

REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG**

CASE NUMBER: 2023-053714

DELETE WHICHEVER IS NOT APPLICABLE

1.REPORTABLE: NO

2.OF INTEREST TO OTHER JUDGES: NO

3.REVISED: NO

27 JUNE 2025

Judge Dippenaar

In the matter between:

SAMUEL BANELE MBIZA

FIRST APPLICANT

THE RELEVATION SPIRITUAL HOME

SECOND APPLICANT

and

ABONGILE TIMATI

RESPONDENT

JUDGMENT

Delivered: This judgment was handed down electronically by circulation to the parties' legal representatives by e-mail and uploading it onto the electronic platform. The date and time for hand-down is deemed to be 14h00 on the 27th of JUNE 2025.

DIPPENAAR J:

[1] The first applicant, Mr Mbiza, is the spiritual guide and founder of the second applicant, the Revelation Spiritual Home, which was founded in 2009. He acts as spiritual guide to members of the second applicant in the practice of African Indigenous Spirituality. The respondent, Mr Timati, is a former member of the second applicant.

[2] The genesis of the application lies in an order granted by Shepstone AJ in the urgent court on 21 June 2023. In terms of the order, the respondent was interdicted and restrained from *inter alia* disseminating directly and indirectly injurious falsehoods regarding the applicants, pending the outcome of Part B of the application. Costs were to be costs in the cause. In Part B, the applicants seek final interdictory relief against the respondent. It remains pending and has not yet been determined.

[3] In this contempt application, the applicant sought orders: (1) declaring the respondent to be in contempt of the order granted on 21 June 2023 by Shepstone AJ; (ii) that the respondent be committed to prison for a period of thirty days or such period as deemed just and equitable by the court, alternatively, the suspension of the committal order for a period of one year on condition that the respondent complies with the order of

21 June 2023 pending the finalisation of part B of the application and that the respondent removes the posts made on social media, including on Facebook against the applicants after 21 June 2023; and (iii) costs.

[4] The respondent sought the dismissal of the application, disputing that he was in contempt or in breach of the conditions imposed by the contempt order during the suspension period. He contended that the application was enrolled prematurely as Part B had not yet been heard and that the application could not be determined on the papers, but required oral evidence.

[5] The following issues require determination: (i) Condonation for the late delivery of the answering and replying affidavits respectively. (ii) The various points *in limine* raised by the respondent, being (a) purported non-compliance with the rules pertaining to service; (b) purported non-compliance with the 'Electronic Transmission and Communications Act', (c) purported non-compliance with the Justices of the Peace and Commissioner of Oaths Act 16 of 1963 ('the COA Act') and (d) purported non-compliance with the rules.

[6] It is apposite to deal with the ancillary issues first. Regarding condonation, condonation is sought by the respective parties for the late delivery of respectively their answering and replying affidavits. The respondent's explanation for his delay was stated in scant and terse terms, and broadly centered around his lack of availability due to being in the Eastern Cape attending family matters. He did not provide a detailed explanation for the entire period of the delay. The delay was not extensive and did not cause any real

prejudice to the applicant. Despite the deficiencies in the respondent's explanation, seen holistically, it is in the interests of justice for condonation to be granted.¹

[7] It is also in the interests of justice that condonation to be granted to the applicants for the late delivery of their replying affidavit. The delay in delivery of the replying affidavit was by and large occasioned by the defective way in which the respondent delivered the answering affidavit by simply uploading it onto the electronic platform. Neither of the parties contended for prejudice and it is clear that ultimately, no prejudice was suffered by any of the parties and the administration of justice was not unreasonably delayed.

[8] I turn to the points *in limine* raised by the respondent. The respondent's contention that there was non-compliance with the rules pertaining to service, lacks merit. The application was served on the respondent's attorney and the Sheriff served the application on the respondent personally, albeit that the respondent alleged that the service address was no longer his residential address. That averment is in contrast with his attorney's advices to the applicants' attorney and is incongruent with the return of service. The respondent's version that there was no personal service of the application on him stands uncorroborated. He did not put up any evidence to gainsay the return provided by the Sheriff, which must be accepted absent cogent facts to the contrary.²

[9] Regarding the alleged non-compliance with the Electronic Transmission and Communications Act, that Act does not exist. That was not disputed by the respondent in argument. It appears that the respondent was referring to the Electronic Communications and Transactions Act 25 of 2002 ('the ECTA'). The challenge raised relates to the

¹ *Van Wyk v Unitas Hospital and Another (Open Democratic Advice Centre as Amicus Curiae)* 2008 (2) SA 427 (CC) para 20; *Grootboom v National Prosecuting Authority and Another* 2014 (2) SA 68 (CC) para 23.

