

Journalist wins libel case against SWAPO

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17 Apr 2012

Legal history was made in the High Court in Windhoek on Friday, 13 April 2012, with a ruling holding SWAPO [South West Africa People's Organisation] legally liable for defamatory statements made on the party's website.

In a judgement handed down by acting judge Kobus Miller, it was found that the ruling party is liable to compensate freelance journalist John Grobler for damages he suffered as a result of defamatory statements about him which were published on the SWAPO website in early September 2009.

Grobler sued SWAPO and the party's secretary general, Pendukeni Iivula-Ithana, for N\$300 000 in connection with the comments made about him.

With Friday's ruling his claim against the party was upheld, while his claim against Iivula-Ithana was dismissed with costs as a result of a finding by acting judge Miller that it had not been proven that Iivula-Ithana had been the author of the offending remarks.

Acting judge Miller's judgement marks the first time that SWAPO itself, rather than an individual officeholder in the party, is being held legally accountable over defamatory statements made on a party platform. It is also the first time that a publication on a website in Namibia, rather than in the print media, has resulted in someone being held liable for defamation.

Only the issue of liability over the statements published on the website was decided in the judgement. The question of what amount SWAPO would have to pay Grobler would have to be thrashed out next - either in negotiations out of court or in further court proceedings and a final decision by acting judge Miller.

In the posting on the website Grobler was called, among other things, "a Koevoet soldier (ekakunya) who, along with his fellow brutal apartheid henchmen committed untold atrocities to the Namibian people".

It was also stated: "Simply put, his hands are soaked in the blood of the Namibian people."

Grobler told the court he had been an unwilling conscript in the former South West Africa Territory Force (SWATF) at the end of the 1980s. He was never a member of the notorious police unit known as 'Koevoet', was never involved in any military combat during his time as a SWATF conscript, and has never killed anybody either, he testified.

"Considering the facts objectively, I have no difficulty in concluding that the article would have the effect of damaging the

reputation of the plaintiff (Grobler)," acting judge Miller stated in his judgement.

SWAPO's claim that the statements in the article were true or essentially the truth was not accepted by the judge.

He stated: "(O)n the totality of the evidence I am satisfied that the plaintiff established in a balance of probabilities that the allegations in the article complained of were false and defamatory of the plaintiff in the sense that objectively the reasonable reader of the article will tend to have a low esteem of the plaintiff."

He said in his view SWAPO failed to establish that in publishing the article it had acted reasonably and without negligence.

In a plea filed with the court the party alleged that the article was based on oral reports and information by former Koevoet members who stated that Grobler had been a member of the unit, the judge noted.

"No evidence to that effect was tendered at the trial," acting judge Miller noted.

"In fact there is a complete lack of any evidence of the steps taken by (SWAPO) to establish the correct facts before the article was published. The plaintiff for instance was never consulted," he added.

Grobler commented yesterday that he hoped his legal win would "lift the general tenor of political debate just a little".

"Crude character assassination, as we saw here, is going to drive us into the abyss of racism and violence. It needs to stop, or we will go the same way as Zimbabwe or Rwanda," he said.

Grobler was represented by Hannchen Schneider, instructed by Mada Opperman. Gerson Narib, instructed by Dirk Conradie, represented SWAPO and livula-lthana.

Source: allAfrica.com

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