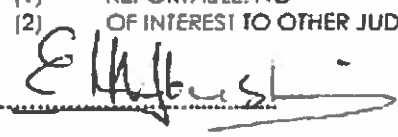


IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)



Case Number: 39867/2020

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
	
E.M. KUBUSHI	DATE: 01-10-2020

In the matter between:

PETERSON KHANYISANI SIYAYA
APPLICANT

and

eNEWS CHANNEL AFRICA (PTY) LTD t/a eNCA

FIRST RESPONDENT

MEDIA 24 LTD t/a CITY PRESS NEWSPAPER

SECOND RESPONDENT

**ARENA HOLDINGS GROUP LTD t/a THE SUNDAY
TIMES NEWSPAPER**

THIRD RESPONDENT

**FUNDUDZI MEDIA (PTY) LTD t/a THE SUNDAY WORLD
NEWSPAPER**

FOURTH RESPONDENT

**CAXTON & CTP PUBLISHERS & PRINTERS t/a THE CITIZEN
NEWSPAPER**

FIFTH RESPONDENT

JUDGMENT

KUBUSHI J

This judgement is handed down electronically by circulating to the parties' representatives by email and by uploading on Caselines.

INTRODUCTION

[1] This urgent application is brought on extremely urgent timeframes, for final relief. The applicant contends that certain statements that the respondents published in articles on 2 and 3 August 2020 are false, defamatory and unlawful. The matter involves five respondents each of whose defence is based on different facts.

SALIENTS FACTS

[2] The institution of the proceedings originates from the story about the arrest of Ms Nomachule Noma Gigaba ("Ms Gigaba") which broke in the media on the evening of Friday 31 July 2020. It appears that the arrest was as a result of a domestic dispute that ensued between Ms Gigaba and her husband (the erstwhile Cabinet Minister, Mr Malosi Gigaba) ("Mr Gigaba") relating to allegations of damage to a Mercedes Benz G-Wagon motor vehicle.

[3] The story was reported in a number of different publications under different articles. For instance, on 2 August 2020 the story appeared in City Press, Sunday Times and Sunday World, newspapers. The story appeared again on 3 August 2020 in the ENCA (a division of e.sat TV (Pty) Ltd) and the Citizen, publications, respectively. The story also appeared in all the online platforms of the respective publications. It is stated in the first respondent's papers that it has been incorrectly cited, in that, there is no such company as "eNEWS CHANNEL AFRICA (PTY) LTD" ENCA is a division of e.sat TV (Pty) Ltd. I shall henceforth, in this judgment refer to the first respondent as "ENCA". Each of these publications is cited as a respondent in these proceedings. For convenience I shall, in this judgment, refer to each of the publications by its own name and I shall refer to them collectively as the respondents.

[4] In the main, what was relayed on in all these publications was the arrest of Ms Gigaba and why she was arrested. However, in all the publications, there was further information that appeared about Mr Peterson Siyaya ("Mr Siyaya"), the applicant in this matter, who was reported to be a friend to the former Minister. It is this

information that is the subject matter of this application which Mr Siyaya is aggrieved by.

[5] As is the norm, before the story was published investigations were carried out. According to ENCA at the time the statements were published, there were numerous pictures from Mr Siyaya's Instagram account showing him posing with expensive motor vehicles - a Mercedes Benz G-Class and Porsche and expensive Louis Vuitton luggage and a helicopter. In one of the pictures he is seen holding a key to the Mercedes Benz. At the time, the Instagram was a public account but it has now been changed to a private account whose posts can only be seen by those Mr Siyaya permits. His Facebook cover page also depicted him leading a march of the National Union of Mineworkers ("NUM").

[6] Sunday Times states in their papers that as the story was developing a source within the Directorate for Priority Crime Investigation (the Hawks) ("DPCI") sent a text message to a senior reporter at Sunday Times, Ms Nicolette Gules ("Ms Gules"), informing her of the arrest of Ms Gigaba and the charges brought against her – malicious damage to property, domestic violence, *crimen injuria* and assault, and that the complainants were Mr Gigaba and Mr Siyaya. About a week before Sunday Times published their article in this regard, Ms Gules had seen that a certain Vuyo Mkhize ("Mr Mkhize") – Mr Gigaba's communication adviser – had posted a video of a badly damaged Mercedes Benz G-Class on Facebook which was subsequently removed. Ms Gules, who is known to Mr Mkhize, called him and after a long discussion learnt from Mr Mkhize about what was later reported about the Gigabas in Sunday Times. She also learnt that Mr Siyaya is the owner of the Mercedes Benz G-Wagon that was the subject of the criminal investigation against Ms Gigaba and that Mr Siyaya had laid a complaint of *crimen injuria* against Ms Gigaba for insulting him. Initially Mr Mkhize had wanted to remain anonymous, but he later agreed to be named. An affidavit by him confirming this discussion forms part of the record of these proceedings.

[7] One other investigator of Sunday Times, Mr Wicks, endeavoured to contact Mr Siyaya as he pursued the story, to no avail. Mr Wicks used Search Works to perform a CIPC search which revealed that Mr Siyaya is an active director of five different entities. Mr Wicks eventually managed to contact Mr Siyaya telephonically. Mr Siyaya indicated that he was not in a position to speak to Mr Wicks at the time and undertook to return his call, but never did. An attempt was made later in the day to contact Mr Siyaya again. When it became clear that Mr Siyaya was never going to return the call, Mr Wicks sent him a WhatsApp message informing him why he sought to speak to him and urging him to return his call. But he never did.

[8] Bongani Mdakane, a freelance reporter at City Press also received the same statement that was sent to Sunday Times by the Hawks. Mr Mdakane phoned the Hawks spokesperson, Hangwani Mulaudzi, who confirmed the contents of the statement. During the course of his investigations, Mr Mdakane also heard about the dispute between the Gigabas from Mr Mkhize who also confirmed that the motor vehicle involved in the dispute belonged to Mr Siyaya.

[9] On Wednesday 29 July 2020, Mr Malatji from Sunday World received a tip off that Mr Gigaba had opened a case against his wife. Mr Malatji then started making enquiries. He phoned his police contact, who works at the admin office in the Gauteng Provincial Office. The contact provided Mr Malatji with a copy of Mr Gigaba's statement to the police and confirmed that the motor vehicle involved belonged to Mr Siyaya.

[10] The Citizen, on the other hand, picked up the story from the News24 wire and republished it. The story itself was researched by News24, the Citizen only used it in its publication. The Citizen says in their papers that this is normal practice and that they did not find it necessary to investigate the matter further as News24 is a respected source that is considered to be reliable.

