

IN THE SUPREME COURT OF SOUTH AFRICA  
WITWATERSRAND LOCAL DIVISION

DELETE WHICHEVER IS NOT APPLICABLE

- 1) REPORTABLE: YES/NO.
- 2) OF INTEREST TO OTHER JUDGES: YES/NO.
- 3) REVISED. ✓

CASE NO: 95/23999

DATE 26<sup>th</sup> JANUARY 1996

  
SIGNATURE

LIBERTY LIFE ASSOCIATION OF AFRICA LTD

APPLICANT

and

KATSAPAS ANTHONY KYRIACOS



RESPONDENT

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JUDGMENT

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NAVSA, J: This is an application, initially brought on an urgent basis, for an order, "interdicting and restraining the respondent from publishing in any manner defamatory statements concerning the applicant, pending the termination of the proceedings to be instituted..." In the event of being granted the interim interdict, the applicant seeks to be ordered to issue summons, against the respondent within fifteen days of the interim order, for an interdict in the aforesaid terms.

The urgency of the matter was nullified by an agreement between the parties; that pending the outcome of this application the respondent undertakes not to publish directly or indirectly any defamatory statement about the applicant.

**THE APPLICANT'S CASE**

The applicant ("Liberty"), came to court on an urgent basis setting out the following. The respondent ("Katsapas") was dismissed by Liberty on 13 September 1994. Subsequent to his dismissal he instituted proceedings in the Industrial Court claiming that he was the victim of an unfair labour practice by Liberty. Katsapas is seeking compensation in the Industrial Court in the amount of R750 000,00. During the week of 2 October 1995 Katsapas made certain allegations to Sue Blaine, a reporter of the "Sunday Times", a national newspaper. The allegations are substantially untruthful and defamatory of Liberty. The "Sunday Times" has not yet published an article containing these allegations but may still do so. Liberty fears that Katsapas will approach other newspapers and radio and television stations with the same or similar allegations. The application is to prevent Katsapas from doing so.

Liberty attached a copy of the intended "Sunday Times" article to its founding papers. The article was faxed by the Sunday Times reporter to Liberty's attorneys for comments and response.

The draft article is set out in full hereunder:

" A Johannesburg businessman has alleged gross misconduct within the upper echelons of insurance giant Liberty Life and is now embroiled in a legal wrangle involving the company's chairman

Donnie Gordon.

After Mr Tony Katsapas, Subpoenaed Mr. Gordon and two colleagues to the Industrial Court in Pretoria he was himself served papers demanding his appearance in the Pretoria Supreme Court where Liberty Life is to contest Mr Gordon's Subpoena. Mr Katsapas alleges he was initially fired in 1992 by the company after he disclosed misconduct and misappropriation of company funds by a senior employee. The reason given by Liberty Life was that Mr Katsapas had been insubordinate.

He was reinstated by Liberty Life a few months later after threatening industrial court action, he was paid damages and he signed a year contract with a protective clause. However Mr Katsapas alleged that his reinstatement was not bona fide as he was not returned to his former position as regional development officer responsible for training employees and assisting agency managers with development.

Mr Katsapas was approached by Liberty Life and offered a new position.

He was offered a position in the sales division where he would earn both a salary for 6 months and commission which Mr Katsapas alleges is a violation of the Life Officers Association agreement.

Mr Katsapas said when he refused the offer he was charged with further misconduct and fired after a hearing he alleges was unfair. He continually wrote letters of protest to Mr Gordon during 1994.

After an internal appeal and a conciliation Board appeal were

unsuccessful Mr Katsapas took the matter to the Industrial Court in Pretoria. He refused Liberty Life's offer of R100 000,00 out of court settlement and Liberty Life then made a successful application for a postponement of the hearing to November this year.

"They want to break me by stalling. They can't. I want justice not money" said Mr Katsapas. Mr Gordon, company director D' Halluin and deputy general manager, Peter Collison have been subpoenaed by Mr Katsapas to attend the resumed hearing. "All I want is a fair hearing. What are they hiding?" he said.

