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REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
LIMPOPO DIVISION, POLOKWANE**

CASE NUMBER: 2025-079559

(1) REPORTABLE: ~~YES~~/NO

(2) OF INTEREST TO THE JUDGES: ~~YES~~/NO

(3) REVISED.

DATE: 2 June 2025

SIGNATURE

In the matter between:

ELIZABETH MORONGOA MOTSEPE

1ST APPLICANT

IDENTITY NUMBER: 6[...]

MAGDELINE MOTLATJO MOTSEPE

2ND APPLICANT

IDENTITY NUMBER: 9[...]

MOGALE KLAAS MOTSEPE
IDENTITY NUMBER: 9[...]

3RD APPLICANT

-and-

ESTHER MOTSEPE
IDENTITY NUMBER: 9[...]

1ST RESPONDENT

CHRISTINA MATHUKWANE LETSHELELE
(Neé MOTSEPE)
IDENTITY NUMBER: 9[...]

2ND RESPONDENT

Delivered : 2 June 2025

This judgment was handed down electronically by circulation to the parties' legal representatives by e-mail and by uploading on the Caselines system. The date and time for hand down of the judgment is deemed to be **2 June 2025 at 3:00 PM.**

Date heard : 26 May 2025

Coram : Bresler AJ

JUDGMENT

BRESLER AJ:

Introduction:

- [1] This case came before Court on the 26th of May 2025 as an urgent application.
The Applicants apply for interdictory and ancillary relief against the

Respondents. The Applicants case is premised on the allegation that the Respondents are involved in a public campaign to publish defamatory statements on social media against the Applicants with the sole aim to defame the Applicants.

- [2] The Applicants submit that their constitutional rights are infringed and that the infringement is of an ongoing nature. As such, it renders the matter urgent.
- [3] Evidence was presented that the conduct of the Respondents have escalated to the point where the Applicants have reported it to the SAPS and a formal letter of demand was addressed to them. This only resulted in a renewed and intense attack on the Applicants on social media.
- [4] Having regard to the nature of the relief applied for, this Court ruled that the matter warrants the attention of the urgent court and the parties accordingly addressed the Court on the merits. Reasons were provided in Court and will not be repeated herein.

Factual synopsis:

- [5] The First and Second Respondents are extended family members of the Applicants. From the affidavits before court, it is evident that, at the heart of this matter, lies a contentious and ongoing family dispute over a deceased estate. As is often the case, parties do not see eye to eye once it comes to the administration of the estate.
- [6] The First Respondent appears to have a history of approaching the Applicants with antagonistic and, to a large extent, unsubstantiated allegations relating to their involvement in the administration of the deceased estate of the Late Klaas Mogale Motsepe, who is the deceased husband of the First Applicant. The

acrimonious relationship between the respective parties have lead to *inter alia* Protection orders and criminal charges pending between the parties.

- [7] On the 11th of May 2025, the First and Second Respondent caused several derogatory and defamatory statements to be published on Facebook and TikTok specifically mentioning the Applicants and tagging the Second and Third Applicants. In these statements, the Applicants were *inter alia* accused of practicing witchcraft, engaging in unlawful business practices, murder and being complicit in crimes of a sexual nature. Numerous videos were released by the First and Second Respondent on the said date and on several dates thereafter.
- [8] The Applicants have reported the incidents to the South African Police Services on the 12th of May 2025. On the same day, instructions were given to their attorneys to institute legal proceedings against the Respondents. This resulted in the current proceedings before court.
- [9] In retaliation and on the 12th of May 2025, the First Respondent published multiple further statements on TikTok. The Applicants thus caused their attorneys to address a letter of demand to the Respondents on the 13th of May 2025. On the same day, the First Respondent published further statements on TikTok explicitly stating that she will not abide by the Letter of Demand.
- [10] The Applicants submit that the First and Second Respondent will continue to unleash more personal insults and threats unless being met with judicial intervention.
- [11] In answer to the Applicants' allegations, the First Respondent essentially took the 'tit for tat' view. According to the First Respondent her conduct is in retaliation of the abusive and defamatory actions of the Applicants towards herself, her mother and her brother. She therefore labels the said videos and comments as a form of self defence and fair comment. During the proceedings,

the First Respondent remained adamant that she was attacked in public and has the right to respond on a public forum. She also reiterated that the statements were the truth. No corroborating evidence was presented to the Court pertaining to the alleged abuse during her childhood or any of the other derogatory remarks made by her.

