

In the matter between

KODWA ZIZI

APPLICANT

AND

NEWS24

RESPONDENT

MATTER NO: 4273/02/2019

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DECISION: APPLICATION FOR LEAVE TO APPEAL

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1. Mr Zizi Kodwa is the applicant in this matter and News24 the respondent. This is an application by the appellant to appeal the Ruling of the Press Ombud dated 9 July 2019 which dismissed his complaint against the respondent. The complaint was about an online article published by the respondent on 10 February 2019. The headline read: "*Revealed: Zizi Kodwa and his Bosasa BFF*". The content of the article stated, amongst others, that the applicant was a friend of one Papa Leshabane, a director of Bosasa company which had over the time been surrounded by allegations of corruption in that, inter alia, it had gotten government tenders in a corrupt manner. The allegations were to be repeated, and became worse, before the so-called state capture commission of inquiry presided over by Deputy Chief Justice Zondo. Some photos, depicting the applicant with Mr Leshabane were also posted, including pictures while they were attending the soccer world cup in Russia.
2. The applicant's complaint was that the reportage breached articles 1.1, 1.2 and 1.3 of the Press Code. The following are some of the material facts which are common cause: the applicant, in his own words, had been friends with Mr Leshabane for years; they met from time to time and associated openly, as the photos indicated; there has been allegations of corruption against Bosasa so

much so that the applicant himself commented that Bosasa acted like a mafia; allegations were made that Mr Leshabane carried bags containing money to bribe state officials; there were allegations that Bosasa secured some state tenders in an improper manner. It is also common cause that Mr Leshabane on occasion publicly defended Bosasa. Regarding the applicant, it is common cause that he was at the time a paid official in the Office of the Presidency of the African National Congress, the governing party, at Luthuli House. Mention any reasonably informed person in the country who does not know or has not heard, about “Zizi Kodwa”! For his part, Mr Leshabane is a colossus within Bosasa; in fact, he can hardly be separated from Bosasa, of which he was and perhaps still is, an integral part (change of the company’s name notwithstanding). It would take an extremely uninformed person not to have heard of Bosasa and its alleged shenanigans, especially in the context of state capture allegations; these allegations go back many years.

3. The true nature and basis of the applicant’s complaint is best captured by himself in his response to the respondent’s defence that the article was in the public interest. He says: *“The heart of my complaint is the misinformed belief by News 24 that my personal life and whom I associate with is a matter of public interest, particularly in the absence of evidence that constitutes a basis for such conclusion. The right to privacy as enshrined in our Constitution is a key tenet of our Bill of Rights aimed at protecting citizens from unjustified intrusion into their private lives. Indeed, there are circumstances where this right can be overridden particularly in instances where there is reasonable suspicion that the said individual(s) may be party to a criminal act. I therefore strongly contend that the mere fact that I am employed as Head of ANC Presidency hardly constitutes sufficient grounds for News 24 to believe that my personal relationships constitute public interest.”* He also says the following: *“I*

*therefore contend that I am under no obligation to respond to questions about my private life and relationships with other human beings, unless there is prima facie evidence that such relationship(s) are corrupt in nature.*" He then goes on to confirm that he had been friends with Mr Leshabane for years. I am afraid the applicant misses the point. The issue is not whether their relationship was corrupt; that was not the basis for the publication, nor what it says. Nor did the article cast the applicant as being corrupt or as having committed a crime, as he contents in his application for leave to appeal. The basis was that the applicant, being a public figure (as the respondent saw him), was openly associating with yet another public figure who was a very active director and an integral part of a company immersed in serious and publicly made allegations of corruption involving public funds.

4. In her Ruling, and in light of the applicant's reliance on the right to privacy, the Ombud correctly states: *"The question in this case is whether the right to privacy overrides public interest. It is also whether the two men in question, Mr Kodwa and Mr Leshabane, are public figures"*. The answer to the question is a clear yes; in this respect, I do no more than refer to the undisputed facts in paragraph 2 above, which was why I went out of my way to set them out. The Ombud was therefore correct to come to the conclusion she did: *"Without doubt, both are public figures."* That being the case, the applicant's right to privacy had to yield to a publication that was in the public interest. Submissions contained in the application for leave to appeal did not take the applicant's case any further. It was also clear that steps were taken to offer the applicant the opportunity to respond, which he exercised in the manner he did.
5. I have, solely for the purpose of dealing with the merits of the application, accepted that the explanation for the delay in lodging the appeal was adequate. But for me to grant leave to appeal there must be reasonable prospects of

success. For the reasons given by the Ombud, with which I find no fault, as well as those set out above, my finding is that there are no such prospects. The application is therefore dismissed.

Dated this 21st day of September 2019

Judge B M Ngoepe, Chair, Appeals Panel