Mr Katsapas, who is currently completing a Masters degree in Management at the Wits Business School, said he became aware of what he suspected was misappropriation of company funds by an agency manager at the company's Braamfontein Agencies about 1990/1992.

He reported the incident to head office manager James Skuse but then "heard nothing more". Some time later Skuse accused him of committing a crime. He was charged on 10 counts ranging from not returning a telephone call to dissuading a potential employee from joining the company, found guilty on some of the counts and dismissed."

Liberty contends that Katsapas was dismissed for misconduct and poor performance and that the merits of his dismissal are currently the subject of litigation between the parties in the Industrial Court and are not relevant to the relief sought by Liberty in this application.

5.

Liberty states that the Industrial Court hearing was enrolled for a period of five days, commencing 7 August 1995 and was postponed following an objection by it that Katsapas had withheld information which it required in order to properly prepare its case. The matter was then re-enrolled for 6 November 1995.

On 7 October 1995 a reporter from the Sunday Times sent Liberty a telefacsimile containing the intended article set out above. The Sunday Times sought Liberty's comments and response to the intended article.

Liberty submits that the article, obviously based on information supplied by Katsapas, contains the following incorrect statements:

1. Katsapas was not dismissed in 1992 as a result of disclosing misconduct and misappropriation of company funds. He was dismissed for poor performance and his own misconduct.
2. After threatening Industrial Court action Katsapas was reinstated but not as a result of the threat. Liberty did not pay Katsapas damages of any kind nor did it sign a one-year contract with him.
3. Katsapas' reinstatement was bona fide. He was reinstated to his former position of regional development officer but a number of his training functions were limited.
4. His letters to Donald Gordon made unfounded allegations of misconduct on the part of certain of Liberty's executives.

6.

5. Liberty did inform Katsapas in 1983 that it was considering transferring him to its field staff. What was being considered was a position in the sales division where he would be able to earn both a salary and commission. This would not have been a violation of the Life Office's Association agreement. There does not exist a Life Office's agreement in respect of earning both a salary and commission simultaneously. This is permissible in terms of Industry practice and there is no contractual or statutory bar in this regard.

6. In respect of the second disciplinary enquiry Katsapas was charged with:

6.1 persuading an individual not to take up a position with Liberty;

6.2 failing to complete a work project timeously;

6.3 failing to deliver required changes and updates timeously;

6.4 failing to deliver a training module timeously;

6.5 failing to deliver a regional development report timeously or at all;

6.6 acting in a disgraceful manner at a training session when bringing into question the competence of a sales manager;

6.7 using abusive, profane and inappropriate language at public forums, particularly at a training session;

6.8 contravening one of six customer requirement guidelines, by repeatedly failing to return telephone calls timeously;

6.9 behaving in an unacceptable manner at the launch of a programme.

7.

It is denied on behalf of Liberty that the internal disciplinary hearing was unfair and it is submitted that this is an issue for determination by the Industrial Court. The internal enquiry found Katsapas not guilty on the charges set out in 6.1, 6.3 and 6.8 above.

It is also denied on behalf of Liberty that Katsapas was offered R100 000,00 in settlement of the Industrial Court dispute. It is denied that any offer at all was made.

It is advanced on behalf of Liberty that the postponement of the Industrial Court matter was for the reasons set out above and not in order to "break" Katsapas.

Liberty asserts that after extensive investigation it could not establish the misappropriation alleged by Katsapas. It points out that although Katsapas was charged with not returning telephone calls he was found not guilty on this charge and that this was not a reason for his dismissal.

It was submitted that, taken together the allegations by Katsapas portray Liberty as a company in which senior employees are able to misappropriate funds with no fear of any action being taken against them. Katsapas also suggests that Liberty is a company unprepared to act fairly and jeopardises the career of employees who intend no more than exposing dishonesty.

