

IN THE HIGH COURT OF SOUTH AFRICA
(NORTH GUATENG DIVISION)

Case No: 19949/2008

DELETE WHICHEVER IS NOT APPLICABLE

- (1) REPORTABLE: YES/NO
(2) OF INTEREST TO OTHERS JUDGES: YES/NO
(3) REVISED

1/8/2013
DATE

[Signature]
SIGNATURE

In the matter between:

SOUTH AFRICAN NATIONAL DEFENCE UNION

Plaintiff

and

THE MINISTER OF DEFENCE
SECRETARY OF DEFENCE
CHIEF OF THE SOUTH AFRICAN NATIONAL
DEFENCE FORCE
MS. T G MANZINI
COL. PHILLIP DHLAMINI

First Defendant
Second Defendant

Third Defendant
Fourth Defendant
Fifth Defendant

JUDGMENT

CHETTY, AJ :

1. The plaintiff, a military trade union, instituted action for defamation against the defendants for two claims of R250 000.00 each arising from the publication of two documents which were authored by the fifth defendant, and authorised by the fourth defendant. The first document, published in October 2007, featured in a military publication called 'The Bulletin'. The article was entitled "GREATEST LIES EVER TOLD BY A MILITARY TRADE UNION: COUNTERFEIT 19% SALARY INCREASE, 10% ANNUAL INCREMENT AND 5% PAY PROGRESSION SYSTEM" and stated the following with reference to the plaintiff :

"On 20 July 2007, the Department of Defence (DOD) published a Bulletin No: 44/07 that the Military Bargaining Council (MBC) held its first sitting on 19 July 2007 to negotiate, amongst other things, the annual salary adjustment for levels 1 to 12 for uniformed members for the Financial Year 2007/2008.

In the same bulletin, it was reported that the South African National Defence Union (SANDU) failed to table any proposal for annual salary adjustment for salary levels 1 to 12 of uniformed members for the 2007/2008 FY.

Furthermore, SANDU was represented by two groups, one led by its democratically elected President, Maj. Hector Mosimane, Vice President WO1 N. Leeuwendaal and Second President WO1 K. Ramsamy and on the other hand the other group was led by Mr G.J Greeff, Mr Jeff Dubazane and Mr Charlton Boer.

DETERMINATION BY THE MINISTER OF DEFENCE

On 22 August 2007, the DOD issued a Bulletin No: 53/07 advising uniformed personnel about the determination by the Minister of Defence of a 7.5% annual salary increase for salary levels 1 to 12 to be implemented with effect from 1 July 2007 and other benefits.

GREATEST DISINFORMATION

The purported agreement dated 19 July 2007 distributed by the SANDU faction led by Mr Greeff does not exist. It was never presented by the MBC by any of the two warring SANDU groups and further that it never formed part of the discussion by the MBC.

The DOD has investigated the origin and the reason as to why SANDU led by Mr Greeff is distributing those so called agreements to soldiers and found that SANDF are resigning in hundreds and more are fighting that SANDU must stop the illegal deductions from their salaries.

Any enquiries in this regard may be forwarded to Military Labour Relations, for the attention of Col P. Dhlamini, tel: (012) 355-5058.

2. The second claim for defamation is based on an Administration Order issued by the fourth and fifth defendants, acting in the course and scope of their employment with the Department of Defence. The document reads as follows

ADMIN ORDER 6/2007: NOTICE OF INTENDED PROTEST MARCH BY
MILITARY TRADE

- 1. Directorate Collective Mechanisms In consultation with Legal Support, Directorate Labour & Service Relation Services and Divisions have been observing and investigating the illegal distribution of a counterfeit Military Bargaining Council agreement dated 19 July 2007 to various SANDF Units by element of un-elected SANDU officials. The purpose of this counterfeit MBC agreement is to create dissatisfaction amongst members and to outmanoeuvre the elected SANDU officials in their Court battles for the control of the union duns. Furthermore, these elements of un-elected SANDU officials are calling soldiers to participate in various protest marches planned for the month of October and November 2007 throughout the country in contravention of the Defence Act read with the provisions of the First Schedule (MBC). The first march is planned for the 12 of October 2007 at Cape Town to hand a petition to Parliament.*
- 2. Based on the above, the Directorate Collective Mechanisms will continue observing development in this regard and take corrective action if necessary.*

AIM

- 3. The aim of this order is to describe the measures to be applied in managing protest marches, strikes/mutiny and or any labour action by military trade unions and their members.*

SCOPE

- 4. This administrative order will address the following issues:*
 - a. Protest march.*
 - b. Any other labour action short of a strike/mutiny*
 - c. Execution."*

3. The plaintiff contends that the content of the publications were of a slanderous nature, untrue and intended to create the impression that the plaintiff was dishonest, deceitful and party to a fraud, and that its members were resigning *en masse*. The defendants admit to the publications but deny that the contents thereof were defamatory and plead that the articles were the truth, and published in the public interest.

4. The fourth defendant, Ms Manzini, is the Director of Collective Mechanisms, responsible for labour relations matters within the military. The fifth defendant is Retired Colonel P Dhlamini, who in 2007 was employed by the SA National Defence Force as a Senior Staff Officer: Labour Relations. The fourth and fifth defendants are currently employed by the Department of Defence in managerial capacities and, apart from providing advice on labour matters, they represent the Department of Defence as the employer party at the Military Bargaining Council ('MBC'), which is established in terms of the Defence Act 42 of 2002 to facilitate matters of collective bargaining and resolving matters of mutual interest.

BACKGROUND TO THE CLAIM

5. Whilst the publication of the documents which give rise to this action for defamation took place in 2007, it is common cause between the parties that the relationship between them has been strained over the years. Much of this tension is owed to the competing interests of the military striving to operate in a disciplined and efficient manner, and the right of the trade union to exist and pursue issues on behalf of its members. The ban on the establishment of a trade union within the military was set aside by the Constitutional Court in South African National Defence Union v Minister of Defence & another 1999 4 SA 469 (CC). As a consequence of

that decision, the Minister of Defence issued regulations to regulate labour relations in the SANDF. The regulations also provide that once a union has a proven membership of 15 000 SANDF members, it may apply to the MBC to be admitted as a party to that body. While the MBC met for the first occasion in 2000, followed by meetings in the next year, it soon became unable to resolve disputes between the parties as it had been intended. It is this breakdown in the structures that led to a meeting of the MBC, followed by the distribution of the publications giving rise to the claims for defamation.

THE PLAINTIFF'S EVIDENCE

6. The plaintiff called two witnesses, Advocate J Greef and Mr J Dubazana and the defendants called Ms TG Manzini and Colonel Dhlamini. All of the witnesses testified whilst making extensive reference to documents which formed part of the bundles handed in as exhibits.