THE STATEMENTS COMPLAINED OF

[11] When reporting its story about the arrest of Ms Gigaba, ENCA under the article headlined *"Hawks to Hand Over Norma Gigaba's Case to the Police"* also published the following information of and about Mr Siyaya:

"the vehicle [a Mercedes Benz G-Class] belongs to Malusi's friend, Peterson Siyaya".

"But who is Mr Siyaya?"

"He [Mr Siyaya] appears to be a National Union Mineworkers member – who had previously been arrested and later released on charges related to the murder of AMCU members in the North West.

There is very little public information about Siyaya – other than his Instagram account.

It appears he and the former Minister are long-time friends and ANC comrades.

Just days before his car was damaged, Siyaya posted a picture of himself with his friend.

Commented – "I would rather walk with a friend in the dark than alone in the dark"

It's not yet known how Siyaya fits into the Gigaba's marital problems.

Neither Siyaya nor the Gigaba's could be reached for comment".

[12] City Press under the article headlined *"Death Plot Against Gigaba? – Hawks Dig Up Charge Laid in May, When He Claimed That Hitmen Were Hired to Kill Him"* published the following information of and about Mr Siyaya:

"This new information comes after a dramatic few weeks, which saw a Mercedes Benz G-Wagon belonging to Gigaba's friend – Peterson Siyaya – badly damaged at the Gigaba's matrimonial home in Waterkloof Ridge Pretoria".

"Siyaya had lent the vehicle to Gigaba".

"Malusi called Peterson to tell him what had happened [to his car], and he [went to the police] and opened a case of malicious damage to property against his wife".

"Peterson came to their house to understand why his car was damaged, and Norma insulted him with unprintable insults. This is when Peterson decided to open the case against Norma".

According to those privy to the matter, Gigaba and Siyaya had been trying to drop the charges against Norma after the parties had a discussion and agreed not to press on. Sources said the Gigaba had agreed that he would drop the charges and Siyaya would do the same".

[13] Sunday Times, on the other side, in an article headlined "Gigaba Conspiracy Probed" reported the following information of and about Mr Siyaya:

"While the investigation took shape, the 40-year old socialite is said to have gone on a rampage in which she allegedly left deep scratches in the R3m black Mercedes Benz G-63 AMG "G-Wagon" which had been lent to her husband by his close friend, trade unionist and businessman Peterson Siyaya".

"She also allegedly trashed her husband's study and called Siyaya – who a source close to Gigaba said Norma believed was a bad influence – on the phone and threaten and insult him".

"The police docket indicates that the damage inflicted on Siyaya's car was so severe that it would take about R500 000.00 to fix".

"A source close to him [Mr Gigaba] said that for Siyaya to access his insurance, Gigaba had to open a police case".

"Gigaba had tried to withdraw the charges he laid against Norma, a source said yesterday, and lawyers representing her and Siyaya have been in negotiations all week to resolve the matters".

"Gigaba and Siyaya, a businessman and official of the National Union of Mineworkers, are close friends. Pictures on Siyaya's Instagram page show how

he toured the country with the former Minister. There are also pictures showing the G-Wagon, his luxury watches and Louis Vuitton luggage".

[14] Sunday World published an article under the headline "*Malusi Gigaba and Wife in Murderous Drama*" which included information of and about Mr Siyaya that –

"The cop also said as the police were investigating the case of conspiracy to commit murder against Nomachule, she then attacked Malusi at their home in Pretoria and even insulted his friend Siyaya Peterson and damaged his car, which was parked in the ANC heavyweight's home".

"After allegedly attacking Malusi, Noma phoned Peterson and told him that he was a dog and that he contracted HIV/Aids because of sleeping with cougars. Peterson opened a case of malicious damage to property and crimen injuria at the Brooklyn Police Station".

[15] On the other hand, the Citizen published an article under the headline "*Norma Gigaba Heads to High Court to Challenge Her Arrest, Bring Civil Claims*" and included information about Mr Siyaya that –

"It was previously reported that Gigaba was arrested after she allegedly badly damaged a Mercedes Benz G-Wagon belonging to Malusi Gigaba's friend, trade unionist Peterson Siyaya".

THE RELIEF SOUGHT

[16] It is these statements that Mr Siyaya is aggrieved by, and has as a result approached court for relief on an urgent basis. Mr Siyaya, in the notice of motion, seeks relief for an order under the following terms:

- 16.1 Condoning the non-compliance with the rules relating to time periods, service and forms and dispose of this matter as urgent in terms of rule 6 (12) of the Uniform Rules of Court.

- 16.2 Declaring the statements published by the respondents about the applicant that he is a trade unionist, a businessman, he owns a Mercedes Benz G-Class, he was arrested in relation to accusations of murder of AMCU members and he is HIV/AIDS positive are false and defamatory.
- 16.3 Declaring that the respondents' publication of statements were and continue to be unlawful.
- 16.4 Directing the respondents to retract the statements as made in relation to matters raised in paragraph 2 within 24 hours of the granting of the order.
- 16.5 Directing the respondents to publish a public apology within 24 hours of the granting of the order couched as follows:

From 2 August 2020 we have published factually incorrect, misleading, false and defamatory statements about Mr Peterson Siyaya. We unconditionally retract these statements, apologise unreservedly, and correct same as follows:

- (a) Mr Peterson Siyaya is neither a businessman nor a trade unionist;
 - (b) Mr Peterson Siyaya does not own, and has never owned a Mercedes Benz G-Class;
 - (c) Mr Peterson Siyaya has not, and has never been arrested on charges of murder of AMCU members; and
 - (d) Mr Peterson Siyaya is not HIV/AIDS positive nor does he sleep with cougars.
- 16.6 The respondents are interdicted from further publishing any statement that says or implies that the applicant is a trade unionist, a businessman,

owns a Mercedes Benz G-Class, was arrested in relation to accusations of murder of AMCU members and that he is HIV/AIDS positive.

- 16.7 Directing each respondent to pay damages of R1 000 000 to the applicant.
- 16.8 Directing that each respondent to pay costs of this application, and such to include costs of two Counsel.

[17] In summary, what really aggrieved Mr Siyaya in the respondents' articles is that it is reported that:

- 17.1 he is a member and official of the Union of Mineworkers;
- 17.2 he is a businessman;
- 17.3 he owns a Mercedes Benz G-Class motor vehicle; which he made available for the use of a former Minister (Mr Malusi Gigaba);
- 17.4 he was arrested in 2017 in relation to allegations of murder of AMCU members; and
- 17.5 he is HIV/AIDS positive, he is a dog and he sleeps with cougars.

