

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

- | | |
|-----|--|
| (1) | NOT REPORTABLE |
| (2) | NOT OF INTEREST TO OTHER JUDGES |

CASE NUMBER: 2023-131956

DATE: 20 September 2024

In the matter between:

BENSON RUTENDO MATINYARARE

First Appellant

FRONTLINE STRAT MARKETING CONSULTANCY

Second Appellant

and

INNSCOR AFRICA LIMITED

First Respondent

ZINONA KOUDOUNARIS

Second Respondent

Neutral Citation: *Matinyarare and Another v Innscor Africa and Another*
(2023-131956) [2024] ZAGPJHC --- (20 September 2024)

Coram: Mabesele, Adams et Noko JJ

Heard: 12 September 2024

Delivered: 20 September 2024 – This judgment was handed down electronically by circulation to the parties' representatives *via* email, by being uploaded to *CaseLines* and by release to SAFLII. The date and time for hand-down is deemed to be 11:30 on 20 September 2024.

Summary: Appeal – execution – application to execute contempt of court orders pending appeal – for respondents to have succeeded in their application,

they were required to establish that: (a) exceptional circumstances exist for the relief sought to be granted; (b) proof exists, on a balance of probabilities, that: (i) they have suffered, and will continue to suffer irreparable harm as a result of appellants' unlawful contempt of the court order, and their continued contemptuous disregard of the interdicts granted against them; and (ii) the appellants will not suffer any irreparable harm – requirements of exceptional circumstances and irreparable harm considered – Superior Courts Act 10 of 2013, s 18 – not possible to lay down precise rules as to what constitute exceptional circumstances – each case has to be decided on its own facts - *Jai Hind EMCC CC t/a Emmarentia Convenience Centre v Engen Petroleum Ltd South Africa* – the question whether exceptional circumstances exist does not depend upon the exercise of a judicial discretion – it is a matter of fact which the Court must decide.

Contemptuous and flagrant disregard of court orders amounts to 'exceptional circumstances' –

Appeal dismissed with costs.

ORDER

On appeal from: The Gauteng Division of the High Court, Johannesburg (Makume J sitting as Court of first instance):

- (1) The appeal is dismissed with costs.
 - (2) The first and the second appellants, jointly and severally, the one paying the other to be absolved, shall pay the first and the second respondents' costs of the appeal, including the costs consequent upon the employment of two Counsel, one being Senior Counsel, on scale 'C' of the Tariff in terms of the Uniform Rules of Court.
-

JUDGMENT

Adams J (Mabesele et Noko JJ concurring):

[1]. This is an automatic appeal in terms of s 18(4)(ii) of the Superior Courts Act 10 of 2013 (the Act) against the judgment of Makume J (the court *a quo*) in terms of which it was declared and ordered, in terms of s 18(1), read with s 18(3) of the Act, that the operation and execution of the Judgment and the Order of this Court (per Malindi J) dated 16 July 2024 (the main judgment) shall not be suspended pending the decision on the appellants' appeal and the outcome of such appeal. The court *a quo* accordingly held that the Malindi J order 'is of full force and effect pending any appeal to be brought by the [first appellant] and shall not be suspended in terms of section 18(1) of the Superior Courts Act 10 of 2013 pending such appeal or notice thereof'.

[2]. In terms of the main judgment (delivered on 16 July 2024), a contempt of Court order was granted against the first appellant ('Mr Matinyarare') as follows: -

- (1) The publication by the [first appellant] of the social media posts about the [respondents] between 28 February and 5 March 2024 – as fully identified in the founding affidavit – is in

contempt of the order by Siwendu J delivered on 9 January 2024 and the [first appellant] is ordered to remove these posts immediately upon granting of the order.

