



**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 17 December 2020

STATUS Immediate

Please note that the media summary is for the benefit of the media and does not form part of the judgment.

EFF and others v Manuel (711/2020) [2020] ZASCA 172 (17 December 2020)

The SCA today gave judgment in an application by the EFF, its national spokesperson, Dr Mbuyiseni Ndlozi, and its leader, Mr Julius Malema, for leave to appeal against a judgment of the Gauteng Division of the High Court, Johannesburg in which a statement issued by the EFF and published on the Twitter accounts of the party and Mr Malema, was held to be defamatory of Mr Trevor Manuel, the former Minister of Finance.

The case arose from Mr Manuel's role as the chair of a committee appointed to advise President Ramaphosa on the appointment of a new Commissioner for the South African Revenue Service. After the committee's recommendation of Mr Edward Kieswetter for the post was published, the EFF issued a statement condemning the recommendation. It said that it was corrupt and nepotistic and had been conducted in secret as a result of an alleged relationship between Mr Manuel and Mr Kieswetter. The basis for these allegations was a WhatsApp message addressed to the Deputy Leader of the EFF, Mr Floyd Shivambu. A demand by Mr Manuel for a retraction was rebuffed in strong terms, leading to him bringing an application against the EFF, Dr Ndlozi, who was responsible for the statement and Mr Malema, who had posted it on his Twitter account. The High Court held that the statement was defamatory and rejected the

defences advanced by the applicants. It ordered that the statement be removed from both the EFF's and Mr Malema's Twitter accounts and that a retraction and apology be published. It also awarded Mr Manuel damages of R500 000. The SCA held that the statement was clearly defamatory and that it was neither true and in the public interest, nor fair comment. The reason was simply that the allegation of a relationship between Mr Manuel and Mr Kieswetter was denied by Mr Manule and the EFF made no attempt to prove that such a relationship existed. Instead it advanced a defence of reasonable publication or absence of intention to injure Mr Manuel. In doing so it relied upon the WhatsApp message. The defence failed because the EFF had made no attempt to establish whether the information given to it by its informant was true. It was not reasonable in the circumstances for it to have relied on it in order to make defamatory statements and this unreasonable conduct showed that it was intended to defame Mr Manuel.

In the result the application for leave to appeal on the merits was dismissed. The SCA then considered the relief granted. It held that the High Court was justified in making a declaratory order and issuing an interdict. However, it said that claiming damages in application proceedings without hearing oral evidence was impermissible. Such claims may only be pursued through a trial action. The basis of Mr Manuel's claim to have suffered damages to his reputation was disputed and could only be resolved by hearing evidence. Additionally, the amount of the award far exceeded the awards in comparable cases.

The SCA accordingly granted leave to appeal in regard to the award of damages and upheld the appeal against that award. In the special circumstances of the case it referred that issue for determination after hearing oral evidence. It also held that an order for the publication of a retraction and apology could only be considered in the light of any damages award. Leave to appeal was also granted in relation to that order and it was referred back to the High Court for consideration after the hearing of evidence and the determination of any damages award.