



**In the High Court of South Africa
(Western Cape Division, Cape Town)**

Case number: 20866/2018

In the matter between:

SHAUN AUGUST

Plaintiff

and

MMUSI ALOYISIAS MAIMANE

Defendant

Case number: 20867/2018

And in the matter between:

SUZETTE ANN LITTLE

Plaintiff

and

MMUSI ALOYISIAS MAIMANE

Defendant

Case number: 20868/2023

And in the matter between:

GREGCHAN GARRETH BARNARDO

Plaintiff

and

MMUSI ALOYISIAS MAIMANE

Defendant

Case number: 20869/2018

And in the matter between:

THULANI STEMELE

Plaintiff

and

MMUSI ALOYISIAS MAIMANE

Defendant

JUDGMENT DELIVERED ON 13 OCTOBER 2023

VAN ZYL AJ:

Introduction

1. The plaintiffs each instituted action against the defendant for defamation under a separate case number. As the actions arose from the same events they were subsequently consolidated and thus heard together.
2. It is common cause that, on 26 October 2018 and again on 29 October 2018, the defendant made disparaging statements about the plaintiffs. It is further common cause that the statements were defamatory, and widely published.
3. On 14 March 2023, shortly before the commencement of the trials, the defendant amended his plea (originally delivered on 13 February 2019) and tendered an apology and a full retraction of the statements in one publication of the *Sunday Times* newspaper, and on the TimesLive website. The tender included an offer to pay each plaintiff the sum of R35,000.00 as compensation, plus costs on the appropriate magistrate court's scale.
4. The plaintiffs rejected the apology and the tender as being "too little, too late". Two issues therefore remain: the *quantum* of damages to be awarded to each plaintiff, and the appropriate costs award. The defendant contends that awards in defamation cases are typically low and that on the particular facts of this matter, the plaintiffs are not entitled to more than R35,000.00 in damages. The plaintiffs, on the other hand, claimed R1 million each in their respective summonses, and costs on the High Court scale. During argument it was indicated that the plaintiffs regarded the following amounts as appropriate:

- 4.1. Mr August: R200,000.00;
 - 4.2. Ms Little: R250,000.00;
 - 4.3. Mr Barnardo: R300,000.00; and
 - 4.4. Mr Stemele: R250,000.00.
5. I set out the events that gave rise to the disputes. The plaintiffs led evidence on their positions within and the relationship that each had with their respective communities prior to the publication of the statements. The defendant did not dispute this evidence in any material respect, but drew certain conclusions therefrom, as will be set out below.

The impugned statements

6. It is common cause between the parties that the plaintiffs had, on 25 October 2018, resigned both as members of the municipal council of the City of Cape Town ("the Council" or "the City"), where they had served as municipal councillors, and the Democratic Alliance ("the DA"). The defendant was the federal leader of the DA at the time (which was the second largest political party in South Africa), as well as the leader of the opposition in Parliament.
7. After the plaintiffs had resigned on 25 October 2018, and on the same day, a report compiled at the Council's behest, known colloquially as the "Bowman's Report", was adopted by the Council, pertaining *inter alia* to the alleged misconduct of certain municipal officials and councillors within the City.
8. The next day, 26 October 2018, the defendant made a public statement to journalists representing various media houses to the effect, *inter alia*, that the plaintiffs' resignations were not surprising, as the plaintiffs were implicated in the Bowman's Report in covering up corruption in the City. The defendant stated that the report "... *made serious findings against those people. They must be investigated.*"

9. The defendant's statements were widely published in the national print and electronic media.
10. Also on 26 October 2018, the defendant published an electronic newsletter, known as *Bokamoso*, to a large national and international audience via email, stating, *inter alia*, that:

"In Cape Town, the DA sought accountability. The city commissioned a report with independent legal firm Bowman Gilfillan, which made adverse findings against some councillors.

For five Cape Town councilors, the DA wasn't a racist party last month. But now that a credible forensic investigation by credible legal firm has allegedly implicated them in tender irregularities, the DA is suddenly a racist party.

These five councilors have resigned, claiming racial victimhood. Can it be coincidence that they have suddenly decided the DA is racist now that they stand accused of maladministration?"

11. On 27 October 2018 the plaintiffs' attorney sent a letter of demand to the defendant, demanding an unconditional retraction and correction of the statements in the same manner as they had been made, namely in a media statement and another published *Bokamoso* newsletter; together with an unequivocal apology for having made the statements.
12. The defendant did not comply with the demands, although it seems that he tried to. The attempt was bungled - on 29 October 2018, the defendant published another *Bokamoso* newsletter, saying, amongst other things, the following:

"Friday's Bokamoso contained....a., factual inaccuracy regarding the role of the five former DA councillors in Gape Town, an error for which we apologise. Please find below the corrected version.

...