THE ISSUE TO BE DETERMINED

[18] The issue that arises is whether Mr Siyaya has in these papers made out a case for the relief he seeks.

DEFAMATION

The Arguments

[19] Mr Siyaya's contention is that the statements as published by the respondents, are designed and intended to mislead the public, false and defamatory. The statements according to Mr Siyaya, have harmed his good name, reputation and

dignity. He, thus, brings this urgent application to vindicate his good name, reputation and dignity in public that he says has been and continues to be tarnished by the respondents' statements and seeks relief as stated in the notice of motion.

[20] In addition, Mr Siyaya contends that the respondents' actions are wrongful in that they infringe upon his constitutional right to human dignity and privacy and place his right to life at risk. As such, he argues that the reprehensible wrongful conduct of the respondents should be remedied as a matter of urgency.

[21] The application is opposed by all the respondents *in toto*. All five respondents oppose the application on its merits and on the issue of urgency. As regards the merits, the respondents deny that Mr Siyaya has succeeded in establishing the relief he seeks in the papers in that he failed to:

21.1 establish that the statements are defamatory.

21.2 demonstrate that the statements made are false - many of the statements are, according to the respondents, demonstrably true and in the public interest. Even if it has been established that any of the statements were defamatory and/or false, the contention is that the respondents were reasonable in publishing them at the time and some of the statements are protected by a qualified privilege.

21.3 make out a case for the interdictory relief he seeks.

21.4 make out a case in support of the damages he seeks.

[22] The respondents submit that the relief Mr Siyaya seeks should be viewed in the context that they have been reporting on a story of significant interest. The story, in essence, according to the respondents, is not about Mr Siyaya but about a domestic dispute between the Gigabas and allegations of damage caused to a Mercedes Benz

G63 AMG which is being investigated by the DPCI. They contend that the stories they have published plainly relate to matters that are highly newsworthy and of significant public interest. The facts that underlie the stories relate to the use of state resources and law enforcement by one party to what appears to be an essentially domestic dispute in which Mr Siyaya is involved. The issues are said to be patently of a significant public interest and are a legitimate subject of journalism and reportage of the kind that the respondents have published.

[23] In publishing this story, the respondents contend also that they exhausted their right to freedom of expression in terms of section 16 of the Constitution, which includes the right to freedom of the press. According to the respondents, section 16 of the Constitution serves not only to protect the rights of the media to publish articles. It also serves to protect the rights of the public to receive timeous, accurate and newsworthy information on issues of public interest. Over and above, before the stories were publicised, Mr Siyaya was given repeated opportunities to respond to the allegations by Sunday Times, but he did not do so and did not explain his failure to do so.

The Law Applicable

[24] It is trite that at common law, the elements of the delict of defamation are (a) the wrongful and (b) intentional (c) publication of (d) defamatory statements (e) concerning the plaintiff. It is not an element of the delict in common law that the statements be false. Once a plaintiff establishes that a defendant has published a defamatory statement concerning the plaintiff, it is presumed that the publication was both unlawful and intentional. A defendant wishing to avoid liability for defamation must then raise a defence which rebuts unlawfulness or intention.¹

[25] The elements of intention, publication and whether the statements concern Mr Siyaya, are not in dispute. The respondents, however, deny that the statements are defamatory.

¹ *Khumalo and Others v Holomisa* 2002 (5) SA 401 (CC) para 18.

[26] It is well established that the determination of whether a publication is defamatory and therefore *prima facie* wrongful involves a two stage enquiry. The first, is to establish the ordinary meaning of the statement made. The second, is whether that meaning is defamatory. In establishing the ordinary meaning, the court is not concerned with the meaning which the maker of the statement intended to convey. Nor is it concerned with the meaning given to it by the persons to whom it was published, whether or not they believed it to be true, or whether or not they then thought less of the plaintiff. The test to be applied is an objective one. In accordance with this objective test, the criterion is what meaning a reasonable reader of ordinary intelligence would attribute to the statement. In applying this test, it is accepted that the reasonable reader would understand the statement in its context and that she or he would have had regard not only to what is expressly stated, but also what is implied.²

[27] The test, therefore, for determining whether a statement is defamatory is whether, in the opinion of the reasonable person, the words have the tendency to undermine, subvert, or impair a person's good name, reputation, or esteem in the community.³

[28] It is common cause that on this test, none of the statements complained of are plainly defamatory. Statement to the effect that Mr Siyaya owns a Mercedes Benz G-Class, appears to be or is a member of a particular trade union, is a businessman, that he was arrested and later released, do not tend to lower his reputation in the eyes of a reasonable person. At worst, the statements are neutral and may in fact increase the esteem in which some members of the community hold him. Mr Siyaya, however, submits that it cannot be conceded that the ordinary meaning of the statements does not impute defamation. The question, therefore, is whether the statements complained of impute defamation.

² *Le Roux and Others v Dey* 2011 (3) SA 274 (CC) para 89.

³ *South African Associated Newspapers Ltd and Another v Yutor* 1969 (2) SA 422 (A) at 451.

[29] The court in *Le Roux* stated that

"In determining its meaning the court must take account not only of what the publication expressly conveys, but also of what it implies, i.e. what a reasonable person may infer from it."

[30] In *Tsedu*⁴ the court stated that the question whether an imputation is defamatory is usually answered by asking whether the imputation lowers the plaintiff in the estimation of the ordinary reader.

Analysis of Evidence

[31] The starting point for Mr Siyaya to be able to claim relief for defamation is that his reputation must be proved to have been harmed in some way. This, as it has been argued, entails examining the effect of the statements complained of to assess whether, in the opinion of the reasonable person, the words have the tendency to undermine his reputation. Unless this is proved, there is no harm to Mr Siyaya's reputation and he has no cause of action.

[32] I do not agree with the argument by Mr Siyaya's counsel that the statements must be viewed holistically in order to determine their effect on Mr Siyaya's reputation. The statements were made in a number of different publications and in different articles. Not all of the statements appeared in every article. In the majority of the articles, only one or two of the statements complained of were made. The correct approach when determining whether the statements have the imputation of lowering Mr Siyaya in the estimation of the ordinary reader, is to deal with the statements as they refer to each respondent. The statements should, therefore, be viewed and considered individually, as I will hereunder do.

⁴ *Tsedu and Others v Lekota and Another* (715/07) (2009) ZASCA 11 para 17.

