



THE SUPREME COURT OF APPEAL REPUBLIC OF SOUTH AFRICA

MEDIA SUMMARY - JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

Masuku & Ano v SAHRC (1062/2017) [2018] ZASCA 180 (04 December 2018)

From: The Registrar, Supreme Court of Appeal

Date: 04 December 2018

Status: Immediate

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

Today, the Supreme Court of Appeal (SCA) upheld an appeal brought by Mr Bongani Masuku and COSATU against a judgment of the Equality Court in terms of which certain statements made by Mr Masuku were declared to be hate speech.

The statements in question were made by Mr Masuku in the context of strong worldwide reaction that followed military operation launched by the armed forces of the State of Israel on Hamas during December 2008 and January 2009.

Mr Masuku made the following statements online:

‘as we struggle to liberate Palestine from the racists, fascists and Zionists who belong to the era of their Friend Hitler! We must not apologise, every Zionist must be made to drink the bitter medicine they are feeding our brothers and sisters in Palestine. We must target them, expose them and do all that is needed to subject them to perpetual suffering until they withdraw from the land of others and stop their savage attacks on human dignity. Every Palestinian who suffers is a direct attack on all of us!’

At a gathering held at Wits University, he made the following statements as part of his speech:

‘ . . . COSATU has got members here on this campus, we can make sure that for that side it will be hell . . . ’,

. . . the following things are going to apply: any South African family, I want to repeat it so that it is clear for everyone, any South African family who sends its son or daughter to be part of the Israeli Defence Force must not blame us when something happens to them with immediate effect . . .', and

' . . . COSATU is with you, we will do everything to make sure that whether it is at Wits, whether it is at Orange Grove, anyone who does not support equality and dignity, who does not support the rights of other people must face the consequences even if we will do something that may necessarily be regarded as harm . . .'

In line with the finding that the statements amounted to hate speech, the Equality Court ordered Mr Masuku to apologise to the Jewish Community.

The Supreme Court of Appeal highlighted the importance of freedom of expression in South Africa and the protection thereof under s 16(1) of the Constitution. It held that the boundaries of free speech were delimited by s 16 (2) of the Constitution in terms of which, for the purposes of this case, only advocacy of hatred based on race, ethnicity, gender or religion was excluded from protection. Even if Mr Masuku's words and statements were hurtful unpalatable, offensive, or even insulting they remained within the protected boundaries. The interpretation of the word 'Zionists' in the blog statement as referring to Jewish people in general was incorrect. The statements fell to be interpreted in the context in which they were made, including the provocative statement that preceded them, both in the blog and at the Wits gathering. The order of the Equality Court was accordingly set aside.