- [12] The Second Respondent denies being involved in the alleged actions. She states that the First Respondent is the holder of the Facebook and TikTok accounts. Notwithstanding the said denial in general, she does concede in her affidavit that her voice note was published 'without her consent'. It presupposes that she did, at one stage or another, publish defamatory statements about the Applicants. There is in any event no evidence as to how the voice note came into the possession of the First Respondent if not provided to her by the Second Respondent. This constitutes publication. One does not make a voice note without intending to address this voice note to a third party. It was in any event not the case of the Second Respondent that this was a voice note made in private and without any third party having access thereto.

Issues that require determination:

- [13] This Court is only called upon to determine if defamation was established and, if so, the appropriateness of the relief prayed for in the Notice of Motion.

The Applicable Legal Principles:

- [14] It is common cause between the parties that First and Second Respondent conveyed information which information was *inter alia* published by the First Respondent on her TikTok account.

[15] In order to succeed, the Applicants need to show that the publication of the statements was wrongful. The Respondents may dispel wrongfulness by proving either truthfulness or public interest¹.

[16] In the unreported decision of **Godongwana v Perry-Mason Mdwaba**² the following was stated:

[37] The requirements for defamation are trite. It requires a twofold enquiry. The first is to ask whether the meaning was defamatory and the second is to decide whether the meaning so attributed to the words 'is likely to injure the good esteem in which the plaintiff was held by the reason able or average person to whom the statement was published.' The meaning of the statement is determined objectively by the legal construct of the reasonable reader and is not a matter on which evidence may be led.

[38] ...

[39] It is clear to this Court that there can be no doubt that the effect of these statements would in the eyes of the reasonable reader diminish the esteem in which any person about whom they were made was held by others in the community.

[40] Once the statement has been shown to be defamatory, it is presumed that that the statement was published wrongfully and with the intention to injure.

¹ **Neethling v Du Preez; Neethling v The Weekly Mail** 1994 (1) SA 708 (A) and **National Media Limited v Bogoshi** 1998 (4) SA 1196 (SCA)

² 2024 JDR 0206 (GJ)

[41] It accordingly falls upon the respondent to produce facts and evidence which would exclude wrongfulness and intention to injure.

[42] The respondent contends that he merely disclosed what was conveyed to him and that he never of his own volition, accused the applicant of corruption. This Court disagrees.

[43] From the exchange of words during the Newzroom Afrika interview the suggestion of corruption and the involvement of the applicant is clear.

[44] The contention that there is no thread of evidence to suggest the statements are ongoing is rejected by this Court as there are five instances of repetition of these statements on YouTube.

[45] The respondent's contention that the applicant seeks to interdict him from events that have already taken place is equally misplaced, in that in terms of prayer four of the notice of motion, no retraction has taken place as yet. In addition, prayer five and six has also not happened and is a future event. It is clear that the declaratory order pertains to past conduct and the interdict pertains to future conduct.

[46] In the answering affidavit the respondent does not specifically address any of the legally recognisable grounds which ordinarily negate wrongfulness in the delict of defamation. There is no mention of any defences in the respondent's heads of argument either.

[47] The defences in law available to the respondent are truth and public benefit, absence of animus iniuriandi and fair comment.

[17] There is no question in this Court's mind that the statements made by the First and Second Respondent are of a defamatory nature. In this Court's view,

neither of the Respondents have shown an absence of *animus iniuriandi* or fair comment. Both Respondents displays an attitude that the attack on the Applicants are warranted because of alleged conduct in the past. This conduct is not corroborated by any evidence. Even if there is evidence of abusive conduct in the past, it does not warrant the defamatory statements made by the First and Second Respondents. Social media is in any event not the appropriate forum to publish alleged criminal activities.

[18] To succeed with interdictory relief, it is trite law that the Applicants must establish a clear right, an injury suffered or reasonably apprehended and that no other suitable remedy are available to them.