² *Interactive Trading 115CC v South African Securitisation Programme* 2019 (5) SA 174 (LP) para 14.

admissibility of certain screenshots annexed by the applicants to their founding affidavit. Those screenshots reflect the offending posts made by the respondent on Facebook.

[10] Section 1 of the ECTA defines a 'data message' as being 'data generated, sent, received or stored by electronic means and include - (a) voice, where the voice is used in an automated transaction; and (b) a stored record'. In relevant part, s 15 provides:

(1), 'In any legal proceedings, the rules of evidence must not be applied to as to deny the admissibility of a data message in evidence-(a) on the mere grounds that it is constituted by a data message; or (b) if it is the best evidence that the person adducing it could reasonably be expected to obtain, on the grounds that it is not in its original form.

(2) Information in the form of a data message must be given due evidential weight.

(3) In assessing the evidential weight of a data message, regard must be had to-(a) the reliability of the manner in which the data message was generated, stored or communicated; (b) the reliability of the manner in which the integrity of the data message was maintained; (c) the manner in which its originator was identified; and (d) any other relevant factor.

(4) A data message made by a person in the ordinary course of business, or a copy or printout of or an extract from such data message, certified to be correct by an officer in the service of such person, is on its mere production in any civil, criminal, administrative or disciplinary proceedings under any law, the rules of a self-regulatory organisation or any other law or the common law, admissible in evidence against any person and rebuttable proof of the facts contained in such record, copy, printout or extract.'

[11] In applying these provisions, I am persuaded that the screenshots are admissible. The weight to be attached thereto is determined by the factors in s 15(3). The screenshots are of the respondent's Facebook account. He is the author of the comments and posts which appear thereon. A confirmatory affidavit was provided by the person who took the screenshots, Mr Makhence, an employee of the second respondent, who monitors social media in accordance with s 15(4). The respondent's averments of suspected 'photo shopping' of the notice of motion which was posted on his Facebook page and the comments made by him are speculative and not underpinned by any primary facts.

[12] Considering all the relevant factors in s 15(3), I conclude that the screenshots are admissible and that due evidential weight should be given to them. In the circumstances, it appears to be the best evidence the applicant could reasonably have been expected to obtain.³ It follows that the respondent's challenge must fail.

[13] The respondent further challenged the competence of the translator who provided translations of his posts and comments, which were not in the English language. Only the translations of Ms Dubazana were challenged as no competency based certificate was provided and on this basis the respondent argued that she was not competent. Ms Dubazana is a sworn translator in the employ of the High Court, Johannesburg since September 2002. She provided a certificate of translation, confirming *inter alia* that the translations were true and accurate. She further provided a confirmatory affidavit. The respondent further did not take issue with the actual interpretation of the texts which were not in the English language but in isiXhosa, one of the official languages of South Africa. The provisions of r 60 are thus not applicable. Considering all the facts, the respondent's challenge lacks merit.

[14] The respondent's challenge to compliance with the Justices of the Peace and Commissioner of Oaths Act 16 of 1963 and the regulations promulgated thereunder, similarly lacks merit. The challenge is misconceived and is based on matters of practice, rather than formal requirements and erroneous submissions. At worst for the applicants there was substantial compliance with the relevant requirements and the validity of the affidavit has not been detrimentally affected.

[15] Lastly, the respondent raised the alleged non-compliance with the rules. It is difficult to properly understand the complaint. It appears to be based on the contention that as the applicant's allegations are false, their affidavit is defective and constitutes a

³ *Sebenza Shipping & Forwarding (Pty) Ltd v Passenger Rail Agency of South Africa* SOC 2019 (2) SA 318 (GJ) paras 8-11.

nullity. The respondent in bald terms alleges that the affidavits contain 'false information' and the court is being misled. No cogent supporting facts were put up in support of this proposition. The respondent's version that the affidavit contains false information is bald, confusing and unsubstantiated. Moreover, the complaint lacks legal substance. This point *in limine* too lacks merit and falls to be rejected.

[16] I turn to consider the merits. The issues are whether the respondent's four posts referred to in the founding affidavit were made prior to or after the order; whether those four posts were defamatory and injurious in nature; and whether the respondent's conduct regarding the posts and comments made during the period July 2023 to August 2023 amount to contempt of the order. Costs also need to be considered.

[17] The history of the interactions between the parties is set out in some detail in the judgment of Shepstone AJ and it is not necessary to repeat it.

