173/88

Case no. 407/87

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IN THE SUPREME COURT OF SOUTH AFRICA

APPELLATE DIVISION

In the matter between:

DOCTOR OSCAR DHLOMO ..... Appellant

and

NATAL NEWSPAPERS (PTY) LIMITED..... First Respondent

I M WYLLIE .....Second Respondent

Coram: RABIE ACJ, CORBETT, JOUBERT, VAN HEERDEN JJA et VILJOEN AJA.

Heard: 18 August 1988

Delivered: 1 December 1988

J U D G M E N T

RABIE ACJ:

This is an appeal against the judgment of Van Heerden J in the Durban and Coast Local Division in which

he upheld an exception to a claim for damages for defamation and dismissed the claim with costs. The judgment has been reported: see Dhlomo N O v. Natal Newspapers (Pty) Ltd and Another 1988(4) SA 63 (D&CLD).

The claim for damages was instituted by Dr Oscar Dhlomo on behalf of Inkatha Yesiswe ("Inkatha"), of which he is the Secretary-General. Inkatha is a legal persona, and in terms of its constitution its Secretary-General can institute action on its behalf. (Inkatha is described in the Particulars of Claim as a "non-incorporate association, a universitas", and "a national popular movement, having a membership of some 1,2 million persons.") The first defendant in the action (the first respondent in the appeal) was the proprietor, publisher and printer of the newspaper, "The Sunday Tribune". The second defendant was the editor of the newspaper. In an article which appeared in the newspaper on 30 March 1986 it was stated that serious violence had been committed at a certain conference by members of a Zulu impi, and that "A spokesman for police headquarters in Pretoria

said that according to their information the Amabutho impi was backed by Inkatha." The plaintiff, stating that it was known to the defendants and readers of the newspaper that Inkatha had publicly rejected on many occasions "(i) the policies of the National Government and in particular the policy of apartheid, and (ii) the use of violence to achieve political aims", alleged that the article was defamatory of Inkatha; that the "reputation, dignity and esteem of Inkatha and its ability to promote and further its aims and objects" had been "impaired and injured" by the defamatory article, and that Inkatha had suffered damages in the amount of R20 000,00.

The defendants (the respondents in the appeal) excepted to the plaintiff's Particulars of Claim on the following grounds:

> "1. The Plaintiff is Inkatha which in terms of its constitution is represented for the purpose of these proceedings by its Secretary General.

2. The Plaintiff is alleged to be a universitas and a national popular movement established and existing for political purposes.

3. The Plaintiff is not alleged to have any trading rights nor is it alleged to have suffered any loss to its patrimony in consequence of the publication of the article, a copy of which is annexure "A" to the Particulars of Claim;

4. The Plaintiff is incapable of being defamed and has no title to sue to recover damages for defamation."

This statement of the grounds of the exception is followed by a prayer that the exception be upheld and that the plaintiff's claim be dismissed with costs.

It is common cause that Inkatha's claim is not one under the lex Aquilia for damages for a loss actually sustained by it. The real issue raised by the exception is, therefore, whether the right on the part of a legal persona

to claim damages for defamation is limited to a legal *persona* which is engaged in trade and which alleges that it has been injured in its business reputation or status. (For the sake of convenience I shall, in what follows below, refer to such a legal *persona* as a trading corporation.) It follows that if the Court should hold that the right to claim damages for defamation is not so limited, or ought not to be so limited, the exception must fail. This was, also, the basis on which the exception was argued in the Court *a quo* ; see the last sentence of the penultimate paragraph of the judgment of the Court *a quo* (at 72 H-I of the report), where the learned Judge indicates that counsel for the excipients (the present respondents) conceded that the exception was "simply aimed at drawing a line between trading and non-trading concerns", and that Inkatha, not being a trading corporation, could for that reason, and not because of its character as a *quasi*-political organisation, not sue.