The Statements that Mr Siyaya Owns a Mercedes Benz G-Wagon Motor Vehicle and that He is a Trade Unionist and a Businessman

[33] The statement that Mr Siyaya owns a Mercedes Benz G-Wagon was made by all the respondents. Only ENCA and the Citizen made the statement that Mr Siyaya is a trade unionist. Sunday Times made statements that Mr Siyaya is a businessman and a trade unionist.

[34] Mr Siyaya submits that these statements published by the respondents are factually incorrect, misleading, false and defamatory, in that

34.1 he does not own a Mercedes Benz G-Class that was damaged by Ms Gigaba. He supports this by attaching a National Traffic Information Service print-out confirming that he owns a BMW motor vehicle.

34.2 it is factually incorrect and misleading to the public that he owns such a luxury SUV, and moreover, he is so imbued with wealth that he would loan such a motor vehicle to a former Minister. He is presently unemployed and could not possibly be saturated with such wealth as to own, let alone loan luxury vehicles to his close friends.

34.3 he has not been a member of the National Union of Mineworkers since the termination of his employment with Lonmin Mine on 26 July 2019. In support he attaches a copy of the Exit Route Form.

34.4 he is not a businessman.

[35] Mr Siyaya contends that these statements create a 'negative perception' of him as a corrupt trade unionist who owns luxury vehicles such as that mentioned in the articles while the workers continue their plight against the unscrupulous labour practices.

[36] He further submits that allegations of corruption are defamatory *per se* and that it is not necessary to point them out. In this regard he referred to *Trevor Manuel*.⁵

[37] According to Mr Siyaya the allegations of corruption in this matter are explicitly evident in the conversations which have been sparked by the respondents' publications. Mr Siyaya contends that the imputation, that he is corrupt, has been drawn on several instances, one such instance being during a conversation with former Minister Trevor Manuel in a discussion titled "*How Can SA Clean UP*", wherein the former Minister refers to a trade unionist who owns a motor vehicle that is worth R3 million. The inference drawn from the statement is that Mr Siyaya is a corrupt individual.

[38] In *Le Roux*,⁶ it was held that "*The reasonable reader or observer is thus a legal construct of an individual utilised by the court to establish meaning. Because the test is objective, a court may not hear evidence of the sense in which the statement was understood by the actual reader or observer of the statement or publication in question*". Similarly, in this instance, the evidence that Mr Siyaya seeks to tender as to how Mr Manuel understood the statements or publications in question is inadmissible.

[39] Mr Siyaya also wants to tender evidence of the comments of people on Twitter who read the articles and how they understood the statements made by the respondents in their respective articles. On the basis of *Le Roux*, this evidence is not admissible. Mr Siyaya's counsel in oral argument refers to these people as reasonable readers. A reasonable reader or observer is said to be a legal construct of an individual utilised by the court to establish meaning. It is not the actual person who read the statement or publication. The test, as it has been held in *Le Roux* and other numerous judgments, is objective. The court cannot accept evidence of the sense in which the

⁵ *Manuel v Economic Freedom Fighters* 2019 (5) SA 210 (GJ) para 11.

⁶ Para 90.

statements were understood by the actual reader or observer of the statements or publications.

[40] The respondents contend, in that regard, that the statements they made in their respective articles do not lower Mr Siyaya's reputation in the eyes of a reasonable person.

Statements made by ENCA

[41] ENCA's argument is that the statements it made that Mr Siyaya owns a Mercedes Benz G-Wagon and that he appears to be a trade unionist, when read in the context of the rest of the article, a reasonable reader would not impute the meaning sought by Mr Siyaya.

[42] According to ENCA, firstly, the article is not about Mr Siyaya but is primarily about the case opened by Mr Gigaba against his wife. Mr Siyaya is referred to only in explaining the motor vehicle that is the subject matter of the case. Secondly, the statement that Mr Siyaya is a NUM member was made in the context of trying to explain who Mr Siyaya is. The statement does not even say that Mr Siyaya is a trade unionist but that he appears to be one. This statement was based on previous statements by NUM to the effect that Mr Siyaya is a NUM member, as well as Mr Siyaya's Facebook cover page which depicts him leading a NUM march. The article further expressly recognises that there is little information publicly available about him.

[43] I am satisfied by the evidence tendered by ENCA to the effect that the statements it made would not be construed by a reasonable reader to mean that Mr Siyaya is a corrupt trade unionist who owns luxury vehicles. The information about Mr Siyaya as contained in the statements is just background information to explain who Mr Siyaya is, as he has been mentioned in the domestic dispute between the Gigabas.

The Statement made by City Press

[44] City Press' statement states only that the Mercedes Benz that was damaged belongs to Mr Siyaya.

[45] The contention by City Press that ownership of a motor vehicle does not lower Mr Siyaya's reputation in the eyes of the reasonable reader is correct. A reasonable reader would not when reading the statement understand it to imply that Mr Siyaya is corrupt. The statement makes no mention of Mr Siyaya being a trade unionist nor does it say that he is a businessman or that he is corrupt. The statement, as argued, is innocuous and cannot be reasonably understood to have the meaning Mr Siyaya seeks to attribute to it. The statement merely states that Mr Siyaya owns a specific motor vehicle which he lent to Mr Gigaba.

Statements made by Sunday Times

[46] Sunday Times' statements are to the effect that Mr Siyaya owns a Mercedes Benz G-Class motor vehicle and is a trade unionist and a businessman. It is submitted that the statements do not tend to lower Mr Siyaya's reputation in the eyes of the reasonable reader. The argument is that read in the context of the rest of the article, a reasonable person would not impute the meaning that Mr Siyaya wants to ascribe to the statements.

[47] The article, according to Sunday Times, is primarily about Ms Gigaba and the dispute that has arisen between her and her spouse. Mr Siyaya is mentioned in the context of the allegations against Ms Gigaba and it is stated in passing that the motor vehicle Ms Gigaba is alleged to have damaged had been lent to Mr Gigaba by Mr Siyaya, who is then described as a businessman and a trade unionist.

[48] I am in agreement with the argument raised by Sunday Times on this point. It is quite clear that Mr Siyaya's ownership of the motor vehicle nor the report that he is a trade unionist and a business is not the focus of the article. The statements cannot,

therefore, when read in the context of the story, be defamatory nor can a reasonable person impute the meaning which Mr Siyaya seeks to ascribe to the statements.

