



THE SUPREME COURT OF APPEAL
REPUBLIC OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal
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Please note that the media summary is intended for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal.

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M TUCH & OTHERS NNO v J H MYERSON & OTHERS NNO

The Supreme Court of Appeal today upheld an appeal against a judgment in the High Court, Johannesburg in terms of which that court dismissed an action for defamation instituted by one Nathan Myerson who has since died.

In application proceedings instituted by the deceased against the first and the third respondents ('the respondents') the deceased, relying on a written undertaking by the respondents, claimed delivery of certificates reflecting him as the holder of 5% of the share capital in a company Jazz Spirit 46 (Pty) Ltd. The respondents alleged that the undertaking constituted a donation and that they had revoked the donation because of gross ingratitude on the part of the deceased.

The deceased and the first respondent's father were partners and according to the respondents the deceased had misappropriated in the order of R5 – R6m of the first respondent's father's portion of the partnership. Such misappropriation allegedly constituted evidence of the deceased's gross ingratitude.

The SCA agreed with the court below that the allegation was defamatory as any reasonable reader of ordinary intelligence would have understood the respondents to be saying that the deceased was a thief who stole from the first respondent's father. However, it disagreed with the court below that no malice on the part of the respondents had been proved and that it had not been proved that the respondents exceeded the bounds of qualified privilege afforded by the fact that the allegation was made during the course of civil judicial proceedings.

Having regard to the fact that the first respondent's father died before the undertaking was given the SCA said that it was hard to believe that anybody could possibly have thought that something done to a third party before a donation was made could constitute evidence of gross ingratitude on the part of a donee in respect of a donation subsequently made. It held that the allegation was so devoid of any merit that, in the absence of any evidence to the contrary, the inference must be drawn that the respondents used the occasion not to advance their case but for an ulterior purpose namely to besmirch the name and reputation of the deceased ie that the respondents acted maliciously.