[18] The applicants' case is that the respondent contravened the order on four occasions, being on 12 and 13 July 2023 and 17 and 30 August 2023 respectively. The first offending post occurred on 12 July 2023 when the respondent posted various comments in response to a video uploaded by a Pastor Mboro of the Incredible Happenings Church on his Facebook page on 2 July 2023. According to the applicant, the video contained numerous false and malicious allegations made by Pastor Mboro against the applicants. In sum, Pastor Mboro in the video contends that persons wearing t-shirts of the second applicant had been sent to his church to kill him. Those persons allegedly confessed that they had been sent by Prophet Samuel Radebe (who is involved with the second applicant) to do so. Pastor Mboro further stated that he had a dream of someone telling him that the people of Revelation Church would kill him as well as making various averments pertaining to hired killers and people fighting with Radebe would die.

[19] The respondent posted that he believed everything that Pastor Mboro was saying; that someone confessed to him as well and that he knew this would happen. In a chat between the respondent and a Mr Mbovu, the respondent commented that the applicants have very strong backup, that the people close to the first applicant are like his hitmen and that the first applicant has private investigators who are high within law structures.

[20] According to the applicants, the respondent clearly supports the defamatory and injurious remarks made by Pastor Mboro against the applicants and sought to paint the first applicant as being a thug as well as a dangerous and intimidating individual. The respondent in turn claimed that these comments were made prior to the order and are not defamatory.

[21] The second offending post occurred on 13 July 2023, when the respondent posted further defamatory remarks about the applicants on Facebook. He posted:

'I will post the voice note that contains the comments of the Upper House members when I had a private meeting with your leader at a certain place. Arrogance (followed by three vomiting emoji's). If they want my apology they must apologize to me first or pour poison for me to die'.

[22] According to the applicant, by posting the three emoji's, the respondent intended it to mean that the applicants are ugly and repulsive. The reference to Upper House is to a group of elders within the second applicant's structure, high up in its hierarchy. The last sentence allegedly implies that the applicants are murderers and capable of criminal activities. According to the respondent, the averments were not defamatory and the applicants' interpretation thereof was not what he communicated or intended to convey.

[23] On 14 July 2023, the applicant's attorney sent a letter to the respondent reiterating the terms of the order and advising the respondent that he was in contravention of the order. The letter remained unanswered.

[24] On 17 August 2023, the respondent posted the third offending comment, which translated amounts to: *'There is something I need to say. I have been through situations but I'm slippery and can't get caught'*. Underneath it, the respondent posted the first page of the notice of motion in the urgent application, referencing the applicants and the applicability of the post to them.

[25] According to the applicants, the respondent believes that there will be no implications for his continued conduct of posting injurious statements on Facebook against the applicants, which demonstrates his *mala fides* and willingness to disregard the court order.

[26] On 30 August 2023, the respondent posted the fourth offending comment on Facebook. Translated, the comment reads as follows: *'Who own travel agency that book buses for travelling in your church take a guess it's the brother –in – law of Mborofeta who is Bishop the guy whose allowed to do business. The cleaning money and it's a shame you don't know'*. The post elicited various responses.

[27] According to the applicant, the responses from other individuals demonstrate that this post was made about the applicants. Reliance was *inter alia* placed on a comment from one Xolani Xman Nyoka that *'obsession over The Revelation spiritual home institution and leader IMboni is reaching higher height'*. One Sandile Gqoboka responded by accusing the applicants of character assassination, bullying individuals, dividing families and institute(sic) the death of family members are as a result of rituals performed and implying that the first applicant has accused people of witchcraft and causing deaths. According to the applicant, this evidences that the respondent's contemptuous conduct is inciting others.

[28] All four of the offending posts were subsequently removed from Facebook by the respondent. The applicants relied on screenshots taken of the said posts. The present contempt application was launched on 24 January 2024.

[29] The applicants contended that the respondent's remarks were both wrongful and injurious and were understood by readers thereof to mean that the applicants are dishonest, involved in bullying tactics and criminal activity, are thugs, practice unprincipled behaviour and use their influence for the benefit of family members. It was further contended that the comments were made with malicious intent and the clear intention of damaging the applicants' character, reputation and standing in the community. According to the applicants, there has already been a division in the community as a result of the respondent's conduct, which is exacerbated by the offending posts, aimed at destroying the trust and respect of the community in the applicants.

[30] The respondent in response did not seek to put up any controverting evidence or proffer any explanation for his comments at odds with the implications thereof averred by the applicants in their founding papers. Instead he disputed that the statements were defamatory in bald and unsubstantiated terms.

