

**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG**

Case number: 21/0144

In the matter between

MARIA DA CONCEIÇÃO DAS NEVES CALHA RAMOS

Applicant

and

INDEPENDENT MEDIA (PTY) LIMITED

First Respondent

SIFISO MAHLANGU

Second Respondent

INDEPENDENT NEWSPAPERS (PTY) LTD

Third Respondent

INDEPENDENT ONLINE SA (PTY) LTD

Fourth Respondent

APPLICANT’S NOTE ON CASE-LAW REGARDING DEFAMATORY MEANING

Introduction

1 Independent Media’s article must be interpreted according to its “ordinary meaning”.¹ Mr Mahlangu’s intention is irrelevant.² The test is objective.³ The litmus test is the “reasonable reader of ordinary intelligence”.⁴

¹ *Le Roux v Dey* 2011 (3) SA 274 (CC) at para 87.

² *Le Roux* (note 1) at para 89.

³ *Le Roux* (note 1) at para 89.

⁴ *Le Roux* (note 1) at para 89.

- 2 As a matter of “ordinary meaning”, the article makes the following statements:
- 2.1 Ms Ramos has not “accounted for fixing the rand” – “all the Republic got for her actions was an apology.” (emphasis added)
- 2.2 “In any other country Ramos would have been charged with treason or corruption”.
- 3 These statements are defamatory. They “injure the good esteem” in which Ms Ramos is held by the reasonable reader.⁵
- 4 While this has been addressed in the main heads of argument, in light of the surprising arguments to the contrary advanced by Independent Media in its heads, this note draws attention to certain further relevant authorities.

The *Manuel v Crawford-Browne* decision

- 5 In *Manuel v Crawford-Browne*,⁶ the respondent wrote in a book that the National Prosecuting Authority “should prosecute the Applicant with corruption and related criminal offences.”⁷
- 6 The Cape High Court held that the statement was defamatory:⁸

“In my view, to say a person, in particular a Minister of Finance, who is charged with the responsibility of the National Treasury and fiscal policy of a Country, is corrupt and should be prosecuted with corruption and

⁵ *Le Roux* (note 1) at para 91.

⁶ 2008 JDR 0242 (C).

⁷ *Manuel* (note 6) at para 4.

⁸ *Manuel* (note 6) at para 20.

similar offences, without providing a shred of evidence pointing to his/her involvement, is defamatory and aimed to lower such person in the estimation of right-thinking members of society.”

- 7 That, in our submission, ought to be the end of the question of whether the statements complained of are defamatory.

Other South African decisions

- 8 If one needs to go any further, we emphasise that our courts have repeatedly held that a statement that in a newspaper that someone has been charged with a crime is per se defamatory.⁹

- 9 The SCA has explained that this is because, despite the presumption of innocence and the possibility of acquittal, the statement relating to a criminal charge tarnishes the reputation of an accused:¹⁰

“In my view the reasonable, normally intelligent, right thinking member of society, when he hears that a man known to him has been charged with a crime, will withhold final judgment on that man. But, temporarily at any rate, the news will tend to lower that man in his estimation, and diminish his willingness to associate with him.

On general principles, therefore, it seems to me that it is defamatory to say of a person that he has been, or is about to be charged with a crime, although in certain circumstances a defendant can escape liability for such a publication.”

⁹ *Hassen v Post Newspapers (Pty) Ltd* 1965 (3) SA 562 (W) at 565B-C.

¹⁰ *Hassen* (note 9) at 565C-E.

10 The SCA has ruled the same way about a statement in a newspaper that someone is “allegedly involved” in criminal conduct.¹¹

11 Again, this makes clear that the statements concerned are defamatory.

The approach in English law

12 Moreover, the English defamation law—which generally shows a “marked resemblance to ours”¹²—tracks a similar path. The English courts have laid down a detailed and very helpful set of principles in this regard.

13 English courts assess allegations that a person has committed “*some serious act, such as murder*” according to a framework called the three *Chase* levels, referring to a Court of Appeal judgment of that name.¹³ The *Chase* approach has repeatedly been applied by English courts.¹⁴

14 In *Chase*, the Court explained what then came to be known as the “*three Chase levels*”:

“The sting of a libel may be capable of meaning that a claimant has in fact committed some serious act, such as murder. Alternatively it may be suggested that the words mean that there are reasonable grounds to suspect that he/she has committed such an act. A third possibility

¹¹ *Modiri v Minister of Safety and Security* 2011 (6) SA 370 (SCA) at paras 1, 10 (noting that the media respondents “rightly” did not dispute that the following statement published in a newspaper was per se defamatory: “Daily Sun readers in the area are asked to help the police in catching Stanford Modiri, who is allegedly involved in drug dealing, cash-in-transit heists and car theft.”).

¹² *Media 24 Ltd v SA Taxi Securitisation (Pty) Ltd* 2011 (5) SA 329 (SCA) at para 50.