7. Mr Greef, the national secretary for the union, was the first to testify and set out much of the historical relationship between the union and the defence department. Much of the tension between the parties was attributed to the MBC having become largely dysfunctional. As a result of the inability of the MBC to meet, the plaintiff brought an application contending that the Minister of Defence's failure to engage in collective bargaining was unlawful. This ultimately led to the decision in South African National Defence Union v Minister of Defence 2007 (5) 400 (CC), where the court ruled in favour of the union. Following this decision, the Secretary of the MBC issued an invitation to the plaintiff and employer to attend a meeting of the council on 19 July 2007, although the plaintiff contends that the meeting was called at their behest. The agenda set out three (3) items for

discussion – the status of parties to the MBC; the MBC constitutional amendments; and general salary negotiations for the financial year 2007/2008. It is not in dispute that the plaintiff was the only recognised trade union admitted as a party to the MBC, and among those invited by the Secretary were Messrs Mosimane, Leeuwendaal and Ramsamy in their capacity as 'elected' SANDU president, vice-president and second vice-president respectively. At the same time, an invitation was issued to Messrs Greef and Van Niekerk representing another 'faction' of SANDU. It is this 'faction' that has launched the present action.

8. It is necessary to set out the background resulting in two factions emerging within the plaintiff, and the basis for them both attending the MBC meeting. It has been the plaintiff's contention throughout these proceedings that the defendants have firmly aligned themselves with the faction led by Maj. Mosimane as a countervailing force to the faction led by Mr Greef. As far as the plaintiff is concerned, the Mosimane faction do not represent the plaintiff and they were surprised to see that an invitation had been issued to them to attend the meeting. The defendants adopted the view that if there were two factions within the SANDU, both factions should be invited and it should be left to the disputing sides to decide which among them is the mandated representative of their members.

9. The Minutes of the MBC meeting reflect that the issue of which faction was duly mandated to represent SANDU emerged at the outset of the meeting. The MBC, however, declined to deal with this matter. Mr Greef testified that like any large organisation, splinter groups emerge, as did the faction led by Maj. Mosimane. According to Greef, Maj. Mosimane and his colleagues were at one time duly elected to leadership positions in SANDU. They attempted, however, to convene a national congress where they intended to pass certain amendments to

the union's constitution. This led to Maj. Mosimane and his colleagues being suspended, and eventually a decision was taken to terminate their membership.

10. Greef was questioned as to whether he, in his capacity as national secretary and chief executive officer of the plaintiff, wrote to the defendants informing them that the Mosimane faction were no longer members of SANDU. In response, Greef referred to a letter addressed by the plaintiff's attorneys to the State Attorney, dated 3 July 2008 in which it was pointed out that he (Advocate J G Greef) was appointed as Acting National Secretary during October 2005, and that Mr Mosimane and the two other vice presidents of SANDU had been suspended pending a disciplinary process. The letter further pointed out that Mr D Peter (who was also invited to the MBC meeting) was not elected as the new National Secretary, and that this position was being taken over by Mr Greef in an acting capacity. In conclusion, the plaintiff's attorney cautioned the State Attorney to obtain its client's confirmation that *"they will not negotiate with Mr D Peter, Mr MAH Mosimane or other suspended vice-presidents of SANDU in any matter of mutual interests between the Department of Defence and SANDU"*.

11. In light of the above, the plaintiff's representatives treated the presence of the Mosimane led faction at the MBC with some suspicion, especially as the defendants' attorneys had already been cautioned not to bargain with them on matters of mutual interest. Even if the letter from the plaintiff's attorney had not reached the Secretary of the MBC before the meeting on 19 July 2007, the defendants were well aware that the mandate of the Mosimane led faction had been terminated by SANDU. Notwithstanding, the Department of Defence was content with the presence of the Mosimane led faction at the MBC, and were insistent on referring to them throughout as the "elected leadership" of the plaintiff.

The manner in which the Defendants sought to grant special status to the Mosimane led faction lends support to the plaintiff's contention that the MBC and the defendants were partial towards one faction to the detriment of the delegation led by Greef. Moreover, Greef testified that Mosimane aligned himself with the defendants who challenged SANDU's authority to institute proceedings in this Court under case number 67118/07, in which Mynhardt J granted an order on 11 October 2007 against the first three of the defendants cited in this action to immediately stop distribution of a publication titled the Bulletin featuring an article entitled "*Greatest lies ever told by a Military Trade Union*". It is this article that forms the basis of the defamation action against the defendants.

12. Mr Greef testified that he drafted a covering letter dated 19 July 2007 which accompanied a draft proposal that the plaintiff intended to submit to the MBC on the day of the meeting, in which they demanded a salary adjustment of 19% for the financial year 2007/2008. He issued instructions to his staff that the letter and the proposal be transmitted by facsimile to all the addresses on the covering letter as well as being sent to all units of the military. He conceded that he did not personally oversee the distribution of the document. However, Mr Jeff Dubazane, the plaintiff's second witness and its chief negotiator at the MBC, testified that he had been 'heavily' involved in the drafting of the salary increase proposal and was responsible for researching the pay structures of police services personnel in order to bench-mark what the military personnel should be paid. He confirmed that the salary proposal was transmitted by facsimile to various units so that soldiers throughout would be aware of the plaintiff's demand on their behalf. In addition to the document being sent to party members at the MBC, Dubazane also testified

that he took copies of the proposal to hand to the representatives at the MBC meeting on 19 July 2007.

13. The covering letter which accompanied the proposal for salary increases was addressed to the national structures of the plaintiff, the Chairperson of the MBC, as well as the Chief Negotiator of the employer in the MBC. The letter dated 19 July 2007 reads as follows :

"RE: SANDU PROPOSED AGREEMENT: NEW SALARY STRUCTURE
AND ANNUAL INCREMENT FOR DEFENCE ACT PERSONNEL (DAP) IN
THE SANDF

Attached find SANDU's proposed agreement which applies to all employees appointed in terms of the provisions of the Defence Act, 1995 and who fall within the registered scope of the MBC.

- It is again confirmed that the delegation of Mr JC Greef, Mr C A Boer and Mr J Dubazana are the only legitimate representatives to represent and negotiate in the MBC on behalf of SANDU and its members as per resolutions of the CEC and as per the Constitution of SANDU.
- The delegation is further mandated to explore the salary offer of the employer and then report back to the SANDU structures, to obtain a further mandate on the employee's offer.

SANDU remains the union of choice among soldiers and we must live up to the faith that soldiers have in and their commitment to SDANDU. We realise that this places on us a heavy responsibility to meet the needs of our members".

The proposal, which accompanied the covering letter, contained the heading "Agreement" and its subject line read *"Agreement: New salary structure and annual increment for Defence Act personnel in the SANDF"*. The document contained a reference to an *"agreement number"*, listed as "1/2007" and is dated 19 July 2007. It is not necessary to set out the further contents of the document as they are not relevant to the determination of this action.