[31] It was common cause between the parties that the respondent uses Facebook and has a Facebook profile. The order in its terms was also not in dispute, nor that the respondent had notice of the order. It was also common cause that the respondent was active on Facebook and made posts and comments thereon after the order.

[32] In argument the respondent contended that the application could not be determined on the papers, but required oral evidence. The applicants submitted the opposite. According to the respondent, the applicants' claim was invalid, no proper case was made out for relief and the applicants abused the interim order by launching the

contempt application without merit and were misleading the court. On that basis a punitive costs order was sought against the applicants.

[33] By and large, the respondent's version constituted a bald denial of the applicants' averments pertaining to the injurious nature of his posts. He denied that he made any injurious statements against the applicants and put them to the proof thereof. He further contended that the applicants' averments were based on assumptions and that there were no posts directly or indirectly referring to the applicants. In his heads of argument, the phrases 'fair comment' and 'privilege' are used, without any attempt to set out the requirements for such defences. No substantive defence was raised in the answering papers in any cogent manner.

[34] A dispute will not be genuine if it is so far-fetched or so clearly untenable that it can be safely rejected on the papers.⁴ It was incumbent on the respondent to set out evidence controverting the applicant's averments and to grapple therewith meaningfully. I am not persuaded that he did so.

[35] The respondent's version is untenable insofar as he contended that his comment to Pastor Mboro was made on 25 May 2023. Pastor Mboro only posted his video to which the respondent commented on 2 July 2023, after the granting of the order. Although he disputed the date of his first offending post in his answering papers, *ex facie* the posts and the facts, they were posted on the date alleged by the applicants. On the facts, the applicants have illustrated that the post was made on the date alleged. The respondent's version does not create any bona fide factual dispute on the issue and can be rejected on the papers as clearly untenable.⁵

⁴ *Wightman t/a J W Construction v Headfour (Pty) Ltd and Another* 2008 (3) SA 371 (SCA) para [12]-[13]

⁵ *Ibid.*

[36] In *Buffalo Freight Systems (Pty) Ltd v Crestleigh Trading (Pty) Ltd and Another*,⁶ the Supreme Court of Appeal enunciated the approach to be followed in relation to whether disputes of fact are bona fide thus:

“The court should be prepared to undertake an objective analysis of such disputes when required to do so. In J W Wightman (Pty) Ltd v Headfour (Pty) Ltd 2008 (3) SA 371(SCA), it was suggested how that might be done in appropriate circumstances.

A court must always be cautious about deciding probabilities in the face of conflicts of facts in affidavits. Affidavits are settled by legal advisers with varying degrees of experience, skill and diligence and a litigant should not pay the price for an adviser’s shortcomings. Judgment on the credibility of the deponent, absent direct and obvious contradictions, should be left open. Nevertheless the courts have recognised reasons to take a stronger line to avoid injustice. In Da Mata v Otto 1972 (3) SA 858 (A) at 689 D-E, the following was said:

In regard to the appellant ‘s sworn statements alleging the oral agreement, it does not follow that because these allegations were not contradicted – the witness who could have disputed them had died – they should be taken as proof of the facts involved. Wigmore on Evidence, 3rd ed., vol. VII, p.260, states that the mere assertion of any witness does not of itself need to be believed, even though he is unimpeached in any manner, because to require such belief would be to give a quantitative and impersonal measure to testimony. The learned author in this connection at p. 262 cites the following passage from a decision quoted:

“it is not infrequently supposed that a sworn statement is necessary proof, and that, if uncontradicted, it established the fact involved. Such is by no means the law. Testimony, regardless of the amount of it, which is contrary to all reasonable probabilities or conceded facts-testimony which no sensible man can believe-goes for nothing; while the evidence of a single witness to a fact, there being nothing to throw discredit, cannot be disregarded.”

[37] Considering all the facts, the respondent’s contention that oral evidence was required as a result of ‘the multiple disputes of fact’, lacks merit. On the material issues, the respondent’s bald denials can be rejected on the papers and do not raise *bona fide* disputes of fact.

⁶*Buffalo Freight Systems (Pty) Ltd v Crestleigh Trading (Pty) Ltd and Another* 2011 (1) SA 8 (SCA) at paras [19] and [20].