The Statement made by Sunday World

[49] The argument by Sunday World that the statement it made that Mr Siyaya owns a Mercedes Benz G-Class does not lower his reputation in the eyes of the reasonable reader, is correct when read in the context of what was reported in the article. The statement is harmless and merely states that Mr Siyaya owns a specific motor vehicle. Of importance is that the statement does not refer to Mr Siyaya as either a trade unionist or a businessman nor does it say he is corrupt. In that sense, the statement can, therefore, not be read or construed to infer that Mr Siyaya is corrupt nor can it be understood to bear the meaning Mr Siyaya attributes to it.

The Statements made by the Citizen

[50] When read in whole, the statement by the Citizen, on the other hand, does not actually say that Mr Siyaya owns a Mercedes Benz G-Wagon. On reading the statement it is apparent that the next sentence in the article states that the charge sheet says the motor vehicle belongs to Mr Gigaba. As such, two inconsistent versions were advanced in this regard. In that context, doubt would be created, in the mind of the reasonable reader as to whether the motor vehicle belongs to Mr Siyaya or Mr Gigaba. The statement can, therefore, not reasonably be construed to bear the meaning that Mr Siyaya ascribes to it. In quoting the statement from the Citizen's article, Mr Siyaya omitted to mention the portion where it is stated that the charge sheet says the motor vehicle belongs to Mr Gigaba.

[51] The statement that he is a trade unionist is also innocuous when read in the context in which it was stated in the article. No reasonable reader can ascribe to it the meaning given to it by Mr Siyaya.

The Statement that Mr Siyaya was Arrested in 2017 in Relation to Charges of the Murder of AMCU Members

[52] Mr Siyaya submits that the statement is factually incorrect, misleading, false and defamatory in that he was never arrested for murder of AMCU members at North West but on a charge of attempted murder that was subsequently withdrawn due to lack of evidence. Mr Siyaya claims that the statement creates the impression that he is a murderous "*tenderpreneur*" who killed members of the trade union AMCU and was released because of being a friend of the former Minister. Such statements, according to Mr Siyaya, are harmful as they place him under dangerous risk of attack and insults from families and friends of AMCU members who were killed at Marikana, North West.

[53] This statement was made by ENCA. ENCA argues that the statement that Mr Siyaya was previously arrested and later released on charges related to the murder of AMCU members in the North West does not lower his reputation in the eyes of the public. Nor does the statement give an impression that Mr Siyaya is a murderous "*tenderpreneur*". The statement makes it clear that though he was arrested he was later released. The statement does not state that he was arrested for murder. The statement clearly state that he was arrested for charges related to murder. Attempted murder is a charge related to murder. His arrest in relations to these charges is said to have been widely publicised at the time.

[54] I align with ENCA's argument that the contention that it is defamatory to say to someone that they were arrested on charges related to murder or attempted murder, is wrong in law. Firstly, no mention is made in the statement of Mr Siyaya being a "*tenderpreneur*" or that he was released because he is a friend to a Minister. Secondly, the judgments that ENCA referred me to in support of this argument are apposite.

[55] In *Manyatshe*⁷, for instance, the court differentiated between the publication of allegations that a person has been arrested by the police as a suspect of a crime and the allegations that a criminal charge has been laid. In the former the court held that it was defamatory to do so 'because it would lead the reasonable reader to infer that the police believed, on reasonable grounds, that the arrested person committed the crime for which he was arrested, whereas in the latter, the allegation would have a lesser impact on the reasonable reader.

[56] It is now settled law that the reasonable reader is well able to discern between being investigated for a crime and having committed a crime (which may be *per se* defamatory). Investigation for criminal conduct or even suspicion of criminal conduct does not amount to guilt, it leaves a possibility of rebuttal.

[57] Thus, the implications that Mr Siyaya seeks to draw from the statement are, indeed, at best tenuous. Of importance, which Mr Siyaya seems to ignore, is that the statement makes it clear that though Mr Siyaya was arrested he was later released. A reasonable reader would know that the fact that Mr Siyaya was released after the arrest would mean that there was no evidence against him. The reasonable reader would, as such, not read the statement as implying the implication ascribed to the statement by Mr Siyaya. Therefore, the statement does not undermine Mr Siyaya's reputation in the eyes of a reasonable reader.

The Statement That Mr Siyaya is HIV/AIDS Positive, is a Dog and Sleeps with Cougars

[58] Mr Siyaya submits that this statement is factually incorrect, misleading, false and defamatory in that he is not a dog and never contracted HIV/AIDS because of sleeping with cougars. The negative connotation created by the statement is that he is perceived as someone who is HIV/AIDS positive, whereas he is not.

⁷ *Manyatshe v M & G Media Ltd and Others* (415/08) [2009] ZASCA 96 at para 16.

[59] Mr Siyaya submits that the statement labelling him as HIV/AIDS positive, being a dog and sleeping with cougars, is defamatory in its nature, violates his right to human dignity and privacy. He in this regard relies on the judgment in *NM*⁸ where the court said the following:

"...the publication by the respondents of the HIV status of the applicants' constituted a wrongful publication of a private fact and so the rights of the applicants' right to privacy was breached by the respondents. The need for access to medical information must also serve a compelling public interest".

[60] The truth, according to Mr Siyaya, is that he is not HIV/AIDS positive, is not a dog and does not sleep with cougars. Therefore, the publication does not only damage his good name and reputation, but it also violates his constitutional right to privacy as enshrined in the Bill of Rights and as given meaning in the Protection of Personal Information Act.⁹

[61] The statement complained of here, was made by Sunday World. Sunday World, as such, argues that the statement is not defamatory. It contends that the statement is identified as reported speech, that is, this is what Ms Gigaba said to Mr Siyaya. It is not presented as a true statement.

[62] I am in agreement with Sunday World's contention that no reasonable reader would read the statement and infer that the content of what Ms Gigaba said is true. A reasonable reader in the circumstances will read the story and understand that Ms Gigaba was furious at the time she said those words, and possibly wanted to hurt Mr Siyaya who he considered a bad influence on her husband. Moreover, the article states that this insult is the basis of a criminal charge - Mr Siyaya has laid a complaint of *crimen injuria* against Ms Gigaba. As such, a reasonable reader reading that Mr Siyaya is disputing this allegation will not construe this statement to be true. Under the circumstances, no reasonable person would construe the statement to mean that

⁸ *NM and Others v Smith and Others* CCT 69/05 2007 ZACC para 47.

⁹ Act 4 of 2013 which came into effect on 1 July 2020 (with the exception of sections 110 and 114(4)).

Mr Siyaya is as a matter of fact HIV/AIDS positive. In this sense, in the eyes of a reasonable person, Mr Siyaya's reputation has not been lowered by this statement.