In Cape Town, the DA sought accountability. The city commissioned a

report with independent legal firm Bowman Gilfillan, which made adverse findings against some councilors.

For five Cape Town councilors, the DA wasn't a racist party last month. But now that they have been shown to be most ardent defenders of maladministration, despite evidence which has now been confirmed by a credible forensic investigation, the DA is suddenly a racist party. These five councilors have resigned, claiming racial victimhood. Can it be coincidence that they have suddenly decided the DA is racist?"

13. As indicated, shortly before the commencement of the trial – and about four years after the commencement of the litigation, which had been defended from the outset - the defendant admitted that the statements, both to the media on 26 October 2018 and in the *Bokamoso* newsletters on 26 and 29 October 2018, were wrongful and defamatory of the plaintiffs. He admitted that the statements were made with the intention to defame the plaintiffs and to injure their reputations, and that they were widely published to a large national and international audience, including different language print and electronic media. He admitted that the statements were understood by the readers thereof and were intended by the defendant to mean that the plaintiffs were dishonest in that the Bowman's Report made adverse findings against them, and that they were corrupt.
14. The defendant admitted that the *Bokamoso* newsletter of 26 October 2018 was understood by the readers thereof and was intended by the defendant to mean that the plaintiffs were dishonest in that they were implicated in tender irregularities, and were accused of maladministration.
15. The defendant admitted, further, that the *Bokamoso* newsletter of 29 October 2018 was understood by the readers thereof and was intended by the defendant to mean that the plaintiffs were dishonest in that they were ardent defenders of maladministration.
16. The defendant concedes that the defamation was serious and accepts that, prior to the making the statements, the plaintiffs were respected local politicians and public figures in their respective communities. As the leader of the DA at the time the

defendant was a major political and public figure. His reach was far and his reputation was respected.

17. The defendant says, however, that the impact of the defamation was short-lived. This is because the plaintiffs themselves, amongst others, made sure that the world knew the truth.
18. The defendant points out that, on 26 October 2018, News24 published the defamatory statements. The same article reported that Mr Grant Twigg (the DA chairperson for the Cape Town metro at the time) had said that the plaintiffs were not implicated in the Bowman's Report. The plaintiffs accepted in their evidence that Mr Twigg had refuted the truthfulness of the defamatory statements at the same time that they were published.
19. On 26 October 2018 Ms Little issued a media statement on her own behalf. Two days later, on 28 October 2018, a second media statement was issued on behalf of all the plaintiffs. The second media statement referred to a letter of demand that had been sent the day before, on 27 October 2018, by the plaintiffs' attorney to the defendant, which demanded that he publicly retract the statements and issue an apology. The plaintiffs accepted that the media statements were widely published in the press. The statements repeated the defendant's claims about the plaintiffs, and emphatically denied those claims.
20. Several articles were published on 29 October 2018 carrying the story that the plaintiffs asserted that they were neither named nor implicated in the Bowman's Report, that the plaintiffs had issued a letter of demand to the defendant, and that they would sue him for defamation if he did not issue a retraction and apology by a stipulated time.
21. The plaintiffs conceded during cross-examination that the media statements and other articles informed the general public that they were neither named nor implicated in the Bowman's Report. They also admitted to turning to social media and appearing on either TV or radio, or both, to refute the defendant's claims.

The impact of the statements on the plaintiffs

22. The plaintiffs each testified about the impact that the defamatory statements had on them.

Mr August

23. Mr August testified that he is 50 years old, has been married for 29 years, and has two children. He was born in Lavender Hill, was raised in Steenberg, and currently resides in Zeekoevlei. He is currently a member of the provincial parliament of the Western Cape on behalf of the Good Party.
24. He commenced his career as a prison warder with the Department of Correctional Services. In 2006 he was employed as the deputy national organizer for the former political party known as the Independent Democrats ("the ID"). In 2010 he joined the DA at the time of its merger with the ID. Mr August was elected as the ward councillor for Ward 67 in the City of Cape Town in 2011. He rose within the ranks of the City, as well as the DA. In 2014 he was elected as the regional chairperson of the party in the City. In 2016, after being elected as a proportional list councillor, he became the chief whip in the Council, where he earned approximately R1 million per year. He also served on the South African Local Government Association ("SALGA"), as its deputy chairperson in the Western Cape after 2016.
25. Mr August is well-known in the communities where he works and lives. He was a respected member of the community at the time of the defendant's statements in the media.
26. On 25 October 2018, Mr August resigned his seat in the Council, and also resigned as a member of the DA. Shortly after he did so, the other plaintiffs similarly resigned their positions in the Council and as DA members. This occurred amid much national media attention.
27. At the time, Mr August wanted to help start a new political movement under the

leadership of Ms Patricia de Lille. His plans included supporting himself with a stipend from a funder, until the national elections in May 2019. Mr August, and the other plaintiffs learnt on 26 October 2018 of the defamatory statements made by the defendant. The defamation was published on Media24, which has a readership (which Mr August checked on www.google.com) of 11,6 million. The plaintiffs were asked questions about the defamatory statements by various journalists.