[38] The requirements for civil contempt are well settled in our law.⁷ These requirements are (i) an order must exist; (ii) it must be duly served on or brought to the notice of the contemnor; (iii) there must be non-compliance with the order; (iv) the non-compliance must be willful and *mala fide*. Once an applicant has proved the existence and service of the order and its non-compliance, the contemnor bears an evidential burden to present evidence in relation to willfulness and *mala fides* which casts reasonable doubt on whether his non-compliance with the order was willful and *mala fide*⁸. Where the applicant seeks a committal order, such as in the present instance, the applicable standard is that willfulness and *mala fides* must be established beyond a reasonable doubt.⁹ I accept that this standard applies in the present application as the applicants seek incarceration relief.

[39] The respondent admitted the existence and contents of the order and that he has knowledge of that order. His central ground of opposition was to dispute that he made any wrongful or defamatory publications regarding the applicants and thus to dispute non-compliance with the order. He further disputed that his conduct was willful or *mala fide*. He argued that there was a reasonable possibility that non-compliance with the order was not wilful and *mala fide*.

[40] In his heads of argument, the respondent persisted with the submission that the applicant's claim was invalid and no proper case was made out for the relief sought as it was not established that any of the respondent's comments were defamatory. The respondent did not deny that the comments were made. The respondent further contended that the first applicant is a public figure and the interdict does not make him immune from scrutiny. He complained that restrictions were being placed on his

⁷ *Fakie NO v CCII Systems (Pty) Ltd* 2006 (4) SA 326 (SCA); *Phoko & Others v Ekurhuleni City* 2015 (5) SA 600 (CC); *Matjhabeng Municipality v Eskom Holdings Ltd & Others*; *Mkhonto & Others v Compensation Solutions (Pty) Ltd* 2018 (1) SA 1 (CC) ('*Matjhabeng*') paras 67 and 85-88.

⁸ *Matjhabeng* supra para 63.

⁹ *Matjhabeng* supra para 67.

constitutionally protected rights and the defence of fair comment applied. It was further contended that the comments made by the respondent enjoy privilege. No such case was however made out in his papers, nor were the relevant requirements of the various defences addressed, either in the respondent's answering papers or his heads of argument.

[41] According to the respondent there was no proof that Pastor Mboro defamed the applicants and they did not allege any defamatory information by Pastor Mboro. It was submitted that the first applicant is a public figure who is not immune from scrutiny and that the words uttered by the respondent are not defamatory by nature. He submitted that posting the word arrogance and emoji's vomiting does not defame the applicants. In his heads of argument, it was submitted in a single sentence that a defence of fair comment applies equally to the respondent's comments. If the reports proved to be true that pastor Mboro was threatened and promised to be beaten up or killed by people purporting to be from the applicants' church, nothing prevented the respondent from voicing his opinion fairly. It was further argued that the comments by the respondent enjoy privilege as the first applicant is a public figure occupying the position as a priest of the church.

[42] The respondent further submitted that setting the matter down for hearing when part B had not been heard was premature as a court hearing that application might come to a different conclusion and that there are also material disputes of fact which cannot be determined without oral evidence. On that basis dismissal was sought with an attorney and client costs order. The respondent's submissions lack merit. I have already dealt with the alleged factual disputes issue. Whatever the ultimate outcome of Part B and whether the applicants are entitled to a final interdict against the respondent, does not detract from the existence of the interim order granted by Shepstone AJ. That order remains extant and enforceable.

[43] The issues which require consideration are first, whether the respondent's publications complained of are '*wrongful and/or defamatory comments regarding or with reference, directly or indirectly to the applicants*'. Put differently, whether there was non-compliance with the order. The second issue is whether the respondent in his affidavit cast reasonable doubt on whether his non-compliance with the order was willful and *mala fide*. These issues are considered in the context of the various statements and publications by the respondent.

[44] Before dealing with the main issues it is convenient to dispose of the additional issues raised by the respondent. The first is the contention that the respondent's statements were true and constituted fair comment. No evidence was presented by the respondent that his statements were true. The defence of fair comment, was distilled by Innes CJ *Crawford v Albu* ¹⁰ in the following terms:

'Inasmuch as it is the expression of opinion only which is safeguarded, it follows that the operation of the doctrine must be confined to comment; it cannot protect mere allegations of fact. It is possible, however, for criticism to express itself in the form of an assertion of fact deducted from other clearly indicated facts. In such case it will still be regarded as comment for the purpose of this defence. The operation of the doctrine will not be ousted by the outward guise of the criticism (see O'Brien v Marquis of Salisbury, 6 Times L.R., at p. 137). Then the superstructure of comment must rest upon a firm foundation, and it must be clearly distinguishable from that foundation. It must relate to a matter of public interest, and it must be based upon facts expressly stated or clearly indicated and admitted or proved to be true. There can be no fair comment upon facts which are not true. And those to whom the criticism is addressed must be able to see where facts end and comment begins, so that they may be able to see where fact ends and comment begins, so that they may be in a position to estimate for themselves the value of criticism. If the two are so entangled that inference is not clearly distinguishable from fact, then those to whom the statement is published will regard it as founded upon unrevealed information in the possession of