14. When they arrived at the MBC meeting, both Greef and Dubazana testified that they handed a copy of the proposal (including the covering letter) to the employer representatives. Mr Dubazana testified that he handed a copy of the document to the Chair of the MBC and to Ms Manzini. According to him, Ms Manzini then passed the document to Col. Dhlamini, who in turn passed it on to the faction led by Mosimane. The fourth and fifth defendants denied receiving a copy of the covering letter or the proposal for the salary increase. Greef testified that he handed the proposal to the employer delegation, and that he could have possibly given the document to Col. Dhlamini. Under cross-examination Greef was referred to an affidavit he deposed to in case number 67118/07, in which he stated the following :

"10. It was the intention of the First Applicant to present this proposed agreement at the MBC meeting, which was scheduled for the 20th of July 2007. However, when I attempted to hand up the said proposed agreement at the said MBC sitting the very same Colonel Dhlamini, the draftsman of this bulletin, advised me that he cannot consider or accept same as two sets of union representatives are present and he therefore does not know who represents whom and, as a result, is not willing to accept our proposal at the time or discuss any proposals we might have."

On this basis, the defendants contended that Greef's testimony is inconsistent with the contents of an affidavit he made relating to the same facts, and accordingly his version that he handed a copy of the union's proposal in respect of salary increases, cannot be accepted as being true.

15. It is common cause that the MBC meeting never proceeded further than the first item on the agenda as both Greef and Dubazana confirmed that the employer's delegation presented the plaintiff with a computer generated print reflecting that the plaintiff's membership had dropped below the threshold of 15 000. The implication of this averment is that a union must have a membership of 15 000 members or

more in order to secure standing in the MBC. Greef disputed the employer's figures, and regarded them with suspicion, particularly as the union had been locked in litigation with the defendants over a refusal to effect deductions, which had a direct bearing on membership figures. The plaintiff litigated against the Defence Department over the refusal to effect deductions for membership fees. In all of these cases, Greef stated that the plaintiff had been successful. The eventual outcome of the litigation was that the SANDF was ordered by Court to pay R999 000, representing arrear membership fees to the plaintiffs.

16. Eventually the MBC meeting was adjourned to enable the parties to resolve the discrepancy related to the issue of the threshold, as well as which of the two factions was entitled to represent the plaintiff. Greef further testified that even after the meeting, the proposal for the salary increment was distributed to various units through approximately 450 different facsimile contact numbers. The purpose of the wide distribution was to ensure greater transparency in relation to the plaintiff's demands.

17. Following the MBC meeting in July 2007 and its failure to arrive at an agreed salary increment for the year 2007/8, the Minister of Defence made a determination of a 7,5% increase, pursuant to a submission made by Col. Dhlamini.

18. According to Col. Dhlamini, towards the end of September 2007 or early October 2007 he received numerous telephone calls from soldiers complaining that they were receiving only a 7,5% increase, whereas an agreement that they had seen referred to a 19% increase. He was subsequently visited by a group of disgruntled soldiers, who voiced the same concerns to him regarding their salary increase. After conducting certain investigations, including a visit to the unit at

Thaba Tshwane, Dhlamini stated that he was obliged to write the article entitled "*Greatest Lies ever told by a Military Trade Union*" in the Bulletin.

19. Shortly after the publication of the Bulletin, Col. Dhlamini authored another document on 8 October 2007, on which the plaintiff's second claim is founded. This document, entitled "*Notice of Protest March by Military Trade Unions*", took the form of an Administration Order, No. 6/2007 signed by the Chief of Staff of the SANDF as well as the Secretary for Defence. The Administration Order addressed the issues of a planned protest march called by the plaintiff for 12 October 2007 in Cape Town, as well as what is described as "*labour action short of mutiny and execution*". It is not disputed that the Administration Order was distributed within the military, although the defendants submitted that it was only intended for 'top-management'. The plaintiff received the document via one of their members based in the Cape. As set out earlier, the Administration Order was the subject of litigation under case number 67118/2007 wherein Mynhardt J issued an order interdicting the Minister of Defence from refusing to grant leave to the plaintiff's members for the purpose of engaging in a march on 12 October 2007. The plaintiff contends that the content of part of the Administration Order is wrongful and defamatory. The parts of the article which the plaintiff considers actionable are confined to the first of three pages of the Administration Order, the relevant portions of which read as follows:

RESTRICTED

8 October 2007

ADMIN ORDER 6/2007: NOTICE OF INTENDED PROTEST MARCH BY MILITARY TRADE

1. Directorate Collective Mechanisms In consultation with Legal Support, Directorate Labour & Service Relation Services and Divisions have been observing and investigating the illegal distribution of a counterfeit Military Bargaining Council

agreement dated 19 July 2007 to various SANDF Units by elements of un-elected SANDU officials. The purpose of this counterfeit MBC agreement is to create dissatisfaction amongst members and to outmanoeuvre the elected SANDU officials in their Court battles for the control of the union funds. Furthermore, these elements of un-elected SANDU officials are calling soldiers to participate in various protest marches planned for the month of October and November 2007 throughout the country in contravention of the Defence Act read with the provisions of the First Schedule (MBC). The first march is planned for the 12 of October 2007 at Cape Town to hand a petition to Parliament.

2. Based on the above, the Directorate Collective Mechanisms will continue observing development in this regard and take corrective action if necessary.

AIM

3. The aim of this order is to describe the measures to be applied in managing protest marches, strikes/mutiny and or any labour action by military trade unions and their members.

SCOPE

4. This administrative order will address the following issues:
 - d. Protest march.
 - e. Any other labour action short of a strike/mutiny
 - f. Execution."
 (my underlining)

EVIDENCE REGARDING THE PUBLICATIONS

20. In his testimony, Mr Greef described the Bulletin as an *ad hoc* communication tool used by management to communicate with members of the defence force. If a member received a copy of this publication, they would consider it to be an official communication from management of information or instructions to be followed. This evidence was not disputed by the defendants. Particularly objectionable, according to Greef, was the statement contained in the publication that a "*purported agreement dated 19 July 2007 distributed by the SANDU faction*

led by Mr Greef does not exist". In another part of the publication, reference is made to "SANDU led by Mr Greef is distributing those so-called agreements to soldiers". The publication concluded with the statement that members affiliated with the plaintiff are "resigning in hundreds and more are fighting that SANDU must stop the illegal deductions from their salaries".

21. All of these statements, it was contended, must be seen in the light of the title of the Bulletin - *"Greatest lies ever told by a Military Trade Union"*. Following the release of the publication, the plaintiff received calls from its members wanting clarity on whether SANDU had misled its members as to their salary increase, and whether this led to confusion amongst the ranks. As a result, ever since the publication, the plaintiff's membership had reached a ceiling, the inference being that the publication had an impact on its growth as a union.