[19] The Applicants have a clear right to protect their dignity and reputation. The injury is evident from the nature of the defamatory remarks and the widespread publication thereof. It is also evident that the Respondents feel that they are entitled to continue their conduct. As to the availability of an alternative remedy, it must be borne in mind that it must be shown to be a suitable remedy that would yield the same, or a similar result.

[20] In ***Hix Networking Technologies v System Publishers (Pty) Ltd and Another***³ the court stated that:

The appropriate stage for this consideration would in most cases be the point at which the balance of convenience is determined. It is at that stage that consideration should be given to the fact that the person allegedly defamed (if this be the case) will, if the interdict is refused, nonetheless have a cause of action which will result in an award of damages. This should be weighed against the possibility, on the other hand, that a denial of a right to publish is likely to be the end of the matter as far as the press

³ 1997 (1) SA 391 (A)

is concerned. And in the exercise of its discretion in granting or refusing an interim interdict, regard should be had inter alia to the strength of the applicant's case; the seriousness of the defamation; the difficulty a respondent has in proving, in the limited time afforded to it in cases of urgency, the defence which it wishes to raise and the fact that the order may, in substance though not in form, amount to a permanent interdict.

- [21] In the decision of ***Economic Freedom Fighters and Others v Manuel***⁴ the Supreme Court of Appeal stated at [89]:

[89] In circumstances where the applicant were obdurate, and where the integrity of an institution of state was being undermined on the basis of Mr Manuel's alleged corrupt and nepotistic conduct, an award of damages, in due course, could hardly be said to be a viable and compelling alternative to an interdict prohibiting further publication.

- [22] Likewise in this case, this Court is of the view that a potential damages claim is not a viable and compelling alternative to interdicting the conduct complained about. The Respondents do not show any remorse. They feel that their conduct is acceptable. On this basis, interdictory relief must be granted to avoid the continued

- [23] The Applicants are therefore entitled to the relief as claimed in the Notice of Motion.

Costs:

- [24] There is no reason why the cost order should not follow the outcome of the proceedings. The Applicants are therefore entitled to their costs as well.

⁴ 2021 (3) SA 425 (SCA)

Having regard to the nature of the proceedings, the urgency of the matter and the importance of the matter to the parties, costs to counsel is warranted on Scale B.

Order:

[25] In the result the following order is made:

25.1 The applicants' non-compliance with and deviation from the uniform rules of court in respect of the forms and service provided for in such rules is condoned and the application is heard as one of urgency in terms of rule 6(12)

25.2 The First and Second Respondent is interdicted and restrained from:

25.2.1 publishing or causing to publish any defamatory statements regarding or concerning the Applicants on WhatsApp, Facebook, Twitter (X), Instagram, TikTok or any other social media platform within the Respondents' direct or indirect control;

25.2.2 posting and / or publishing any photos or videos of the Applicants on WhatsApp, Facebook, Twitter (X), Instagram, TikTok or any other social media platform within the Respondents' direct or indirect control;

25.2.3 harassing, sending messages or contacting the Applicants to threaten or intimidate the

Applicants in any manner, whether directly or indirectly.

25.3 The First Respondent is directed to retract and remove from her Facebook and TikTok social media accounts and / or any other social media account(s) under her direct or indirect control:

25.3.1 The posts dated 10 May 2025;

25.3.2 The posts dated 11 May 2025;

25.3.3 The posts dated 12 May 2025;

25.3.4 The posts dated 13 May 2025 and any other subsequent posts made in relation to the Applicants which are of a defamatory nature.

25.4 The Respondents are directed to furnish a full unconditional apology, within 24 (twenty-four) hours from the date of this order, for the publication of the defamatory statements made against the Applicants contained on Facebook and TikTok and to publish such apologies on all their social media platforms.

25.5 In the event that the Respondents refuses to apologise and / or publish the apologies stated above, an order is granted for the immediate closure of the Facebook and TikTok accounts under the name Esther Motsepe. This order is to be submitted to Facebook, TikTok or any company administering and / or handling the social media accounts to immediately close and restrict all access to the said social media accounts.

25.6 The First and Second Respondent, jointly and severally, are ordered to pay the Applicants costs on party and party scale, such costs to include the costs of counsel on Scale B.

M BRESLER AJ
ACTING JUDGE OF THE HIGH COURT,
LIMPOPO DIVISION, POLOKWANE

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