¹⁰ *CJ Crawford v Albu* ("Crawford") 1917 AD 102 at 114. See also *Democratic Alliance v African National Congress and Another* 2015 (2) SA 232 (CC) at 99 ("DA v ANC").

the publisher, and it will stand in the same position as any ordinary allegation of fact (see remarks of FLETCHER MOULTON, L.J., in Hunt v Star Co., 1908, 2 K.B. at p321). Further, the comment, even if clearly expressed as such, and based upon true facts, must be "fair" in the sense that it does not exceed certain limits.'

[45] Although it is lawful to publish a defamatory statement which is fair comment on facts that are true and are matters of public interest, this immunity is provisional and the publication will be wrongful if the defendant acted with improper motive.¹¹ Moreover, as stated in *Farrar v Hay*¹²: '*where the words complained of not only attack the plaintiff's actions as a public man, but also impugn his honour and private integrity*', a plea of fair comment will not avail as a defence.

[46] The onus is on the respondent to establish that the facts on which his comments were based are true or constitute fair comment. The respondent simply put up no primary facts supporting such conclusions, nor made out any such case in his papers. This defence, insofar as it was competent to be raised purely in laconic terms in the heads of argument, which is doubtful, in any event lacks merit.

[47] The second issue is that the respondent in broad terms contended that his right to freedom of speech was impeded. No facts were put up in support of such bald and unsubstantiated conclusion in the respondent's answering papers nor did the respondent properly address the issue in argument.

[48] Whilst it is correct that freedom of expression is a constitutional right¹³, it is not unbridled or without limitation. Such limitations emanate from s 16 and s 36 of the Constitution. Moreover the respondent's right to freedom of expression must be the

¹¹ *Crawford* supra 113-114 and 136-138.

¹² *Farrar v Hay* 1970 TS 194 at 201.

¹³ Protected under s 16 of the Constitution

balanced against the applicants' fundamental right to human dignity, which includes a number of values including their reputation, entrenched in s 10 of the Constitution.¹⁴

[49] The respondent has, simply put, made out no case that his right to freedom of expression has been curtailed.

[50] It is apposite to refer to the applicable principles pertaining to defamation before considering the statements made by the respondent. It was undisputed on the papers that the respondent's statements were published on Facebook. It was further undisputed that the first applicant was and is a spiritual leader or Imboni ¹⁵ of the second applicant, which has an estimated total membership of approximately three million people, including international members.

[51] It is trite that defamation is the unlawful publication, *animo iniuriandi* of a defamatory statement concerning a person. It is equally trite that a statement is defamatory if it has the effect of injuring a person's reputation by lowering such person in the estimation of right thinking members of society¹⁶.

[52] A defamation claim has three requirements, stated thus in *Le Roux v Dey*¹⁷:

'[84]...In Khumalo and Others v Holomisa ("Holomisa") this court stated that the elements of defamation are "(a) the wrongful and (b) intentional (c) publication of (d) a defamatory statement (3) concerning the plaintiff"

[85] Yet the Plaintiff does not have to establish every one of these elements in order to succeed. All the plaintiff has to prove at the outset is the publication of defamatory matter concerning himself or herself. Once the plaintiff has accomplished this, it is presumed that the

¹⁴ *National Media Ltd v Bogoshi* 1998 (4) SA 1196 (SCA) 1216J-1217B; *Khumalo v Holomisa* 2002 (5) SA 410 (CC) 418F-419D; *South African Human Rights Commission on behalf of South African Jewish Board of Deputies v Bongani Masuku and the Congress of South African Trade Unions* [2017] 3 All SA 1029 (EqC) ("Masuku") paras [28]-[29].

¹⁵ Meaning a prophet or messenger.

¹⁶ *National Media Ltd v Bogoshi* 1998 (4) SA 1196 (SCA).

¹⁷ *Le Roux v Dey* 2011 (3) SA 274 (CC) at para 84.