22. In so far as the allegation of its members resigning in their hundreds, Greef stated that there was no truth to this statement, nor was he aware of any investigation carried out by the Department of Defence into the origin of the "purported agreement". He further considered the words in the publication referring to "two warring SANDU groups" to be suggestive of in-fighting or strife within the union and akin to "union bashing", aimed at spreading rumour and discontent amongst its members. Moreover, the repeated reference to the words "faction led by Mr Greef", was, according to him, designed to discredit the plaintiff. In contrast, when the defendants referred to the group led by Maj. Mosimane, they referred to them in the publication as "democratically elected". He also pointed out that the contention that this group was "democratically elected" was also factually incorrect, as the MBC and the defendants' attorney had been informed on 3 July 2007 that this faction had no legitimacy to negotiate on behalf of the plaintiff, as they had

been placed on suspension. In light of all of these factors, Greef considered that the Department of Defence, as an employer, was acting inappropriately by siding with one of the factions within the union, and by entering into terrain that should remain an area of organised labour.

23. Three days after the publication of the Bulletin, the fifth defendant authored and published the Administration Order on 8 October 2007. Greef testified that this publication repeated the false allegations, contained in the Bulletin, that the plaintiff was illegally distributing a "*counterfeit*" Military Bargaining Council agreement. It insinuated that this was being done with the intention of creating "*dissatisfaction among members*" in an attempt to out- manoeuvre the "*elected SANDU officials in their Court battles for control of the union's funds*". It was factually incorrect that the plaintiff, under the leadership of Greef, had initiated any litigation against the faction led by Mosimane over any matter, but more so, that there was any litigation or struggle to control the plaintiff's funds. Greef testified that the statements attributed to the plaintiff adversely impacted its reputation and insinuated that it was engaged in the dissemination of misinformation about a counterfeit agreement before the MBC. These allegations portrayed the plaintiff as acting in an unlawful and unethical manner, particularly where there was reference to union finances. Such statements would have the effect of discouraging members from joining such an organisation. By way of example, Greef referred to a former Commander in the defence force and member of Sandu, commenting that members were "laughing" at the union as a result of this publication.

24. The remainder of the Administration Order was aimed at members of the military who may have considered joining the protest march called by the plaintiff for 12 October 2007. In essence, the Administration Order forewarned members that

no leave would be granted to them if this leave was intended to be used for the purpose of engaging in the protest.

25. Greef testified that subsequent to the publication of the Bulletin and the Administration Order he contacted the fourth defendant with the intention of holding an amicable discussion regarding the untrue statements. In what can only be attributed to mistrust between the parties, Greef stated that when he engaged in telephonic discussion with the employer, he either had another person listening to the discussion on a speaker-phone, or he recorded the conversation (ostensibly with the permission of the other party). On this occasion, he requested his colleague and the chief negotiator for the plaintiff at the MBC, Mr Dubazane, to listen in on the conversation. Greef stated he pointed out to the fourth defendant, with reference to the publications, that it was untrue that a "*counterfeit agreement*" was being distributed by the plaintiff, and that the document was only a proposal for a salary increase. He then referred her to the contents of the covering letter to the agreement, as well part of the letter which made reference to a "proposed agreement". In any event, it was common cause that no agreement on salary increases had been reached at the MBC. In light of this, Greef asked the fourth defendant to retract the false allegations attributed to the plaintiff. Despite the fourth defendant undertaking to revert to him, she never did. In the circumstances, the plaintiff proceeded to launch an urgent application to this Court, whereupon it was granted an Order by Mynhardt J on 11 October 2007 which prevented the Department of Defence from refusing to grant leave to the plaintiff's members for the purpose of attending the protest march on 12 October 2007. In addition, the Court ordered that the respondents immediately stop distributing the Bulletin

headed "*Greatest lies told by a Military Trade Union*". This action is a sequel to the initial order obtained by the plaintiff.

26. According to the plaintiff's witness this is neither the first nor last instance in which the defendants have made defamatory statements toward the plaintiff. I was referred to an earlier judgment of Kollapen J in South African National Defence Union v Minister of Defence & others 2012 (4)SA 382 (GNP) in which the plaintiff was awarded damages following an article which insinuated that the plaintiff was dishonest in making unlawful deducting from members' salaries and that it was not conducting its affairs in an honest and lawful manner. Three similar actions are awaiting trial relating to similar defamatory conduct alleged by the plaintiff against the defendants.

27. The second witness for the plaintiff, Mr Dubazana, corroborated the evidence of Greef that the plaintiff's proposal for the increase in salary was handed over to the Chairperson of the MBC, as well to the fourth defendant personally. He recalled being present with Greef when the latter phoned the fourth defendant asking that she retract the false allegations against the plaintiff. Dubazana described the issue of the Bulletin in question as "propaganda" being used against the plaintiff in light of its planned protest march to parliament on 12 October 2007. He was adamant that the document which was presented to the MBC on 19 July 2007, and which he contends he handed to the fourth defendant, was an unsigned proposal for a salary increment. At no stage did either he or anyone else in the union refer to it as an "agreement" – particularly as it was unsigned by either party. To the extent that the publication refers to a "counterfeit agreement" Dubazana testified that he had never seen an 'original' agreement purportedly concluded by parties to the MBC, as no such original existed. As I understood his evidence, it

followed logically that there could therefore be no “counterfeit” which would constitute a deviation or misrepresentation when compared to the original agreement. When commenting on the likelihood of the plaintiff putting out false information to its membership, particularly on salaries, Greef described this conduct as “suicidal”. It stands to reason that if a union conducted itself in this manner, its members would have no trust whatsoever in its ability to represent their interests or to act in good faith.

EVIDENCE FOR THE DEFENDANTS

28. On behalf of the defendants, only the fourth and fifth defendants testified, raising two defences to the claims that the contents of the Bulletin and the Administration Order were untrue, wrongful, and defamatory. It was contended that the content of the publications were true, and that they were made in the public interest. The defendants relied primarily on the evidence of retired Colonel Dhlamini, the fifth defendant, who was a member of the employer delegation to the MBC meeting on 19 July 2007, as well as the person responsible for drafting the Bulletin and the Administration Order which have given rise to the action. Their evidence is dealt with below.

29. Col. Dhlamini stated that the meeting before the MBC did not make much progress with the issues on the agenda, and most certainly did not discuss the salary proposal of the plaintiff. This was because the employer party to the MBC raised a preliminary issue of standing of the union and whether it was properly represented – either by Greef or Maj. Mosimane. No sooner had this issue been raised, when another matter pertaining to whether the plaintiff had met the required

threshold of 15 000 signed up members, to be recognised and admitted as a party to the MBC, arose.

