

OTHER AFRICAN JURISDICTIONS

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CIVIL APPEAL NO. 978 2024 - SAFARI AUTOMOBILE LIMITED V GODWIN DANDA – Posting a video of an individual without his/her consent is a violation of their right to privacy

Summary of Facts

Godwin Danda is a customer of Safari Automobile Limited (Safari), a company involved in the interior and exterior designing of motor vehicles. Godwin Danda engaged the services of Safari to mend the seat cover, dashboard, 5D carpets and clean the motor vehicle. Upon the completion of the adjustments to the vehicle's design, staff of Safari recorded a video of Godwin Danda with his motor vehicle and subsequently posted it on its Instagram page.

Godwin Danda claimed that his right to privacy was violated and that due to the publication, he and his family suffered a disruption of peace and harmony. Accordingly, he instituted an action against Safari for the unauthorized use of his image in marketing and promoting their services and products. Safari argued that Godwin Danda consented to the video which was taken for educational purposes, not for marketing and promotion. They added that the video only existed online for ten (10) days.

The trial court ruled against Safari, agreeing with Godwin Danda that the posting of the video without Godwin Danda's consent amounted to a violation of his right to private and family life. Safari Automobile Limited dissatisfied with the trial court's decision appealed before the High Court of the United Republic of Tanzania, Dar Es Salaam.

Notable Issue for Determination

An issue that was distilled for determination was: Whether Godwin Danda consented to the videos being posted on Safari's Instagram page and whether the videos were used for commercial purposes?

Arguments

Safari argued that the video was posted with the Godwin Danda's consent, noting that Godwin Danda was cooperative with the interview. They further argued that the video was posted on their Instagram page for the purpose of educating members of the public.

Godwin Danda in opposing this point argued that Safari recorded and posted his video without his consent and for commercial purposes.

Decision of the Court

In resolving this issue, the Court held that:

Godwin Danda consented to being recorded and was in fact very cooperative to Safari's employees who interviewed and recorded him. However, he could not have foreseen how the video would be used and there is no evidence that suggested that he consented to the videos being uploaded and posted on Safari's social media page. Furthermore, the Court highlighted that the consent given to be recorded does not extend to consent to posting the recorded video on Instagram.

On the decision as to whether the video was used for commercial purposes, the court considered the nature of the video, and the evidence adduced before the Court to determine the reason the video was posted. The Court highlighted that it was difficult to put a line between educating members of the public and commercial gain.

However, the video clip cannot be distanced from advertisements because “its content is about the quality of work done by Safari to the motor vehicle of the Godwin Danda.” The Court further stated that viewers on the Instagram page will be persuaded to engage the services of Safari based on the video. The Court also considered what Safari would achieve from educating the public about their services. The Court ultimately held that the video was for commercial purposes because “...the conversation aimed to narrate the style and quality of the services offered to customers by Safari” which constitutes advertising as it persuades the minds of the public to engage the services of Safari.

Comments

Judging from the facts of the case and the issues of determination, one could wonder whether it could be reasonable to assume that Godwin Danda ought to have had an idea that the video was going to be used for promotional and marketing purposes. Although the Court rightly decided that this does not amount to consent for the video to be used for commercial purposes, it emphasizes the importance of organisations and individuals obtaining consent from third parties for their images to be taken and further their consent to use their images for whatever purpose especially marketing and promotional purposes and on whatever platform before going ahead to use the third parties’ images.



FINANCIAL SERVICES TRIBUNAL CASE NO: JSE2/2023 – Murray Hector Munro v Johannesburg Stock Exchange Limited - A director has a duty to ensure compliance with Listing Requirements

Summary of Facts

Murray Hector Munro, former CFO (Chief Financial Officer) and other senior executives of the Tongaat Hulett were accused of financial impropriety such as engaging in practices that amounted to inflated profits as well as inflated value of assets as a result of an investigation carried out by Price Waterhouse Coopers (PWC). Subsequently, the Johannesburg Stock Exchange (JSE) found that Mr Munro had contravened paragraphs 8.5.7(a), 8.6.2 (B) and General Principles (v) and (vii) of the Listing Requirements and had thereby failed to comply with the listing requirements and the International Financial Reporting Standards (IFRS).

Mr Munro was subsequently fined R6,000,000.00 and disqualified from holding office of director in listed companies for ten years. He brought an application before the Financial Services tribunal for the reconsideration of the JSE’s ruling.

Notable Issue for Determination

An issue raised for determination was: Whether the evidence presented before the JSE was sufficient to find Murray Hector Munro guilty of contravening the JSE listing requirements.

Argument

Mr Munro argued that mere evidence of financial misstatements was not sufficient to establish that he had breached the listing requirements, he further relied on the dictum in an earlier case, *Democratic Alliance v ANC* 2015 (2) SA 23 (CC) at paragraph 154 (ANC case), where it was contended that a penal prohibition must include a requirement of fault as opposed to strict liability. He stated that there was a failure to provide evidence to establish that he caused or contributed to the need to restate the company’s financial accounts.

