

Summary: David Kassel v Thomson Reuters (Markets) SA

Case Number 34227/16

1. This case concerns a particular class of persons: politically exposed persons ("PEP(s)"). There is no universal definition of PEPs. The Financial Action Task Force (FATF), an international body of which South Africa is a member, defines domestic and foreign PEPs. In essence, PEPs enjoy or have enjoyed high office within the state and its institutions from which office PEPs discharge prominent public functions. They include heads of state or government, senior government, judicial and military officials; and, importantly for this case, senior executives of state owned corporations.
2. The designation of this class of persons is intended to facilitate enhanced due diligence by financial institutions when a customer or prospective customer is a PEP. This enhanced scrutiny is part of a worldwide effort to exercise greater vigilance in the global financial system so as to detect and deter money laundering and the financing of terrorism. Many countries, South Africa included, have passed legislation that requires the enhanced due diligence of PEPs.
3. The Respondent ("Thomson Reuters") has an international database of PEPs. Thomson Reuters offers a service to subscribers called World-Check. Subscribers, for the most part financial institutions, consult World-Check to find out whether a person is listed in the World-Check database as a PEP.
4. The Applicant ("Mr Kassel") is listed as a PEP in the World-Check database. He is listed as a former senior official of a State Owned Enterprise.
5. Mr Kassel was a non-executive director of a company, Mbada Diamonds (Private) Ltd. Mr Kassel relinquished this position on 8 October 2014.
6. Mr Kassel complained that he should not be listed as a PEP. He said that his continued listing is defamatory and his name should be removed from the listing.

7. The central question before the Court was whether the continued listing of Mr Kassel as a PEP is defamatory, and, if it was so, did Mr Kassel have a right to prevent Thompson Reuters from publishing his name as a PEP.
8. The classification of persons as PEPs is intended to convey to the ordinary reader of World-Check that such persons warrant enhanced scrutiny because their positions carry greater risk of association with or involvement in transactions linked to money laundering or the financing of terrorism.
9. Counsel for the Applicant contended that this attribution of enhanced risk is defamatory of a person once they have resigned from the office that gave rise to their political exposure, unless there is some reason to suppose that the risk remains, and hence the listing as a PEP remains justified.
10. The court found the continued listing of Mr Kassel was not defamatory for two principal reasons.
11. First, that a person is politically exposed by reason of their occupancy of a high office of state does not say of that person that he or she has abused their office or is otherwise corrupt. It is the office that gives rise to the risk because of the influence that attaches to it. But that says nothing as to whether a particular person occupying that office has been compromised. That is the point of the due diligence that is to be done. To be listed as a PEP by reason of a person's occupancy of a high office of state does not injure the esteem in which they are held because mere occupancy of office entails no attribution of wrongdoing.
12. Second, the designation of persons as PEPs defines a very wide class, comprising the more senior position in government and the state. This too is relevant to the ordinary meaning of the statement concerning Mr Kassel. Mr Kassel is listed as a PEP in a class that is peopled with the great and the good. Whether a particular PEP is indeed good is the point of the enhanced scrutiny. But there is no presumption whatever that merely listing a person as a PEP renders them suspect.
13. In the result, the application is dismissed with costs.