Case No 468/90

IN THE SUPREME COURT OF SOUTH AFRICA

(APPELLATE DIVISION)

In the matter between:

THE ARGUS PRINTING & PUBLISHING

COMPANY LIMITED Appellant

and

INKATHA FREEDOM PARTY Respondent

CORAM: CORBETT, CJ, HOEXTER, HEFER, E M GROSSKOPF, et

GOLDSTONE, JJA

HEARD: 6 MARCH 1992

DELIVERED: 15 May 1992

J U D G M E N T

E M GROSSKOPF, JA

In Dhlomo NO v. Natal Newspapers (Pty) Ltd and Another 1989 (1) SA 945 (A) ("the Natal Newspapers case") this Court held (at p. 954 D) that a non-trading corporation may sue for defamation if a defamatory statement concerning the way it conducts its affairs is calculated to cause it financial prejudice. However, this did not necessarily mean, the Court stated, that every non-trading corporation would in all circumstances be entitled to sue for defamation - it was conceivable that such a corporation might, in certain circumstances, be denied the right to sue on the ground of considerations of public or legal policy. Indeed, the Court said (at p. 954 G), the Natal Newspapers case could 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.

The question which, it was said, could conceivably

arise from the Natal Newspapers case now in fact falls to be answered in the present case. The facts are not in dispute. The respondent, the Inkatha Freedom Party ("Inkatha") (which, incidentally, was the successful appellant in the Natal Newspapers case, in that case represented by its Secretary-General), now, after amendments to its constitution and a consequential amendment to its pleadings, appears in its own name. It, together with a co-plaintiff, issued summons in the Witwatersrand Local Division against the present appellant, the Argus Printing and Publishing Company Limited, for damages in respect of defamatory statements alleged to have been published in two articles in the Sowetan, a newspaper of which the appellant was the proprietor, publisher and printer. Mr. J. Latakgomo, the editor of the Sowetan, was joined as second defendant. These two articles reported on the same events as those dealt with in the article which was in issue in the Natal Newspapers case, and the nature of the alleged defamations complained of is

similar. Since the nature and effect of the articles are not in dispute it is not necessary to deal with them in any detail.

After close of pleadings in the present case the parties came to an agreement to limit the issues. This agreement was embodied in a minute of a pre-trial conference held in terms of rule 37 of the Uniform Rules of Court. The minute recorded that the claim by the second plaintiff had been disposed of, and that the trial would continue with Inkatha as the sole plaintiff. Neither party would lead evidence, and the parties agreed that the sole issue for adjudication was

> "... in as much as Inkatha is a non-trading corporation (a universitas capable of suing and being sued in its own name) ... which depends on financial support from the public, ... whether Inkatha, as such a body, has the right to claim damages for defamation in respect of the articles complained of, assuming those articles, for the purposes of argument, to be defamatory in the manner alleged by the plaintiff, and assuming further that the articles were calculated to cause financial prejudice in the nature of loss of membership dues and donations."

Attached to the minute was an agreed statement of facts concerning Inkatha's nature and aims, as well as a copy of its constitution at the time. For present purposes it will suffice to quote the following passage from the statement of facts:

> "Inkatha may be described as a political body in the wide sense in that it enters into debates of national and international significance, and in the narrow sense in that Inkatha puts up candidates for participation in local authority and parliamentary elections within KwaZulu."

Although expressions such as "assuming ... for the purposes of argument" were used in the minute, it is clear that the question posed to the Court was not a merely theoretical one. Indeed, the minute proceeded to state unequivocally that, if the Court were to hold that Inkatha did not have a right to claim damages for defamation, its claim should be dismissed with costs, but if the Court were to hold otherwise, judgment should be entered in Inkatha's favour in the sum of R7000 with costs. Save for the question submitted to the Court for decision, the appellant must

accordingly be taken to have admitted all the elements of Inkatha's claim and to have settled the quantum of Inkatha's damages.

In accordance with the minute of the pre-trial conference, no evidence was led at the trial before STEGMANN J and only the question submitted by the parties for decision was argued. The Court a quo answered this question as follows:

> "There are no considerations of legal or public policy which deprive juristic persons which are or which resemble political parties of the ordinary remedy for defamation."

As a result of this finding it gave judgment against both defendants jointly and severally for payment of the sum of R7000 and costs in accordance with the agreement between the parties.

The two defendants applied to the trial judge for leave to appeal, which was duly granted. The attorneys of the second appellant (the editor of the Sowetan), however, subsequently withdrew his appeal. Despite this withdrawal,

Mr. Daley, who appeared for Inkatha at the hearing of the appeal, informed us that, if the appeal were to succeed at the instance of the first appellant (which is now the only appellant), Inkatha would not wish the judgment to stand against the former second appellant.

It is convenient at the outset to determine the exact ambit of the Court's decision in the Natal Newspapers case. In that case, as I have already stated, Inkatha claimed damages for defamation. The defendant (respondent on appeal) excepted to this claim. The issue raised by the exception, RABIE ACJ said in delivering the judgment of this Court (at p. 948 C), was "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 convenience the Court referred to such a legal persona as a trading corporation. To decide this issue, the Court found it necessary to consider the following questions

viz.:

> "(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". (ibid., p. 948 G).

The first question was answered in the affirmative, mainly on the strength of G.A. Fichardt Ltd. v. The Friend Newspapers Ltd 1916 AD 1 (ibid. p. 952 I). Moreover, the Court held (also following Fichardt's case) that it was not necessary for a trading corporation which claims for an injury done to its reputation to provide proof of actual loss suffered by it (ibid. p. 953 C-D).

The Court then turned to the second question, stated as follows (at p. 953 H):

> "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".

The manner in which the question was formulated flowed from the nature of the exception which "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". (ibid. p. 953 H).

The reasoning of the Court in answering this question is contained in one paragraph, and I quote it in toto. It reads as follows (at p. 953 I-954 E):

> "... 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 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 have said above concerning the narrow basis on which the respondents' 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."