- (2) The further publication by the [first appellant] of the social media posts about the [respondents] between 8 May 2024 and 25 June 2024 – as fully identified in the founding affidavit – is contemptuous of the orders by Siwendu J dated 9 January 2024 and by Wanless J dated 20 March 2024; and the [first appellant] is ordered to remove these posts immediately upon granting of the order.
- (3) The [first appellant] is committed to a period of imprisonment of three months, which committal is suspended on condition that the [first appellant] does not disseminate, directly or indirectly, false and defamatory allegations pertaining to the [first and second respondents], or in any other manner breach the orders by Judges Siwendu and Wanless.
- (4) The [first appellant] is liable to pay the [respondents] the costs of this application on an attorney client scale, including the costs of two counsel on scale “C”.

[3] The main judgment and the order were obviously preceded by and related to orders granted by Siwendu J (‘the Siwendu order’) and by Wanless J (‘the Wanless order’). It is therefore apposite to cite these orders in full.

[4] In terms of the Siwendu order, the following interdictory relief was granted against the first and the second appellants in favour of the first and the second respondents: -

‘1 Pending determination of the action to be brought by the [respondents] against the [appellants] within 30 days of this order,

1.1 the [first appellant] is directed forthwith to remove from his following social media accounts:

1.1.1 a tweet on the [first appellant’s] X (formerly known as Twitter) “Twitter” account with a handle “@matinyarare” titled “Innscor Has Destroyed the Taste of Zim Food”.

1.1.2 a videoclip titled “The Innscor Problem explained” posted on the social media X (formerly Twitter) under the [appellant’s] handle @matinyarare with the following link:

<https://x.com/matinyarare/status1726175343357383053?s=48&t=WGlybZPZvx8v5fer64T8Nw>.

1.1.3 a videoclip titled “The Innscor Problem explained” published on the [first appellant’s] Facebook page with the link:

<https://www.facebook.com/share/v/Wd4hNDc8BoXYKbia/?mibextid=7eNqk6>.

1.2 the [appellants], jointly and severally, are directed forthwith to remove from the [second appellant’s] website the following content:

- 1.2.1 an article entitled "Innscor Food and Feed Monopoly have destroyed Zim Beef, Pork and Chicken" authored by the respondent and published in the website of his business, [frontlinestrat.co.za](https://www.frontlinestrat.co.za) ("the article"). The article is accessible through the weblink, <https://www.iamrutenclo.online/post/innscor-food-and-feed-monopoly-have-destroyed-zim-beef-pork-and-chicken>

1.3 the respondents are interdicted and restrained from publishing any of the defamatory statements contained in the aforementioned articles and video.

2 Failure by the applicants to institute the action referred to paragraph 2 shall result in the automatic discharge of the interim interdict on the last day of the 30-day period referred to in paragraph 2.

3 The respondents are jointly and severally liable to pay the applicants costs of this application.'

[5] The Wanless order was granted by agreement between the parties and was issued in a contempt of court application brought by the respondents on an urgent basis. It granted further interdictory relief in favour of the respondents against the appellants and, in the relevant part, reads as follows: -

'1 The urgent contempt of court application is postponed *sine die*.

2 The parties, through legal representatives, engaged in settlement negotiations on the contempt application. Pursuant to the negotiations, the [first appellant] undertakes to remove the following posts from the [first and second appellants'] social media accounts:

2.1 A tweet on the first respondent's X (formerly known as Twitter) handle "@matinyarare" titled "Innscor GMO Tests: Raw Pork" and a post of the same content on his Facebook page on 24 February 2024.

2.1 A Facebook post published on the [first appellant's] Facebook page on 25 February 2024 entitled "Innscor GMOS risk exposing Zimbabweans, Zambians, Kenyans and Others to biological weapons".

2.3 The TikTok video entitled "Update on Innscor Case" published on <https://vm.tiktok.com/ZMM8W9cx7/>.

2.2 A tweet published on the [first appellant's] X (formerly known as Twitter) handle "@matinyarare" on 29 February 2024 titled "Glyphosate Damages and Settlements" found on the following link: <https://x.com/matinyarare/status/1762666906782142883?s=48>.