[63] Sunday World did not in fact publish information about the HIV status of Mr Siyaya, it merely reported on the content of the insult which forms the basis of a charge against Ms Gigaba. It is not against the law to publish the content of a charge sheet. Besides, the truth is that Mr Siyaya is not HIV/AIDS positive his right to privacy has, in that sense, not been breached as he wants this court to believe. The case of *NM* to which he referred me, is instructive. The applicants in *NM* were in fact HIV positive, hence that court's decision that the publication of the applicants' health status without their consent was a breach of their right to privacy. This is not the case in this instance.

[64] Nevertheless, Mr Siyaya, relying in *Tsedu*,¹⁰ further argues that Sunday World has no defence to avoid liability for defamation on the basis that the statement originated from someone else. In particular, Mr Siyaya relies firstly, on the court's finding which was based on *Kelsey Stuart's Newspaperman's Guide to the Law*¹¹, that a person who repeats or adopts and publishes a defamatory statement will be held to have published the statement. The court in that case made an example that the writer of a letter published in a newspaper is *prima facie* liable for the publication of it but so are the editor, printer, publisher and proprietor – so too a person who publishes a defamatory rumour cannot escape liability on the ground that he passed it on only as a rumour, without endorsing it. Secondly, Mr Siyaya relies on the finding in *Tsedu* that a newspaper that publishes a defamatory statement that was made by another is as much the publisher of the defamation as the originator is. Moreover, it will be no defence for the newspaper to say that what was published was merely repetition.

¹⁰ *Tsedu v Lekota* at para 5.

¹¹ Stuart K.W. by Bell, Dewar & Hall (1990) *Kelsey Stuart's Newspaperman's Guide to the Law* Sed Butterworths: Durban, at p43.

[65] *Tsedu* is distinguishable from the current matter in that the statement made by Sunday World is a report that was made by Mr Siyaya to the police and is recorded in the charge laid with the police. It is a fact that Mr Siyaya informed the police that Ms Gigaba told him that *"he is [suffering from] AIDS, he is a dog and he goes around sleeping with old ladies"*. Sunday World's article simply paraphrases the complaint and substituted *'cougars'* for *'old ladies'*. There is no law against publishing the content of a charge sheet. This is what Sunday World did in this regard.

**The Statement that Mr Siyaya Opened a Case of Malicious Damage to Property
Against Ms Gigaba**

[66] This statement was made by Sunday World. No actual relief is sought by Mr Siyaya in respect of this statement. I shall therefore not delve into it.

[67] Mr Siyaya, in his own words, concedes that it would have been expected by the respondents that the statements would arouse suspicion and intrigue in the public as to who Mr Siyaya is and whether or not he is "clean" or corrupt. Suspicion and intrigue could never amount to defamation.

REASONABLE PUBLICATION

[68] Even if I am wrong in concluding that the statements are not defamatory or do not have the implication that Mr Siyaya is contending for, for the reasons mentioned hereunder, the statements were reasonably published by the respondents. It is common cause that the respondents have placed the wrongfulness and defamatory nature of the publications in dispute and for that they rely on truth and reasonable publication.

The Applicable Law

[69] It is trite that a respondent may justify a defamatory statement by alleging truthfulness and that the publication thereof was in the interest of the public. For the defence of truth and public interest, the respondents have to allege and prove (a) the statement was true and (b) its publication was to the benefit of the public.¹²

[70] Public benefit lies in telling the public something which they were ignorant of and that is in their interest to know.¹³

The Arguments

[71] On the aspect of truthfulness of the statements, Mr Siyaya argues that it is not necessary for him to allege and prove the falsity of a statement because the defamatory nature of a statement does not depend on falsity. He contends that the onus is on the respondents to justify the statements by alleging and proving the truthfulness thereof and that their publication was in the public interest.

[72] According to Mr Siyaya, though it was not necessary to do so, he has, in fact, proven the falsity of the statements whereas the respondents have speculated on a number of aspects that form the basis of their claim more specifically in the following respect:

- 72.1 the supposed ownership of the Mercedes Benz G-Class motor vehicle is ascribed to social media pictures although there are more accredited verification methods such as the Road Traffic Management Corporation checks. The statement that Mr Siyaya is a member of NUM is ascribed to a social media picture and old NUM media statements despite there being a recognised data base of NUM members which can be made available by NUM itself.

¹² *Khumalo v Holomisa* 2002 (5) SA 401 (CC) para 18; *Allie v Foodworld Stores Distribution Centre (Pty) Ltd* 2004 (2) SA 433 (SCA).

¹³ *Mohamed v Kassim* [1973] 2 All SA 398 (RA).

72.2 the statement that Mr Siyaya was previously arrested and later released on charges relating to the murder of AMCU leaders on media reports, despite there being a criminal history data base that can be accessed with the assistance of the South African Police Services.

Mr Siyaya contends that all these statements are false.

[73] Well, it might be so that Mr Siyaya need not prove the falsity of a statement because the defamatory nature of a statement does not depend on falsity. However, the evidence he proffers in order to rebut the respondents' evidence that the statements are true does not stand critical scrutiny. For instance,

73.1 in trying to show that he does not own a Mercedes Benz G-Class, he attaches what he says is a printout from the National Traffic Information System which appears to be an email print-out. The authenticity of the documents is suspect as it does not appear to have been sourced directly from the National Traffic Information System. Besides, all that the document shows, is that Mr Siyaya owns a BMW. It does not say that he does not own a Mercedes Benz G-Wagon.

73.2 the search document he provides as evidence that he is not a business man does not in effect prove that he is not a businessman. The documents show that he is a director in five companies. The fact that some of the companies are being deregistered and those that he is still active on are not in business, does not prove that he is not a businessman. Mr Siyaya's evidence that the Instagram pictures were posted long ago and that they do not reflect his proper financial status does not prove that he is not a business. The impression he created by so posting is that he is man of means and as such could also be a businessman.

[74] On the question of reasonableness, relying in *Bogoshi*,¹⁴ where it was held that *'in law, a respondent who cannot establish the truth of a defamatory statement may nevertheless rely on the reasonableness of the publication. The respondent must allege and prove that they had reasons to believe in the truth of the statement, took reasonable steps to verify its correctness and that publication of the statement was reasonable in all the circumstances'*.

[75] Mr Siyaya submits that in these circumstances, it cannot be held that the publishing of the statements, was reasonable, or even necessary, more specifically for the following reasons: the main article to which the statements are made relate to a domestic dispute between a former Minister and his wife. There was no reason to delve into who Mr Siyaya is, what he does or does not do for a living, and his HIV/AIDS status. It could have been reasonably foreseen by the respondents that the publishing of these statements would arouse suspicion and intrigue in the public as to who Mr Siyaya is and whether or not he is "clean" or corrupt.

