

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

- (1) REPORTABLE: YES / NO
(2) OF INTEREST TO OTHER JUDGES: YES/NO
(3) REVISED.

CASE NUMBER: 2025-057909

SIGNATURE

DATE

In the matter between:

ANTOINETTE JULIANA CAVANAGH

First Applicant

TWO OCEANS MARATHON NPC

Second Applicant

and

STUART MANN

Respondent

Heard: 14 May 2025

Delivered: 05 June 2025

J U D G M E N T

YACOOB, J:

INTRODUCTION

[1] The first applicant, Ms Cavanagh ("Cavanagh"), is the chair of the Board of the second applicant, Two Oceans Marathon NPC ("Two Oceans"). Two Oceans is the body that organises a prestigious ultra-marathon in the Western Cape. It is common

cause that the Two Oceans Marathon is an important event on the running calendar in South Africa.

[2] The respondent, Mr Mann ("Mann"), is a runner and the author of a blog known as The Running Mann, on which he shares information about road running events and what he calls "exposé articles". He has apparently brought public attention to a number of irregularities and problems that arose in races including the Two Oceans and the Comrades Marathon. He is a member of Two Oceans.

[3] The applicants approach this court on an urgent basis for relief stemming from four articles or posts which Mann published on The Running Mann and on other social media platforms ("the publications"):

- (a) on 11 December 2024, an article that queries whether Cavanagh is an appropriate person to chair the board of Two Oceans, and sets out apparent inconsistencies between her professional and running credentials as set out in a press release announcing her election on the one hand, and those details of her credentials which Mann was able to verify on the other hand, and suggesting that these had been "embellished";
- (b) on 10 April 2025, dealing with certain controversies that emerged during the 2025 iteration of the Two Oceans, including a shortage of bronze medals, which Mann contends was due to Two Oceans accepting more entries than it had a permit for, and referring back to the December article to suggest that Cavanagh embellished her running history, and that the problems result from her being a less experienced runner than the press release claimed;

(c) on 14 April 2025, an article that sets out Cavanagh's running history, expanding on the "embellishment" theme, and refers to her having made numerous vociferous complaints about Two Oceans on social media in April 2023, before she was elected to the board, using those complaints as a basis to refer to Cavanagh as a "Karen" and insinuating that she has the rest of the board completely under her thumb, and, finally,

(d) on 20 April 2025, an article setting out a letter addressed to Mann by the applicants' legal representatives complaining of defamation and seeking a retraction, and in which Mann explains why, in his view, the complaints have no merit. The article also finally publishes Cavanagh's CV that served before the board when she was elected chair.

[4] The applicants seek an order that everything contained in the publications is defamatory and unlawful, and that Mann remove them and publish an apology in terms they suggest. They also seek an order preventing future publication of similar content based on the same or similar allegations. Alternatively, they seek an order that (all) the allegations contained in the publications are made with intention to injure them, or that the allegations violated their rights to dignity and privacy.

[5] Mann disputes the urgency of the application, denies that the content of the posts is defamatory or otherwise unlawful, and raises certain defences to the extent that this court finds that there is defamation. Mann also contends that the merits cannot be determined in application proceedings.

URGENCY

[6] It is contended for Mann that the application is not urgent because the first publication complained of was months ago, in December 2024.

[7] The applicants contend however that the publications have a cumulative effect. It is clear from a brief scan of the publications that they contain an escalation in tone and content with each publication. In addition, each publication refers to the others, which refreshes and builds on the effect of the previous publication.

[8] I am satisfied that, generally speaking, a complaint of a sustained and escalating campaign of defamation like the complaint made by the applicants can result in a finding of urgency.

[9] It must be said that the chaotic and vague manner in which the application is pleaded does not commend itself to determination on an urgent basis. The founding papers are vague, voluminous and lacking particularity. They contain more argument than fact. This would be frowned upon in an ordinary application, but to require a judge to trawl through papers to try and make sense of them and to get basic factual background from the answering affidavit is unacceptable in the urgent court. In my view it would be appropriate for me to decline to entertain the matter on this basis alone.

[10] Be that as it may, in view of the approach I take, I consider it to be appropriate to deal with the matter nevertheless.

THE APPROPRIATE TYPE OF PROCEEDINGS

[11] It is contended for Mann that it was inappropriate for the applicants to institute motion proceedings when suing for defamation, and that action proceedings are required. He contends that there is a foreseeable dispute of fact and that the applicants must bear the consequences of electing to proceed by motion.

