



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA
MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF
APPEAL

From: The Registrar, Supreme Court of Appeal

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The following summary is for the benefit of the media in the reporting of this case and does not form part of the judgments of the Supreme Court of Appeal

Bool Smuts and Another v Herman Botha (887/20) [2021] ZASCA 3 (10 January 2021)

Today the Supreme Court of Appeal (SCA) handed down judgment upholding, with costs, an appeal against a decision of the Eastern Cape Division of the High Court, Grahamstown (the high court).

The issue before the SCA was whether the publication of the Facebook posts by Mr Smuts is protected by the right to freedom of expression.

On 23 September 2019, a group of cyclists were participating in an adventure ride organised by Quantum Adventure. During their ride, they traversed Farm Varsfontein belonging to the respondent, Mr Herman Botha (Mr Botha). Nicholas Louw, one of the cyclists noticed two cages on the farm, one containing a dead baboon, the other a dead porcupine. According to his observations, the cages were positioned where there was no shade and water and there were some oranges near the baboon. He formed the view that the animals had died as a result of dehydration whilst trapped in the cages. Incensed by what he saw, he took photographs of the cages containing the dead animals and sent them to the first appellant, Mr Smuts, a wildlife conservationist and founder and executive director of the second appellant, Landmark Leopard and Predator Project–South Africa (Landmark Leopard).

Upon receipt of the photos, Mr Smuts contacted Mr Botha via WhatsApp and Mr Botha confirmed that he had a valid permit to hunt, capture and/or kill the baboons, porcupines and other vermin. On 9 October 2019, Mr Smuts posted, on Landmark Leopard's Facebook pages, pictures of a dead baboon and porcupine trapped on the farm owned by Mr Botha. In the Facebook page, Mr Smuts also included a picture of Mr Botha's six-month old daughter. Additionally, he posted a Google Search Location of Mr Botha's business, his home address and his telephone numbers. A WhatsApp conversation between Mr Smuts and Mr Botha was also posted. In that post, Mr Botha was asked by Mr Smuts if he had a permit to trap animals to which he responded in the affirmative. The post was accompanied by a caption, part of which read as follows: '[t]his is utterly vile. It is ecologically ruinous. Mr Botha claims to have permits to do this – see the Whatsapp conversation with him attached'. Mr Botha contended that Mr Smuts' Facebook post infringed on his right to privacy as it included his identity, family, home address and his business address. He further contended that the Facebook post is inflammatory to the extent that it makes reference to practices that are unethical, barbaric and utterly ruinous to biodiversity.

The SCA held that Mr Smuts was right to expose what he considered to be the cruel and inhumane treatment of animals at Mr Botha's farm. It held further that Mr Botha's post constituted a fair comment. Furthermore, the SCA held that the public has a right to be informed of the humane or inhumane treatment of animals at Mr Botha's farm. Members of the public have the freedom to decide which commercial enterprise they support and which they do not. That freedom of choice can only be exercised if activities happening at Mr Botha's farm are laid bare for the public. It would serve no useful

purpose in publishing the photographs without stating where they were taken, by whom the traps were used and naming the farm and identifying its owner.

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