[76] Having so argued, Mr Siyaya submits that the respondents' defence of the truthfulness of the statements and reasonable publication can, therefore, not stand.

[77] To the contrary, the respondents argue that it is not the test that the respondents should have been in possession of proof of the truth of each statement before it is published. The media is only expected to act reasonably in publishing information that later turns out to be incorrect. According to the respondents, the publication of defamatory statements is not wrongful – even if those statements later prove not to be truthful if 'upon consideration of all the circumstances of the case, it is found to be reasonable to publish the particular facts in a particular way and at a particular time'.¹⁵ This is argued to be the defence of media privilege or reasonable publication.

¹⁴ *National Media Ltd v Bogoshi* [1998] 4 All SA 347 (A).

¹⁵ *National Media Ltd & Others v Bogoshi* 1998 (4) SA 1196 (SCA) at Para 30.

[78] The reasonableness of publication must be determined by having regard to all relevant circumstances including, namely, the public interest, the nature, extent and tone of the allegations, the nature of the information on which the allegations are based, the steps taken to verify the information, and, whether the plaintiff was afforded an opportunity to comment on the allegations before publication. The courts have cautioned against imposing an unrealistic standard on journalists when applying these considerations. It requires responsible journalism under pressure. Reasonableness does not require perfect accuracy. Instead it requires responsible journalism under pressure.¹⁶

[79] The respondents' proposition is that the publication of the articles complained of by Mr Siyaya is reasonable in the light of the said test. According to the respondents,

- 79.1 the matter is one of intense public interest;
- 79.2 the nature, extent and tone of the statements are measured, fair and reasonable. The statements do not impute any guilt to the applicant;
- 79.3 the information is based on reliable evidence obtained from impeccable official sources;
- 79.4 the statement that Mr Siyaya is a trade unionist was based on previous statements by NUM to the effect that Mr Siyaya is a NUM member, online references point to his being a trade unionist, as well as Mr Siyaya's Facebook cover page which shows him leading a NUM march.
- 79.5 the statement that Mr Siyaya is a businessman was based on a CIPIC search, that revealed that Mr Siyaya is an active director of five different companies. Sunday Times made repeated attempts to contact Mr Siyaya to verify this statement.

¹⁶ *Gold reef City Theme Park (Pty) Ltd & Another v Electronic Media Network Ltd & Another* 2011 (3) SA 208 (GSI) at para 83.

- 79.6 the statement that Mr Siyaya owns the Mercedes Benz was based on information from sources close to Mr Gigaba, as well as numerous social media posts showing Mr Siyaya posing with the motor vehicle.
- 79.7 the statement that Mr Siyaya was arrested in relation to accusations of murder of AMCU members was based on the fact that it had been widely reported that Mr Siyaya was arrested in relation to these allegations.
- 79.8 the statement that Ms Gigaba insulted Mr Siyaya by saying he is HIV/AIDS positive was based on information provided by a police source about the *crimen injuria* complaint Mr Siyaya laid.
- 79.9 the respondents took extensive steps to verify the information including attempting to give Mr Siyaya the opportunity to respond. Importantly, Mr Siyaya does not deny that Sunday Times afforded him an opportunity to respond to the statements made about him – including that he owns the Mercedes Benz – before publication. Mr Siyaya elected not to respond, despite undertaking to return the call and despite having read the WhatsApp message requesting comment.

[80] The respondents further submit that media privilege plays an important role in safeguarding the s 16 (1) constitutional right to freedom of expression, which includes the freedom of the press and other media. In support of this argument the respondents referred me to *Bogoshi*.¹⁷

Analysis

[81] It is trite that reasonableness of publication must be determined by having regard to all relevant circumstances, including – the public interest; the nature of the information on which the allegations are based; the steps taken to verify the information; and whether the plaintiff was afforded an opportunity to comment on the allegations before publication.¹⁸ The list is said not to be exhaustive or definitive.¹⁹

¹⁷ *National Media Ltd & Others v Bogoshi* 1998 (4) SA 1196 (SCA) at 1209H – 1210A and 1210H – I.

¹⁸ *National Media Ltd & Others v Bogoshi* 1998 (4) SA 1196 (SCA) at para 31.

¹⁹ *National Media Ltd & Others v Bogoshi* 1998 (4) SA 1196 (SCA) at para 32.

Courts have cautioned against imposing an unrealistic standard on journalists when applying these considerations. It requires responsible journalism under pressure. The reasonableness does not require perfect accuracy. Instead it requires responsible journalism under pressure.²⁰

[82] Having listened to the arguments for and against whether the publication of the statements was reasonable, the question is whether when publicising the statements the respondents complied with the requirements of the test as stated in paragraph [81] of this judgment.

[83] The evidence of the respondents is that they have been reporting on a story of significant public interest. The story they were reporting centred on a domestic dispute between the Gigabas and allegations of damage caused to a Mercedes Benz G63 AMG which was being investigated by the DPCI. The facts that underlie the stories reported relates to the use of state resources and law enforcement (the DPCI) by one party to what is essentially a domestic dispute in which Mr Siyaya is involved.

[84] Viewed in that light, that the stories published by the respondents relate to matters that are highly newsworthy, of significant public interest and a legitimate subject of journalism and reportage, cannot be gainsaid. As it has been said in *Government of Republic of South Africa v 'Sunday Times' Newspaper and Another*²¹ at 227H – 228A thereof –

"The role of the press in a democratic society cannot be understated ... It is the function of the press to ferret out corruption, dishonesty and graft wherever it may occur and to expose the perpetrators. The press must reveal dishonest mal-and inept administration. It must also contribute to the exchange of ideas already alluded to. It must advance communication between the governed and those who govern."

²⁰ *Gold Reef City Theme Park (Pty) Ltd & Another v Electronic Media Network Ltd & Another* 2011 (3) SA 208 (GSI) para 83.

²¹ 1995 (2) SA 221 (T) at 227H – 228A.

[85] The nature, extent and tone of the allegation is also acceptable. The statements are not accusatory of Mr Siyaya. They do not intend to defame or vilify Mr Siyaya. His name crops up only because he is somehow involved in the Gigaba's domestic dispute. What is mentioned about him, is mentioned in passing by way of background. The nature of the information reported about Mr Siyaya is meant only to inform the reader who Mr Siyaya is and nothing else. The focus of the story is not on him *per se*.