30. It is not in dispute from the evidence that no definitive ruling was issued on these matters by the Chairman of the MBC. The meeting was adjourned to allow the competing factions to resolve their disputes among themselves. After the meeting, Dhlamini drafted an issue of the Bulletin on 20 July 2007 in which he apprised the soldiers of what had transpired at the MBC meeting the day before. Dhlamini denied having ever received a copy of the covering letter or the accompanying salary proposal from the plaintiff's offices, either from Greef or Dubazana. According to him, after the MBC meeting had failed to achieve anything substantial, he was being approached by soldiers who complained of becoming impatient waiting for a decision on salary increments. He then drafted a submission to the Minister of Defence, in which he motivated for a 7,5% increase. This was subsequently implemented.

31. Towards the end of September or early October 2007 he received a call from soldiers enquiring why the military was not implementing the 19% salary increase in terms of an MBC agreement. Dhlamini testified that he informed the soldiers that no agreement had been reached at the MBC. Following a report that copies of a salary agreement were being distributed among various units of the military, Dhlamini visited the Thaba Tshwane base where he saw a member of the plaintiff's executive committee, Mr Charlton Boer, using a loud hailer to distribute a flyer calling on troops to attend a protest march planned for 12 October 2007. Mr Boer also distributed copies of the salary proposal drafted by the plaintiff to members. Dhlamini stated that he was then approached by a group of five soldiers who

raised the query as to why they were not being paid in accordance with an agreement supposedly concluded at the MBC.

32. In light of the circumstances set out above and after obtaining a copy of the proposed agreement, he wrote the article for publication in the Bulletin, which forms the basis of one of the defamation claims. According to Dhlamini, he received information that soldiers were starting to "combine", and as they were armed (by virtue of being military personnel), it was possible that the situation could give rise to a mutiny. He therefore felt compelled to bring certain matters to the attention of the soldiers and therefore penned the article which featured in the Bulletin.

33. When questioned as to why he referred to the proposal as a "*purported agreement*" in the article, Dhlamini conceded that no such agreement was concluded at the MBC. He further indicated that he did not want to attribute the agreement to "SANDU" as he was aware that there were different factions and for this reason he chose to refer to those responsible for the distribution of the purported agreement as "*the faction led by Mr Greef*".

34. In relation to the Administration Order also written by him, which perhaps was penned in response to the plaintiff calling on its members to engage in protest action on 12 October 2007, he testified that the rationale behind the publication was to stop members from engaging in "unlawful action". He was distressed that soldiers wanted to engage strike action in the same way as teachers and members of the police services. He confirmed having authored the Administration Order as an 'advice' to his seniors, and that it was not intended for general distribution amongst members.

35. Under cross examination, Colonel Dhlamini proved to be evasive when questioned on his use or choice of particular words in both the Bulletin and the

Administration Order. He was questioned at length on his use of the words “*purported agreement*” in the Bulletin, particularly when he was fully aware that no such agreement had been concluded at the MBC. He responded that the word “purported” connoted something which is not what it is, essentially something untrue. The ordinary dictionary meaning of counterfeit refers to something which “appears to be or do something, especially falsely”. Counsel for the plaintiff, Mr van der Merwe, submitted this was precisely the complaint of the plaintiff, in that the fifth defendant knowingly insinuated that an “agreement” on salary increases was being distributed by the plaintiff when Dhlamini was aware that this was untrue, and had no basis for believing such statement to be true. Dhlamini further conceded that the agreement shown to him by the soldiers was not signed and therefore could not be an agreement. He later retracted this concession, stating that an agreement did not necessarily have to be signed. Later in his evidence, he contended that the document distributed by the plaintiff was an agreement, as it contained a reference to ‘*Agreement number: 1/2007*’, suggesting that it was an agreement that emanated from the MBC.

36. It was further contended that Colonel Dhlamini, who by his own account was a seasoned adviser in labour relations matters and always intent on ensuring sound labour relations, acted in a contrary manner by issuing the Bulletin and the Administration Order, which were conversely intended to entice reaction rather than calm down soldiers who, on his account, were becoming mutinous. In regard to the statement in the Bulletin that he had conducted an investigation into the “*origin and the reasons as to why SANDU led by Mr Greef is distributing these so called agreements*”, Colonel Dhlamini was unable to indicate what the nature of these investigations were, other than a reference to the unit in Thaba Tshwane where he

witnessed a member of the plaintiff distributing what he believed to be the "purported agreement".

37. Colonel Dhlamini was unable to provide a coherent or rational explanation as to why he referred to the proposed salary agreement as a "counterfeit" agreement, which the plaintiff argued was used in a manner designed to create the impression that it was dishonest, deceitful and a party to a fraud. When questioned on how a reasonable reader of the Bulletin and the Administration Order would interpret these documents, Colonel Dhlamini somewhat surprisingly responded that he considered himself to be the "final interpreter" of his document. This contention was later withdrawn by Mr Matebese who appeared for the defendants. In an attempt at damage control, Col. Dhlamini later contended that the Administration Order was intended for distribution to 'top management' and not intended for general distribution among soldiers. He also gave lengthy account that the MBC had met from 2004 to 2007, contending that the body had met prior to a Constitutional Court order in 2007. Nothing turns on this aspect of his evidence in my view. As to why, when he was approached with the document purporting to be an MBC agreement, had not approached Mr Greef or Dubazana immediately to obtain their response as to why a counterfeit or fraudulent document was being distributed among the soldiers, he responded that the 'elected' head of the plaintiff union was Maj. Mosimane. He further indicated that he did not contact Mr Greef as he is not a member of the defence force, and the Administration Order is only applicable to employees of the defence force.

38. In relation to his statement that the members of SANDU were "*resigning in the hundreds*", Col. Dhlamini testified that he formulated this view from the access which he had to the computer records which provided details of deductions effected

from salaries for membership fees. He was unable to produce any information in support of his contention that SANDU members were resigning in large numbers. He also believed that in publishing the two articles, he was "saving lives" of members of the defence force. No evidence was however tendered which would have suggested that the members' lives were in danger, or what effect these publications had in quelling any danger that did exist. He was unable to offer any comment on the response by both Greef and Dubazane that it would be foolish and 'suicidal' of the plaintiff, as a trade union, to claim that an agreement at the MBC had been reached on salary increases where there had been none. That aspect of their evidence remained uncontested.