¹³ *Chase v News Group Newspapers* [2003] EMLR 11.

¹⁴ See, for example, *Miller v Associated Newspapers Ltd* [2014] EWCA Civ 39; *Horan v Express Newspapers* [2015] EWHC 3550 (QB); *Simpson v MGN Ltd* [2016] EWCA Civ 772; *Serafin v Malkiewicz* [2019] EWCA Civ 852.

is that they may mean that there are grounds for investigating whether he/she has been responsible for such an act.”¹⁵

15 Critically, all three *Chase* levels carry defamatory meanings.¹⁶

16 In the present case:

16.1 The statements concerning Ms Ramos likely fall into Chase level 1 – they are in substance statements that she “*has in fact committed*” treason or corruption.

16.2 Alternatively, at the very least, the statements concerning Ms Ramos fall into Chase level 2 – they are statements that “*there are reasonable grounds to suspect that ... she has committed*” treason or corruption.

16.3 At the very best for Independent Media, the statements concerning Ms Ramos fall into Chase level 3 – they are statements that “there are grounds for investigating whether” she has committed treason or corruption.

16.4 As we have explained, all three of these meanings are defamatory.

17 Lastly, and by way of illustration, we note how the English courts have applied the *Chase* framework to allegations of treason:

¹⁵ *Chase* (note 13) at para 45.

¹⁶ See, for example, *Serafin* (note 13) at para 15.

- 17.1 *Shakil-ur-Rahman v Ary Network Ltd* dealt with television broadcasts that made a number of allegedly defamatory allegations against the claimant, a “prominent media mogul in Pakistan.”¹⁷
- 17.2 The allegations included:
- 17.2.1 “What you have told us, and the events you have described with reference to Mahmud Sham, if it happened as described, it is high treason against Pakistan”.¹⁸
- 17.2.2 “Because there is evidence and witness is available, this is a plain case of treason.”¹⁹
- 17.2.3 “I am saying it, that I suspect that Baba Ji committed treason several times and this too will come in the ambit of treason under the Constitution of Pakistan.”²⁰
- 17.2.4 “It is abetment, treason ... He is an accused; it is treason.”²¹
- 17.2.5 “Are there such courts in Pakistan that will take action against enemies of Pakistan; is there any legal institution that will take action? Will the same happen that every knowledgeable person, every powerful person commit treason against Pakistan and provides material to enemy

¹⁷ [2015] EWHC 2917 (QB).

¹⁸ *Shakil-ur-Rahman* (note 17) at para 46.

¹⁹ *Shakil-ur-Rahman* (note 17) at para 46.

²⁰ *Shakil-ur-Rahman* (note 17) at para 167.

²¹ *Shakil-ur-Rahman* (note 17) at para 243.

country against Pakistan and no action is taken against him?”²²

17.3 The Court held that all these allegations had meanings at *Chase* level 1 or *Chase* level 2:

17.3.1 The allegations in paragraph 17.2.1 and paragraph 17.2.2 were *Chase* level 1. According to the Court, these allegations meant: “The Claimant is guilty of the criminal offence of treason, having conspired with Indian intelligence agencies to force the publication of a newspaper story in the *Hindustan Times* which furthered the interests of India at the expense of Pakistan.”²³

17.3.2 The allegation in paragraph 17.2.3 was *Chase* level 2. According to the Court, this allegation meant: “The Claimant is suspected of having committed treason several times contrary to the constitution of Pakistan.”²⁴

17.3.3 The allegations in paragraph 17.2.4 and paragraph 17.2.5 were *Chase* level 1. According to the Court, this allegation meant: “The Claimant was a traitor and enemy of the state who had betrayed his country by plotting with other countries to further their agendas against Pakistan, by maligning the

²² *Shakil-ur-Rahman* (note 17) at para 243.

²³ *Shakil-ur-Rahman* (note 17) at para 53.

²⁴ *Shakil-ur-Rahman* (note 17) at paras 174-175.

armed forces of Pakistan, by putting the interests of Pakistan at stake.”²⁵

17.4 The Court held that these meanings were “seriously” and “clearly” defamatory because the broadcasts “were such as to make right thinking (i.e. reasonable and fair minded) viewers of the Defendants’ programmes within England and Wales think the worse of the Claimant.”²⁶

18 *Shakil-ur-Rahman* is useful guidance for applying the *Chase* framework to Mr Mahlangu’s allegation that in “any other country” Ms Ramos “would have been charged with treason or corruption”. The allegation bears all three *Chase* level meanings. They are, as *Shakil-ur-Rahman* found, “seriously” and “clearly” defamatory.

STEVEN BUDLENDER SC

JASON MITCHELL

SAGWADI MABUNDA

Counsel for the Applicant

Chambers, Sandton

25 March 2021

²⁵ *Shakil-ur-Rahman* (note 17) at paras 250-251.

²⁶ *Shakil-ur-Rahman* (note 17) at paras 71, 101.