It was contended, on behalf of Liberty, that these allegations will have the effect of eroding the confidence of investors who hold shares in it, and that there is a real possibility that such investors may sell large quantities of the shares they hold, thereby effecting negatively the price of shares to the prejudice of other investors. It was submitted that there is a strong possibility that persons who hold policies with Liberty may seek to terminate their contractual arrangements and transfer them to another insurance company. A further submission was that potential subscribers may, because of these allegations decide not to do business with Liberty. It was contended that Liberty was a company with a high public profile and an unblemished reputation in South Africa. These allegations by Katsapas it was submitted would seriously injure that reputation.

When Liberty's attorneys sought an undertaking from Katsapas' attorneys that he would not make further defamatory remarks concerning Liberty, they received a reply which was to the effect that only the existing pleadings in the Industrial Court were discussed with the Sunday Times.

Liberty states that it fears that even if the Sunday Times does not publish Katsapas' allegations. "it is quite possible that Katsapas will seek other outlets for them." Liberty's apprehensions in this regard were substantially heightened by Katsapas' refusal or failure to give the undertakings sought and this is what led to these proceedings being launched.

In its replying affidavit Liberty submits that even if Katsapas' statements are true they were made with malice and any protection his statements might have enjoyed falls away.

#### THE RESPONDENT'S CASE

Katsapas states that the allegations made by him are fair comment, "substantially truthful and clearly in the public interest". He submits that they are consequently not defamatory of Liberty. He also relies on section 15 of the Constitution of The Republic of South Africa (Act No. 200 of 1993) which enshrines the right to freedom of speech and expression.

Katsapas asserts that the ostensible reasons for his dismissal were misconduct and poor performance, but he has always contended and continues to contend that his dismissal was the product of a conspiracy of "trumped up complaints, given effect to in the charade disguised as a disciplinary enquiry and was nothing more than a smokescreen to prevent my legitimate complaints and concerns being properly aired and was directed to achieve a cover up of irregularities." Katsapas then proceeds to deal with the history of the dispute between him and Liberty in an attempt to show that his statements to the Sunday Times are justified.

In respect of the draft Sunday Times article, Katsapas states that he anticipated that the reporter, Ms. Blaine would communicate with someone on behalf of Liberty in regard to the

matters he had discussed with her, in order to hear the other side. He concedes that the article is based on his discussion with her. Whilst he states that there are a few areas where she did not correctly reflect what he said , "the article is substantially correct."

In dealing with his failure to supply Liberty with the undertaking not to publish any further defamatory matter Katsapas submits that the harm suggested by Liberty is speculative in the extreme. He submits that section 15 of the Constitution protects his right to freedom of speech and expression. He submits further that any harm that Liberty may sustain will flow not from his allegations but from Liberty "blowing up the incident out of all proportion by seeking to gag me."

Katsapas points out that Liberty has a total shareholding, capital and reserves that run into billions of rand. He submits that the allegations by Liberty that his disclosures as set out in the draft Sunday Times article would create a real possibility that investors who hold shares will sell large quantities of such shares with the resultant drop in the price of shares is ludicrous. He states that the behaviour of senior executives in what is "really a minor dispute" with him is indicative of high handedness and arrogance. He states that his opposition to this application is to be regarded as his claim that he is entitled to make these publications.

In response to Liberty's reference to a letter by his attorney that he only discussed the pleadings in the Industrial Court case with the Sunday Times, Katsapas states that the reference to "pleadings" was unnecessarily restrictive. He states that the reference should have been to "pleadings and the bundle of documents relating to the enquiry".

#### THE MERITS OF THE APPLICATION

Liberty is applying for an interlocutory or interim interdict. The requirements for such an interdict have repeatedly been set out by our courts. The authorities and the requirements for an interim interdict are usefully set out in The Civil practice of the Magistrates' Courts in South Africa by Erasmus-assisted by Van Loggerenberg ( Vol.1 - eight edition) at p.88 et seq.