It is clear from what I have said above that the

respondents accept, for the purposes of the exception, that a trading corporation can claim damages for defamation, but that they contend that a non-trading corporation has no such right. Their contention is that our Courts have never decided that a non-trading corporation has such right, and, also, that no such right should now be recognised. The questions which call for discussion are, therefore, (a) whether a trading corporation can in our law claim damages for defamation, and (b), if it can, whether a non-trading corporation can also do so, or (c), if it has not yet been decided that a non-trading corporation can do so, whether the right to do so should be accorded to it.

In Cape Times,Ltd v. South African Newspaper Co., Ltd (1906) 23 SC 43 the Court accepted the law to be that a "trading company" could sue for libel in the event of injury to its "business reputation" (at 49). In Witwatersrand Native Labour Association, Ltd v. Robinson 1907 TS 264 **Innes CJ** stated (at 265):

> "The rule apparently adopted, both in England and in South Africa, is that a trading corporation - which I take to mean a corporation engaged in some business for the purpose of profit - may sue for defamation which affects it in its trade or business or property. But that is the high-water mark of the decisions affirming the right of companies or corporations to bring actions for defamation."

In the same case **Bristowe J** said (at 266):

> "The functions and activities of a natural individual are manifold in their character; the functions and activities of a corporation are limited to the objects for which it is created, and in the case of a joint-stock company are limited to the objects stated in the articles of association. So that a corporation cannot, from the nature of its foundation and of its constitution, be defamed unless something is said or written which will interfere with it in the pursuit of the purposes for which it was created; and in the case of a trading corporation it must, as was laid down in the cases to which we have been referred, be calculated to injure its business reputation, or to affect the trade or business which it was formed to carry on."

In Rand Water Board v. Lane 1909 TH 4 **Bristowe J** raised the question whether a non-trading corporation could claim damages for defamation. The learned Judge said (at 7):

> "First, is the Rand Water Board a trading corporation? I am not sure that this affects the matter, for I suspect that in the case of any corporation established to carry out a particular undertaking, if it were injured by a libel in that undertaking, the corporation would have a right to sue on the libel."

He proceeded to hold, however, that the Rand Water Board was a trading corporation and that it could, therefore, sue for damages for defamation. In Bhika v. Prema and Others 1910 TS 101, where the respondents claimed to be an "association", **Innes CJ** held (at 103):

> "But even if this were in law an association which could sue for libel, it is clear that it cannot do so apart from its business. And it has no business which can be libelled."

In the same case **Smith J**, who concurred in the judgment of **Innes CJ**, also said (at 104):

> "An association or corporation has no personal honour which can be attacked, and therefore this association, which had no business, cannot be libelled in the way plaintiffs allege."

This takes me to the case of G.A. Fichardt, Ltd v. The Friend Newspapers, Ltd 1916 AD 1 - the first case in which questions of the kind mentioned in the cases referred to above were discussed in the Appellate Division. The appellant company, a trading corporation, claimed damages for defamation, alleging that it had been defamed in headlines to an article which appeared in a newspaper owned and printed by the respondent company. **Innes CJ** said (at 5/6):

> "That the remedy by way of action for libel is open to a trading company admits of no doubt. Such a body is a juridical *persona*, a distinct and separate legal entity duly constituted for trading purposes. It has a business *status* and reputation to maintain. And if defamatory statements are made reflecting upon that *status* or reputation, an action for the *injuria* will lie. (See de Villiers' *Law of Injuries*, p. 59.) In the present case no special damages were proved; but that circumstance

> does not really affect the position. Where words are defamatory of the business status and reputation of a trading company, I am not aware of any principle of our law which would make the right of action depend on proof of special damage."

Solomon JA, in whose judgment **Maasdorp JA** concurred, said (at 8):

> "It has been settled by a series of decisions, both in England and in South Africa, that an action will lie at the suit of a trading company for statements defaming it in its business character or reputation. For example it is actionable to write or say of such a company that it conducts its business dishonestly or that it is insolvent. And for defamatory statements of that nature general damages may be given, just as when an individual is defamed, nor is it necessary to prove that actual loss has been sustained. The law on this subject is now well settled, and it is unnecessary, therefore, to discuss the authorities dealing with it."