3 The [first appellant] undertakes not to publish and/or disseminate, directly or indirectly, any written articles, recordings, and videos related to the [respondents] and the quality of the [first respondent's] food until the finalization of the Rule 6 (12) (c) reconsideration proceedings.

[6]. The appellants applied for leave to appeal the main judgment and that application is presently pending before the court.

[7]. The facts that gave rise to the dispute between the parties are in the main common cause. The first appellant is a director of the second appellant and, by all accounts, is resident in the Republic of South Africa with a South African identity number, although he appears to be a citizen of Zimbabwe. The second appellant carries on business as a marketing consultancy in the Johannesburg area.

[8]. The first respondent is a listed public company, duly registered and incorporated in Zimbabwe, and is part of a group of companies which manufactures consumer staple and durable goods for the mass market in Zimbabwe. Its business involves light manufacturing, distribution, and retail of fast moving and durable consumer goods in Zimbabwe and internationally; the production of several of Zimbabwe's iconic brands in the consumer staple product space; and the milling of flour and maize. It also carries on business as a manufacturer of stock feeds, edible oils, and bakers' fats, as well as a producer, processor and marketer of pork and related food products and as a producer of chicken, table eggs and day-old chicks. The first respondent is also a retailer of stock feeds and day-old chicks. The second respondent is a Zimbabwean citizen and the founder of the first respondent.

[9]. At the heart of the dispute between the parties are certain statements which were published by the first appellant on a number of social media platforms, as fully set out in the aforesaid court orders, as well as on the official website of the second appellant. According to the respondents, as has been found by the High Court on more than one occasion, the statements are defamatory in the sense that they convey to the reader or viewer of the posts and videoclips that the first respondent manufactures and sells poisonous food products and that its products can cause cancer. The intention of these publications, which first surfaced during or about December 2023, is also to convey to the general public, so it is averred by the first respondent, that its (the first respondent's) products are otherwise of substandard or low quality and that it does not adhere to the applicable laws and regulations regarding the manufacturing of food products.

[10]. Following the respondents' discovery of the publication of these statements, they filed an urgent application during January 2024 for an interdict against the appellants, which resulted in the Siwendu order, which was handed down on 9 January 2024. At the time, the first and the second appellants were represented by an attorney, and they delivered notice of intention to oppose. They were, however, not present or represented at the hearing of the urgent application and the order was granted in their absence. The first appellant has never offered an explanation to the court for his absence or for his failure to file an answering affidavit in that urgent application.

[11]. When, according to the respondents, the appellants failed to comply with and adhere to the Siwendu order, they urgently launched contempt of court proceedings during March 2024, which resulted in the consent order granted by Wanless J on 20 March 2024. It bears emphasising that, through his counsel and attorney, the first appellant consented to the order by Wanless J, which *inter alia* directed as follows:

'The first [appellant] undertakes not to publish and/or disseminate, directly or indirectly, any written articles, recordings, and videos related to the [respondents] and the quality of the first [respondent's] food until the finalization of Rule 6(12)(c) reconsideration proceedings.'

[12]. And still the appellants, according to the respondents, failed to comply with any of the court orders, which compelled them to lodge further contempt of court proceedings on an urgent basis, which culminated in the main judgment by Malindi J, which he handed down on 16 July 2024. The respondents' case in the latter application, which was accepted by Malindi J, was that between 8 May 2024 and 9 July 2024, the first appellant published no less than twenty posts on his social media in violation of the Siwendu and Wanless JJ orders. Between 24 June 2024 and 9 July 2024, having received notice of the respondents' application for the contempt order, the first appellant published a total of further fifteen articles and videos on his social media, all in direct violation of the court orders by Siwendu and Wanless JJ.