39. The second witness called on behalf of the defendants was Ms TG Manzini, the fourth defendant. She testified that she had never received the covering letter or the proposed salary agreement from either Greef or Dubazane at the MBC meeting, nor had she received such document via facsimile. She further denied ever having a telephonic discussion with Greef subsequent to the publication of the articles, or that she had undertaken in any manner to retract the allegations. When questioned as to why the minutes of the MBC meeting refer to the possibility on the part of the plaintiff of securing a 19% increase if this proposal was never tabled at the meeting, Ms Manzini was unable to provide a response. Similarly, she was unable to comment on what benefit would accrue to the plaintiff by falsely claiming that an agreement had been reached on a 19% increase when, even by the plaintiff's account, no agreement in this regard had been reached. That concluded the evidence on behalf of the defendants.

ANALYSIS OF THE EVIDENCE

40. In South African National Defence Union v Minister of Defence and others 2012 (4)SA 382 (GNP), in which the plaintiff sued for damages arising from certain defamatory statements attributed to it, Kollapen J took note of the reasoning in the earlier decisions of GA Fichardt Ltd v The Friend Newspapers Ltd 1916 and Die Spoorbond v South African Railways; Van Heerden v South African Railways 1946 AD 999 in the context of whether a non-trading entity could sue under the actio *injuriarum* for damages. The Court at paragraph [16] held that:

“In this action the plaintiff is a trade union, which is a voluntary association whose members are invariably employees who have both the right to associate, as well as the right to dissociate. While their objectives may be narrower than those of a political party, trade unions in the modern era involve themselves, and understandably so, in matters beyond the workplace, and their activities may often relate to the economic and social policies of the day, and to important events that impact on the wellbeing of society. Accordingly the existence of a trade union, its ability to recruit new members, and to retain existing members, are in turn dependent on a number of factors, which include its policies and the manner in which they are articulated, its leadership, and the manner in which the organisation is structured and organises its affairs. In this regard I would imagine a commitment to openness, an internal structure that is transparent and democratic, integrity in the handling of its affairs, including its financial affairs, all reflect on the reputation of a trade union, and its very existence and sustainability.”

The standing of the plaintiff to claim damages for defamation in these proceedings was therefore not in issue.

41. The issue to be determined, in light of the evidence, is whether the contents of the articles written by Col. Dhlamini and subsequently published, were of a slanderous nature and defamatory. Both Greef and Dubazane testified that the use of the word “counterfeit” to describe the plaintiff’s salary proposal was without foundation and false. Greef testified that the proposal which the union formulated

for a salary increase remained simply that – it had never been discussed nor agreed to at the MBC. The defendant, on the other hand, admits to the publication of the articles but relies on the defences that they were true and in the public benefit. Accordingly, the defendants deny that the statements were in any way defamatory of the plaintiff's reputation.

42. There was a dispute as to whether the plaintiff's salary proposal was submitted at the MBC meeting on 19 July 2007. Both Greef and Dubazane testified that the proposal and the covering letter were sent via facsimile to the various addressees on the covering letter before the meeting commenced. Both the plaintiff's witnesses further testified that they had personally handed copies of the proposal to the fourth and fifth defendants and to the secretary of the Council. The testimony of Greef was placed in doubt in light of an affidavit in which stated that he attempted to hand the document to Col. Dhlamini, who refused to accept it.

43. On the other hand, Dubazane testified that it would be highly unlikely that plaintiff, having prepared for the MBC meeting on 19 March 2007 with the intention of raising the issue of the salary increases, would not have sent out their proposal in advance to the secretariat of the Department of Defence, or that they would have arrived at the meeting without their written proposal at hand.

44. Similarly, both Greef and Dubazane testified of the telephonic discussion with Ms Manzini after the publication of the administration Order and the Bulletin. She denies that such discussion ever took place.

45. Counsel for the plaintiff submitted that the fourth and fifth defendants had no alternative but to deny receipt of the proposal and the telephone call, as to do otherwise would be fatal to the defendant's case. It was contended that an admission on their part would imply that the defendants were unequivocally aware

of the proposal for a salary increase – and crucially that there was no agreement on the issue. The position of the defendants is that no such proposal was brought to their attention at the meeting, and the only time they became aware of such a document was when soldiers began complaining to Col. Dhlamini that they were not being paid in accordance with an “agreement” reached at the MBC.

46. There is nothing from the demeanour of the witnesses of either the plaintiff or the defendants to tell them apart. Both Col. Dhlamini and Mr Dubazane proved to be equally argumentative when they gave their evidence. I am unable to make any credibility findings based on their evidence. Where there are two diametrically opposed versions of the facts, the test to be employed in determining which of the two versions is more probable was set out in Stellenbosch Farmers Winery Group limited and Another v Martell Et Cie and Others 2003 (1) SA 11 (SCA) at 14, para. 5 where the Court held

“[5] On the central issue, as to what the parties actually decided, there are two irreconcilable versions. So too on a number of peripheral areas of dispute which may have a bearing on the probabilities. The technique generally employed by courts in resolving factual disputes of this nature may conveniently be summarised as follows. To come to a conclusion on the disputed issues a court must make findings on (a) the credibility of the various factual witnesses; (b) their reliability and (c) the probabilities.”

The probabilities, in my view must favour the plaintiff, as it seems to me to be entirely improbable that the defendants would not have received the proposal either before or at the MBC meeting. This conclusion is fortified by the failure of the defendants’ witnesses to explain why, if the proposal had not even been tabled at the meeting, why would it have been a matter featuring in the minutes of the MBC meeting. Having reached that conclusion, there would therefore be no basis for the

defendants to have been unaware of the proposal from the plaintiff, and their evidence to this effect must be rejected.

47. Turning to the two articles, the contention of the plaintiff is that there can be no factual basis or truth in the statement contained in the Bulletin that a *"purported agreement dated 19 July 2007 distributed by the SANDU faction led by Mr Greef does not exist"*. The evidence of both the plaintiff's and the defendants' witnesses is that no agreement on a salary increase was reached at the MBC meeting on 19 July 2007. On that basis, the plaintiff contends that no lawful grounds exist for the defendants to refer to a "purported agreement" or a "counterfeit agreement" as they did in the Bulletin and the Administration Order, both authored by Col. Dhlamini.

48. The evidence of the fifth witness, Col. Dhlamini, is crucial to determining the merits of the claim. He was present at the MBC and stated that no agreement on salaries was reached at the meeting. He further confirmed that, thereafter, he drafted a submission to the first defendant for a 7,5% salary increase for members of the defence force, which was subsequently granted. Taking into account these facts he, more than anyone else, should have known that there was no agreement struck between the parties and there could be no basis for the use of the words "purported agreement" and "counterfeit" as being either constituting the truth, or that it was made in the public interest. Moreover, when Col. Dhlamini was approached by a group of misinformed or disgruntled soldiers complaining that they were not paid a 19% salary increase, the obvious response in those circumstances would have been to clarify the position that there was no agreement for a 19% increase. Instead, and fully aware that no agreement had been concluded at the MBC, Col. Dhlamini proceeded to draft the Administration Order referring to the plaintiff's

proposal as "a counterfeit Military Bargaining Council agreement". His conduct was clearly actionable.

