

Activist silenced by Free State High Court for defamatory social media posts

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A self-styled "public transport activist" has been directed to remove 55 posts on social media which the judge found were defamatory of Itumele Bus Lines, trading as Interstate Bus Lines.



Source: www.unsplash.com

Damaging

Free State High Court acting Judge Andre Berry, also interdicted Zwelakhe Joseph Msabe from posting, spreading, publishing or making known to the public, or any of the bus company's clients, anything aimed at defaming or damaging its reputation.

This includes all social media applications, any newspaper or magazine, or the internet in general.

"Believing that one pursues a worthy cause in the public interest, does not justify publishing false statements about another party," acting Judge Berry wrote in his ruling last week.

He said the bus company and Msabe had a “long history of conflict” and were “no strangers to each other”.

Read the full judgment [here](#).

The posts by Msabe were made during May last year and February this year.

Public interest

Msabe had alleged that the bus company had instituted unlawful tariff increases and that an accident in November 2022 was the result of the bus having worn tyres and was responsible for “murdering commuters”.

Summarising the bus company’s application, the judge said it argued that the statements were simply not true and not in the public interest.

The private company had been in operation since 1975, transported 46,000 passengers a day, employed 630 employees and had, on average, 230 buses running daily.

It had a contract with the Free State Department of Police, Roads and Transport, which provided a subsidy to make the costs for commuters more affordable.



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Commuter tariffs were determined by a passenger focus forum and had to be approved by the MEC in the province.

Msabe was not part of the forum.

The company said the thrust of the statements he had posted on social media were that the increases were unlawful, that it did not serve the needs of the poor, that it was dishonest and involved in fraud and corruption, and that it represents white capitalists with no respect for the Constitution.

Msabe, who represented himself, said he was advancing the interests of Mangaung residents whose rights were being violated and this justified the publications.

He further relied on his constitutional right to freedom of expression.

Final interdict

Judge Berry said Msabe did not argue that the statements were true, but on the context – the motives and history of his campaign to serve the broader interests of commuters and the public at large.

“The problem with context, motives and history, is that these do not appear in the publications … nor do they make the statements true.

“The reader does not have the benefit of this,” Judge Berry said.

He said Msabe had persisted in publishing the defamatory statements even after the application (for the interdict) was served on him in December last year.

"This illustrates that the applicant (the bus company) had no other option than to apply for a final interdict.

"Publication of defamatory statements can be justified on the grounds that the statements are true and that they are in the public interest ... the right to freedom of speech does not give a party the right to publish false statements."

Msabe, he said, had not once averred that the statements were true. And the bus company had provided sufficient proof to show that the bus involved in the accident was roadworthy and the picture of the tyre published by Msabe was false.

Beginning of the end

Msabe, Judge Berry said, had also not provided any argument or evidence to lend credence to the allegations of fraud or collusion involving the provincial department.

"Believing that one pursues a worthy cause in the public interest, does not justify publishing false statements about another party ... the publication of defamatory statements are *prima facie* [at first sight] wrongful."

He noted that in December, when the application was served on Msabe, he had posted several posts of a certain tone, saying it would take more than a court interdict to silence him and that 2023 was the "beginning of the end" for the company.

While courts should be slow in granting final interdicts silencing people, such an interdict would not prevent Msabe from publishing statements that were true and in the public interest. It would only prevent him from making false statements, the judge said.

Judge Berry said while the bus company wanted an order directing Msabe to publish an apology, "forcing a party to publicly apologise against his will does not serve any purpose, other than soothing the feelings of the injured party".

It also created a further opportunity to "create awareness of the very statements the complaining party took umbrage to".

Judge Berry granted the interdict, ordered the removal of the offending posts, and ordered Msabe to pay the company's costs.

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