[13]. The social media posts by the first appellant, so the case on behalf of the respondents continued, are in contempt of the Siwendu J order because they constitute 'defamatory statements contained in the aforementioned articles and video', they allege that the respondents' food products cause cancer in humans and that the respondents conduct their business dealings unethically or against the law. Moreover, the social media posts of the first appellant offend against the Wanless J order because, contrary to the first appellant's undertaking, these posts relate to the respondents and the quality of the first respondent's food products whilst the rule 6(12)(c) reconsideration application is still pending.

[14]. My understanding of the case of the appellants before Makume J, as is their case before the Full Court, is that they should be allowed to continue making and publishing statements in contravention of the Siwendu J order, the Wanless J order and the Malindi J order, because, so the argument goes, all of these orders were erroneously granted. The respondents contend otherwise and argue that the orders by Siwendu and Malindi JJ are of full force and effect for so long as they are not set aside. The first appellant is not entitled to disregard them. The rule of law requires this.

[15]. The determination of this appeal depends on the proper interpretation of the contempt order granted by Malindi J. The starting point is to determine the manifest purpose of the order. In interpreting a judgment or order, the court's intention is to be ascertained primarily from the language of the judgment or order in accordance with the usual well-known rules relating to the interpretation of documents.

[16]. A convenient starting point in the adjudication of the appeal is a discussion of the applicable principles, followed by the application of the facts *in casu* to those principles.

[17]. Section 18 of the Act provides that:

'(1) Subject to subsections (2) and (3), and unless the court under exceptional circumstances orders otherwise, the operation and execution of a decision which is the subject of an

application for leave to appeal or of an appeal, is suspended pending the decision of the application or appeal.

- (2) Subject to subsection (3), unless the court under exceptional circumstances orders otherwise, the operation and execution of a decision that is an interlocutory order not having the effect of a final judgment, which is the subject of an application for leave to appeal or of an appeal, is not suspended pending the decision of the application or appeal.
- (3) A court may only order otherwise as contemplated in subsection (1) or (2), if the party who applied to the court to order otherwise, in addition proves on a balance of probabilities that he or she will suffer irreparable harm if the court does not so order and that the other party will not suffer irreparable harm if the court so orders.
- (4) If a court orders otherwise, as contemplated in subsection (1) –
 - (i) the court must immediately record its reasons for doing so;
 - (ii) the aggrieved party has an automatic right of appeal to the next highest court;
 - (iii) the court hearing such an appeal must deal with it as a matter of extreme urgency; and
 - (iv) such order will be automatically suspended, pending the outcome of such appeal.'

[18]. The requirements for an order in terms of section 18(3) that alters the ordinary course of the processes in an appeal is now well established. In that regard see *Ntlemeza v Helen Suzman Foundation and Another*¹. For the respondents to have succeeded in their application, they were required to establish that: (a) exceptional circumstances exist for the relief sought to be granted; (b) proof exists, on a balance of probabilities, that: (i) they have suffered, and will continue to suffer irreparable harm as a result of appellants' unlawful contempt of the court order, and their continued contemptuous disregard of the interdicts granted against them; and (ii) the appellants will not suffer any irreparable harm.

[19]. The court *a quo* found that the respondents are entitled to insist on compliance with and immediate implementation of the contempt of court orders by Malindi J. First, it found that exceptional circumstances were established in that the appellants are continuously 'defying [a] Court order'. This, so the court held, is unheard of and therefore amounts to exceptional circumstances as contemplated by the SCA in *Tyte Security Services CC v Western Cape*

¹ *Ntlemeza v Helen Suzman Foundation and Another* 2017 (5) SA 402 (SCA).

*Provincial Government and others*², in which Ponan JA, agreed with the following proposition: -

'[W]hat is ordinarily contemplated by the words "exceptional circumstances" is something out of the ordinary and of an unusual nature; something which is excepted in the sense that the general rule does not apply to it; something uncommon, rare or different'³.

[20]. The exceptionality, so the court *a quo* commented, lies therein that even in the face of a threat of incarceration, the first appellant is undeterred. He, in the court *a quo*'s view, appears hell-bent on doing as he pleases in flagrant disregard for the law.