And also (at 9):

> "Now, as already pointed out, just as it is defamatory to make any statement concerning an

> individual which reflects upon his character or reputation, so it is defamatory to make a statement concerning a trading corporation reflecting upon its business reputation."

Innes CJ and **Solomon JA** held that the headlines of which the appellant complained were not defamatory, and that the appellant could therefore not succeed. Both of them expressed the view that the appellant might have been entitled to institute an action based on false, but not defamatory, statements concerning its business. **De Villiers AJA** (with whom **Juta AJA** agreed) held that the appeal should be dismissed on the ground that the words of which the appellant complained were not defamatory.

In Goodall v. Hoogendoorn, Ltd 1926 AD 11 the Court held that a trading corporation could claim damages on the ground of statements defaming it in its business reputation. It was held on exception in that case that the action could not succeed because it was not the company itself which sued, but a shareholder who apparently claimed in respect of a loss

allegedly suffered by himself.

In Die Spoorbond and Another v. South African Railways 1946 AD 999 the Railways, which was a legal persona and which, so the Court held, was engaged in trade, claimed damages on the ground of defamatory statements which had allegedly injured it in its reputation as the authority which managed and superintended the railways. **Watermeyer CJ** (in whose judgment **Tindall JA, Greenberg JA and Davis AJA** concurred) accepted, without discussing the matter, that a trading corporation could claim damages for an injury done to its business reputation. It was held, however, inter alia on the ground of what may be said to be considerations of public and legal policy, that such right should not be accorded to the State. As to the question of damages in a claim made by a trading corporation, **Watermeyer CJ** said (at 1007):

> "There have been several decisions in Courts in South Africa which recognise that a trading or business corporation has, like an individual, a

> reputation in connection with its trade or business and that it can sue for damages for injury to the reputation, e.g. Fichardt Ltd. v. The Friend Newspapers (1916, A.D. 1); Witwatersrand Native Labour Association v. Robinson (1907, T.S. 264); Rand Water Board v. Lane (1909, T.H. 4); African Theatres Trust v. McWilliams (1915, E.D.L. 102); African Life Society v. Phelan (25 S.C. 743). But there have also been cases in which the Courts have decided or suggested that no action for libel affecting the reputation of a corporation will lie without proof of damage. See Cape Times Ltd. v. S.A. News Ltd. (16 C.T.R. 40); Cape Times Ltd. v. Richards & Sons (10 C.T.R. 727). There has been no decision of this Court upon the subject so far as I am aware."

I have read the cases of Cape Times Ltd v. S.A. News and Cape Times Ltd v. Richards & Sons, mentioned in this passage, but, with great respect, I do not think that either of them should be taken to have decided that in a claim for defamation by a trading corporation there must be proof of actual damage suffered by the corporation. Reference may be made in this connection to what **Bristowe J** said in Rand

Water Board v. Lane, supra, at 5, in regard to the case of Cape Times Ltd v. S.A. News, supra. The learned Judge said:

> "Mr. Nathan has cited the case of Cape Times, Ltd v. South African News (16 C.T.R. 40), from the report of which it is made to appear that special damage must be alleged in a case of this kind. But I do not believe that the court meant to lay down that special damage must be alleged in the sense in which that term is usually understood. By special damage is meant simply damage to the plaintiff's trade or business. If the court intended to decide more than that, then I think it decided contrary to the decision in South Hetton Coal Co. v. North Eastern News Association ([1894] 1 Q.B. 133), which was approved of by the Supreme Court in Witwatersrand Native Labour Association v. Robinson ([1907] T.S. 264)."

