



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

Date: 28 March 2025

Status: Immediate

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Lebashe Investment Group (Pty) Ltd and Others v United Democratic Movement and Another
(1308/2023) [2025] ZASCA 29 (28 March 2025)

The Supreme Court of Appeal (SCA) today handed down judgment in which it struck from the roll with costs the appellants' appeal against the dismissal of an exception raised by the appellants in response to the respondents' amended plea.

The appellants issued summons against the respondents, seeking R2 million in damages for defamation and *injuria*. Their claims arose from two publications alleged to be *per se* defamatory: The first publication being a letter authored by the second respondent, Mr Bantubonke Holomisa, a Member of Parliament and the President of the first respondent, the United Democratic Movement (UDM), a registered political party. The second publication was a tweet posted on UDM's official X account (formerly Twitter) on 1 July 2018, in which the sixth appellant and others were referred to as 'hyenas' (the tweet).

The appellants' particulars of claim asserted that the statements in the letter titled '*Unmasking Harith's and Lebashe's Alleged Fleecing of the Public Investment Corporation*', were intended and understood by an ordinary reader of reasonable intelligence to suggest that the appellants were deeply involved in a longstanding and escalating corrupt scheme. This scheme allegedly implicated, among others, the then CEO of the Public Investment Corporation (PIC), a state-owned vehicle and asset-management company and the sixth respondent, who served as a non-executive director of the first appellant and chairman of the second and third appellants. It was alleged to involve the unlawful depletion of billions of Rand from the PIC. The letter also called upon the President to initiate an investigation into the PIC. This led to the establishment of a Commission of Inquiry under Mr. Justice Mpati (the PIC Commission of Inquiry). On 13 December 2019, the Report of the PIC Commission of Inquiry into the Allegations of Impropriety at the Public Investment Corporation (the PIC Report) was released.

Nearly two years later, on the eve of the trial, the respondents filed a notice seeking to amend their plea. Their proposed amendment was extensive, aiming to insert verbatim excerpts from the PIC Report. Despite the appellants' objection thereto, the amendment was allowed. As a result, the appellants raised an exception to the amended plea. The crux of the exception was that the amendment lacked averments which were necessary to sustain a defence and that the contents of the PIC Report were entirely irrelevant to the meaning of the letter and the tweet. In the circumstances, the appellants sought an order upholding the exception and striking out the paragraphs from the PIC Report. The court a quo dismissed the exception with costs.

This court, per Windell AJ, held that allowing the appeal in this matter would result in piecemeal adjudication and prolong the litigation, which would lead to a wasteful use of judicial resources and costs. The SCA further held that the summons was issued more than seven years ago and that it is in the interests of justice that the matter proceeds to trial.

The SCA found that the appellants have not demonstrated any irreparable prejudice that cannot be remedied within the framework of the Uniform Rules of Court if the appeal is not entertained. Furthermore, the appellants' right to object to evidence on the grounds of relevance, as well as established principles in defamation law, remains intact and is not curtailed by the order of the court a quo.

Ultimately the SCA held that the appellants' papers fail to disclose any facts that would justify granting leave to appeal in the interests of justice. In the result, the appeal was struck from the roll with costs, such costs to include the costs of the application for leave to appeal, all of which will include those consequent on the employment of two counsel.

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