28. Mr August testified that the impact of the defamation was exacerbated by the fact that the impugned allegations came from the national leader of the opposition, who speaks to millions of people. As an individual, Mr August could not defend himself against a national leader such as the defendant. He attempted to do so by way of the media as well as the social media platforms of *Twitter* and *Facebook*. Whenever Mr August attempted to deny the allegations, he was reminded that the defendant was the national leader of the opposition. The same applied to the other plaintiffs.
29. Mr August admitted that the DA regional chairperson in the City, Mr Twigg, stated in the media that the plaintiffs were not implicated in the Bowman's Report, but that had little impact as Mr Twigg is unknown in comparison to the defendant. Mr August testified that millions of people took note of what the defendant said about the plaintiffs – no such notice would have been taken of Mr Twigg's statements. There was no mention of Mr Twigg in the second *Bokamoso* newsletter.
30. The impact of the defamatory allegations was severe. Many people to whom Mr August spoke believed those allegations rather than Mr August's denials. He felt rejected where he was previously welcomed. He was no longer invited to speak as a motivational speaker at meetings of NGOs or schools. He was often asked by his colleagues in politics about the progress with the defamation case against the defendant, and as recently as four weeks prior to the trial he was questioned about it by a politician in Struisbaai during a local election campaign.
31. The ability to raise funds for the new political party was also negatively impacted. The person who would have provided the stipend for Mr August to support

himself until the May 2019 elections, Mr Rodney Lentit, was no longer willing to do so. The defendant's allegations of corruption against Mr August caused the previous friendly relationship with Mr Lentit to sour. Mr August was unable to support himself financially until May 2019, when he was elected to the National Assembly on behalf of the Good Party. He fell into areas with his mortgage bond, his motor vehicle instalments, his children's school fees, and other financial obligations.

32. Mr August testified that if the defendant had retracted the defamatory allegations and apologized when the initial demand was made on 27 October 2018, its fall-out would have been severely curtailed. The matter was on the court roll on several previous occasions. On each occasion the defendant indicated that he might want to apologise, but never did so. Mr August does not consider the defendant's tendered apology to be sincere. He is of the view that the tender was only made because the trial was due to commence on 22 March 2023. Mr August testified that he had attempted unsuccessfully to vindicate his reputation for four and a half years against the "*giant voice*" of the defendant.
33. When it was put to Mr August during cross-examination that the world has long since been told of the wrongfulness of the defamatory statements, Mr August said that the defendant had stated in the media that he would see the defendants in Court. Mr August also pointed out that *The Sunday Times*, where the tendered apology was to be published, has a much lower readership than the media platforms where the defamatory statements had been made. Mr August conceded that the media reported that the defendant admitted in the second *Bokamoso* newsletter that the plaintiffs were not implicated in the Bowman's Report, but that they were implicated in tender irregularities. In the same news reports, Mr August called on the defendant to apologise for the defamation against the plaintiffs. The defendant retorted by saying that: "*They must be running away from something.*" Mr August was of the view that the purported retractions by the defendant of the defamatory statements did not set the record straight.

34. Ms Little testified that she is a 62-year-old widow with three children. She was born and raised in Athlone, where she still resides. She is currently a member of the City's Council on behalf of the Good Party (since 1 November 2021). It is a part-time position, but her work for the political party takes up most of the rest of her time.
35. She testified that she started her career as a bank clerk with Standard Bank. By 2006 she had risen to the position of provincial bank manager for the emerging market in the Western Cape. While she was stationed at the Athlone branch of the bank, she moved between various branches of that bank, and she became well known across the province.
36. Ms Little left the bank in 2006 when she started her own supply and maintenance business and tried her hand at farming. The farming enterprise failed and in 2008 she joined the DA as a politically appointed secretary in the office of a member of the mayoral committee in Cape Town. In August 2010, Ms Little was elected as a ward councillor for the DA in Athlone. She became a sub-council chairperson in 2011, a member of the mayoral committee in 2012, and the chairperson of the DA caucus in the City. Before she resigned from the DA and the Council on 25 October 2018, she earned approximately R900,000.00 per year.
37. Ms Little resigned as a member of the DA and the Council on 25 October 2018 because she felt that her integrity was at stake. Her plans at the time were to restart her supply and maintenance business. She did not plan to remain in politics but was convinced to do so the next day when she was told of a new political movement to be led by Ms de Lille. Ms Little agreed to join the movement, which is now known as the Good Party.
38. Ms Little testified that she learnt of the defamatory statements on 26 October 2018, while she was in a meeting with the other plaintiffs and Ms De Lille. Ms Little responded with a media statement wherein she asked the defendant to withdraw his allegations and to apologize. The defendant refused to do so. The defamation was widely published in the national media and, during a live radio

interview with John Maytham, the defendant's defamatory allegations were repeated by the DA's chief whip, Ms Natasha Mazzone. In response to a question from the Court about how she felt about the defendant's statements, Ms Little testified that she was very upset about it, as the defendant told the whole of South Africa that she (i.e., Ms Little) was a thief.