Immediately after this paragraph there appears the passage, to which I referred at the outset of my judgment, in which the Court stated that its finding must not be taken to mean that every non-trading corporation would in all circumstances be entitled to sue for defamation, and that it

is conceivable that such a corporation may, in certain circumstances, be denied the right to sue on the ground of considerations of public or legal policy (in this regard the Court referred to Die Spoorbond and Another v. South African Railways; Van Heerden and Others v. South African Railways 1946 AD 999 ("the Spoorbond case") - a case with which I propose dealing later). The Court then mentioned and left open the question with which we are now concerned, viz., whether it would be in the public interest to permit attacks on political bodies to be made the basis of claims for damages in courts of law.

The Court was, of course, only dealing with claims in respect of defamatory matter which related to the conduct of the corporation and was calculated to cause it financial prejudice. This is also the only type of claim which is now before us, and everything I say hereafter must be read in that context.

The Court's reasoning in the Natal Newspapers case

may, I consider, be summarized as follows for present purposes:

a) A trading corporation may sue for defamation.

b) A non-trading corporation, could, like a trading corporation, have a fama which deserves the protection of the law. It would accordingly 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.

c) Conceivably, however, certain corporations may be denied the right to sue for defamation on the ground of considerations of public or legal policy.

The basis of the Court's reasoning was therefore the illogicality and unfairness of denying to a non-trading corporation the right to defend its fama by recourse to law.

This reasoning applies to every non-trading corporation. The possible exception in (c), stated rather tentatively by RABIE ACJ, would then, if applicable, exclude certain corporations from the general rule, and this would be so irrespective of whether they have good reputations which would normally be protected by law.

The question then is whether this Court should, on the grounds of public or legal policy, hold that a political body is not entitled to sue for defamation calculated to cause it financial loss. The effect of such a finding would be that a political body would never be able to defend its reputation against any defamation, however gross or untrue.

The ground of public policy mainly relied upon by the appellant is the need to foster and protect freedom of expression. As was stated in S. v. Turrell and Others 1973 (1) SA 248 (C) at 256 G:

> "Freedom of speech and freedom of assembly are part of the democratic rights of every citizen of the Republic ..."

However freedom of speech can never be absolute. In Publications Control Board v. William Heinemann Ltd. and Others 1965 (4) SA 137 (A) at p. 160 E-F RUMPFF JA said the following:

> "The freedom of speech - which includes the freedom to print - is a facet of civilisation which always presents two well-known inherent traits. The one consists of the constant desire by some to abuse it. The other is the inclination of those who want to protect it to repress more than is necessary. The latter is also fraught with danger. It is based on intolerance and is a symptom of the primitive urge in mankind to prohibit that with which one does not agree. When a Court of law is called upon to decide whether liberty should be repressed - in this case the freedom to publish a story - it should be anxious to steer a course as close to the preservation of liberty as possible."

One of the means by which the constant desire of some to abuse freedom of speech is curbed, is to be found in the law of defamation. As stated by Melius de Villiers (The Roman and Roman-Dutch Law of Injuries, pp. 24-25):

> "Every person has an inborn right to the tranquil enjoyment of his peace of mind, secure against aggression upon his person, against the impairment of that character for moral and social worth to which he may rightly lay claim and of that respect

> and esteem of his fellow-men of which he is deserving, and against degrading and humiliating treatment; and there is a corresponding obligation incumbent on all others to refrain from assailing that to which he has such right."

Although these words apply in terms to natural persons, De Villiers himself stated in a footnote to this passage that "the principles relating to injuries may also be extended to 'legal' or 'juridical' persons" (ibid., p. 24, footnote 20). This has now been confirmed, at least with reference to some legal or juridical persons, in the Natal Newspapers case.

The present case therefore requires the balancing of two different and competing values which our law seeks to protect - on the one hand, freedom of speech, and, on the other, the safeguarding of reputations against unjustified attack.

In weighing up these rivalling values one should first determine which corporations would be affected by a rule denying political bodies the right to sue for

defamation. On behalf of the appellant Mr. Doctor argued that all political bodies should be included. This would firstly cover organizations whose raison d'être is politics, such as political parties (a concept with which I deal in greater detail later). However, there are many participants in the political life of this country other than political parties in the ordinary sense of the term. If the purpose of the law is to permit, in the interests of freedom of expression, attacks on all bodies participating in politics, a very wide class of corporations would be affected. This was particularly evident during the recent referendum campaign when large numbers of corporations urged the public to vote in a particular way. But even in more settled political times overt political activity is not limited to political parties. On the national level associations such as trade unions, employers' organizations, cultural organizations, chambers of commerce and even churches frequently make political pronouncements on highly

contentious political issues. On a more parochial level there are civic associations, ratepayers' associations, etc. Many organizations thus participating in politics may have corporate personality. If a claim for defamation is to be denied to all corporations taking part in the political debate in the country at whatever level, all these corporations could then be defamed with impunity.

But the class becomes even larger when one has regard to the wide connotation of the adjective "political". The Shorter Oxford Dictionary defines it, in its relevant context, as "of, belonging or pertaining to, the state, its government and policy". I understood Mr. Doctor to accept in argument that an organization would properly be described as political if its functions included that of attempting to influence state policies in any field, including, for instance, fields such as nature conservation, the economy or sport.

The amplitude of the class of corporations which

might appropriately be called political bodies is relevant in two main respects. Firstly, the fact that the class is wide and amorphous tends to make it unsuitable for special treatment. If at all possible, boundary lines in law should be definite and easily applicable to the facts of particular cases.

But perhaps of greater importance is that the size of the class results in great differences between its members. This must be borne in mind when considering the implications of according or denying to political bodies a right to sue for defamation. In discussing this whole topic one tends to think of the position of great national parties, whose activities are matters of intense public interest, and which may have ample ways of defending their reputations by means other than recourse to law. They are not, however, the only participants in the political process. There are also small parties or bodies in national or local politics which do not have a captive press or other forms of easy access to

public attention. Moreover there are bodies which take part in politics but also perform other functions. Depriving them of an action for defamation may lead to undesirable results which might differ from those pertaining to purely political bodies. When considering the various arguments presented in support of the appellant's case I will revert to some of these distinctions.