In his judgment in the Spoorbond case, supra, Schreiner JA dealt with the question of the development of the law of defamation from early times up to the time when recognition began to be given to the right of a corporation to claim damages for defamation. The relevant passage reads as follows (at 1010-1011):

"Our action for defamation is derived ultimately from the Roman actio injuriarum which 'rested on outraged feelings, not economic loss' (Buckland, Textbook of Roman Law, sec. 202). Even in the early days of recorded Roman law mention was specifically made, in this connection, of public insults, but the gist of the action was the intentional and unjustified hurting of another's feelings and not the damage to his reputation considered as something that belonged to him. In our modern law, as often happens, the wide old delict of injuria has split up into different delicts, each with its own name, leaving a slight residue to bear the ancient title. The particular delict now known as defamation has lost a good deal of its original character since it is no longer regarded primarily as an insulting incident occurring between the plaintiff and the defendant

personally, with publicity only an element of aggravation by reason of the additional pain caused to the plaintiff. Although the remnant of the old delict of injuria still covers insults administered privately by the defendant to the plaintiff, the delict of defamation has come to be limited to the harming of the plaintiff by statements which damage his good name. The opinion of other persons is of value to him and although it is not usual to speak, with Iago, of defamation as a form of theft, it has become in some degree assimilated to wrongs done to property. Thus special damage can be recovered in a defamation action, as a matter of convenience, although if one looks at the history of the action it would appear to be logical to require a separate action to be brought under the lex Aquilia in respect of that loss (see Matthews v. Young (1922, A.D. 492 at p. 505)). It is because of this

> development in the character of actions for defamation, so it seems to me, that some logical justification can be found for the recognition, even in our law, of such actions at the suit of corporations, although the latter have no feelings to outrage or offend."

Schreiner JA also touched on the question whether the right of trading corporations to sue for defamation should be extended to other corporations which rely on their reputation to win them public support. The learned Judge said (at 1011):

> "Whether the right to sue for defamation, assuming that some corporations at least have such a right, is to be limited to trading corporations or is to be extended to such other corporations as rely on their reputations to win them public support for the conduct of their affairs, has certainly not been settled in our law."

In the case of Universiteit van Pretoria v. Tommie Meyer Films (Edms) Bpk 1979(1) SA 441(A) I did not find it

necessary to discuss the law as stated by Innes CJ and Solomon JA in Fichardt's case, supra, and merely said (at 454 G-H), referring to Fichardt's case, that: "Wat fama betref, is in hierdie hof al gesê dat 'n handelsmaatskappy 'n fama het en dat sodanige maatskappy belaster kan word ...". I accepted in that case, for the purposes of the appeal, that the appellant, which was a University and not a trading corporation, could in appropriate circumstances sue for defamation (see at 455 E). I also left open the question whether the right enjoyed by a trading corporation to sue for defamation should be extended to legal personae which have a fama and are dependent on financial support from the public for the conduct of their affairs.

Fichardt's case, supra, has been criticised for accepting that a trading corporation can sue for defamation. See Universiteit van Pretoria v. Tommie Meyer Films (Edms) Bpk 1977(4) SA 376 (T); Church of Scientology in SA Incorporated Association Not For Gain and Another v. Reader's

Digest Association SA (Pty) Ltd 1980(4) SA 313 (C). The basis of the criticism is, briefly put, that a natural person, who has rights of personality, can be defamed, but not a legal persona, which does not have such rights. A trading corporation, it is said, can sue for damage done to its reputation if it suffers actual loss, its reputation being an asset which has economic value. Such corporation's remedy, thus the argument, is an Aquilian action, not an action for defamation which does not require proof of actual loss.

The question now to be decided is, therefore, whether one should hold the law as stated in Fichardt's case, supra, to be the law of South Africa, or whether one should decide that the law is that only a natural person can sue for defamation.