49. Similarly, the article entitled "*Greatest lies told by a Military Trade Union*" refers to a "purported agreement dated 19 July 2007". Col. Dhlamini was cross examined as to the existence of an "original" MBC agreement, as he repeatedly used the word "counterfeit" and "purported" in the context of the publications. The contention of the plaintiff is that if there is reference to a "counterfeit" agreement, an original or true version must exist. Col. Dhlamini was unable to produce any such document. Moreover, if one considers the ordinary meaning attributed to the word "purport", it is that which implies or professes to be something.

50. In the context of the articles published by the defendants, the enquiry that must follow is what would a reasonable reader of ordinary intelligence attribute to the words used in the Administration Order and the Bulletin? The plaintiff contends that a reasonable reader would not know that there was no agreement reached at all before the MBC, but would nonetheless formulate an opinion that the plaintiff was conducting itself in a dishonest manner, and deliberately distributed a document which it knew was not an agreement. The word "counterfeit" ordinarily means something which is initiated in order to deceive someone, or to make a fraudulent imitation of the original. A reasonable reader of ordinary intelligence would, according to the plaintiff, interpret the word(s) in the context of the article to mean that the plaintiff was distributing an agreement which did not exist, and generally acting in a dishonest manner. The test to be applied was set out in Sindani v Van der Merwe [2002] 2 All SA 311 (SCA) at [11] where the Court held:

"The ordinary meaning of the words under consideration does not necessarily correspond with their dictionary meaning. The test to be applied is an objective one, namely what meaning the reasonable reader of ordinary intelligence would attribute

to the words read in the context of the article as a whole. In applying this test it must be accepted that the reasonable reader will not take account only of what the words expressly say but also what they imply (see e.g. *Argus Printing & Publishing Co v Esselen's Estate* 1994 (2) SA 1 (A) 20 F-G). It must also be borne in mind that the ordinary reader has no legal training or other special discipline and that 'if he read the article at all would be likely to skim through it casually and not to give it concentrated attention or a second reading. It is no part of his work to read this article, nor does he have to base any practical decision on what he reads there'

(per Lord Pearson in *Morgan v Odhams Press Ltd and Another* [1971] 2 All ER 1156 at 1184).

Consequently, a court that has of necessity subjected a newspaper article under consideration to a close analysis must guard against the danger of considering itself to be "the ordinary reader" of that article (see also *Ngcobo v Shembe and others* 1983(4) SA 66 (D) 71 C-D).

51. Mr Matebese for the defendants submitted, with reference to *Sindani* (supra), that I should not subject the words in the Bulletin and the Administration Order to any closer analysis as a reasonable reader would have probably "skimmed" through the article without giving concentrated attention to the meaning of the words used in the publications. I respectfully disagree with this contention, as my interpretation of the decision in *Sindani* is that it is important to consider the meaning of the words in the "context of the article as a whole". As Lord Steyn in R v Secretary of State for the Home Department, ex parte Daly [2001] 3 ALL ER 433 (HL) at 447 stated, "in law, context is everything".

52. In his testimony, Mr Greef stated that soldiers receiving a copy of an Administration Order would regard this as an instruction, and in some instances, would place a copy on their notice boards. It was a means of *ad hoc* communication within the military. This evidence was not disputed by the defendants. Having regard to the obligation to follow orders within the context of the military, I am not persuaded by the argument that a reasonable reader of the

Administration Order and the Bulletin – not being a member of the public, but a reasonable soldier - would have given the publications no more than a cursory “skim”. This conclusion is fortified by the evidence of Col. Dhlamini who stated that he was extremely concerned that soldiers who read the “counterfeit agreement” attributed to the plaintiff, could become mutinous and that “blood could flow”. Although his fears, in my view, were grossly exaggerated, it is suggestive that those within the military would have given closer attention to the contents of the publication than an ordinary reader of a newspaper article.

53. While counsel for the defendants argued that there were no untruths in the Administration Order or in the article in the Bulletin, both written by Col. Dhlamini, it was submitted in written argument that, despite certain inaccuracies which may exist in the articles, I ought to have regard to the “gist” of the articles. On this approach, the “gist” of the articles, it submitted, was true. In this regard, the defendants rely on the decision in Modiri v Minister of Safety and Security and others [2012] 1 All SA 154 (SCA) where the Court held :

“As to the appellant’s second contention based on the admitted inaccuracies in the impugned article, it is a matter of settled law that the defendant is not required to prove that the defamatory statement was true in every detail. What the defence requires is proof that the gravamen or the sting of the statement was true. Inaccuracies in peripheral detail do not rule out the defence (see eg *Johnson v Rand Daily Mails* 1928 AD 190 at 205-206; *Independent Newspapers Holdings Ltd v Suliman* [2004] 3 All SA 137 (SCA) paras 34-38). The underlying logic appears from the judgment of Wessels JA in *Johnson*. The reason, he explained, why truth and public benefit is recognised as a defence, is because a plaintiff is not entitled to recover damages in respect of an injury to a reputation which he does not deserve. Consequently, the defendant ‘need not justify immaterial details or mere

expressions of abuse which do not add to its sting and would produce no different effect on the mind of the reader than that produced by the substantial part justified'. The gist or sting of a statement is determined with reference to the legal construct of a reasonable reader. It is the meaning that the reasonable reader of ordinary intelligence would attribute to the statement (see eg *Basner v Trigger* 1945 AD 22 at 32; *Sindani v Van der Merwe* 2002 (2) SA 32 (SCA) para 11). The test is thus an objective one. Evidence of how the plaintiff, or for that matter, any actual reader of the article understood the statement is of no consequence."

54. In response to this ground of defence, the plaintiff contended that the defendants have not laid a factual basis for proving that the contents of the articles are true, nor was this defence put to the witnesses or pleaded by the defendants. The defendants restricted themselves to the defences of truth and the public interest as justification for the publication of the articles. I am not persuaded by this argument. I am in agreement with the contention on behalf of the plaintiff that the title of the article in the Bulletin, "*Greatest Lies ever told by a Military Trade Union*", suggests that a reasonable reader of ordinary intelligence would infer that the plaintiff is guilty of spreading lies and untruths. This directly impacts on its reputation and whether it is an institution that new members of the military may wish to join.