*statement was both wrongful and intentional. A defendant wishing to avoid liability for defamation must then raise a defence which excludes either wrongfulness or intent. Until recently there was doubt as to the exact nature of the onus. But it is now settled that the onus on the defendant rebut one or the other presumption is not only a duty to adduce evidence, but a full onus, that is, it must be discharged on a preponderance of probabilities. A bare denial by the defendant will therefore not be enough. Facts must be pleaded and proved that will be sufficient to establish the defences.*¹⁸

[53] The test for whether a statement is defamatory, is stated thus:¹⁹

'Where the plaintiff is content to rely on the propositions that the published statement is defamatory per se, a two-stage enquiry is brought to bear. The first is to establish the ordinary meaning of the statement. The second is whether that meaning is defamatory. In establishing the ordinary meaning, the court is not concerned with the meaning which the maker of the statement intended to convey. Nor is it concerned with the meaning given to it by the persons to whom it was published, whether or not they believed it to be true, or whether or not they then thought less of the plaintiff. The test to be applied is an objective one. In accordance with this objective test the criterion is what meaning the reasonable reader of ordinary intelligence would attribute to the statement. In applying this test it is accepted that the reasonable reader would understand the statement in its context and that he or she would have regard not only to what is expressly stated but also to what is implied.'

[54] The respondent's contentions that he did not make any direct or indirect reference to the applicants in his Facebook posts and his denial that these statements were wrongful, do not bear scrutiny.

[55] The test whether the statement refers to the applicants is objective; *'would the ordinary reasonable person to whom the statement was published be likely to understand the statement in its context to refer to the applicant.'*²⁰ In my view the statements refer to the applicants in such a way that they are readily identifiable²¹, although they are not

¹⁸ See also FDJ Brand LAWSA Volume 7 (Second edition) at 234.

¹⁹ *Le Roux v Dey* 2010 (4) SA 210 (SCA) paras 134-137 and *Le Roux v Dey* fn 17 supra para [89].

²⁰ *Williams v Van der Merwe* 1994 (2) SA 60 (E) 64; *Aymac CC v Widgerow* 2009 (6) SA 433 (W) at 23

²¹ *Sauls v Hendrickse* 1992 (3) SA 912 (A) 919; *Williams* supra 65-66

referred to by name. Although there was no direct reference made to the applicants in the posts, the order is wide enough to include any indirect reference to the applicants.

[56] The first respondent did not in my view put up any valid defence in respect of this claim. Measured against the relevant principles set out earlier, the respondent's comments meet the threshold set out in *Le Roux v Dey*. The comments are defamatory.

[57] In relation to the second offending post, I am not persuaded that the applicants have established that it is defamatory or injurious. The word 'arrogance' and the three sick emoji's are open to interpretation. I am not persuaded that the applicants' interpretation that the applicants are ugly and repulsive is the necessary implication thereof. For those in the know, the reference to the 'upper House' may denote a connotation to the structures of the second applicant. That does not mean that such connotation will be made by the objective reasonable person reading the post. The respondent's comments regarding the apology is also open to interpretation. The reference to poison does not necessarily connote, as the applicants contend, that the applicants are murderers and capable of criminal activities.

[58] The third offending post is not per se defamatory of the applicants. However, it illustrates *mala fides* on the part of the respondent and the willingness to disregard the court order which was granted. It thus disrespects the court and the rule of law and evidences an intention of continuing with his course of conduct. The respondent did not dispute the post.

[59] The fourth offending post denotes a willingness by the applicants to do business with people they are connected to. The responses referred to by the applicants, intimate that the comments were made of the applicants, although they are not directly referenced. Those responses further illustrate that the respondent's comments incited others in making defamatory remarks about the applicants. Again, the respondent did not dispute

the post, nor did he attempt to offer an explanation as to what he meant thereby. Considering the relevant test, I conclude that the post was defamatory.

[60] Having regard to the case put up by the applicants, it was incumbent on the respondent to put up facts which illustrated a valid defence or at the very least give context to his statements in the offending posts. He elected not to do so.

[61] There is in my view no reasonable doubt that the aforesaid publications were willful and *mala fide*, in contravention of the order. In applying the relevant principles to the facts, the respondent has not put up any valid defence on any of the grounds alleged why the statements were not wrongful and defamatory. I conclude that the comments made by the respondent are wrongful and defamatory, save as qualified elsewhere in this judgment.

[62] In my view, the respondent has further failed to discharge the evidentiary burden to cast reasonable doubt on whether his non-compliance with the interdict order and the contempt order was willful and *mala fide*. He has put up no cogent evidence on these issues, other than a bald denial. It follows that he is in contempt of those orders, applying the standard of proof beyond a reasonable doubt.

