



**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:** 29 May 2023

**Status:** Immediate

***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***

*Media 24 (Pty) Ltd v Nhleko & Another (Case no 109/22) [2023] ZASC 77 (29 May 2023)*

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Today the Supreme Court of Appeal (SCA) handed down judgment upholding, with costs on an attorney client scale, an appeal against the decision of the Western Cape Division of the High Court of South Africa, Cape Town (the high court).

This appeal concerned the dismissal of an application to amend a plea. The appellant published an article under the heading 'Nhleko's R30 m blessing.' The article stated that the first respondent, who was the Minister of Police at the time, had been 'implicated for signing off millions of rands for work done by his love interest – and for going all out to reinstate charges against Ipid head Robert McBride.' The love interest was a reference to his partner, the second respondent, who according to the article, 'scored more than R30 million for providing services which the police ministry officials claim that they could have received for free.'

The respondents sued for defamation claiming R15 million each, for damages which they allegedly suffered. The appellant admitted the publication of the article but denied the meaning attributed to it, and that it was defamatory. In the alternative, the appellant pleaded that it had established the defences of (a) truth in the public interest; (b) protected comment; and (c) reasonable publication. In response to the plea, the respondents filed a rule 30A notice in terms of the uniform rules of court, objecting to the plea on the grounds that it constituted a bare denial, it was evasive and did not clearly and concisely state the material facts on which the appellant relied for its defence.

In order to address some of the objections, the appellant filed a notice of intention to amend its plea. Again, an objection was raised in which it was asserted that the proposed amendment was an 'elaborate lie with the sole purpose of misleading the court' and was an 'insult to the integrity and intelligence' of the respondents. The high court ruled in favour of the respondents but granted the appellant leave to appeal to the SCA.

The SCA held that the appellant was required only to plead to allegations made in the particulars of claim, and not to verify or justify the allegations made in the article that were not pleaded to constitute the defamation. The amended plea, according to the SCA, made various admissions and provided details of the denials, and the basis for them. Thus, there could be no prejudice to the respondents by the proposed plea. The high court in coming to its conclusion to refuse the application for amendment, paid scant regard to the purpose of pleadings, which is to define the issues between the parties, and not to or to provide details of the facts in dispute between the parties. Because the primary role of pleadings is to ensure that the real dispute between litigants is adjudicated upon, courts are loathe to deny parties the right to amend their pleadings. The exception is when an amendment is *mala fides* or would result in an injustice which could not be cured by a cost order. Here, the sole purpose of the application for amendment was to ensure that the plea advanced encapsulated the defence to the particulars of claim, not to the article itself.

The SCA held further that a litigant is not required to prove its case in the pleadings, or to describe the evidence to be led, but to state the material facts on which it relies and which it intends to prove at the trial. The SCA reminded trial courts that an adherence to the fundamental principles of pleadings should

be observed and parties should be allowed to ventilate their case as they determine, within the bounds of these well understood principles. It was upon those findings that the appeal was upheld.

The punitive costs were awarded against the respondents because of the intemperate and ill-founded accusations in the notice of objection.

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