55. It is also common cause that the plaintiff is the only union recognised by the MBC, and any reasonable reader of the publications would associate the plaintiff union with the spreading of untruths. However, when one considers the evidence of Col. Dhlamini and the particular words used in the two publications, it is apparent that the defendants sided with a faction led by Major Mosimane, who were not office bearers of SANDU and who had no legitimacy as a party to the MBC. This conclusion is readily apparent if one has regard to the repeated references in the

articles to "the group led by Mr Greef". On the other hand, the article refers to the group led by Maj. Mosimane as being "democratically elected" as well as Dhlamini's evidence that he considered Maj. Mosimane as the "elected leader" of SANDU. A reasonable reader would interpret these statements to mean that the plaintiff's present leadership under Greef has come about by an "undemocratic" process.

56. There is a presumption that a defamatory allegation is false or untrue, and accordingly it is not necessary for the plaintiff to provide any evidence to prove this. In this case, however, the plaintiff has provided evidence to prove that no agreement on salaries was reached at the MBC. On the other hand, the defendants have not been able to provide any evidence that the plaintiff was "distributing a counterfeit Military Bargaining Council agreement". Even more damning is the reference to a court battle "for the control of union funds". No evidence was tendered by the defendants to establish the truth or public interest of this statement, and the onus is on the defendant to rebut the presumption.

57. Col. Dhlamini was unable to explain what investigation the Department of Defence carried out into the distribution of a "purported agreement" by the plaintiff, other than reference to Mr Charlton Boer, distributing flyers supposedly notifying soldiers of a proposed protest march, as well as of the proposal on salaries which the union hoped to have concluded at the MBC. There is nothing in the proposal prepared by Greef and Dubazane which can be inferred to suggest that the document constitutes an agreement. That the document bears a reference number for an MBC agreement is of no consequence. Even if Col. Dhlamini was approached by angry soldiers during his visit to Thaba Tshwane, who queried the existence of the document being distributed by Mr Boer, he (Dhlamini) was in an ideal position to explain to them that no such agreement existed. He had an

obligation to promote transparency and provide members of the defence force with accurate information. On the contrary, the words published by the defendants, as contained in the article entitled "*Greatest Lies told by a Military Trade Union*" and the Administration Order, authored by Col. Dhlamini, dated 5 and 8 October 2007 respectively, cannot be said to have been either true or in the public interest.

58. I am accordingly satisfied that the plaintiff has established that the words and statements attributed to it in the Bulletin and the Administration Order were defamatory, and calculated to harm the plaintiff's reputation as a trade union within the defence force. As Kollapen J stated in SANDU v Minister of Defence and others (*supra*):

"[17] There is the added reality that in many of the labour sectors that exist in our society there exists more than one trade union and so potential members have a choice in which trade union they will seek and retain their membership. The reputation of a trade union thus becomes important in the choices that members and potential members may make and that reputation ultimately impacts on the ability of a trade union to sustain itself and continue its activities. It must accordingly follow that a trade union has indeed a reputation which it is entitled to protect, and that conduct which unlawfully impairs such reputation should be actionable."

I accordingly find in favour of the plaintiff in respect of both claims 1 and 2 that the aforementioned articles were defamatory.

59. I now turn to deal with the quantum in respect of both counts, in respect of which the plaintiff claims R250 000 each. Mr Greef testified that after publication of the article in the Bulletin and the Administration Order its membership figures have never increased, hinting at the reputational damage of false statements attributing lies and counterfeit documents to the plaintiff's leadership. This is worsened where reference is made to the union effecting "illegal deductions from their salaries", as mentioned in the article published in the Bulletin.

60. The plaintiff claimed R250 000 in respect of each claim as set out in the summons. Mr Greef testified that it is impossible to verify quantum claimed in a case of defamation to a trade union, although counsel for the plaintiff submitted that the award made by Kollapen J in the amount of R40 000 was both fair and reasonable yardstick. It was further contended that I should regard the previous judgment as an aggravating factor, and make a higher award. Counsel for the defendants, on the other hand, contended that if I were to make any award, I should not consider Kollapen J's judgment as an aggravating factor, as both incidents giving rise to the defamation actions occurred in 2007. In that case, the SANDU succeeded in proving that the publication of a statement claiming that the union had unlawfully deducted a substantial amount of money from its members was defamatory. Col. Dhlamini played a pivotal role in the publication of the defamatory statements in the matter before Kollapen J, where the learned judge said the following at paragraph [49] of him :

"To continue with the publication of the article in its original form and disregarding the judgment of Mynhardt J was not justified and the defendants' reliance on the defence of truth is in my view not sustainable."

63. In determining the amount to be awarded following the publication of a defamatory statement, the authorities suggest that one must have regard to the nature of the statement, the nature and extent of its publication, and the character or reputation of the plaintiff. The evidence of the witnesses suggests that the arena in which labour and management engage with each other is fraught with tension and distrust. Litigation appears to be the preferred method to resolve disputes, as opposed to conciliation and negotiation. This hardly bodes well for constructive dialogue between the parties, especially in an institution like the military. The

unfounded allegations that the defendants made against the plaintiff must be assessed against this backdrop. The defendants charged that the plaintiff was untrustworthy, dishonest, and had acted illegally in distributing a fraudulent or counterfeit agreement on salaries, when it knew that no such agreement was reached at the military bargaining council. As Mr Greef testified, for a trade union to falsely proclaim to its members that it had concluded a salary agreement along higher percentages than agreed on, would be 'suicidal'. Given the acrimony between the two parties, the publication of such a statement by the defendants could only serve to undermine the confidence in which the plaintiff is held by its members, and deter potential or future members from joining. The first publication in the Bulletin, which was described by the defendants in their pleadings as a means of communication or a tool to share views and information within the defence force. The article "*Greatest lies ever told by a Military Trade Union*" was therefore widely disseminated throughout the defence forces and its distribution only halted upon the issuing of a Court order. Although the Administration Order, published a few days later on 8 October 2007 was, according to Dhlamini, intended for distribution only amongst 'top management', the allegations of a counterfeit agreement distributed by the plaintiff would have been read by those occupying positions of authority within the defence force. Such statements, in the minds of those occupying senior positions in the defence force, could be just as damaging to the way the plaintiff is regarded among the rank and file members.

64. In my view, taking into account all of the above factors, I am of the view that an award of R40 000 in respect of each count is fair and just compensation to the plaintiff for the defamatory articles published by the defendants. I also see no reason why costs should not follow the result.

I accordingly make the following order:

1. The first to the fifth defendants are ordered to pay the plaintiff the sum of R80 000 jointly and severally, the one paying the other to be absolved;
2. The first to the fifth defendants are ordered to pay the plaintiff's costs of suit on a party and party scale.



M R CHETTY,

ACTING JUDGE OF THE NORTH GAUTENG HIGH COURT

Dates of hearing: 30 April; 2-3 May; 13 May 2013

Date of judgment: July 2013

For the Plaintiff: Adv. L K van der Merwe

Instructed by : Griesel & Breytenbach Attorneys

For the Defendants: Adv. Z Z Matebese

Instructed by: State Attorney (Pretoria)