39. The community response to Mr Little following the defendant's allegations was negative, and remains "*tense*" to this day. Before the defendant defamed her, Ms Little was welcomed wherever she went. Thereafter she encountered strained smiles, for example at the local supermarket, and people would avoid talking to her. This was despite the fact that she had lived in Athlone the whole of her life.
40. After she had resigned from the DA and Council, Ms Little worked for the Good Party, but no regular funds were paid to her, due to a lack of income by the party. She was only given *ad hoc* payments. This, she said, was directly attributable to the defamatory comments. Mr Rodney Lentit, who would have paid a stipend to Ms Little until the national elections of May 2019, later informed the plaintiffs that it was difficult for him to make payments in the light of the defendant's allegations.
41. In the May 2019 national elections, Ms Little lost the seat she would have won in the Western Cape provincial parliament, by a very small margin. She believes the defamation had an impact on the Good Party's election results. The defamatory allegations made it difficult to raise funds for the Good Party. With more funds, the party would have won more seats, and Ms Little would have been elected to the provincial parliament.
42. Ms Little testified that she then attempted to restart her supply and maintenance business. The impact of the defamatory allegations had a negative impact there, too. She testified about a meeting pertaining to funding of the business, which meeting went well until the funders asked her at the end of the meeting about the defendant's allegations. No funding was forthcoming after these questions. The business could not be relaunched without funding.

43. Ms Little was left without employment or regular income until 2020, when she was appointed to a political position as a researcher in the Western Cape provincial parliament for Mr Brett Herron. In 2019 she had to sell her possessions. Her late husband, who was an amputee, could not work. She was the only breadwinner in the home. These difficulties also caused problems in her marriage and her late husband often reminded her of the defendant's allegations to the effect that she was a thief. Her husband believed the defendant, as he was a national political leader and therefore had to be right. Ms Little and her late husband separated in February 2020 and her husband died in January 2021.
44. When she was asked about the defendant's tender of an apology, Ms Little explained that it will have little meaning now, due to the lapse of time. She was of the view that the defendant only tendered the apology to try and make the case go away. She testified further that the defendant only made the tender because the plaintiffs "*helped him*" to do so (i.e., by bringing the matter before the Court).

Mr Barnardo

45. Mr Barnardo testified that he is 41 years old, married, and that he has two children. He was raised in Mitchell's Plain, but now resides in Kuils River. He is currently an official in the City but works in the office of the Good Party.
46. Mr Barnardo started his career with Statistics South Africa, as a statistical officer, whereafter he moved to Mondi Packaging as a machine operator assistant. Thereafter, he took a contract position with the City of Cape Town, as a communications specialist. He started his political career in Kuils River in 2008. In 2016 he was elected as a DA proportional list councillor in the City. He was deployed to work in Atlantis, and he moved there with his family. He became well known in the communities where he worked as a municipal councillor.
47. Mr Barnardo resigned with the other plaintiffs on 25 October 2018. Before his resignation, he earned an annual salary of approximately R600,000.00.
48. When Mr Barnardo decided to resign from the Council and the DA, his plans

were to start a small business and to work toward the start of a new political party. He would have been paid a stipend, but this did not materialise due to a lack of funding - people were hesitant to give money after hearing the defendant's allegations.

49. Mr Barnardo testified that he learnt of the defamatory allegations on television. He felt betrayed and hurt by the defendant's false statements. The defamation also triggered anger in him, because he knew that his name was not mentioned in the Bowman's Report. Many people in his local community were disappointed in him, because they had previously looked up to him as someone of integrity, morals, and principles. Mr Barnardo was thereafter interviewed on Radio Atlantis about the reasons for his resignation, as well as the allegations of corruption against him. He denied the allegations.
50. Mr Barnardo was not paid after his resignation. He testified that people were hesitant to give money to the plaintiffs due to the cloud over their heads. He was left unemployed. He had to face an eviction, and also lost his vehicle. He and his family faced very tough times, and had it not been for his wife's employment as a teacher with the provincial education department, matters would have been worse. His wife's salary did not cover all their financial obligations.
51. Mr Barnardo mentioned that he had made more than twenty applications for employment with the City, the provincial administration, and also various national departments of state. None of these applications were successful. Mr Barnardo remained unemployed until shortly before the November 2021 local government elections, when he was employed on a short-term basis for the mayoral campaign of Mr Brett Herron. In 2022, he was employed as an official paid by the City, but working as a researcher in the office of the Good Party, where he currently earns R21,000.00 per month.
52. During cross-examination, Mr Barnardo acknowledged that Mr Twigg had stated in the media that the plaintiffs were not implicated in the Bowman's Report. Mr Barnardo testified, however, that the defendant's allegations carried much more weight than any statement from Mr Twigg.