In the alternative Mr. Doctor contended that, if it is difficult or undesirable to define the class of political bodies which should be denied a right to sue for defamation, this Court need go no further than to hold that political parties should fall within that class, whatever other corporations might also do so. I do not think that this approach would really solve the problem. There is no generally applicable legal definition of a political party, although definitions may be found in particular statutes. Thus in section 1 of the Electoral Act, no. 45 of 1979, "political party" is defined as a political party registered

in terms of section 36 of that Act as a political party. Reference to section 36 discloses, however, that the Act is concerned only with parties participating in elections for any particular House of Parliament, and the definition is in any event not helpful.

In more general terms, "party" is defined in the Shorter Oxford Dictionary in its relevant context as "a number of persons united in maintaining a cause, policy, opinion, etc., in opposition to others who maintain a different one". If this definition is applied, "political party" would bear virtually as wide and uncertain a meaning as "political body". It may, however, be suggested that an essential element of a political party is that it proposes candidates for election to governmental bodies. As a matter of language this may be so, and in stable democratic societies political parties in this sense may appropriately be dealt with in a special way. In the volatile and only partially democratic political life of South Africa it would,

however, in my view, be completely unrealistic to distinguish in the present context between political bodies which propose candidates for election and those which do not. It is a matter of common knowledge that some major political organizations in this country have never proposed candidates for election, and in fact do not regard themselves as political parties at all, but rather as liberation movements or something similar. Public policy does not, to my mind, require that they should enjoy greater freedom from attack than bodies which fight elections. There is consequently no basis in logic upon which we could lay down a rule which would apply only to political parties. Any decision which we could give would necessarily have a wider application, and, in determining whether public policy demands such a rule, we must have regard to its full effect.

I turn now to the reasons advanced for denying a political body the right to sue for defamation. The essential one is that political debate should be unfettered.

People should not be restrained in their political utterances by the fear of being subjected to claims for defamation. The same argument applies of course to the defamation of individuals. There also political debate is fettered to some extent by the obligation not to defame individual politicians. It will therefore be a convenient starting point to consider the restraints imposed by the law of defamation on the expression of political views or statements with reference to individual politicians, and what the position might be expected to be if it were to be recognized that political bodies also are entitled to sue for defamation. At the same time I propose considering the role played by public policy in the shaping of the law of defamation as it is, and the extent to which it may be invoked in its further development.

The traditional standard for determining whether utterances are defamatory is whether the imputation conveyed by them lowers the plaintiff in the estimation of right-

thinking persons generally. Mere debate on political questions, or expressions of disagreement with an opponent's political views, would clearly not be actionable. Even personal criticisms of a political opponent are not readily regarded as defamatory. In Pienaar and Another v. Argus Printing and Publishing Co. Ltd. 1956 (4) SA 310 (W) at 318 C-E, LUDORF J said the following:

> "... I think that the Courts must not avoid the reality that in South Africa political matters are usually discussed in forthright terms. Strong epithets are used and accusations come readily to the tongue. I think, too, that the public and readers of newspapers that debate political matters, are aware of this. How soon the audiences of political speakers would dwindle if the speakers were to use the tones, terms and expressions that one could expect from a lecturer at a meeting of the ladies' agricultural union on the subject of pruning roses!"

The same approach was adopted in Botha en 'n ander v. Marais 1974 (1) SA 44 (A). In that case the first appellant accused the respondent of a "gesmous met dit wat heilig is vir 'n volk". In determining whether these words were defamatory the Court said (at p. 49 F - 50 A):

"Dit moet nie uit die oog verloor word nie dat die gewraakte woorde tydens 'n politieke toespraak gedurende 'n verkiesingsveldtog deur 'n politikus van een politieke party t.o.v. 'n ander politikus, 'n lid van 'n ander politieke party, gebesig is. Onder sodanige omstandighede - alhoewel ek geensins te kenne wil gee dat straffeloos belaster kan word nie - is sterk bewoorde kritiek van 'n politieke opponent niks ongehoord nie (vgl. met betrekking tot die verweer van billike kommentaar, Waring v. Mervis and Others, 1969 (4) S.A. 542 (W) te bl. 547, en gewysdes daar aangehaal). Die gedrag ... waarvan respondent verwyt word, mag wel afkeuringswaardig wees, maar respondent moet verder gaan en bewys dat hy belaster is. Selfs bewerings wat 'n persoon by 'n sekere bevolkingsgroep in onguns bring is nie noodwendig lasterlik nie, tensy hulle daardie persoon se aansien by regdenkende mense in die algemeen verminder (cf. Conroy v. Nicol and Another, 1951 (1) S.A. 653 (A.A.) te bl. 660 in fine en 663B). Ek stem saam ... dat, in die samehang van die gewraakte woorde, die woord 'smous' slegs te kenne gee dat iets wat verhewe behoort te wees bo gebruik vir persoonlike of politieke voordeel, nogtans daarvoor gebruik word. Daardie aantyging sou egter nie, na my mening, die aansien van respondent in die gemoed van die denkbeeldige redelike aanhoorder of leser met normale verstand en ontwikkeling werklik laat daal nie. Die gewraakte woorde is wel afkeurend van respondent se gedrag, maar, in die geheel beskou, is hulle, na my mening, nie naamskendend van hom nie."

The law's reluctance to regard political utterances

as defamatory no doubt stems in part from the recognition that right-thinking people are not likely to be greatly influenced in their esteem of a politician by derogatory statements made about him by other politicians or political commentators. At the same time, it seems to me, it also reflects the general approach properly adopted by our courts that a wide latitude should be allowed in public debate on political matters.

Even if utterances during political debate can be regarded as prima facie defamatory, the defendant would have available to him a number of defences. The most important ones for present purposes are those of fair comment, justification (truth and public benefit) and privilege. The effect of these defences is to exclude unlawfulness - in other words, to render lawful the conduct of the defendant in publishing matter which is prima facie defamatory. See Marais v. Richard en 'n Ander 1981 (1) SA 1157 (A) at p. 1166 H-1167 A. As defences excluding unlawfulness their boundaries

are determined by applying a general criterion of reasonableness ("algemene redelikheidsmaatstaf"). See Marais v. Richard en 'n Ander (supra, at p. 1168 C and authorities there quoted). The criterion of reasonableness necessarily introduces considerations of public and legal policy. See Lillicrap, Wassenaar and Partners v. Pilkington Brothers (SA) (Pty) Ltd. 1985 (1) SA 475 (A) at p. 498 G-I. This feature will be illustrated when some facets of these defences are considered.

