REPORTING CRIME AND THE DEFAMATION DANGER: LESSONS FROM THE WORKPLACE

Believing someone to be guilty of a crime you call the police and have the suspect arrested, only to have the charges dropped. Can you be sued for defamation?

A recent High Court case provides some answers.

A fraudulent iPad order, an arrest and a R1.6m claim

A government employee was, at the instigation of officials in his department, arrested and taken in for questioning by police on suspicion of fraudulently ordering R138,000 worth of 14 iPads on departmental letterheads.

The police released him after taking a statement and his employers did not pursue disciplinary charges against him. They also withdrew an accusation of unlawful conduct in the workplace, with however an indication that the matter might be revisited if further information came to light.

The employee accused his employers of defamation and sued them for R1.6m in damages for his tarnished dignity and reputation at work, trauma, post-traumatic stress, medical expenses and loss of earnings

Holding that the publication or allegation of a suspicion of a criminal offence is defamatory and the onus is upon the accuser “to prove justification”, the Court concluded, on the facts of this particular case, that there was indeed a “reasonable suspicion” that the employee had been involved in the fraudulent order. The employer had therefore been justified in its conduct.

The employee’s claim for damages accordingly failed and he is lumbered with a (no doubt substantial) legal bill.

The acid test – 3 things an accuser must prove

An accuser relying on reasonableness of the publication as a defence must prove, held the Court, that he or she -

* Had reason to believe in the truth of the statement,
* Took reasonable steps to verify its correctness, and
* Acted reasonably when reporting the matter to the police, or that publication of the statement was reasonable in all the circumstances of the case.

What that all boils down to is this – whether in the workplace or out of it, you aren’t automatically guilty of defamation just because no prosecution ensues.

What is vital is that you have enough evidence to prove all three legs of the reasonableness test if it comes to justifying your actions in court.