53. In respect of the tender of an apology by the defendant, Mr Barnardo testified that he did not accept the tender, as he did not regard it as sincere or genuine. As far as he was concerned, it was not coincidental that the tender was only made on the eve of the trial. An apology could have been made years ago.

Mr Stemele

54. Mr Stemele testified that he was 38 years old and unmarried. He has no children. He comes from King William's Town in the Eastern Cape. He was raised in Site B, Khayelitsha, and attended Wynberg Boys' High School, where he matriculated in 2005. He is currently a community outreach officer in the office of the national Minister of Tourism.
55. Mr Stemele started his career in 2006/2007 as a member of the ANC Youth League, by working on a project in the office of the former mayor of the City, Ms Nomaindia Mfeketo. Thereafter, he worked as a customer relations manager for Giant Discounters. He then embarked on studies for three years from 2008, after which he worked as a field support officer for an audit consulting firm. In 2015, he learnt that the DA was expanding its base into the so-called Black communities, when the ANC fell into trouble. He wanted to help the DA to win the municipal wards currently held by the ANC in Khayelitsha.
56. When Mr Stemele joined the DA, he encountered animosity at home, where he was labelled a traitor to the ANC and to the community. He was elected as a proportional list councillor on behalf of the DA in the City in 2016, and served on various committees in his capacity as a municipal councillor. He also served on SALGA.
57. Mr Stemele resigned from the DA and Council on 25 October 2018, together with the other plaintiffs, because he believed it was the right thing to do. He also learnt of the defendant's defamatory allegations in the meeting with the other plaintiffs on 26 October 2018. He was shocked. The community's reaction to the defamation was that the defendant was believed instead of Mr Stemele. This was

the case even in his own home. Mr Stemele purchased a new home shortly before his resignation on 25 October 2018. On occasion, when he invited people for dinner at his new house, he was asked by a relative whether the house was *"part of the fraud."*

58. In Mr Stemele's hometown, King William's Town, the defamatory allegations became well known. Mr Stemele was interviewed on SABC about the allegations, where he could deny the allegations, but not on the isiXhosa news.
59. The impact of the defendant's defamatory allegations reached far and wide. When Mr Stemele applied for the position he currently holds in the office of the national Minister in 2018, the Department of State Security, who had to do a security clearance, informed him that his clearance certificate for the position would be delayed. The certificate was delayed for two months as a result of the defendant's allegations. Mr Stemele testified that this chapter in his life, created by the defendant, would never be closed until the defendant admitted to what he had done.
60. Mr Stemele also testified that he was not willing to accept the tender of an apology by the defendant, as it arrived very late, shortly before the commencement of the trial. He did not believe that the apology was sincere. If, according to Mr Stemele, the defendant was indeed sorry for what he did, he should have apologised the day after he made the defamatory allegations in October 2018. Instead, he left the plaintiffs to suffer for more than four years.
61. The defendant argues that, given each of the plaintiffs' current positions, it is clear that the defamation had no lasting effect on them. He refers to Mr August currently being a member of the provincial parliament of the Western Cape, having served as one of the Good Party's two members in the national assembly from May 2019. Ms Little is now a municipal PR councillor for the City of Cape Town. The Good Party had placed her as the second candidate on the proportional representation list in respect of her nomination as a PR councillor for the City. Mr Barnardo is a researcher for the City, in the office of the Good Party. Lastly, Mr Stemele is now employed by national government in the office of the Minister of the Department of Tourism.

62. In this context, what is an appropriate award of damages?

The appropriate award of damages

63. The defendant contends that the *quantum* sought by the plaintiffs is extraordinarily high and not justified on the pleaded case or the evidence lead at trial. He argues that the reasonable person following the media's reporting on this incident would invariably have concluded that the plaintiffs were not named nor implicated in the Bowman's Report. The defendant has tendered an apology and retracted his statements. The injury to the plaintiffs' reputations, integrity and dignity was short-lived and limited, and their reputations were ultimately restored. The plaintiffs should be compensated for the injury to their reputations. The defendant's punishment is not the object of the award.