I deal first with fair comment. Fair comment provides a ground of defence in respect of the publication of statements, upon the face of them defamatory, which take the form of comment upon subjects of public interest (Crawford v. Albu 1917 AD 102 at 113) Its origin and essential nature are stated as follows (ibid. pp. 113-4):

> "Its development has been largely judge-made; so that its requirements, its scope, and its limitations can only be gathered from the decisions. Broadly speaking, the defence rests upon the right of every person to express his real judgment or opinion honestly and fairly upon matters of public interest. The use of the word

> 'fair' in connection with it is not very fortunate. It does not imply that the criticism for which protection is sought must necessarily commend itself to the judgment of the Court, nor that it must be impartial or well-balanced. It merely means that such criticism must confine itself within certain prescribed limits."

The "prescribed limits" to which reference is made have to a large extent been laid down in previous decisions of the courts, but in the final analysis they depend on what the courts regard as appropriate in the public interest in accordance with the general criterion of reasonableness to which I have already referred (Marais v. Richard en 'n Ander (supra) at p. 1168 D-E). Policy considerations also enter into the determination of what are to be considered matters of public interest. These matters have consequently not been finally laid down in a numerus clausus but may be developed in accordance with the changing needs of society.

When one is dealing with political matters, a great deal of latitude is traditionally allowed for comment. See Waring v. Mervis and Others 1969 (4) SA 542 (W) at p. 549 D-G

and authorities there cited, a passage which was approved in Botha en 'n Ander v. Marais (supra) in the extract quoted above.

I turn now to the defence of justification, which allows a defendant to escape liability for publishing a statement which is on the face of it defamatory, if it appears that it is substantially true, and was published for the public benefit (I deal later with the onus of establishing these matters). Here again public benefit can hardly be determined without having regard to questions of legal or public policy. The publication of true statements about public officials and figures is generally for the public benefit (LAWSA vol. 7, para 247, p. 206).

The third defence which may be relevant in the present context is what is traditionally called qualified privilege. Its nature is described as follows in LAWSA, vol. 7, para 249, p. 209:

> It is lawful to publish a defamatory statement in the discharge of a duty or exercise of a right recognized by law to a person who has a similar

> duty or right to receive the statement. The immunity afforded to such a publication is provisional, and the publication will be wrongful if the publisher acted with an improper motive."

The jurisprudential nature of the qualified privileges was considered in Suid-Afrikaanse Uitsaaikorporasie v. O'Malley 1977 (3) SA 394 (A) at p. 401 H to 403 A. There the Court held that the publication of defamatory matter gives rise to two presumptions, viz. that the publication was intentional and that it was unlawful. As far as the latter presumption is concerned (which is the relevant one for present purposes) the Court said the following (at p. 402 H - 403 A):

> "Die vermoede van onregmatigheid kan in ons reg weerlê word deur getuienis wat aantoon dat die lasterlike woorde gebesig is in omstandighede wat onregmatigheid uitsluit en wanneer die vraag ontstaan of die publikasie van die lasterlike woorde regmatig of onregmatig was, is dit die taak van die Hof om vas te stel, vir sover dit die gemene reg betref, of publieke beleid verg dat die publikasie geregverdig is en dus as regmatig bevind moet word. Die geykte Engelse 'privileges' word juis as 'privileges' geag, omdat die publikasie van die lasterlike woorde in die betrokke omstandighede 'in the interest of public policy' geag word. Vgl. Fraser, On Libel and Slander, 7de uitg., bl. 116.

> Die omstandighede wat aanleiding gee tot die sgn. 'privileges' in die Engelse reg geld ook in ons reg as voorbeelde van omstandighede wat onregmatigheid uitsluit."

See also Borgin v. De Villiers and Another 1980 (3) SA 556 (A) at p. 571 E-G, 577 D-G; May v. Udwin 1981 (1) SA 1 (A) at p. 10 D-G; and Joubert and Others v. Venter 1985 (1) SA 654 (A) at pp. 695 I - 696 C.

In principle, therefore, the court is not limited to the accepted grounds of qualified privilege. Where public policy so demands, it would be entitled to recognize new situations in which a defendant's conduct in publishing defamatory matter is lawful. So, in Zillie v. Johnson an Another 1984 (2) SA 186 (W) COETZEE J weighed up the interests of the public against those of the persons defamed, and held that the defendants (the editor and publisher of a newspaper) were entitled to publish defamatory matter where the public had, in the circumstances, a right to be informed of the facts.

Finally, if all defences fail, the court would

award damages. Our courts have not been generous in their awards of solatia. An action for defamation has been seen as the method whereby a plaintiff vindicates his reputation, and not as a road to riches. This is a further factor which reduces the inhibiting effect of the law of defamation on freedom of expression.

The above survey shows the role played by public policy in the law of defamation. More particularly it shows how the importance of free political debate has been recognized in the determination of what is to be regarded as defamatory and the limits within which matter may lawfully be published even if it is, on the face of it, defamatory. These are the rules which would be applicable to the defamation of political bodies, if an action by them is to be permitted. And if it were to appear, in the interests of legal or public policy, that the limits of lawfulness are, in certain circumstances, unreasonably wide or narrow our law is flexible enough to adapt to the needs of the times.

In his argument Mr. Doctor mentioned certain features of the law of defamation which, he submitted, rendered it unsuitable for extension to political bodies. When analysed there does not, however, seem to be any material difference in the operation of the law with reference to, respectively, political bodies and individual politicians. Thus, referring to the defence of justification, it was contended that a defendant may make a defamatory attack on a political body containing a statement which is true, but that he would not be able to prove the truth of the statement by admissible evidence, and might therefore be held liable. This is said to be undesirable.

At the outset it must be noted that it is by no means clear that there is an onus on the defendant who raises the defence of justification, to prove the truth of the defamatory statement. There is, at least, much to be said for the proposition that the defendant bears only a "weerleggingslas", the overall onus of proving unlawfulness

remaining on the plaintiff. See Suid-Afrikaanse Uitsaaikorporasie v. O'Malley (supra) at p. 403 B; Joubert and Others v. Venter (supra) at pp. 696 D to 697 G and Iyman v. Natal Witness Printing and Publishing Co (Pty) Ltd 1991 (4) SA 677 (N) at pp. 681 C- 684 in fin. However, be that as it may, the incidence of the onus is itself a matter of legal policy (see During NO v. Boesak and Another 1990 (3) SA 661 (A) at p. 672 I - 673 A, Joubert and Others v Venter (supra) at p. 697 C-G). When the question of onus is finally resolved the decision will depend on the balance to be struck between the various policy considerations involved and due weight will be given to the importance of freedom of expression.

