

**IN THE SUPREME COURT OF APPEAL
HELD AT BLOEMFONTEIN**

SCA Case Number: 711/2019
GJ Case Number: 13348/2019

In the matter between:

ECONOMIC FREEDOM FIGHTERS First Applicant

MBUYISENI QUINTIN NDLOZI Second Applicant

JULIUS SELLO MALEMA Third Applicant

and

TREVOR ANDREW MANUEL Respondent

and

MEDIA MONITORING AFRICA TRUST Amicus Curiae

PRACTICE NOTE OF THE AMICUS CURIAE

NATURE OF THE APPEAL

1. This is an application for leave to appeal against a decision of the High Court of South Africa (Gauteng Local Division, Johannesburg) (“**the High Court**”), in which the High Court declared the allegations made about Mr Manuel (“**the Respondent**”), in the statement titled “EFF rejects SARS Commissioner interview process” dated 27 March 2019, to be defamatory and false. The High Court further declared that the publication of the statement was, and continues to be, unlawful.

2. The High Court ordered the Economic Freedom Fighters, Mr Ndlozi and Mr Malema (“**the Applicants**”) to remove the statement from all their media platforms within 24 hours, and to publish a notice on all their media platforms in which they unconditionally retract and apologise for the allegations made about the Respondent in the statement. Furthermore, the High Court interdicted the Applicants from publishing any statement that says or implies that the Respondent is engaged in corruption and nepotism in the selection of the Commissioner of the South African Revenue Service.
3. The High Court also ordered the Applicants, jointly and severally, to pay damages of R500 000 to the Respondent.

JURISDICTION

4. The application for leave to appeal to this Court was referred for oral argument in terms of section 17(2)(d) of the Superior Courts Act 10 of 2013 on 30 September 2019.
5. Media Monitoring Africa was admitted as an amicus curiae by order of this Court dated 17 July 2020.

ISSUES IN THE APPEAL AND SUMMARY OF ARGUMENT

6. Social media platforms present unique challenges regarding the dissemination and publication of information online. This is of particular concern where there is publication of false and wrongful information – such as disinformation – that may be damaging or harmful to the dignity and reputation of one or more persons.
7. The amicus curiae addresses three issues in this regard:

- 7.1. The need to bear in mind the threat of disinformation in striking the appropriate balance between the right to freedom of expression and the rights to dignity and reputation;
- 7.2. The proper approach to be taken towards the notion of the “reasonable reader” in the context of social media; and
- 7.3. The importance of effective and expeditious procedures and remedies in defamation proceedings relating to online publications.

DURATION OF ARGUMENT

- 8. The amicus curiae requests 30 minutes for oral argument.

STEVEN BUDLENDER SC

Counsel for the amicus curiae

31 July 2020