64. Awards in defamation cases serve a specific purpose, namely commensurately to compensate someone for the injury to his or her reputation, integrity and dignity. Awards do not serve a punitive function, and are characterised by low monetary amounts as a result. This is a fundamental principle of the jurisprudence on defamation awards and has been cited with approval in various courts, most notably in *Mogale v Seima*.¹ The Supreme Court of Appeal captured the principle, with reference to *Esselen v Argus Printing and Publishing Co Ltd*,² in the following terms:

*"In general, a civil court, in a defamation case, awards damages to solace plaintiffs' wounded feelings and not to penalise or to deter the defendant for his wrongdoing ... Clearly punishment and deterrence are functions of the criminal law, not the law of delict... To sum up: having regard to the foregoing and the general trend in recent times and the fact that our courts have not been generous in their awards of solatia ... a practice that is to be commended."*³

¹ 2008 (5) SA 637 (SCA) at paras [9]-[12], and [18].

² 1992 (3) SA 764 (T) at 771G-I.

³ *Mogale supra* at para [18].

65. The SCA reaffirmed the position in 2021, when it considered the award of R500,000.00 to the former Minister of Finance in *EFF v Manuel*.⁴ In addressing the amount awarded, the Court held that "... *the amount awarded appears extraordinarily high, and not, as stated by the court below, in line with the recent general trend ... a cursory scrutiny of awards from 2017 onwards will reveal that recent awards in serious defamation cases, with defamatory statements having been widely published, were in amounts that were a fraction of what was awarded in this case.*"⁵

66. Calculating the *quantum* of the award depends on the particular facts of each case. It requires a realistic assessment of what is just and fair in the circumstances. For this reason, past awards do not have any real precedential value, but are relevant in as far as they provide general guidance only:⁶

*"We were referred to a number of cases reported over a period of years which were claimed to be comparable or roughly comparable to the present. An inflation factor was applied to some of them to indicate what the current value would be of the amounts awarded ... Comparisons of the kind suggested serve a very limited purpose. In the nature of things no two cases are likely to be identical or sufficiently similar so that the award in one can be used as an accurate yard stick in the other. Nor will the simple application of an inflationary factor necessarily lead to an acceptable result. The award in each case must depend on the facts of each case .."*⁷

67. There is a range of factors that a Court may rely on to determine what is just and fair in the circumstances. Those factors include, *inter alia*, the nature and gravity of the defamatory words, the nature and extent of the publication, the rank or social status of the parties, the intentions of the defendant, and the absence or nature of an apology.⁸ Counsel referred the Court to case law which confirmed the principle in

⁴ 2021 (3) SCA 425 (SCA).

⁵ *Manuel supra* at paras [122]-[124]; and see *Media 24 Limited t/a Daily Sun v Du Plessis* [2017] ZASCA 33 (29 March 2017).

⁶ *Manuel supra* at para [123]; *Van der Berg v Coopers & Lybrand Trust (Pty) Ltd* 2001 (2) SA 242 (SCA) at para [48].

⁷ *Van der Berg supra* at para [123].

⁸ *Mogale supra* at paras [13]-[16]; *Media 24 Limited supra* at para [35].

defamation cases that an apology mitigates the damages. In *Manuel*,⁹ for example, the SCA said that an apology “*has always weighed heavily in determining the quantum of damages in defamation cases.*”

68. The defendant accepted that the apology issued on 29 October 2018 could have done more to reach a resolution with the plaintiffs. He refers to the fact that an apology and retraction were made in the second Bokamoso letter and that that is what the media reported. The problem is, of course, that whilst an apology was attempted at that stage, the rest of the newsletter yet again referred to the plaintiffs in defamatory terms. The apology in the newsletter served no purpose in undoing the damage done to the plaintiffs.
69. The second apology – the one tendered just prior to the commencement of the trial – is comprehensive, but it came exceedingly late in the day.¹⁰ It had not been published, but was presented as a tender to the plaintiffs in correspondence from the defendant’s legal representatives. I am inclined share the plaintiffs’ suspicion that the tender was finally given so as to bring the litigation to an end and to limit the award of damages. The defendant did not give evidence, and the Court was thus unable to gauge from his demeanor the sincerity with which the tender had been made.
70. During the cross-examination of the plaintiffs, the defendant’s counsel focused on some of the news reports which allegedly proved that the defamatory allegations were repudiated by, amongst others, Whilst the plaintiffs explained that Mr Twigg is unknown, compared to the defendant, no explanation was proffered by the defendant as to why he never confirmed Mr Twigg’s comments. He also did not explain why, if the defamatory allegations had indeed already been repudiated, there was any need for the tender of a n apology years later, on 14 March 2018. As indicated, the defendant did not come to Court to explain himself or to make an apology in person. The defendant’s tender, after the lapse of almost five years, of an apology to be made in different and more limited media contexts from those in which the defamatory statements were made, is not

⁹ *Manual supra* at para [130]. See also *Mogale supra* at para [17].

¹⁰ See *Tsedu and others v Lekota and another* 2009 (4) SA 372 (SCA) at para [24].

sufficient.