The further point that the defendant would have to establish his case by means of admissible evidence hardly bears examination. The defendant in a defamation action shares this burden (if burden it be) with every litigant before our courts. The purpose of the law of evidence is to

promote the efficient search after truth. If the law is lacking in any respect, the answer is to improve it, and not to provide immunities for persons who might otherwise have to defend their actions in court. In fact many of the examples quoted in argument where the rule against hearsay would have worked to the detriment of a defendant are no longer valid in the light of the Law of Evidence Amendment Act, No. 45 of 1988.

To sum up so far: the law of defamation provides wide scope for freedom of political expression. If its extension to political bodies were to reveal any substantial weaknesses or defects, the law is flexible enough to remedy them. And the remedy could be applied to the specific circumstances where it is needed. There would accordingly appear to be no cogent reason why political bodies should be completely deprived of the right to protect their reputations by recourse to law.

I turn now to certain practical difficulties which

it was contended would result from any extension to political bodies of the right to sue for defamation. Firstly it is said that it would be difficult to find a judge whose past or present activities do not include support for one of the contestants. I do not agree. Judges do not take part in politics, and few of them did so before their appointment to the bench. If a "political" defamation action comes before a judge he would not be required to take decisions on the merits of the political programmes of political parties. He would have to decide whether a case of defamation has been made out. If he has personal connections with one or other of the parties it might be undesirable for him to sit, and in practice he would be replaced without difficulty. This would, I consider, rarely be necessary. But, in any event, the same problem can arise with individual litigants, and sometimes a judge will simply have to disregard his personal feelings. In Upington v. Saul Solomon & Co.; Upington v. Dormer 1879 Buch 240 the plaintiff in a defamation action

was the attorney-general of the Cape Colony, who, at the time, was a member of the government and also the leader of the Bar. The Court (DE VILLIERS CJ) commented (at p. 260) that, in view of the intimate relations which must always exist between the Bench and the Bar, the great esteem which the Judges had personally for the plaintiff, and their high opinion of his ability and moderation in the conduct of cases coming before the Court, the case was an extremely unpleasant one for the Court to decide. He added:

> "But of course the Court is open to the plaintiff as well as to any one else, and the Court must decide a case whether the duty is a pleasant or an unpleasant one ..."

Then it is said that there would be a danger of rendering political debate sub judice by the simple expedient of issuing a defamation summons on matters of public debate. This seems to me somewhat fanciful. The same expedient would be available to individual politicians, but I cannot offhand think of any case in which it has been employed. The fact is that very few matters of public debate are amenable to

actions for defamation,as I have attempted to show earlier. If the matter in issue can be regarded as defamatory (eg. where it relates to the personal integrity of a politician) it does not seem undesirable to me that it should be resolved in a court of law rather than on a political platform.

A further argument is that it would be impractical in deciding whether an utterance is defamatory, to apply, to matters of acute political controversy, the test of how it would be regarded by a body of right thinking people generally. Here again it must be repeated that the court is not concerned with the relative merits of opposing political views or philosophies. In a defamation action the question to be decided will be whether the defendant has overstepped the limits of legality. Where individual politicians have been involved the courts have for many decades applied the test of right thinking people. I am unaware of any general dissatisfaction with the way in which it was done. There seems to be no reason why the position would be different

where, not individual politicians, but political bodies, feel themselves aggrieved.

A number of arguments were addressed to us arising from the relationship between a political body and its leaders. In most or all cases of defamation of a political body, it is said, its leaders also would have been defamed. Consequently, it is contended, there is no need to allow the body as a separate party to sue. Now this argument, it seems to me, would apply to corporations generally. The affairs of a corporation are managed by natural persons. If the corporation is defamed, the defamation would usually strike also at one or more natural persons. Nevertheless the right of corporations to sue for defamation was firmly recognized in the Natal Newspapers case. And one can certainly envisage circumstances in which only a corporation would have the right to sue. This might be so, for instance, where no natural person can be identified as an object of the defamation, or, if one can be identified, he has died, or

where the defamer has made it clear that he is not casting blame on any individual member or leader of the organization.

Then it is said that, where a political body sues in conjunction with one or more of its leaders, there will be an unwarranted increase in damages and costs payable by an unsuccessful defendant. This possibility would again place a fetter on political activity. However, it seems to me that if the defamation of the political body and its leader is essentially the same, the court will ensure through the size of its award and, if deemed necessary, its order for costs, that the defendant is not oppressed by the bringing of two actions where one would have sufficed to vindicate the reputations of both the political body and its leader. Cf. Pienaar and Another v. Argus Printing and Publishing Co. Ltd. (supra) at p. 323 G to 324 A. Of course, if the interests of the party and its leader differ, there would be no anomaly in both of them suing and receiving an appropriate award of damages.

A further objection to allowing political bodies to sue was that it would lead to a great proliferation of defamation actions. I can see no reason why this should be so. Individual politicians rarely sue for defamation, probably because the approach of the law, which I have set out above, does not encourage them to do so. There is no reason to suppose that political bodies will prove more litigious.

The appellant's counsel also placed much reliance on the historical argument - we were, he emphasized, not referred to any authority for the proposition that a political body could recover damages for defamation. I deal first with the lack of authority in South Africa. This lack does not really surprise me. That a universitas can sue for defamation is not a matter of great practical importance. Where a defamation has been committed, there is usually (although, as I pointed out above, not always) some individual who feels aggrieved. For this reason there would

normally be no strong incentive for a political body to sue, and it would in the past have been discouraged by the uncertain state of the law. These also, I consider, are the reasons why it was not settled before 1988 (the Natal Newspapers case) that a non-trading corporation may sue for defamation, and why it has not yet been decided whether a non-trading corporation may do so if the defamatory matter of which it complains relates to the conduct of its affairs but is not calculated to cause it financial prejudice (the Natal Newspapers case, supra, at p. 954 E). Then, as far as political bodies are concerned, there is the further factor that defamation actions arising from political activity in any event do not succeed very easily. In all these circumstances the lack of precedent in South Africa is not, I consider, of any significance.

