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## Application of vicarious liability in a shop steward and trade union relationship

*Vicarious liability – shop steward – trade union – damages*

On 30 August 2024, the Magistrates' Court handed down judgment in *Raborife Kedibone Pauline v Moeketsi MC and Another* (Case No.: LP/TBZ/RC/21/2024). The judgment concerned an exception raised by the South African Democratic Teachers' Union (SADTU), the second defendant in the matter, relating to whether a trade union can be held vicariously liable for the actions of a shop steward.

In this matter the plaintiff sued the defendants, claiming damages on the basis that the first defendant, an adult female employed as an educator at Ysterburg Primary School and a member of SADTU, made defamatory statements against her. The plaintiff also sought to hold SADTU liable for the damages on the basis that the first defendant is a shop steward of SADTU.

SADTU raised an exception against the plaintiff's claim on the basis that the particulars of claim do not disclose a cause of action against SADTU.

At the hearing of the exception, SADTU argued that in order to hold a party vicariously liable for the conduct of another, the plaintiff must allege and establish a relationship between the parties through which vicarious liability may be incurred, as held by the Supreme Court of Appeal (SCA) in *Minister of Police v Underwriters at Lloyds of London*.<sup>1</sup>

It was argued that a relationship between a shop steward and a trade union is not subjected to vicarious liability. That is, a trade union is not vicariously liable for the conduct of its shop stewards. In support of the argument, SADTU relied on *Mondi Limited – Mondi Kraft Division v CEPPWAWU*,<sup>2</sup> where the Labour Court held as follows:

...I am not dealing with an employer and employee since it is common cause that the persons who committed the delict were not employees of the union. The only other possible basis is that of agency. The test is much more restricted and while it is notionally possible that a shop steward's committee may in peculiar circumstances be authorised to act as agent for the union and render the union vicariously liable that is most unusual and not in circumstances such as the present where there is no evidence whatsoever that any organ of the union supported the conduct in question let alone authorised it. It had to be alleged and proved that the union as principal authorised, instigated or ratified the commission of the delict...What is more a principal is not vicariously liable for unauthorised acts of his agent even if the act was ancillary to carrying out the mandate.

The Magistrates' Court accepted that it was bound by this approach and held that it is trite that a trade union is not vicariously liable for the conduct of its shop stewards. Accordingly, the court upheld the exception raised by SADTU, with costs on a scale of party and party.

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<sup>1</sup> [2021] JOL 50472 (SCA), para 24.

<sup>2</sup> (2005) 26 ILJ 1458 (LC), para 37.

The Magistrate correctly held that in order to hold a party vicariously liable for the conduct of another, the plaintiff must allege and establish a relationship between the parties through which vicarious liability may be incurred.

A relationship between a shop steward and a trade union is not subjected to vicarious liability. That is, a trade union is not vicariously liable for the conduct of its shop stewards. As held in *Mondi Limited – Mondi Kraft Division v CEPPWAWU*, a possible basis for a party who wants to hold a trade union liable for the conduct of its shop steward is that of agency. However, the test for agency is much more restricted. A party must allege and prove that the union as principal authorised, instigated, or ratified the commission of the conduct in question.

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