The aforesaid statements of the law by **Innes CJ** and **Solomon JA** were, as I said in Universiteit van Pretoria v. Tommie Meyer Films (Edms) Bpk 1979(1) SA 441 at 455 A-C,

strictly speaking not necessary for the decision of that case. The claim was one for damages arising from allegedly defamatory newspaper headlines, and when it was found that the headlines were not defamatory, the Court could have dismissed the claim on that basis, without entering on a discussion of the question whether a trading corporation could in law sue for defamation. It is clear at the same time, however, that those statements were made as reflecting settled law. **Innes CJ**, as pointed out above, stated: "That the remedy by way of action for libel is open to a trading company admits of no doubt", and **Solomon JA**, as has also been shown above, regarded it as settled law that a trading corporation could sue for defamation. In the Spoorbond case, supra, decided thirty years after Fichardt's case, **Watermeyer CJ**, without discussing the matter, accepted the law to be that a trading corporation can sue for defamation. I appreciate that it may be said that the recognition of the right of a trading corporation to sue for defamation

involves an extension of the principles of Roman and Roman-Dutch law which dealt with the right of action only in relation to natural persons, but, having considered all this, and having taken account of South African academic writings in textbooks and legal journals pro and contra the idea that a trading corporation should have the right to sue for defamation, I have come to the conclusion that it would be unrealistic not to hold that the law as stated by this Court in Fichardt's case more than seventy years ago has become the law of South Africa. I accordingly so hold.

With regard to the question of the proof of damages in an action for defamation, **Innes CJ** held in Fichardt's case that it was not necessary for a trading corporation to prove special damage, i.e., to prove an actual loss. The judgment of **Solomon JA** was, as has been pointed out above, to the same effect. In the Spoorbond case, as indicated above, **Watermeyer CJ** referred to several decisions which recognised that a trading corporation has, like an individual, "a reputation in connection with its trade or business and that

it can sue for damages for injury to that reputation." One of the cases mentioned by him was Fichardt's case, and he dealt with the case before the Court on the assumption that a trading corporation could sue for defamation without proof of special damage. I have already dealt with the Chief Justice's reference to Cape Times Ltd v. S.A. News, Ltd, supra, and Cape Times Ltd v. Richards & Sons, supra, as being cases in which it was "decided or suggested that no action for libel affecting the reputation of a corporation will lie without proof of damage." In my view we should follow what was said in Fichardt's case. It would be wrong, I think, to demand of a corporation which claims for an injury done to its reputation that it should provide proof of actual loss suffered by it, when no such proof is required of a natural person who sues for an injury done to his reputation.

I may point out, in conclusion, on this part of the case, that the rule that a trading corporation can sue for injury to its business reputation is also known to other

legal systems. See, e.g., as to England: Salmond and Heuston on the Law of Torts, 19th ed. (1987), at 482; Gatley on Libel and Slander, 8th ed. (1981) para. 954; Duncan and Neill on Defamation, 2nd ed. (1983), para. 9.02; as to Scotland: David M. Walker, Principles of Scottish Law, Vol. II, Book IV (3rd ed.) at 624; and as to the United States of America: Corpus Juris Secundum, Vol 53, in the chapter on Libel and Slander, para. 113; Restatement of the Law, Torts, 2nd ed., Vol. 3 (1977), in the chapter on Invasions of Interest in Reputation, para. 561. German law accepts that a legal persona can be defamed.(See e.g. Rolf Serick, Rechtsform und Realität Juristischer Personen (1955) at 173-175.) In Dutch law there are conflicting Court decisions as to whether a legal persona can be defamed, but it is said that most writers hold the view that it can be defamed. (See Asser, Verbintenisrecht, De Verbintenis uit de Wet, 6th ed. (by Rutten, 1983) at 214, Vol 4-III; Asser, Vertegenwoordiging en Rechtspersoon, De Rechtspersoon, 6th ed.,

(by Van der Grinten, 1986) para. 72.

I turn now to the question whether the right to sue for defamation should be restricted to trading corporations, or whether such right should also be extended to non-trading corporations - or at least some kinds of non-trading corporations. As I pointed out above, the respondents' exception was brought on the narrow basis that no such extension to any kind of non-trading corporation should be permitted, and that the appellant's claim should, for that reason, be dismissed.