Decision of the Tribunal

In resolving the issue, the Tribunal rejected the argument of Mr Munro, relying on the principle established in *Jooste v JSE* (Case Number JSE4/2022) that directors of a company have the responsibility to ensure that the financial information of listed companies are accurate representations of the companies' financial information.

The Tribunal further emphasized the importance of the provision of accurate financial statements in the interest of potential investors by referring to the case of *Trustco Group Holdings Ltd v Financial Services Tribunal* and another [2024] ZASCA 100 at para. 33 Smith AJA (as he then was) which stated that "where financial statements do not accurately reflect the nature of financial transactions in accordance with international accounting standards, the JSE must be entitled to direct restatement of the financial statements to ensure that the full and correct position is stated."

The Tribunal further established that there was no question as to whether the financial statements were accurate as the board resorted to such a surgical operation to restate the financial statements to the detriment of the company.

The Tribunal continued by highlighting that Murray Hector Munro as the CFO was a prominent part of how the financial records were prepared, and the said statements were intended to reflect the nature of the financial transactions of the company in line with the international accounting standards. Furthermore, the Tribunal established based on the provisions of section 76(5) Companies Act 71 of 2008 and Schedule 13 of the JSE Limited Listings Requirements that the said provisions show that the director is not absolved from his/her duties to listings requirements of the company.

In conclusion, the Tribunal upheld the ruling of the JSE on the grounds that Mr Munro had failed to adduce convincing evidence to adopt a contrary approach to the decision of the JSE.

Comments

This case showcases the importance and significance of the directors' duties and responsibilities in a company. Murray Hector Munro tried to evade the liability by implying that he was not responsible for the inaccuracies realised in the financial statements.

However, the Tribunal has unequivocally indicated that with regard to the director's duties and responsibilities regarding the listing of companies is to be interpreted strictly clearly establishing that a director owes a strict duty to ensure that the financial statements of its company is on par with the international financial standards.

(16255/2024) [2024] ZAWCHC 209 - Munetsi v Madhuyu – Beware of posting an individual's personal information on social media

Summary of Facts

Social media influencers Better Kudakwashe Madhuyu and wife Kylie Tonsani, also known as Tytie and Kiki conducted a live broadcast on their social media platform (Facebook) in which they made defamatory remarks and further included a screenshot displaying the picture of Moreboys Munetsi and his private phone number.

Tytie and Kiki subsequently posted Moreboys Munetsi's private phone number on their social media platform requesting their followers to contact him. Aggrieved by this, Moreboys Munetsi instituted an action against them before the High Court of South Africa, Cape Town claiming that the publication of his private phone number on Tytie and Kiki's social media platform amounts to a breach of his right to privacy according to the Protection of Personal Information Act 4 of 2013 (POPIA). Moreboys Munetsi sought an order from the Court demanding the removal of the video displaying his personal information, punitive costs and an apology from Tytie and Kiki.

Notable Issue for Determination

An issue raised for determination was: Whether Tytie and Kiki should be prohibited from broadcasting Moreboys Munetsi's private information and whether Tytie and Kiki should remove the live broadcast from their social media platforms.

Arguments

Moreboys Munetsi argued that Tytie and Kiki had violated his right to privacy by posting his personal information on their social media platform, Tytie and Kiki did not address Moreboys Munetsi's averments however, they sought to justify the said post by claiming that Moreboys Munetsi undermined their business.

Decision of the Court

The Court in resolving this issue, highlighted the fact that Tytie and Kiki had failed to address Moreboy Munetsi's case recalling that Tytie and Kiki were advised to bring a separate suit before the Court to address their claims.

The Court went further to agree with Moreboys Munetsi on the ground that personal information may only be processed in certain circumstances, none of which were applicable in the instant case. The Court further held that posting a person's phone number regardless of whether it was available on other social media platforms, is a violation of the person's common law right to privacy. The Court granted an order directing Tytie and Kiki to remove the video and any posts showing the Moreboys Munetsi's personal information without his consent.

The Court further held that to call Moreboys Mnuetsi a "liar" and "evil" on a live broadcast was sufficient to establish a claim for defamation. It found that there was a sufficient apprehension of irreparable harm to Moreboys Munetsi's reputation which justified him seeking an interdictory remedy to remove the video as any alternative relief would be insufficient.

The Court stated that a public apology is not an appropriate remedy for defamatory statements however, the Court recognised that damages or an interdict would be more suitable.

Comments

The Court's decision in favour of Moreboys Munetsi was not in contention as Tytie and Kiki sought to justify their actions rather than dispute it. This judgement establishes that in the case of a defamatory statement made on a video posted on social media and the unlawful display of a person's personal information, the Court will be inclined to grant interdictory reliefs such as an order compelling the other party to remove the video or an order granting damages to the aggrieved person.

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