[21]. Second, it was held by the court *a quo* that if the appellants were to continue their total disregard of the order in the main judgment, the respondents would suffer damages in that the first respondent, being a listed company with shareholders, suppliers and finances not only in Zimbabwe but beyond its borders, including in South Africa, would suffer reputational damage and consequential financial damages which may be difficult to quantify. The ongoing publication of negative material about the first respondent, unless halted, is likely to cause its good name and repute harm that cannot be undone.

[22]. Lastly, the court *a quo* found that the harm that the appellants stand to suffer cannot be said to be irreparable because the first appellant would only suffer damages, and therefore possibly irreparable harm, should he be incarcerated and then lose his liberty and freedom. There is no irreparable harm to be suffered by the first respondent, so the court *a quo* reasoned, because he will only be arrested and held captive if he does not stop publishing defamatory statements about the respondents. The term of imprisonment will remain suspended for as long as he obeys the court order.

² *Tyte Security Services CC v Western Cape Provincial Government and others* 2024 JDR 2306 (SCA).

³ As per Thring J in *MV Ais Mamas Seatrans Maritime v Owners, MV Ais Mamas, and Another* 2002 (6) SA 150 (C) at 156H-J,

[23]. The appellants submit that the court *a quo* erred in that, whilst it held that defying court orders can and should be regarded as ‘exceptional circumstances’, it failed to assess whether indeed and how the first appellant was defying the said orders. If he had done such an assessment, so the contention continues, Makume J would have realized the error of his ways, and he would not have found any *mala fide* breach of the court orders in this case.

[24]. This submission is misguided. And that is so for the simple reason that a finding to that effect was already made in the Malindi order, which followed the Wanless order, which had directed that certain posts and statements made by the first respondent *post* the Siwendu order be removed and/or retracted. The implication of the latter orders is that, according to Wanless J’s order, which it will be recalled was by agreement between the parties, the first respondent was in contempt of the Siwendu order.

[25]. There is also no merit – none whatsoever – in the first appellant’s contention that there could not have been a contravention of prayer 1.3 of the Siwendu order. It cannot possibly be, as contended by the appellants, that prayer 1.3 of the said order did not prohibit or restrain the publication of new statements, but only the ‘aforementioned articles and video’ referring to those listed in prayers 1.1 and 1.2. This is an artificial approach at odds with commonsense and the realities in the matter and amounts to nothing more than fancy footwork. If regard is had to the order as a whole, as well as to what is ordered in prayer 1.3, there can be little doubt what was intended by the order – that being that the first appellant was interdicted from badmouthing the first respondent. Moreover, a finding to that effect was made by the Malindi order, which was based on the evidence presented in that urgent application.

[26]. The point which is worth repeating is that in the s 18(1) and 18(3) application before Makume J, as well as in this Full Court appeal, it is not an issue to be decided as to whether there was contempt or not. That is an issue which was required to be decided and which was in fact decided by Malindi J. In any event, the appellants’ reliance in support of their argument in that regard on

*Economic Freedom Fighters and Others v Manuel*⁴, is misguided. The point is simply that implicit in the finding by Malindi J that the first appellant was in contempt of court, is a determination that certain statements published by him were defamatory in that the said statements were 'likely to injure the good esteem in which the [first respondent] was held by the reasonable or average person to whom the statement was published'⁵.

[27]. The same can be said of the criticism by the appellants of the order by Siwendu J, who is accused of not having conducted the twofold enquiry and that she did not make a finding that the statements referred to in the application before her (or the order) were defamatory or unlawful. The fact that the interdictory order was granted can only mean that the requisite findings were made by her.

[28]. I therefore reject the contention that there was no disregard on the part of the first appellant for the Siwendu J order. The argument that Makume J should have revisited the enquiry relating to the requirements for contempt of court to be established and whether in fact these requirements were met in the application before Malindi J, similarly, falls to be rejected. The simple fact is that there was a finding of contempt of Court which implies compliance with the requirements by respondents.

