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John Campbell SC

Call: 1989

Silk: 2005

Call to The Honourable Society of Gray's Inn: 2009

Barrister

Practice Profile

Highly regarded silk in South Africa, specialising in large commercial trials, competition proceedings, Judicial Review and actions and injunctions for defamation and privacy.

John has extensive experience in these fields and has also written for academic journals – both in South Africa and internationally – in most of them.

In the last few years, he has acted for a large European bank in Competition Tribunal proceedings arising from the alleged fixing of currency exchange rates of emerging markets in New York; for an international commodities trading company in lifting a freezing order over a consignment of cobalt from the DRC; for South African Breweries in an arbitration dispute under Uncitral rules arising from a contract for the delivery of its product which necessitated a close knowledge of the logistics business; and in a Judicial Review arising from the award of a tender worth approximately half a billion rands per year.

His breadth of experience equips him to act across wide ranging commercial fields from banking and contract law to civil fraud, judicial review and negligence, and in commercial injunctions.

John has appeared in courts at all levels both in South Africa and the United Kingdom, including the South African Constitutional Court and the United Kingdom Supreme Court, as well as in arbitrations.

Work Undertaken

Defamation, privacy and data protection

Areas of Experience

- Commercial Litigation
- Judicial Review
- Arbitration

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For the better part of 15 years, John was extensively briefed on behalf of South Africa's biggest circulation newspaper, The Sunday Times, in both privacy and defamation cases. This included opposing, on public interest grounds, an attempt by a previous Minister of Health, controversial because of her approach to the treatment of AIDS, to suppress publication of her own hospital treatment;^[1] opposing an order by a commission of inquiry that a journalist testify;^[2] and successfully defended an action brought after allegations that a catering company had caused food poisoning at a public event.^[3] Other important reported decisions include successfully acting for the largest theme park in Johannesburg against a television company that had broadcast a defamatory programme alleging that some of its rides were unsafe;^[4] and acting for various media companies in defamation actions brought against them by the previous State President of South Africa (the matter was withdrawn before trial); and for the publisher of a biography of a prominent member of Parliament critical of the government's then AIDS policy, for revealing the HIV status of three persons.^[5]

John has also written an article on the rules of pleading defamation in South Africa, in the South African Law Journal,^[6] arguing for harmonisation with the UK and Australian rules; a comparative article on the new defence of responsible publication (arguing that it is really the reintroduction of fault as an element of the tort of defamation);^[7] an analysis of what damages are designed to redress in defamation;^[8] a short note arguing that damages for loss of profits ought not to be claimable in a defamation action;^[9] and, finally, an article explaining the Roman Dutch common law action founded on human dignity.^[10] He regularly advises clients on all aspects of defamation, privacy and data protection.

Currently, John appears for the Freedom of Expression Institute in South Africa (a prominent NGO that, amongst other things, litigates freedom of expression issues with a constitutional aspect) in a case (both the civil trial and the injunction) that raises the question, amongst other issues, as to how far a freelance journalist may be held responsible for publication of an article in the media.

Competition law

John co-wrote (with four other authors) the leading academic work in South Africa on competition law^[11] drawing heavily from comparative United States anti-trust law and European law to give flesh to the new South African statute.

In practice, he has been involved both in large mergers and, particularly, cartel cases, all involving the assessment and cross-examination of expert competition economic evidence. These include acting for South Africa's Competition Commission in a case against the General Council of the Bar as to whether or not certain Bar Council rules were anti-competitive;^[12] for a media company in opposing a merger, by way of two judicial reviews taken to the Competition Appeal Court;^[13] acting for a vehicle tracking company in a successful appeal to the Competition Appeal Court which established that industry standards did not necessarily (and did not, in this case) constitute an anti-competitive practice;^[14] successfully arguing, in the Supreme Court of Appeal, that litigation privilege had been waived;^[15] and assisting in the eventual settlement of a cartel case by showing, in cross-examination, the existence of a further cartel in the industry concerned that had not been identified by the Competition Commission.

Commercial

Over recent years, John has practised extensively over the full range of commercial law including contracts, waivers, estoppel, company law, cession and damages. Recent cases include successfully defending SAB in an arbitration under Uncitral Rules against a claim by a logistics service-provider; acting successfully for a UK asset management company in obtaining an injunction against former employees from filching its trade secrets;^[16] and setting aside, on behalf of a UK-based commodities trading company, an injunction essentially freezing a consignment of cobalt^[17] which required argument on both the English law of specific performance, as well as aspects of both Roman Dutch law and of international arbitration procedure.

Judicial review

Before coming to the Bar, John acted as instructing attorney (solicitor) in the famous trio of Traub cases that established the doctrine of legitimate expectation in South Africa five years before the advent of democracy and the Constitution.[18] Some years later, he wrote a substantial article illustrating how substantive legitimate expectations could be protected, and with reference to all comparative law in the Commonwealth.[19] It has been widely cited in articles, books and case law in both the UK and South Africa. This was followed by a short article focussing on a decision by the Hong Kong Final Court of Appeal as an illustration of the approach that he had argued for.[20] John also wrote a further article for the UK publication, Judicial Review, on the operation of the remedy of substitution in South Africa.[21]

Other important cases in this field include a case reviewing a Cabinet Minister's decision not to pay subsidies available for the production of a film,[22] reviews of various decisions, both procedural and substantive, of the Competition Appeal Court,[23] and, recently, a review of the award of a large tender by the South African Police Service.