71. In *Dikoko v Mokhatla*¹¹ the Constitutional Court held that “...whether or not the amende honorable technically still forms part of our law, it is important that once an apology is tendered as compensation or part thereof, it should be sincere and adequate in the context of each case. When considering the purpose of compensation in defamation cases the true value of a sincere and adequate apology, the publication of which should be as prominent as that of the defamatory statement, and or a retraction as a compensatory measure restoring the integrity and human dignity of the plaintiff, cannot be exaggerated.”
72. Various considerations relevant in determining the award of damages arise from the evidence on record. The defamatory statements imputed criminal conduct to the plaintiffs in the form of corruption. The allegations were of a malicious nature and, and were made intentionally. When the defendant was asked to withdraw the allegations and apologise, he published a second *Bokamoso* newsletter in which the plaintiffs were again defamed before a national and international audience. It appears that the statements were made to punish the plaintiffs for resigning from the DA.
73. The defendant must have known that the plaintiffs were not implicated in the unlawful conduct he attributed to them. He had no reason to believe that they were ever dishonest. The publication of the defamation was very wide, and in several languages, across South Africa, as well as to an international audience of readers. Publication occurred on the platforms of Media24, which has a vast readership, as well as the SABC and ENCA television channels and radio stations. An unknown number of local and community radio stations also broadcast the allegations. The impact of the defamatory statements upon the public and the level of interest was evidenced by numerous requests by television and radio stations for interviews with the plaintiffs.
74. The defamatory material was published and republished several times since the cause of action first arose. The additional defamation attracted further publication

¹¹ 2006 (6) SA 235 (CC) at para [67].

of the defamatory material. The defendant, holding the public position that he did, must have known that this would happen.

75. The defamatory allegations were made by the defendant when he was the national leader of the opposition in parliament. He did so against individual former municipal councillors.
76. The defendant waited for four and a half years before withdrawing his defence to the claims. I have dealt with the merits of the tendered apology.
77. The defamation had far-reaching effects upon the plaintiffs' professional and personal lives. It also resulted in financial detriment to the plaintiffs after funding for their new political party and private business ventures proved difficult (this was clearly the case whether or not one accepts the evidence regarding Mr Lentit's promised contribution), in the light of the damage to their reputations.
78. Due to the long lapse of time; the fact that the defendant no longer speaks as the leader of the opposition, and the diminished interest of the public in the matter, it is unlikely that the plaintiffs' reputations can ever be fully vindicated. The plaintiffs were political and public figures with longstanding reputations, and they were respected and trusted in their communities. Those reputations were affected by the defendant's actions, even if short-lived, as he argues. I am not convinced that one can brush off the effects of the defendant's statements as easily as he tries to do. An accusation of dishonesty is difficult to dispel. People tend to believe that "where there is smoke, there is fire", and the shadow of imputed dishonesty will follow the plaintiffs. The defendant himself did little to rectify the situation. It was the plaintiffs who went about attempting to set the record straight. It is ironic that the defendant relies so heavily, in an attempt to limit his liability, on the plaintiffs' efforts.
79. In all of these circumstances, I am of the view that the amount of R35,000.000 tendered by the defendant is too low. On the other hand, the amounts proposed by the plaintiffs are relatively high. In the exercise of my discretion¹² I regard the

¹²

I have considered the case law referred to by the plaintiffs, including *Tsedu and others v Lekota and another* 2009 (4) SA 372 (SCA), *Dikoko v Mokhatla* 2006 (6) SA 235 (CC), *Jankiehlson v Boovsen* [2020] 1 All SA 214 (FB), *Flusk v Berg* 2013 JDR 2403 {GSJ}, and *Katz v Welz and another* [2021]

following as appropriate in relation to each of the plaintiffs:

79.1. Mr August: R100,000.00;

79.2. Ms Little: R120,000.00;

79.3. Mr Barnardo: R135,000.00; and

79.4. Mr Stemele: R120,000.00.

Costs

80. No reason has been advanced why the general rule in relation to costs should not be followed. The defendant admits that the plaintiffs are entitled to their costs. He contends that the costs should be limited to party-and-party costs on the magistrate's court scale.
81. I have considered the defendant's submissions in this respect, as well as the case law relied upon.¹³ The awards ultimately given to the plaintiffs, although not as low as tendered by the defendant, fall within the jurisdiction of the magistrate's court and, given the available precedent, the plaintiffs could not have been under the impression that the initially claimed damages of R1 million were reasonable.
82. I am nevertheless of the view that the plaintiffs should be awarded costs on the High Court scale. In *Greef v Raubenheimer en 'n ander*¹⁴ the then Appellate Division held that in a defamation action, when the scale of costs is to be determined, one needs to consider the various factors that a reasonable plaintiff would consider at the time of the issue of the summons. These include the content of the defamation, the extent of the publication, the possible defences to be proffered, the importance of the case to the parties, and certain inherent uncertainties which are known to defamation cases (that is,

ZAWCHC 76 (26 April 2021).