I turn now to the absence of precedents in other jurisdictions, and this is a convenient stage to deal generally with the value of foreign authorities in this

field. In Marais v. Richard en 'n Ander (supra) at p. 1168 D-E the Court dealt with legal policy in the context of determining the permissible limits of fair comment. In this respect, JANSEN JA said, the basic criterion must be the juridical convictions in South Africa and not elsewhere. This is not mere legal chauvinism. As judges we are expected to know and understand our own society and its institutions, particularly its legal ones. We do not have the same understanding of foreign societies. Foreign authorities can be very valuable in showing how problems have been dealt with elsewhere, but one must always bear in mind that circumstances may be different there, sometimes in subtle but important ways. Thus we were referred to a number of decisions on defamation in the United States Supreme Court. See, in particular, New York Times Co. v. Sullivan 376 US 254 and Gertz v. Robert Welch Inc. 418 US 323. In the well-known Sullivan case the Court laid down that a State could not under the First and Fourteenth Amendments to the United

States Constitution allow damages to be awarded to a public official for defamatory falsehood relating to his official conduct unless he proved "actual malice" - that the statement was made with knowledge of its falsity or with reckless disregard of whether it was true or false. In weighing up the value of free speech against the protection of a person's reputation the Court found a formula which struck a balance between freedom of speech and the right to protect reputation. I do not propose analysing the Court's reasoning in any detail. Much of it is of relevance also to our circumstances, and, indeed, has been reflected in counsel's arguments.

In the final analysis the Supreme Court held that the constitutionally protected freedom of the press was in general to be accorded a higher value in American society than the protection of the reputations of public officials or public figures. Even so, the Court was not prepared to recognize an unfettered freedom of expression such as

contended for on behalf of the appellant in the present case. The Court weighed up a number of factors which, even if they were also present in South Africa to a greater or lesser extent, would not necessarily carry the same weight. Thus it would seem that a factor in the Court's desire to protect defendants against awards for defamation at the instance of public officials was the sheer size of such awards in the United States of America. In Sullivan's case the plaintiff was an elected commissioner of the City of Montgomery, Alabama. He sued the appellant, the New York Times, for damages arising from a defamatory statement which had appeared in an advertisement published by the New York Times. The matter was tried in Alabama, where the jury awarded him damages in the sum claimed by him, viz. $500 000. Another plaintiff who claimed in respect of the same advertisement had been awarded a further $500 000, and in three cases still pending a total amount of $2 000 000 was claimed (vide Mr. Justice BRENNAN, p. 278, Mr. Justice

BLACK, pp. 294-5). The potential liability of the New York Times, in respect of a paid advertisement published by it, was accordingly $3 million, or approximately R8 670 000 at current rates of exchange. It is inconceivable that such large awards of general damages would be made in a similar case in South Africa.

In the result it seems to me that American cases, although containing helpful and relevant discussions of the policy considerations in issue in defamation cases of a political nature, are, as far as the actual decisions are concerned, of limited assistance because of the different legal, social and political milieu in which they operate. By the same token it does not seem important, as far as our law is concerned, that there is apparently no authority in American law which either allows or denies a right to a political body to sue for defamation.

The same applies to English law and the laws of other English speaking countries. In English law it was held

as far back as 1946 that a trade union could sue for defamation (National Union of General and Municipal Workers v. Gillian and Others [1946] KB 81). In a very recent case the Court of Appeal held that any corporation, whether trading or non-trading, which can show that it has a corporate reputation (as distinct from that of its members) which is capable of being injured by a defamatory statement, can sue in libel to protect that reputation, in the same way as can an individual, although there will of course be certain types of statement which cannot defame an artificial person (Derbyshire County Council v. Times Newspapers Ltd. as yet unreported, delivered 19 February 1992). The Court of Appeal went on to hold, however, that a local authority did not have such a right. In so holding, it relied mainly on Article 10 of the European Convention of Human Rights, and Article 19 of the UN Covenant on Civil and Political Rights, to both of which conventions Great Britain was a party. The position of a political body such as a political party has

not been considered in any decided case. What the outcome would be if this question were to arise before an English court, and what the reason is why it has not yet done so, must, as far as I am concerned, be matters for conjecture, which cannot have any effect on the decision in the present case.

In Germany, on the other hand, non-trading corporations and associations of persons are more readily regarded as capable of being defamed and granted the right to take appropriate legal action. See K.C. Horton, The Law of Defamation in West Germany (1979) 129 New LJ 785, Karl Larenz, Allgemeiner Teil des Deutschen Bürgerlichen Rechts (1989) p. 135. Political organizations and parties are not excluded. See Rolf Serick Rechtsform und Realität Juristischer Personen, pp. 174-5; Enneccerus Nipperdey, Lehrbuch des Bürgerlichen Rechts, 15th ed (1959) vol. 1 p. 628. Again I cannot draw any conclusions from this which may be helpful for the decision of the present case.

A further argument advanced by the appellant was that political bodies have other remedies, apart from legal action, to protect their reputations. In particular, it is contended, such organizations "enjoy significantly greater access to the channels of effective communication, and hence have a more realistic opportunity to counteract false statements than private individuals normally enjoy" (Mr. Justice Powell in the Gertz case, supra, at p. 344). Mr. Justice Powell was, of course, distinguishing between, on the one hand, public officials and public figures, and, on the other, private individuals. Whether even in that context the statement was correct may be doubted. There is, in my view, a great deal of truth in what Mr. Justice Brennan said in Rosenbloom v. Metromedia Inc. 403 US 29 at p. 46 (quoted by him in the Gertz case at p. 363) viz.:

> "While the argument that public figures need less protection because they can command media attention to counter criticism may be true for some very prominent people, even then it is the rare case where the denial overtakes the original charge. Denials, retractions, and corrections are not 'hot' news, and rarely receive the prominence of the

> original story. When the public official or public figure is a minor functionary, or has left the position that put him in the public eye ..., the argument loses all of its force. In the vast majority of libels involving public officials or public figures, the ability to respond through the media will depend on the same complex factor on which the ability of a private individual depends: the unpredictable event of the media's continuing interest in the story."