Other

John has also done a large variety of cases in areas such as tax,[24] (and has advised extensively on tax issues), copyright[25] and employment law.[26]

References

- [1] Tshabalala-Msimang and Ano v Makhanya and others 2008 (3) BCLR 338 (W)
- [2] Munusamy v Hefer NO and others 2004 (5) BCLR (508 O)
- [3] Times Media Ltd and Others v Niselow and Ano (2005) 1 ALL SA 567 (SCA)
- [4] Gold Reef City Theme Park (Pty) Ltd v Electronic Media Network Ltd and Ano 2011 (3) SA 208 (GSJ)
- [5] NM and others v Smith and others 2007 (7) BCLR 751 (CC)
- [6] Pleading Meaning in Defamation : Le Roux v Dey (2011) 128 SALJ 419
- [7] The Law of Defamation in flux : fault and the contemporary Commonwealth Accommodation of the Right to Reputation with the Right of Free Expression in Media Freedom and Regulation in the New Media World (Budapest : Wolters Kluwer, 2014), also delivered at a conference in Budapest in April 2014
- [8] Damages for Defamation in Comparative Perspectives on the Fundamental Freedom of Expression (Budapest : Wolters Kluwer, 2015)
- [9] An Anomaly : Special Damages for Libel (2011) 3 Journal of Media Law 193
- [10] Litigating Human Dignity : The Roman-Dutch Common Law [2011] E.H.R.L.R. issue 4, 375
- [11] Competition Law (Juta) 2002
- [12] Commissioner, Competition Commission v General Council of the Bar of South Africa and Others 2002 (6) SA 606 (SCA)
- [13] African Media Entertainment Ltd v Lewis NO and others [2008] 1 CPLR 1 (CAC); African Media Entertainment Ltd v Lewis NO and others [2009] 1 CPLR 1 (CAC)
- [14] Netstar (Pty) Ltd and others v Competition Commission and Ano [2011] 1 CPLR 45 (CAC)
- [15] Competition Commission of South Africa v Arcelormittal South Africa Ltd and others [2013] 1 CPLR 1 (SCA)
- [16] ...
- [17] ...
- [18] Traube and Others v Administrator, Transvaal and others 1989 (1) SA 397 (W)

Administrator, Transvaal v Traub 1989 (4) SA 731 (AD)

Traub v Administrator Transvaal, 1989 (2) SA 397 (T)

- [19] Legitimate Expectations : The Potential and Limits of Substantive Protection in South Africa (2003) 120 (SALJ) 292
- [20] Legitimate Expectations : Developments at Home and Abroad (2004) 121 (SALJ) 538
- [21] The Substitutionary Remedy under CPR 54.19 (3) : A response (2002) JR72
- [22] Minister of Home Affairs and Ano v American Ninja IV Partnership and Ano 1993 (1) SA 260 (AD)
- [23] African Media Entertainment Ltd v Lewis NO and others [2008] 1 CPLR 1 (CAC); African Media Entertainment Ltd v Lewis NO and others [2009] 1 CPLR 1 (CAC)
- [24] Housecalls Projects CC and others v Minister of Finance and others 1995 (3) SA 389 (T)
- Greenan NO (Estate Ebberlaar) and Ano v Commissioner for Inland Revenue 1996 (2) SA 984 (AD)
- Rand Mines (Mining and Services) Ltd v Commissioner for Inland Revenue 1997 (1) SA 427 (AD)
- Commissioner for Inland Revenue v Guiseppa Brollo Properties (Pty) Ltd 1994 (2) SA 147 (AD)
- Nissan SA (Pty) Ltd v Commissioner for Inland Revenue 1998 (4) SA 860 (SCA)
- Relier (Pty) Ltd v Commissioner for Inland Revenue 1998 (1) All SA 183 (SCA)
- [25] Rapid Phase Entertainment CC and others v South African Broadcasting Corporation 1996 JOC 597
- [26] Firestone SA (Pty) Ltd v National Union of Metalworkers of SA 1992 (3) SA 218 (T)
- Performing Arts Council of the Transvaal v Paper, Printing, Wood and Allied Workers Union and others 1994 (2) SA 204 (AD)

Notable Cases

Most recently in the UK, John has appeared in Consumer Credit cases. These include *Plevin v Paragon Personal Finance Ltd* and *Anor* at trial, in the Court of Appeal ([2013] EWCA Civ 1658 (16 December 2013); [2013] All ER (D) 152 (Dec)) and in the Supreme Court [2014] UKSC 61.

Academic Writing

John has also written extensively on aspects of public law for both UK and SA publications and his article on legitimate expectations in the *South African Law Journal* has been cited in UK text books. He has also published articles on libel in both UK and SA journals. In a forthcoming European work, he argues that the new Commonwealth defence of reasonable (or responsible) publication is, in reality, the re-introduction of fault into the law of libel.