The applicant must show:

- (a) a prima facie right;
- (b) a well-grounded apprehension of irreparable harm if the interim interdict is not granted and the ultimate relief is eventually granted;
- (c) a balance of convenience in favour of granting the interim relief; and
- (d) the absence of any other satisfactory remedy.

At p.88 the learned authors say the following:" These factors should not be considered separately or in isolation but in conjunction with one another in order to determine whether the court should exercise its discretion in favour of the grant of

the interim relief sought."

The facts of this case have to be measured against these requirements.

The test for determining whether an applicant has established a prima facie right is set out in Webster v Mitchell 1948(1) SA1186 (W) at 1188:

"...the right to be set up by an applicant for a temporary interdict need not be shown by a balance of probabilities. If it is "prima facie" established although open to some doubt that is enough...

The proper manner of approach I consider is to take the facts as set out by the applicant together with any facts set out by the respondent which the applicant cannot dispute, and to consider whether, having regard to the inherent probabilities, the applicant could on those facts obtain final relief at the trial. The facts set up in contradiction by the respondent should then be considered. If serious doubt is thrown upon the case of the applicant he could not succeed in obtaining temporary relief, for his right, prima facie established, may only be open to "some doubt". But if there is mere contradiction, or unconvincing explanation the matter should be left to trial and the right be protected in the meanwhile, subject of course to the respective prejudice in the grant or refusal of interim relief."

In Gool v Minister of Justice 1955(2) SA 682 at 688 the test set out in the Webster case supra was modified only to the following

extent:" In my view the criterion on the applicant's own averred facts or admitted facts is: should(not could) the applicant on those facts obtain final relief in the trial."

The test set out in the Webster case as modified by the Gool case has been followed in numerous subsequent cases. See The Civil Practice of The Magistrates' Courts in South Africa supra at p89.

On Katsapas' own version of what the article reflects it is clear that as a whole the article is defamatory. It certainly paints a picture of a company that victimises an employee who seeks to uncover and expose dishonesty. It depicts Liberty as a company intent on covering-up irregularities. It also creates the impression that after a bungled attempt to dismiss Katsapas in 1992, Liberty reinstated him on conditions less favourable than those that had applied before and that steps were then taken to move him into a position where he would effectively be contravening regulating provisions contained in the Life Office's Association agreement.

It is now established law that a trading corporation can be defamed. Katsapas' defences come into the picture. He relies on truth and public interest as a justification as well as on fair comment.

Most of the heads of argument presented by Counsel on behalf of

Katsapas was devoted to demonstrating the truth of what was stated by Katsapas. Most of the Sunday Times article is fact based and consequently the defence of fair comment is untenable.

Liberty is a public company listed on the stock exchange and the manner in which the company conducts itself must be a matter of public interest.

The allegations set up in contradiction by Katsapas as they bear on the truth and public interest justification fall to be considered.

There are allegations, counter-allegations and denials in respect of almost every aspect of the history of the matter. Annexure "K" to Katsapas' affidavit contains allegations made by him to "Group Operations Audit", concerning "misappropriation" and they relate to:

- (i) the purchase in 1990 by a Liberty executive of electronic equipment worth R5000,00 , including a Compact disc player and headphones, ostensibly intended as gifts for managers who delivered excellent service for Liberty. According to Katsapas he saw the equipment in this executive's home in December 1990.
- (ii) the purchase of paintings also designated as gifts but retained by the same executive in his home.
- (iii) the purchase of liquor which had been charged to Liberty but which was used by the executive concerned for personal

purposes.

(iv) the payment by the same executive of certain staff members' gym fees debited to Liberty as gifts.

(v) the improper allocation of parking bays to certain secretaries and employees who were not entitled thereto.

Katsapas also accused the same executive of improperly conducting a short term insurance business in conjunction with his brother-in-law from Liberty's premises.