As to the aforesaid question, one could, I suppose, adopt the attitude that the extension of the right to sue for defamation to a trading corporation constituted an extension of the earlier law which conferred such a right only on natural persons, and that one should not go further along that road. I do not think, however, that such an attitude would be justified. It was rightly not contended by the respondents that no non-trading corporation can have a fama

which deserves the protection of the law; the contention was that a corporation which has such a fama can protect it by means of an interdict or by claiming damages in an Aquilian action, but not by suing for defamation. It seems to me, however, that once one accepts - as one must, in my view - that a trading corporation can sue for an injury to its business reputation, there is little justification for saying that a non-trading corporation should not, in appropriate circumstances, be accorded the right to sue for an injury to its reputation if the defamatory matter is calculated to cause financial prejudice (whether or not actual financial prejudice results.) It is conceivable that in the case of a non-trading corporation such as a benevolent society or a religious organisation - these are but examples - which is dependent upon voluntary financial support from the public, a defamatory statement about the way in which it conducts its affairs would be calculated to cause it financial prejudice in the aforementioned sense. It would in my view be

illogical and unfair to deny such a corporation the right to sue for an injury to its reputation, but to grant it to a trading corporation when it suffers an injury to its business reputation. In my opinion we should hold, and I so hold, that a non-trading corporation can sue for defamation if a defamatory statement concerning the way it conducts its affairs is calculated to cause it financial prejudice. This finding involves, in view of what I said above concerning the narrow basis on which the respondent's exception was brought, that the exception cannot be sustained. It is accordingly unnecessary to consider the further question whether a non-trading corporation can sue for defamation if the defamatory matter of which it complains relates to the conduct of its affairs but is not calculated to cause it financial prejudice.

My aforesaid finding must not be taken to mean that I hold the view that every non-trading corporation will in all circumstances be entitled to sue for defamation. It is

conceivable, I think, that such a corporation may, in certain circumstances, be denied the right to sue on the ground of considerations of public or legal policy. (Such considerations moved the Court in the Spoorbond case, supra, to hold that a department of the State should not be permitted to sue for defamation.) The present case can conceivably give rise to the question whether it would be in the public interest to permit attacks on political bodies, whose policies and actions are normally matters for debate on public and political platforms, to be made the basis of claims for damages in Courts of law. However, I express no opinion thereon.

With regard to my finding above regarding the right of a non-trading corporation to sue for defamation, it may be useful to indicate that it appears to be in line with American law on the subject. In the Restatement of the Law, Torts (2nd), a publication of The American Law Institute, the following is said in Vol. 3 (1977), para. 561, regarding the

question of the defamation of a corporation:

> "One who publishes defamatory matter concerning a corporation is subject to liability to it
>
> (a) if the corporation is one for profit, and the matter tends to prejudice it in the conduct of its business or to deter others from dealing with it, or
>
> (b) if, although not for profit, it depends upon financial support from the public, and the matter tends to interfere with its activities by prejudicing it in public estimation."

In a caveat to (b) it is said that the Institute expresses no opinion on "whether there may be liability for defamation of a corporation that is not for profit, if the corporation does not depend upon financial support from the public or the defamation does not tend to interfere with that support"; and in a comment on this caveat it is stated that there have not been cases involving the publication of defamatory matter concerning a corporation not for profit, where the corporation did not depend on the financial support of the public, or where the matter published did not tend to interfere with the activities of the corporation by

preventing it from obtaining financial support. It is suggested, however (although it is expressly stated that the matter is left open), that "cases may arise in which the defamatory publication will so seriously injure a corporation not for profit, or so seriously interfere with its activities otherwise than by preventing financial support, that the action will be held to lie."