The same considerations apply to political bodies. There may be some which are so prominent or newsworthy, or have so much control over the media, that their points of view will always be reported. Smaller bodies on the national or local level would not normally be so fortunate, and might very well need the protection of the law to vindicate their reputations.

I turn now in conclusion to some arguments based on the Spoorbond case (supra), and, more particularly, on the relationship between a ruling party and the government. In the Spoorbond case the South African Railways sued two defendants for damages for defamation which was alleged to have injured its "reputation as the authority controlling,

managing and superintending" the railways (ibid., p. 1004). In each case an exception was taken on the ground that the plaintiff was not in law entitled so to sue. On appeal it was held that the exceptions should have succeeded. Concurring judgments were delivered by WATERMEYER CJ and SCHREINER JA, and it is necessary to consider them in some detail.

WATERMEYER CJ commenced by asking (at p. 1004): who is the plaintiff in the action? His conclusion was (at p. 1005) that it was the Governor-General-in-Council (whom he called the Crown and who was also sometimes referred to as the Government of the Union). The Crown is regarded as a legal persona distinct from the individual human beings who from time to time hold office as Governor-General and as members of the Executive Council (ibid.).

After discussing the law of defamation, WATERMEYER CJ assumed, without deciding, that a business or trading corporation could recover damages for defamatory publication

without proof of special damage, and posed the question whether the Crown had a similar right (at p. 1008). He first pointed out that no case was quoted to the Court in which such an action had ever been brought, and stated that the non-existence of such cases would be surprising if the Crown had a legal right to sue for damages for injury to its reputation, since many business activities are carried on by the Crown, and the management and conduct of such activities are peculiarly liable to hostile criticism and attack by adverse interests (ibid.). The same point was made by SCHREINER JA (p. 1013). These passages were strongly relied upon by the appellant, but I do not think they assist it to any extent. At the time of the Spoorbond case it had been generally accepted for many years that trading corporations could sue for defamation. If the Crown, as a persona engaged in trade, also had such a right, one would have expected this to be reflected in the case law, for the reasons stated in the Spoorbond case. As I have indicated above, the position

of non-trading corporations in general, and political bodies in particular, is substantially different, and no significance can be attached to the absence of precedents as far as they are concerned.

WATERMEYER CJ then proceeded to consider whether, even if an action by the Crown for damages for defamation was a novelty, the courts should extend to the Crown by analogy the right to bring such an action. (ibid.)

He firstly agreed with SCHREINER JA that considerations of fairness and convenience did not demand such an extension (p. 1008-9). I shall deal with SCHREINER JA's judgment in due course. WATERMEYER CJ then proceeded as follows (at p. 1009):

> "But, independently of considerations of fairness and convenience, it seems to me that the position of the Crown in relation to any reputation enjoyed by it in connection with its trading or business activities is very different from that of a business or trading corporation. A business or trading corporation exists solely for the purpose of carrying on its trade or business and the reputation which has been attributed to it in decided cases is connected with or attached to the carrying on of that trade or business. On the

> other hand the Crown's main function is that of Government and its reputation or good name is not a frail thing connected with or attached to the actions of the individuals who temporarily direct or manage some particular one of the many activities in which the Government engages, such as the railways or the Post Office; it is not something which can suffer injury by reason of the publication in the Union of defamatory statements as to the manner in which one of its activities is carried on. Its reputation is a far more robust and universal thing which seems to me to be invulnerable to attacks of this nature."

Taking the judgment of WATERMEYER CJ as a whole (excluding for the moment his concurrence with the views of SCHREINER JA, with which I deal later) I consider that it provides no support for the appellant's submissions. Stress was placed on the use by WATERMEYER CJ of expressions which indicated that it would have been an extension of the law to allow the Crown to sue for defamation. But, as I have stated, that was indeed the manner in which WATERMEYER CJ approached the matter in the light of the then existing state of the law. With us the situation is entirely different. In principle it has been decided in the Natal Newspapers case

that non-trading corporations can sue for defamation. The question therefore is not whether a novel action should be accorded to a political body, but rather whether a political body should be excluded from a class which has already been recognized as entitled to such an action.

The passage from the judgment of WATERMEYER CJ which I have quoted above, also does not assist the appellant - its reasoning is, in my view, not applicable to political bodies. Depending on the width of the class comprised by them (a matter to which I adverted earlier) political bodies could range, for instance, from bodies hoping to win the next general election to bodies whose purpose is to protect the ecology and are continually in conflict with the Government on that score. But whatever form these bodies take, their functions would be as unlike those of the Government, which are discussed in the above passage, as were those of business or trading corporations, mentioned in the passage. And there can, in my view, be no suggestion that a political body's

reputation is necessarily so robust and universal as to be invulnerable to defamatory attacks.

I turn now to the judgment of SCHREINER JA. He dealt with the two grounds upon which the lower Court had held that the Crown had a right to sue for defamation. The first was that, since trading corporations could sue for defamation, the Crown could also do so where it is engaged in trade in order to protect its reputation as a trader. Secondly, the lower Court had held that considerations of fairness and convenience required that the Crown, when engaged in competitive trade, should be allowed to sue any subject for damages who defames it in respect of its trade. SCHREINER JA disagreed with the Judge a quo on both these grounds.

As regards the comparison with trading corporations, SCHREINER JA pointed to the dangers of arguing by analogy. He concluded (at pp. 1011-1012):

> "It is no doubt convenient for certain purposes to treat the Crown as a corporation or artificial person. But it is obviously a very different kind

> of person from the rest of the persons, natural and artificial, that make up the community. In many respects its relationship to those other persons is unique and there is no reason in common sense or logic for concluding that wherever a subject would have a right of action there the Crown must have one too."

SCHREINER JA then turned to the finding of the Court a quo that considerations of fairness and convenience required that the Crown should be allowed to sue the subject for defamation. He assumed that the Crown might, at least in so far as it took part in trading in competition with the subjects, enjoy a reputation, damage to which could be calculated in money. On this assumption, he said, there was certainly force in the contention that it would be unfair to deny to the Crown "the weapon, an action for damages for defamation, which is most feared by calumniators" (p. 1012). Nevertheless, he said, it seemed to him that considerations of fairness and convenience were, on balance, distinctly against the recognition of a right in the Crown to sue the subject in a defamation action to protect that reputation.