The memorandum (annexure "K") is dated 10 December 1992. The purchase of the electronic equipment is stated to have occurred in December 1990. Katsapas alleges that the allegations contained in the memorandum were made earlier to another senior staff member at Liberty as recorded therein. This staff member according to Katsapas ignored the allegations made by him.

Katsapas refers in his answering affidavit to a case of copyright infringement by Liberty. It is clear that this complaint by him was not included in the complaints which on his version started the chain of events. It is clear from annexure "Y" to his affidavit that he only took this up some three years after he allegedly became aware of it and after he started litigation against Liberty in the Industrial Court.

In respect of Katsapas' allegations concerning his first dismissal in 1992, it is true that a disciplinary enquiry was held that culminated in Katsapas' dismissal. It is also true that

witnesses testified about his aggressive and rude behaviour that impacted negatively on Liberty. There were however witnesses who testified about his contribution to Liberty and to individuals working there. Katsapas maintains that the disciplinary enquiry was a smokescreen, related to his disclosures of misappropriation by executives. From the relevant portion of the record of the first internal enquiry it appears that the chairperson of the enquiry took up a very curious attitude towards Katsapas' disclosures concerning the misappropriation referred to above. He stated that if they are not true then the disclosure amounted to insubordination and if they are true then "your breach of faith is insubordinate."

It is true that Katsapas did not at the inquiry pursue the allegations against the individuals who allegedly misappropriated Liberty funds. It was raised by the chairperson and Katsapas chose not to pursue it at that stage.

Katsapas was reinstated by Liberty. Whether the amounts paid to Katsapas by Liberty upon his reinstatement can properly be categorised as damages or not it is common cause that he was paid certain sums to ensure that he did not lose out financially. Furthermore, it is clear from the correspondence by the labour consultant representing Katsapas that he was threatening litigation in the Industrial Court before his reinstatement. Furthermore, the letter confirming Katsapas' reinstatement, dated 11 January, appears to visualise an employment relationship until

the 31 December 1993.

There therefore appears to be some substance to Katsapas' claim that the first dismissal was unjustified and that it was related to his disclosures.

Liberty supplies scant detail in respect of the alleged investigation into management misappropriation. Liberty's assertion that the investigation was closed when the executive concerned resigned is not entirely convincing. There is no documentation or explanation to show what concrete steps, such as checking of vouchers and accounts, were taken.

As to whether the offer made to Katsapas involved a contravention of the Life Office's Association agreement, Liberty in its founding affidavit firstly states that it was considering offering Katsapas a position in the sales division where he would earn both a salary and a commission.

Liberty asserts that it "in fact never made such an offer." It goes on to state that it is incorrect to say that such an offer would be in violation of the Life Office's Association Agreement("LOA") and that an LOA in respect of the earning of salary and commission simultaneously does not exist. It is stated on behalf of Liberty that it is permissible in terms of industry practice for an insurance consultant to be paid both a salary and commission and that there is no bar to this.

Katsapas' response to this is that it has always been Liberty's stated policy that an agent could not earn a salary in addition to commission as this was a violation of the LOA. He then annexes a copy of the LOA Agreement dealing with Commission Control and Remuneration Regulations which he submits supports his understanding of the position. Katsapas challenges the statement that an offer was never in terms of which he would be earning both commission and a salary.

Liberty in its reply states that "although it is not the policy of Liberty, the LOA agreement does not prohibit an agent , who sells a life policy, from earning a salary in respect of such sale." The LOA agreement supplied by Katsapas is admitted but it is denied that it supports his "understanding of the position." Liberty then goes on to describe how over the years he was paid a salary as well as commission and never complained. Katsapas' interpretation appears to be arguable. It is of course in dispute whether an offer was made by Liberty in terms of which both salary and a commission could be earned by Katsapas. Against this dispute is Liberty's own version that it was considering making an offer.

It is common cause that after his reinstatement Katsapas was not performing his former duties. It is also admitted by Liberty that it was considering transferring him. There therefore appears to be some substance to his complaint that his reinstatement was not bona fide .