¹³ Including *Mogale supra* at para [19]; *Mthimyune v RCP Media and another* 2012 (1) SA 199 (T) at para [29]; and *Khambule v Minister of Police* [2012] ZAGPJCH 202 (12 October 2012) at para [41].

¹⁴ 1976 (3) SA 37 (A) at 44E-G, with reference to *Van der Merwe v Schraader* 1953 (2) SA 339 (E) at 342D-F.

the validity or not of alleged innuendo).

83. In *Gelb v Hawkins*¹⁵ the seriousness of the defamation was held to be a relevant consideration to determine whether High Court or magistrate's court costs were to be awarded. At no stage during the proceedings, until the plea was amended shortly before the commencement of the trial, did the defendant, although legally represented, protest or suggest that the summons should have been instituted in the magistrate's court. The same considerations apply in the present matter.
84. The defendant was the leader of the second largest political party in South Africa, and the leader of the opposition. The dispute was one which had received national attention because of its importance. The parties were both represented by senior counsel, and the defendant was represented by two counsel. If costs were to be awarded on the magistrate's court scale, the damages awards would be eroded by the costs. I am therefore inclined to allow costs on the High Court scale.
85. There are a few loose ends in relation to costs. Prior to the hearing of the actions, the matter was postponed on various occasions due to circumstances not within the parties' control, with costs standing over for later determination. I am of the view that, in respect of these instances, each party should pay his or her own costs. These occasions were on 26 February 2021,¹⁶ 8 June 2021,¹⁷ and 18 October 2021.¹⁸ The trial was at that point postponed to 1 November 2022.
86. The matter had to be removed from the roll on 1 November 2022 due to the defendant's representatives not being available. The defendant should foot the bill for the costs that stood over on this occasion.¹⁹
87. The plaintiffs seek costs on a punitive scale. Given the nature of the matter and the

¹⁵ 1960 (3) SA 687 (A) at 694B-D.

¹⁶ The four actions were consolidated and set down for hearing on 8 June 2021.

¹⁷ No judge was allocated to hear the matter.

¹⁸ No judge was allocated to hear the matter.

¹⁹ The matter was also postponed on 23 February 2023 because the defendant was not ready to proceed, but he has, according to counsel, already paid the wasted costs of that postponement.

circumstances discussed in the course of this judgment, I agree that such an award would be appropriate.

Order

88. In the premises, I make the following orders:

88.1 **Under case number 20866/2018**, the defendant shall pay to the plaintiff:

- (a) Damages in the sum of R100.000,00;
- (b) Interest thereon at the prescribed legal rate *a tempore morae*;
- (c) Costs of suit (on the High Court scale) on the scale as between attorney and client, including the wasted costs incurred as a result of the postponement on 1 November 2022, but excluding the costs incurred as a result of the postponements on 26 February 2021, 8 June 2021, and 18 October 2021.

88.2 **Under case number 20867/2018**, the defendant shall pay to the plaintiff:

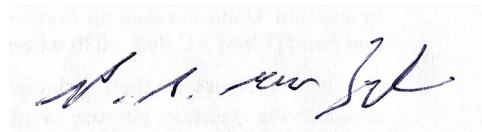
- (d) Damages in the sum of R120.000,00;
- (e) Interest thereon at the prescribed legal rate *a tempore morae*;
- (f) Costs of suit (on the High Court scale) on the scale as between attorney and client, including the wasted costs incurred as a result of the postponement on 1 November 2022, but excluding the costs incurred as a result of the postponements on 26 February 2021, 8 June 2021, and 18 October 2021.

88.3 **Under case number 20868/2018**, the defendant shall pay to the plaintiff:

- (g) Damages in the sum of R135.000,00;
- (h) Interest thereon at the prescribed legal rate *a tempore morae*;
- (i) Costs of suit (on the High Court scale) on the scale as between attorney and client, including the wasted costs incurred as a result of the postponement on 1 November 2022, but excluding the costs incurred as a result of the postponements on 26 February 2021, 8 June 2021, and 18 October 2021.

88.4 **Under case number 20869/2018**, the defendant shall pay to the plaintiff:

- (a) Damages in the sum of R120.000,00;
- (b) Interest thereon at the prescribed legal rate *a tempore morae*;
- (c) Costs of suit (on the High Court scale) on the scale as between attorney and client, including the wasted costs incurred as a result of the postponement on 1 November 2022, but excluding the costs incurred as a result of the postponements on 26 February 2021, 8 June 2021, and 18 October 2021.



P. S. VAN ZYL

Acting judge of the High Court

Appearances:

For the plaintiffs:

P. A. Corbett SC, instructed by Van Rensburg & Co.

For the defendant:

P. B. Hodes SC (with him V. S. Bruinders), instructed by Smiedt & Associates