[29]. The appellants also contend that Malindi J erred in that he failed to make a determination of the appellants' counter-application for a rescission, alternatively, for a suspension of the Wanless J order, which application was filed during May 2024 in response to the respondents again setting down the contempt of court application, which served before Wanless J. The rescission or the suspension application, I understand, is premised on the fact that, according to the first appellant, he did not give his consent to the granting of the said order by agreement. The import of this point I understand to relate to the prospects of success. The point made by the appellants is this. It appears that, in deciding the

⁴ *Economic Freedom Fighters and Others v Manuel* 2021 (3) SA 425 (SCA).

⁵ *Economic Freedom Fighters and Others v Manuel* 2021 (3) SA 425 (SCA) at para 30.

contempt of court application, Malindi J apparently did not apply his mind to the rescission application and on this basis alone the appeal against the Malindi J judgment will succeed. The same argument, according to the appellants, also apply to the judgment of the court *a quo*.

[30]. I need say no more about this argument than that the rescission / suspension application in respect of the Wanless J order had, in my view, no prospects of success. It was doomed from inception, which probably explains why same has to date not been proceeded with by the first appellant. In that regard, it will be recalled that the order was granted by agreement between the parties, which was confirmed by the first appellant's erstwhile legal representatives. It can therefore safely be inferred that Malindi J was of the view that the said application should fail. In wanting to resile from the agreement reached in that matter and by him disavowing his instruction to his erstwhile legal representatives, the first appellant is being opportunistic at best. There is therefore no merit in this argument.

[31]. Moreover, the difficulty with this argument is that even if Malindi J misdirected himself by not considering the counter-application, which I do not accept, it is of no moment in these proceedings, as was in fact held by Makume J at para 24 of the judgment *a quo*. The order of Malindi J stands and, on the basis of the rule of law, should be complied with. It cannot be, as contended on behalf of the appellants, that because the Malindi J order, and the other ones, are incompetent, they can simply be ignored. I reiterate that, in my view, Makume J and this Full Court were not required to inquire into whether or not the contempt of court orders were granted competently or not. The orders were granted, which required of the appellants to comply and the fact that they did not, as was found by Malindi J, means that they were in contempt of court.

[32]. The appellants furthermore contend that the respondents will not suffer irreparable harm if the court orders (especially the Siwendu J and Wanless J orders) are not implemented pending the application for leave to appeal or any appeal to the Supreme Court of Appeal or the Constitutional Court. Makume J

erred, so the contention goes, in finding that irreparable harm would be caused because of the ‘negative material about the applicants’ products’.

[33]. As regards the third s 18(1) and (3) requirement, it is the appellants’ case that the first appellant will suffer irreparable harm in that he has a constitutionally enshrined right to freedom of expression. He has been gagged from speaking about the first respondent without any determination of whether his speech is defamatory or unlawful.

[34]. In the final analysis, it is not possible to lay down precise rules as to what constitute exceptional circumstances. Each case has to be decided on its own facts. In *Jai Hind EMCC CC t/a Emmarentia Convenience Centre v Engen Petroleum Ltd South Africa*⁶, Sutherland DJP emphasized that the question whether exceptional circumstances exist does not depend upon the exercise of a judicial discretion, but their existence or otherwise is a matter of fact which the Court must decide.

[35]. In *University of the Free State v AfriForum and Another*⁷, the court held that the prospects of success on appeal is a relevant factor in determining whether there are exceptional circumstances justifying an order under section 18(3). In *Minister of Social Development Western Cape and Others v Justice Alliance of South Africa and Another*⁸, Binns-Ward J concluded that the judgment creditor’s prospects of success on appeal were so poor that they ought to have precluded a finding of a sufficient degree of exceptionality to justify an order in terms of s 18 of the Act. In *Zero Azania (Pty) Ltd v Caterpillar Financial Services SA (Pty) Ltd and a Similar Appeal*⁹, the Full Court held that the poor prospects of

⁶ *Jai Hind EMCC CC t/a Emmarentia Convenience Centre v Engen Petroleum Ltd South Africa* 2023 (2) SA 252 (GJ).

