



Joubert
Galpin
Searle

A s t u t e l a w y e r s w i t h b u s i n e s s a c u m e n

HATE SPEECH IN SOUTH AFRICA

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Liesl Fourie

Astute lawyers with business acumen



Introduction

1. Not only racist comments are hate speech
2. Hate speech is a complex concept
3. Each society differs. SA has many cultures
4. The Constitution prohibits hate speech
5. It is regulated by law eg
 - Equality Act
 - Common Law
 - Workplace Law



SA Concept of Hate Speech

1. Bill of Rights

Every one has the right to freedom of expression

2. Equality Act (*Promotion of Equality and Prevention of Unfair Discrimination Act*)

- a person may not publish, propagate, advocate or communicate
- words concerning race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, language and birth
- if the words could reasonably be construed to demonstrate a clear intention to be hurtful, harmful, incite harm, promote or propagate hatred



Legal consequences of hate speech

1. Criminal court

-Criminal charges. *Crimen iniuria*. Imprisonment or fine

2. Labour court

- Dismissal. Damages. Removal from Govt vendor list

3. Equality court

- Fine

4. Civil court

- Defamation. Damages claim.



Case studies

1. Mangope v Asmal & Another

Facts

- Kader Asmal called Lucas Mangope a “baboon”

Judgment

- it implies a person of low intelligence
- the complainant described as a baboon may rightfully perceive it to be hurtful
- Asmal ordered to pay R200 000

2. Herselman v Geleba

Facts

- white person called an African person a “baboon”

Judgment

- race was an issue and affected the meaning
- R4 500 fine



Case studies, cont.

3. Strydom v Chiloane

Facts

- at work white person called a co-worker a “baboon”

Judgment

- complainant may institute action against employer in the Labour Court
- complainant may also institute separate claim against his co-worker



Case studies, cont.

4. Sonke Gender Justice Network v Julius Malema

Facts

“When a woman didn’t enjoy it (sex), she leaves early in the morning. Those who had a nice time wait until the sun comes out, requests breakfast and taxi money. In the morning that lady requested breakfast and taxi money. You don’t ask for taxi money from somebody who raped you.”



Case studies, cont.

Judgment

- it is hate speech
- it was stated as a fact, and not a comment (opinion)
- it would be understood as fact
- Malema did not state the true facts
- it was not of public interest
- Malema had to pay R50 000 to POWA (People Opposed to Woman Abuse)



Case studies, cont.

5. Afri-Forum v Julius Malema

Facts

- “Awudubula (i) bhulu” meaning “shoot the Boer/farmer”
- “Dubula amabhunu baya raypha” meaning “shoot the Boers/farmers they are rapists/robbers”

Judgment

- publication of words implies publication to the nation
- what do the words mean?
- what do they mean to a reasonable listener?
- the fact that portions of society do not understand the language is irrelevant



Case studies, cont.

- for some it is a liberation song, for others it is incitement to violence
- each meaning must be considered and accepted
- if words constitute hate speech, they cannot be justified on the basis of the right to sing them
- the New SA embraces compromise, forgiveness, goodwill, human dignity - "ubuntu"



Conclusion

- SA society is diverse
- Race, colour, ethnicity and religion are sensitive issues
- Depending on the context any words can be construed as hate speech. You can be sued
- Hurt or harm is not limited to physical harm, it extends to an attack on dignity
- Not a “quick rich” system. Awards are relatively low



Conclusion, cont.

- Not many defences to hate speech
- Brokers consider including defamation cover in your policies
- Employers review and update employment policies, sensitise and train employees
- Be circumspect in your statements – even “every day” comments



Discussion

Questions

Thank you

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