It is common cause that the subpoenas served on Mr. Gordon and other senior executives were set aside by the Supreme Court, after the papers in this application were filed. Whatever correspondence passed between Mr Gordon and Katsapas, it could not realistically be expected that he personally would investigate Katsapas' allegations, which seen in their proper perspective and accepted by him as such, were minor in the greater scheme of things.

In respect of the allegations concerning the present Industrial Court case, the Sunday Times article states that Liberty successfully applied for a postponement. Katsapas in his answering affidavit states that the presiding officer erred in granting the postponement. Liberty was asked for comment and it could quite simply have placed the Industrial Court's Ruling on the postponement into perspective. It could have pointed out that the legality or otherwise of Katsapas' second dismissal was still to be considered by the Industrial Court and that it was improper to engage in a discussion or to publish a debate concerning the merits of the case still to be decided. I do not accept that Katsapas merely discussed the pleadings and the bundle of documents with Ms Blaine. He clearly discussed the merits of the case still to be decided.

As to whether there was an offer of R100 000,00 there is a denial by Liberty, in its founding affidavit, that such an offer was made. In his answer Katsapas states that there an offer was made.

There is also an indignant response to this by Liberty about confidential discussions being disclosed. There is also Katsapas' allegations about a conversation he said he overheard, involving Liberty's legal team in the Industrial Court and which features the dragging out of the Industrial Court case. Liberty's response is a denial of this and a statement that the matter was set down for the number of days agreed upon by both parties.

There are disputes in respect of the truth or otherwise of all the relevant parts of the newspaper article which are not soluble on the papers.

I turn to Liberty's claims that the statements were made maliciously and with an ulterior purpose which would nullify the defences raised by Katsapas.

Mr Bregman, representing Katsapas, in attempting to justify a discussion with the Sunday Times at this juncture, urged me to understand Katsapas' frustration and to see it as a cry of desperation. I am not wholly persuaded that this is so. The timing of the statements made by him is relevant. They come at a time when the Industrial Court case is pending and according to Katsapas, after an offer of settlement was made. There appears to be some substance to Mr Campbell's submission that the statements were made by Katsapas solely to pressure Liberty into settling. Mr Campbell likens the publication of the statements concerning the misappropriation of company funds to Katsapas'

statements concerning the copyright infringements made in 1995 when they allegedly occurred in 1993.

However, given Katsapas' attempts to communicate over an extended period of time with people who had influence and power at Liberty, including the Chairman of the Board, and having regard to his oft stated concern about the well-being of the company, and his allegations about overhearing a conversation which reflects stalling tactics being resorted to by Liberty, there must be some doubt about whether he acted maliciously in making the statements to the Sunday Times. He may from his perspective have turned to the press in desperation and frustration. On his version he first reported the misappropriation to James Skuse. He made a report to Higgo and Graham Croock. Subsequent to his reinstatement the labour consultant acting on his behalf wrote to Liberty requesting a meeting with senior personnel. He wrote to Donald Gordon and attended an annual general meeting where he put questions to him. He wrote to him subsequently. He made unsuccessful attempts to meet with a Mr Vosloo, a senior employee with Standard Bank Investment Corporation Limited, a company with an interest in Liberty.

Bowden, on behalf of Liberty, states in his replying affidavit that Katsapas' complaint in the press "is not so much that Liberty covers up acts of dishonesty within the organisation, but that it has made him suffer in the course of such cover-up. The self-interest is obvious." It may well be self-interest but it

does appear to be linked to the alleged irregularities Katsapas repeatedly stated he was concerned about and it may in addition be frustration seeking an ear.

To sum up at this stage; Liberty has established a prima facie case, open, as appears from what is set out above, to varying degrees of doubt. I turn to consider Liberty's apprehension of irreparable harm.