⁷ *University of the Free State v AfriForum and Another* 2018 (3) SA 428 (SCA).

⁸ *Minister of Social Development Western Cape and Others v Justice Alliance of South Africa and Another* 2016 JDR 0606 (WCC).

⁹ *Zero Azania (Pty) Ltd v Caterpillar Financial Services SA (Pty) Ltd and a Similar Appeal* 2024 (2) SA 574 (GJ).

success on appeal constitute in themselves the kind of exceptional circumstances that might justify interim execution.

[36]. In my view, the oddities of the respondents' case *in casu* warranted the judgment of exceptionality 'and took it out of the broad range of ordinary perils of litigation'. There have been three orders of this court – by Siwendu, Wanless and Malindi JJ spanning over a period of seven months – all three of which orders the first appellant has steadfastly and stubbornly chosen not to comply with. The first appellant's justification for his disregard and contempt of the orders is that they were not competently granted. The folly of this approach cannot be overstated. It cannot be that in a constitutional democracy, with the rule of law as one of its founding values, a person can and should take it upon himself to decide which laws to comply with and which ones not.

[37]. Moreover, in my view, the appellants' prospects of success against the Malindi J order in any appeal are poor. And because the appellants have so little prospect of success in obtaining leave to appeal, the Malindi order should not be suspended.

[38]. The irreparable harm to the first respondent, who is involved in a volatile industry, is self-evident. If the first appellant continues his defamatory statements of and about the first respondent and its food products and continues to act contrary to the Wanless J order, there is little doubt that the reputation of the first respondent will suffer damage from which it will recover with extreme difficulty. There is no guarantee, in any event, that a damages claim against the appellants would have any measure of success from a recovery point of view. The respondents must expect to suffer harm of a kind that is ordinarily associated with the appellate process taking its course, and without interim redress. But harm that is out of the ordinary requires intervention. Here, the appellants run the real risk of irreparable damage to its good name and reputation built up over many years. This constitutes an exceptional circumstance in addition to representing irreparable harm. There is therefore good reason to intervene in terms of s 18(3)

of the Act to prevent further losses suffered by the first respondent as a result of the first appellant's continued defamation and his contempt of the court orders.

[39]. In contrast, should the order be awarded, the appellants would not experience any irreparable damage. It could, at most, assert a claim for damages and recommence its publication of the statements.

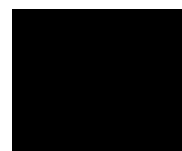
[40]. The court *a quo* was thus correct in finding that the requirements in s 18(3) have been met.

[41]. As for costs, same should be awarded to the respondents on the basis of the general principle that a successful litigant should be awarded his costs.

Order

[42]. Accordingly, the following order is made: -

- (1) The appeal is dismissed with costs.
- (2) The first and the second appellants, jointly and severally, the one paying the other to be absolved, shall pay the first and the second respondents' costs of the appeal, including the costs consequent upon the employment of two Counsel, one being Senior Counsel, on scale 'C' of the Tariff in terms of the Uniform Rules of Court.



L R ADAMS
*Judge of the High Court,
Gauteng Division, Johannesburg*

HEARD ON:	12 th September 2024
JUDGMENT DATE:	20 th September 2024
FOR THE FIRST AND THE SECOND APPELLANT:	M Salukazana
INSTRUCTED BY:	M J Maponya Attorneys Incorporated, Fourways
FOR THE FIRST AND THE SECOND RESPONDENTS:	H C Bothma SC and S Mahlangu
INSTRUCTED BY:	M V Ratshimbilani Attorneys Inc, Sandton
