



THE SUPREME COURT OF APPEAL
REPUBLIC OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

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THE CITIZEN 1978 (PTY) LTD & OTHERS v ROBERT JOHN McBRIDE

The Supreme Court of Appeal (by a majority) today partially upheld an appeal against a judgment in the High Court, Johannesburg in favour of Robert John McBride who had instituted action for damages against the Citizen newspaper, its editor and some journalists (‘the appellants’). His claims were based on editorials and articles (‘the articles’) published in the Citizen. He alleged and the High Court held that the articles were defamatory of him in that it was stated:

- (i) That he is not suited for the position of Head of the Ekurhuleni Metro Police Force;
- (ii) That he is a criminal;
- (iii) That he is a murderer; and
- (iv) That he has been involved in illegal activities with gun dealers in Mozambique.

The SCA held that it had not been alleged in the articles that McBride had been involved in illegal activities with gun dealers in Mozambique but only that there were facts indicating that he may have been involved in such gun dealing. To that extent the appeal succeeded.

During 1986 McBride was a member of Mkhonto we Sizwe (“MK”), a military wing of the African National Congress which was then involved in an armed struggle for political

liberation against the security forces of the Republic. On 14 June 1986 a unit of MK under the leadership of McBride and acting within the context of the liberation struggle, carried out an attack by planting and exploding a car bomb outside the Magoo's Bar / Why Not Restaurant, in Durban as a result whereof three female patrons were killed and many other patrons were injured. McBride was subsequently convicted of murder and of several other offences relating to the bombing attack and sentenced to death. On 19 April 2001 McBride was granted amnesty in terms of s 20 of the Promotion of National Unity and Reconciliation Act ('the Reconciliation Act') in respect of the offences committed by him.

When it became known that McBride could be appointed as Ekurhuleni Metro Police Chief the Citizen in a number of articles expressed the opinion that he was not suited for the position because he was a murderer and a criminal. In the action instituted against them the appellants pleaded that the statement that McBride was unfit to be appointed Ekurhuleni Metro Police Chief constituted fair comment based on facts that were true namely that McBride was a murderer and a criminal having placed the bomb and having killed several people in Magoo's Bar.

In terms of the Reconciliation Act amnesty could be granted in respect of offences which related to an act associated with a political objective committed in the course of the conflicts of the past. The Act provides that no person who has been granted amnesty in respect of an offence may be held criminally liable for such offence. Where a person has been convicted of such an offence any record of the conviction is deemed to be expunged from all official documents or records and the conviction is for all purposes deemed not to have taken place.

The SCA held that the purpose of amnesty provided for in the interim constitution was to advance reconciliation and reconstruction of our society on the basis that there was no need for retribution or victimisation. Provision had to be made for the reintegration into the South African society of many people who had taken part in the armed struggle for liberation. It was, amongst other things, to give effect to this intention that the Reconciliation Act was passed and that provision was made that a person who had been granted amnesty in respect of an offence should not be held criminally or civilly liable for the offence, that any entry or record of the conviction should be deemed to be expunged from all official documents or records and that the conviction should for all purposes be deemed not to have taken place. The SCA stated that it had no doubt that the intention was not only that people to whom amnesty had been granted should not be held criminally and civilly liable for offences committed by them in the course of the conflicts of the past and with the political object of liberation, but also that they should be considered not to have committed the

offences and that those offences should not be held against them, so that they could be reintegrated into society. The intention was to close the book on human rights transgressions of the past in order to achieve reconciliation. Without an agreement on that basis a negotiated settlement may well not have been possible.

The SCA concluded that once amnesty had been granted to McBride he could no longer be branded a criminal and murderer in respect of the offences in respect of which such amnesty had been granted to him. That is not to say that his actions and the consequences of his actions are to be considered not to have taken place. It is a fact that he placed the bomb that killed a number of people and it is a fact that he was convicted of the murder of those people. The granting of amnesty could not and was not intended to obliterate those facts or erase them from the historical record, it was an attempt to shape the future not to undo the past. It had the effect that McBride is no longer considered to be a criminal and a murderer in respect of his actions.

For these reasons the appellants appeal against the High Court's judgment awarding damages to McBride for having been defamed by having been called a murderer and a criminal unsuited for appointment as the Ekurhuleni Metro Police Chief was dismissed.