Further, as to American law on the subject, the following is said in American Jurisprudence, 2nd ed., Vol. 50 (1970), in the chapter on "Libel and Slander", para. 315:

> "A corporation, even though not engaged in business, may maintain an action for libel without proof of special damages, where it is dependent for its support on voluntary contributions, the number and amount of which are likely to be affected by the publication of which complaint is made."

One of the cases cited in support of this statement is New York Society for the Suppression of Vice v. MacFadden Publications et al., decided in the New York Court of Appeals

and reported in 86 American Law Reports (1933) at 440. The plaintiff in that case was a society which had been established for the purpose of doing social welfare work, and it was dependent on voluntary contributions for its support. It instituted an action for libel against the defendant company, the publisher of a newspaper, and was awarded damages. On appeal it was contended that only a trading corporation could maintain an action for libel; that the plaintiff was not a corporation engaged in business for pecuniary gain, and that, to justify a claim for damages, special damage should have been alleged and proved. The Court rejected these contentions and said inter alia (at 441-442):

> "Corporations engaged in charitable, social welfare, benevolent and religious work, have the right to acquire and hold property which may produce a profit or income. Indeed, the statute under which plaintiff was organized expressly grants that power to it. Many such corporations own and control very valuable properties, and in

their management such corporations establish a reputation, rights and interests similar to the reputation, rights and interests acquired by individuals and corporations engaged in business for profit. To decide that such corporations have no reputation acquired in the management of their affairs and property which can be injured or destroyed by a malicious libel, unless special damage is proved, would constitute a reflection upon the administration of justice. Benevolent, religious, and other like corporations have interests connected with property and its management which should have the same protection and rights in courts in case of injury as corporations engaged in business for profit.

Their usefulness depends largely upon their reputation for honesty, fair dealing and altruistic effort to improve social conditions.

The respondent depends entirely upon voluntary contributions for its support. The number and amount of such contributions would necessarily be affected by the publication of false and malicious articles to the effect that it engaged in illegal and reprehensible conduct in the management of its affairs.

> It has never been decided by this court that a nonbusiness corporation could not maintain an action for libel without alleging and proving special damages."

So much for American law.

In English law the position would appear to be less clear. According to Gatley on Libel and Slander, 8th ed., para. 957, a non-profit corporation can maintain an action for libel "in respect of charges which tend injuriously to affect its property or financial position." The cases cited in support of this statement are Canadian and American (one of which is the case of New York Society for the Suppression of Vice v. Macfadden Publications et al., to which I referred above). In para. 958 it is pointed out that it was held in Bognor Regis Urban District Council v. Campion (1972) 2 QB 169 that a municipal corporation has a "governing" reputation which it can protect by bringing an action for defamation. In the case of National Union of General and Municipal Workers v. Gillian and Others (1945)2 All E R 593 (CA) at 605

A-B Uthwatt J said:

> "It is well established that in certain cases a trading corporation may bring suit in respect of an imputation on its trading reputation and I see no reason why a non-trading corporation should not have the same rights as respects imputations on the conduct by it of its activities."

In Duncan and Neill on Defamation, 2nd ed. (1983), in para. 9.05, it is said that the law as to non-trading corporations is "less clear" than it is in the case of trading corporations, but the submission is made (in para. 9.06) that "there is no distinction in principle between the rights of a trading corporation and the rights of a non-trading corporation." In 1975 the Faulks Committee on Defamation recommended that a non-trading corporation should be entitled to sue for defamation if it can establish either "(i) that it has suffered special damage, or (ii) that the words were likely to cause it pecuniary damage." (See para 342 of the Committee's report (Cmnd 5909; March 1975) and sec. 17 of its draft Defamation Bill.)

As indicated above, the exception should, in my view, not have succeeded. The appeal is accordingly upheld with costs, including the costs of two counsel. The order made by the Court a quo is set aside and the following order is substituted therefor: "The exception is dismissed with costs, including the costs of two counsel".

P J RABIE

ACTING CHIEF JUSTICE.

CORBETT JA

JOUBERT JA Concur.

VAN HEERDEN JA

VILJOEN AJA