[86] The respondents took extensive steps to verify the information. Firstly, the information was readily available on the Instagram and Facebook account of Mr Siyaya. The respondents' evidence is that from the Facebook cover page of Mr Siyaya he was depicted leading a NUM march. From the Instagram account Mr Siyaya had placed photos of himself posing next to expensive motor vehicles like a Mercedes Benz similar to the one that is the subject matter of the charge against Ms Gigaba, a Porsche and a helicopter. He also posed wearing luxurious watches and holding expensive Louis Vuitton luggage. In one of the pictures he was also holding the Mercedes Benz car keys.

[87] When the text message from DPCI came through to Sunday Times and to City Press, it was not readily accepted but was verified. The message reminded Ms Gules of Sunday Times that she had earlier seen a video posted on the Facebook of Mr Mkhize depicting a badly damaged Mercedes Benz G-Wagon. Ms Gules immediately phoned Mr Mkhize to verify the story. Mr Mdakane at City Press phoned the Hawks' spokesperson to verify the authenticity of the message send from DPCI. He also heard about the Gigaba's domestic dispute from Mr Mkhize. In addition, Mr Mdakane phoned a source who is a friend of Mr Gigaba who sent him a message similar to that of the DPCI. On the other hand, when Sunday World got wind of the story, their investigator Mr Malatji phoned his police contact who sent him a copy of the statement Mr Gigaba made to the police.

[88] Mr Wicks of Sunday Times did a CIPC search which revealed that Mr Siyaya was a director in five entities. Even though the search results filed by Mr Siyaya in the

replying affidavit show that of the five entities, two were in the process of deregistration and that the remaining three are not in business, it confirms the authenticity of Mr Wicks' search results.

[89] The stories about the arrest of Mr Siyaya in connection with the charges relating to murder charges has always been in the media at that time and could easily be accessed by the respondents.

[90] It can thus, not be said that the information was published without being verified.

[91] There is uncontroverted evidence on record that Mr Wicks of Sunday Times attempted relentlessly to give Mr Siyaya an opportunity to give his side of the story before publication of the article. Mr Siyaya failed and/or refused, without tendering any reason for such refusal and/or failure, to make a comment. He failed and/or refused to even answer to the WhatsApp message sent to him by Mr Wicks. There is no evidence on record that Mr Siyaya did not receive the WhatsApp message.

[92] The information itself was obtained from impeccable and reliable sources like a member of the police and the DPCI's spokesperson, and Mr Mkhize who is said to be Mr Gigaba's communication adviser.

[93] Based on the information so collected it was reasonable that the publications be made that Mr Siyaya –

93.1 owned the Mercedes Benz G-Wagon. The evidence show that he was seen on his Instagram account posing next to a similar motor vehicle with luxurious items. It was therefore reasonable that the respondents would have mentioned in the stories that he owns the motor vehicle. Besides there are reliable sources like Mr Mkhize, the police contact, Mr Gigaba's close friend contacted by Mr Mdakane who confirmed that

the motor vehicle belonged to Mr Siyaya. In the light of this information the argument by Mr Siyaya that the posts were made whilst he was still a member of NUM or that they are old is not sustainable.

- 93.2 is a member or appears to be a member of NUM. His Facebook cover page, which has since been changed had shown him leading a NUM march and it had been previously reported by NUM itself that he was its member and official. Mr Siyaya's contention that he has long left NUM when he left his employment with Lonmin might be correct but does not do away with the fact that under the circumstances it was reasonable for the respondent to publish this information when they did.
- 93.3 is a businessman. The lifestyle depicted by him in the Instagram account would lead any reasonable person to conclude that Mr Siyaya is a businessman with means. Coupled with the information revealed on the CPCI register it was reasonable that the respondents would have reported him as a businessman. His argument that two of the companies are in the process of deregistration and that the three remaining are not in business does not do away with the fact that a person who is a director of a company is regarded as being in business, and, therefore, a businessman.
- 93.4 was arrested on charges relating to murder. This evidence as previously indicated was already in the public domain at the time of publication by the respondents. Mr Siyaya seeks to argue that he was never arrested on a charge relating to murder but on a charge of attempted murder. This is semantics, as far as I am concerned. A charge of attempted murder is a charge relating to murder.
- 93.5 is a dog and is HIV/AIDS positive because he sleeps with cougars. As earlier stated, the statement as it has been argued by Sunday World is a report that was made by Mr Siyaya to the police and is recorded in the charge laid with the police. It is a fact that Mr Siyaya told the police that Ms Gigaba told him that *"he is [suffering from] AIDS, he is a dog and he goes around sleeping with old ladies"*. Sunday World's article simply paraphrases the complaint and substituted 'cougars' for 'old ladies'.

[94] I find, therefore, that the respondents must succeed on this defence. In that sense, I find it not necessary to deal with the other defence of qualified privilege.

URGENCY

[95] A dispute of urgency had arisen at the commencement of these proceedings. But for the conclusion that I have arrived at on the merits, I have to accept that the matter is urgent as suggested by Mr Siyaya. Mr Siyaya opted to seek final relief in motion proceedings and at extremely truncated timeframes. It is trite that final relief will only be granted in motion proceedings on the basis of the facts stated by the respondent, together with those alleged by the applicant that the respondent does not adequately dispute.²²

CONCLUSION

[96] I have to hold, therefore, that Mr Siyaya has not succeeded to make out a case for the relief he seeks in this papers. None of the statements are defamatory nor can they be said to be unlawful because their publication as I have shown was reasonable. The application stands to be dismissed.

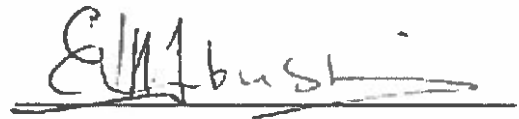
COSTS

[97] The respondents as the successful parties are entitled to the costs of suit such costs to include costs of two counsel.

ORDER

[98] The application is dismissed with costs, such costs to include the costs of each of the first, second, third, fourth and fifth respondents, and to include the costs of two counsel.

²² *National Director of Public Prosecutions v Zuma* 2009 (2) SA 277 (SCA).



E.M KUBUSHI

JUDGE OF THE HIGH COURT

Appearance

Applicant's Counsel : Adv. Snethemba Vobi

Adv. Lindelani Msomi

Applicant's Attorneys : **Mtuntum Inc. Attorneys**

Respondents' Counsel : Adv. Nick Ferreira

Adv. Ingrid Cloete

Respondents' Attorneys : **Willem De Klerk Attorneys.**

Date of hearing : 27 August 2020

Date of judgment : 01 October 2020