His reasons are set out in the following passage (at pp. 1012-1013):

> "The normal means by which the Crown protects itself against attacks upon its management of the country's affairs is political action and not litigation, and it would, I think, be unfortunate if that practice were altered. At present certain kinds of criticism of those who manage the State's affairs may lead to criminal prosecutions, while if the criticism consists of defamatory utterances against individual servants of the State actions for defamation will lie at their suit. But subject to the risk of these sanctions and to the possible further risk, to which reference will presently be made, of being sued by the Crown for injurious falsehood, any subject is free to express his opinion upon the management of the country's affairs without fear of legal consequences. I have no doubt that it would involve a serious interference with the free expression of opinion hitherto enjoyed in this country if the wealth of the State, derived from the State's subjects, could be used to launch against those subjects actions for defamation because they have, falsely and unfairly it may be, criticised or condemned the management of the country."

Certain expressions used in this passage were much relied upon by the appellant. Now, of course, in so far as SCHREINER JA here emphasizes the importance to be attached to the subject's freedom to express his opinion upon political

matters, this passage is relevant and important. The application of this principle to the circumstances of the Crown or State is, however, a different matter from its application to a political body. Stress was placed upon the statement that the normal means by which the Crown protects itself against attacks is political action and not litigation - the same, it was contended, applies to political bodies. However, the State's capacity to defend itself far transcends that of any political body. The State can appoint commissions of enquiry, make official statements which would be widely disseminated, even introduce legislation. These facilities are not available to political bodies, even the most prominent of them, or in any event not to the same extent. Smaller or more obscure political bodies may well enjoy none of the political advantages possessed by the State.

Taking the judgments in the Spoorbond case as a whole, the central theme is that the State as a persona is

unique - its nature and functions are different from those of all other corporations and its reputation is not only invulnerable to attack but can, in any event, be defended by political action unavailable in its nature or scope to others; moreover, the State should not be allowed to use its wealth derived from its subjects, to launch against those subjects an action for defamation. This reasoning clearly does not apply to political bodies.

The principle laid down in the Spoorbond case was used in another way in argument. If the State cannot sue for defamation, it was asked, why should the ruling party be allowed to do so? In many circumstances a defamation might apply to both the State (represented by the government) and the ruling party, and the policy reasons precluding the one from suing apply also to the other. Moreover, it was contended, even where the defamation applies only to the party and not to the State, the right to criticize and attack the ruling party is of great importance and should be allowed

unfettered by any fear of defamation actions.

These arguments must first be placed in perspective. It is not contended that Inkatha must be non-suited in the present case because it is the ruling party in KwaZulu. This point is not taken on the papers and is not covered by the question which the parties submitted to the Court. The argument concerning the ruling party was used only in a theoretical or hypothetical way in order to underline the undesirability of according the right to sue for defamation to political bodies generally.

I turn now to the merits of the argument. The position of a ruling party is closely analogous to that of an individual member of the government. For many years our courts have entertained actions for defamation brought by members of the cabinet or other members of the government. See, for example, Upington v. Saul Solomon & Co. (supra); Conroy v. Nicol and Another 1951 (1) SA 653 (A); South African Associated Newspapers Ltd. and Another v. Estate

Pelser 1975 (4) SA 797 (A) and Minister of Justice v. S.A. Associated Newspapers and Another 1979 (3) SA 466 (C). In Pelser's case (supra) it was specifically argued that, if individual ministers could sue for damages for defamation consequent upon a criticism of the government or the executive, the effect of the Spoorbond case would be undone (pp. 807 H - 808 A). This argument did not succeed (p. 808 A-C).

The decision in Pelser's case has been criticized by academic writers. See, for instance, 1975 Annual Survey of South African Law 194 (P.Q.R. Boberg) and C.F.Forsyth, Recent Judicial Attitudes to Free Speech, 1977 SALJ 19. In the former article the submission is made (at pp. 195-6) that a distinction should be drawn between the case where an individual member of the government is defamed solely by reason of his association with the government for whose policies and decisions he is responsible, and the case where he is defamed for his personal actions or attitudes. It is

contended that in the former case no action for damages for defamation should lie, but that one should be allowed in the latter case.

I do not wish to express any view on the controversy concerning Pelser's case. If political parties were to be accorded the right to protect their reputations by legal action, the position of the ruling party would have to be dealt with when it arises. The Court would then, if the question were to be raised, have to decide whether Pelser's case was correctly decided and whether it should be applied by analogy to the ruling party; or whether the association between the ruling party and the government should lead to the denial of the right of the party to sue for damages for defamation, either generally, or in particular cases where its position can be assimilated to that of the government. Whatever the correct rule might be found to be, the situation of the ruling party is sui generis, and I do not think it affords any reason why political bodies generally should be

deprived of the right to protect their reputations by legal proceedings. In the same way it has never been suggested that politicians generally should be denied such a right because it may be desirable that a minister should not be able to sue for damages for defamation consequent upon a criticism of the government or the executive.

In the light of all the above-mentiond considerations, it seems to me that the position is as follows. The appellant contends that all legal <u>personae</u> falling within the rather nebulous class of political bodies should be entirely denied the right to protect their reputations by legal action. The reason advanced is public policy, and in particular the need to protect freedom of political expression. However, the promotion and defence of this facet of public policy do not in my view require that any class of person should be prevented from bringing proceedings for defamation. Where a right to sue exists, the law of defamation itself recognizes the importance of

freedom of political expression, and makes provision for it. Moreover, this provision is tailored to the needs of particular situations, and does not entail, as the appellant's argument does, that a large class of juridical persons, including some which may be very deserving, would be entirely prevented from protecting their reputations by recourse to law. In these circumstances I consider that no good reason has been shown for excluding political bodies from the class of non-trading corporations which, according to the Natal Newspapers case, are entitled to sue for damages for defamation.

The appeal is dismissed with costs.

E M GROSSKOPF, JA

CORBETT, CJ

HOEXTER, JA
HEFER, JA Concur
GOLDSTONE, JA