



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

- (1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED.

SIGNATURE

DATE: 22 May 2023

Case No. 2023/041722

In the matter between:

VAN DEVENTER AND VAN DEVENTER INC

Applicant

and

SIZWE INTELLECT MDAKANE

First Respondent

Neutral citation: Van Deventer and van Deventer Inc v Mdakane [2023] ZAGPJHC 529 (22 May 2023)

JUDGMENT

WILSON J:

- 1 The applicant, which I will call Van Deventer Inc, is a law firm. It brought an urgent application before me seeking to restrain the respondent, Mr. Mdakane, from making any social media comment about the firm, and directing Mr. Mdakane to remove any comments he had already posted. Van Deventer Inc also sought a costs order against Mr. Mdakane on the attorney

and client scale. The application was not opposed. However, on 16 May 2023, I dismissed the application, and directed each party to pay their own costs. When I gave the order, I said that I would provide my reasons in due course. These are my reasons.

2 Mr. Mdakane was one of Van Deventer's clients. After having received some advice from junior practitioners at the firm, Mr. Mdakane posted a review about the firm on "Google Review". That review said: "What a scam!!! I'm so disappointed. I was really hoping for a professional service after the prompt response I received to my enquiry email."

3 Van Deventer Inc took the view that this post defamed it, and demanded that Mr. Mdakane remove the post forthwith. Mr. Mdakane did not remove the post, but he did edit the post to read: "I was disappointed by the answers I received to my question during consultation. I guess I expected too much."

4 Dissatisfied with this, Van Deventer Inc instituted its urgent application. In her founding affidavit, Mehzil Ismail, an associate at the firm, alleged that the initial post was defamatory, because it implied that the firm is "unprofessional, dishonest, indiscrete [sic] and untrustworthy". In argument, Mr. Scheepers, who appeared for Van Deventer Inc, emphasised the use of the word "scam" in the initial post. It was primarily that word, he argued, that embodied the defamation that Van Deventer Inc alleges.

5 A publication is defamatory if it tends to lower the person defamed "in the estimation of the ordinary intelligent or right-thinking members of society" (*Hix Networking Technologies v System Publishers (Pty) Ltd* 1997 (1) SA 391 (A), 403G-H). The test is objective. What matters is not what the

publisher intends, but “what meaning the 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 he or she would have had regard not only to what is expressly stated but also to what is implied” (*Le Roux v Dey* 2011 (3) SA 274 (CC), para 89).

6 Although Mr. Mdakane’s language in his initial post was strident, and perhaps inappropriate, I do not think that a reasonable reader of the post would think less of Van Deventer Inc in the manner Ms. Ismail alleges. The reasonable reader is not a naïve or gullible individual that believes everything they read is literally true. They would not have assumed that, in the context of the review, the word “scam” meant dishonesty. “Scam” has a common secondary and vernacular meaning, which conveys something more akin to the practice of offering inferior or disappointing service. The only reasonable meaning that can be attributed to the post is not that the firm is dishonest, but that Mr. Mdakane was disappointed with the service he received. The average reasonable reader of a Google Review would not automatically conclude that Mr. Mdakane’s disappointment was due to Van Deventer Inc’s malpractice or ineptitude. They would conclude simply that the post reflected Mr. Mdakane’s subjective (and unsubstantiated) disappointment with the firm.

7 That this is really what the post means is confirmed by how Mr. Mdakane subsequently amended it. The post, as amended, is plainly an innocuous

record of Mr. Mdakane's dissatisfaction with the advice he received, coupled with an admission that his expectations may have been unrealistic.

8 I am accordingly unable to conclude that Mr. Mdakane defamed Van Deventer Inc.

9 Even if I am wrong in that respect, the fact that Mr. Mdakane amended the post to its innocuous later form before the application was launched ought to have assuaged any apprehension of harm anyone at Van Deventer Inc may have felt on reading the initial post. There was no suggestion that Mr. Mdakane had posted anything else about the firm, and no conceivable basis on which the post in its final form could be said to be defamatory. The application was accordingly wholly unnecessary from the outset.

10 Finally, the relief Van Deventer Inc sought was clearly inappropriate. What it wanted was a total ban on Mr. Mdakane saying anything at all about the firm online in future. That relief could never have been granted, even if Mr. Mdakane's post was defamatory.

11 It was for these reasons that I dismissed Van Deventer Inc's application.



S D J WILSON
Judge of the High Court

HEARD ON: 16 May 2023

DECIDED ON: 16 May 2023

REASONS:

22 May 2023

For the Applicant:

J Scheepers

Instructed by Van Deventer and Van Deventer Inc