In my view the harm foreseen by Liberty is unlikely to occur. It is common cause that there was media coverage over the two days the matter was argued. The dispute between Katsapas and Liberty will be seen by investors and shareholders and the public at large in its proper perspective. It started some three or more years ago. It is an acrimonious labour dispute and the misappropriation alleged by Katsapas seen in its proper perspective is not really of the kind that threatens the present or future financial stability or prosperity of Liberty. If true, it really amounts to a past departmental abuse of funds on a minor scale that can hardly be described as having made any impression on the financial viability of Liberty or to be a cause for major concern. Shareholders and investors may be concerned to prevent a reoccurrence and to see to it that management reacts more swiftly in future but it is highly unlikely that there will be a rush to sell off shares. It is unlikely that potential investors will be influenced by statements related to a labour dispute that has its origins some three to five years ago. If one

accepts the rock-solid position of Liberty in the industry in which it operates, as spelt out by Katsapas and by Bowden on behalf of Liberty, it follows that that position is what will lead potential policy holders and investors. There certainly is no suggestion of present financial abuse on any scale.

Liberty seeks a prior restraint in the widest possible terms. This dispute between Katsapas and Liberty has finite parameters. The correctness or otherwise of the actions of either side relative to Katsapas' dismissal will be decided by the Industrial Court. In respect of the harm, if any, suffered or foreseen by Liberty, it could institute an action to recover such damages it has suffered or may suffer.

The Sunday Times sought comment and reaction from Liberty before it published anything. There is no indication that had Liberty put its side of the story, including emphasising that the Industrial Court was still to decide the rights and wrongs of the matter, the Sunday Times would still have published an article in the form submitted to Liberty. Comment and response would in all likelihood have placed the matter in the perspective set out above and would have led either, to reducing the newsworthiness to an extent that it would not have been published, or at the very least to the position where readers, shareholders and potential investors would have realised that in the greater scheme of things the dispute was a storm in a teacup.

By launching this application Liberty gave the dispute and Katsapas' statements prominence. The harm foreseen is unlikely to occur. In my view it is unlikely that the print or electronic media will prospectively display the kind of interest Liberty submits is to be expected. Furthermore, the Sunday Times sought comment and response before it published and there is no indication that other members of the media will not do the same. I cannot imagine what else of interest Katsapas could say to the media as he appears in this application at least to have exhausted his complaints against Liberty.

As to the balance of convenience, the perspective I set out above, does not, in my view, indicate a balance in favour of granting the interim relief, particularly, as Liberty seeks an interdict in the widest possible terms.

In respect of other remedies Liberty may have, this requirement is closely linked to that of "irreparable harm." As pointed out above Liberty can pursue an action against Katsapas. Even though on his own version he is struggling financially, we do not know what all his assets are. We know that he has disposed of some of his Liberty shares to finance litigation against Liberty. He also retained some shares. He appears to be a resourceful person and in my view it cannot be said that litigation against him would be an exercise in futility as nothing would be recovered.

Furthermore, in respect of Katsapas' statements which may amount to contempt of the Industrial Court, Liberty is free to pursue such remedies as are available to it in that Court.

In light of the view I take of the matter it is unnecessary for me to consider section 15 of the Constitution and its applicability to the facts of this case.

In the premises, in all the circumstances of this case the grant of an interim interdict is not warranted.

In so far as costs are concerned there was some confusion about Katsapas' legal representatives. On the first day Mr. Bregman appeared, assisted by an advocate and an attorney. On the second day I was informed that the appearance by the attorney as one of Mr Bregman's assistants was not sanctioned by a professional association and that the other assistant had taken ill. I have considered that the papers were voluminous and that constitutional points were raised. Having regard to all the facts of the case including its complexity, and in the exercise of my discretion in respect of costs I do not include in the order I make the costs of two counsel for any part of the duration of this case.

For all the reasons set out above I make the following order. The application is dismissed with costs.



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M. S. NAVSA

JUDGE OF THE SUPREME COURT