[63] At the hearing, the applicants' counsel made it clear that the objective of the applicants was not the outright incarceration of the respondent, but rather to obtain a coercive measure to force him to comply with the orders granted against him.

[64] By his conduct, the respondent illustrated a flagrant disregard for the order of the court granted by Shepstone AJ and a blatant disrespect for the court's processes. From his own posts, specifically the third offending post, it appears that he fully appreciates the consequences of his conduct and is willing to disregard the order as he considers himself

to be wily and can escape the consequences of his actions. Such attitude cannot be countenanced.

[65] As stated in *Fakie NO v CCII Systems (Pty) Ltd*:²²

[6] It is a crime unlawfully and intentionally to disobey a court order. This type of contempt of court is part of a broader offence, which can take many forms, but the essence of which lies in violating the dignity, repute or authority of the court. The offence has, in general terms, received a constitutional 'stamp of approval', since the rule of law- a founding value of the Constitution- "requires that the dignity and authority of the courts, as well as their capacity to carry out their functions, should always be maintained."

[8] In the hands of a private party, the application for committal for contempt is a peculiar amalgam for it is a civil proceeding that involves a criminal sanction or its threat. And while the litigant seeking enforcement has a manifest private interest in securing compliance, the court grants enforcement also because of the broader public interest in obedience to its orders, since disregard sullies the authority of the courts and detracts from the rule of law.'

[66] Cameron JA further cited with approval the dictum in *Cape Times Ltd v Union Trades Directories (Pty) Ltd* ²³, wherein it was held:

'Generally speaking, punishment by way of fine or imprisonment for the civil contempt of an order made in civil proceedings is only imposed where it is inherent in the order made that compliance with it can be enforced only by means of such punishment'.

[67] Willful disobedience of an order made in civil proceedings is both contemptuous and a criminal offence. As held in *Matjhabeng* ²⁴: *'The purpose of a finding of contempt is*

²² Supra at para [6].

²³ *Cape Times Ltd v Union Trades Directories (Pty) Ltd* 1956 (1) SA 105 N at 120D-E

²⁴ Supra, paras [48] and [50].

to protect the fount of justice by preventing unlawful disdain for judicial authority. Discernibly, continual non-compliance with court orders imperils judicial authority'. As stated in Fakie: 'In the end, whatever the applicant's motive, the court commits a contempt respondent to jail for rule of law reasons...'.²⁵

[68] Given the facts, I am not persuaded that the order can only be enforced by way of direct imprisonment at this juncture. In my view the respondent should be afforded the opportunity to avoid incarceration by complying with the order, pending the determination of part B of the application. The applicants had in the alternative, sought a suspended order for incarceration on certain conditions to enforce compliance with the court order. Such an order would constitute an appropriate coercive remedy in the circumstances. Were the respondent to breach the conditions, he would be the author of his own misfortune.

[69] It follows that the applicants are entitled to substantial relief. An attenuated order will be granted in appropriate terms. There is no reason to deviate from the principle that costs follow the result. In the notice of motion, costs were not sought by the applicants on a punitive scale. That was raised for the first time in the applicants' heads of argument. I am not persuaded that such an order is appropriate. Given the issues and the complexities involved, I am persuaded that the costs of two counsel on scale C is warranted.

[70] In the result, the following order is granted:

[1] The respondent is declared to be in contempt of the order granted by Shepstone AJ on 21 June 2023 under case number 2023/053714;

²⁵ *Fakie* supra para [20].

[2] The respondent is committed to prison for a period of thirty days, such imprisonment to be suspended for a period of one year or the final determination of part B of the application, whichever is the earlier, on the following conditions:

[2.1] that the respondent complies with the order of 21 June 2023 pending the finalisation of part B of the notice of motion dated 5 June 2023 under case number 2023/053714;

[2.2] that the respondent permanently removes all posts made on social media, including Facebook, against the applicants after 21 June 2023;

[2.3] that the respondent refrains from making any defamatory posts on social media, including Facebook regarding the applicants pending the finalisation of part B of the application referred to in 2.1 above;

[3] Should the respondent fail to comply with the conditions in 2 above, the applicants are authorised to apply on the papers, supplemented if necessary, for an order for the enforcement of the suspended order in 2 above or any appropriate alternative order;

[4] The respondent is directed to pay the costs of the application, including the costs of two counsel where so employed, on scale C.



EF DIPPENAAR
JUDGE OF THE HIGH COURT
JOHANNESBURG

HEARING

DATE OF HEARING : 23 APRIL 2025

DATE OF JUDGMENT : 27 JUNE 2025

APPEARANCES

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