[12] The applicants contend that there is no true dispute of fact, and rely on the judgment of the Supreme Court of Appeal in *Economic Freedom Fighters v Manuel*¹ (“*Manuel*”) for the proposition that a defamation claim may be brought on motion as long as no damages are sought.² However, this was not what the SCA decided. The SCA found that the question of the apology was “inextricably bound up” with the question of damages,³ and declined to confirm an order that the offending statement be retracted and apologised for. While confirming the finding of defamation, and the order that the offending statement be removed from all the appellants’ media platforms, the SCA referred the damages issue, the questions whether there should be a retraction, and whether an apology should be made, back to the High Court.⁴

[13] Even if there is no dispute of fact, the law has not been developed to permit the apology and retraction sought by the applicants to be sought and granted on motion. Naturally, as pointed out by the SCA, it is open to the applicants to seek and obtain on motion quick relief that may prevent further harm, such as a declaration that the

¹ 2021 (3) SA 425 (SCA)

² At para 111.

³ At para 130.

⁴ At para 132.

publications are defamatory, and a consequential interdict to prevent continued or further harm.⁵

THE CONTENT OF THE PLEADINGS

[14] I would ordinarily at this point set out the factual background. I do not because I have encountered unusual difficulties in establishing what that is.

[15] The applicants fail to set out a clear factual background. It is not clear whether this is because the applicants assume (wrongly) that because much of the information may be obtainable from public websites it is not necessary to do so. It is certainly not the function of this court to find information about an application that is not contained in the papers. The factual context is also relevant to whether the publications are defamatory or otherwise harmful as alleged, as the meaning of statements is determined by their context.⁶

[16] The *dictum* of this division in *Swissborough Diamond Mines (Pty) Ltd and Others v Government of the Republic of South Africa and Others* ("Swissborough"),⁷ is apposite, both with regard to the content of affidavits and the manner of referring to annexures. I have no compunction in referring to and relying on this authority despite it not having been relied upon by either party, as it is well-established law.

[17] The founding affidavit falls foul of the basic principles set out in *Swissborough*. It fails to clearly define the relevant issues or to set out the evidence upon which the applicants rely to discharge the onus they bear. Formulation of the issues is neither

⁵ Para 111.

⁶ *Le Roux v Day (Freedom of Expression Institute and Restorative Justice Centre as amici curiae)* 2011 (3) SA 274 (CC) para 87.

⁷ 1999 (2) SA 279 (T) at 323G to 327A in general.

precise nor comprehensive. The founding affidavit, rather than setting out facts “simply, clearly and in chronological sequence and without argumentative matter”,⁸ is almost devoid of any facts, and consists almost entirely of argumentative matter.

[18] In addition, the founding affidavit contains neither the dates of the publications, nor the specific statements or utterances complained of. According to the applicants this is because they complain of the publications in their entirety. The court is asked to go through 50 pages of annexures to the notice of motion, which are poorly formatted printouts, apparently from Mann’s blog. The top and bottom line of many of the pages is cut off. The printouts include photographs, items in different fonts which do not seem relevant to the flow of the writing, and which may be links to other articles, and copies of posts from other platforms. The printouts are not clearly marked as to which annexure is which. Nor are they particularised or identified in the founding affidavit.

[19] This is inconsistent with what is set out in *Swissborough*, that

“it is not open to an applicant or a respondent merely to annexe to its affidavit documentation and to request the Court to have regard to it. What is required is the identification of the portions thereof on which reliance is placed and an indication of the case which is sought to be made out on the strength thereof.”⁹

[20] Mr Ploos van Amstel, when dealing with the merits, pointed out that the applicants’ counsel failed to deal in argument with why the applicants allege that each publication in its entirety is defamatory. This was in fact the case, the sweeping submission being made that the publications are *prima facie* defamatory, as a whole

⁸ *Swissborough* at 324D-E.

⁹ At 324 F-H.

and cumulatively. The real issue lies in the fact that the defamation was pleaded in a broad and sweeping manner. Certain paragraphs have been picked out, but Cavanagh is at pains to emphasise that she considers each publication defamatory in its entirety, and that the extracts are simply for emphasis and to point the court to the nature of the defamation.

[21] Of course an entire publication or annexure may be *prima facie* defamatory in the context of certain cases. It is not the case in this matter. The publications consist of much material which is either not obviously defamatory, or not defamatory at all.

[22] For example, it is not clear how a photograph of someone I assume to be Cavanagh participating in an event, with a caption that "Cavanagh recently completed the 23km 'Explorer' event at the UTCT with her predecessor in the TOM Chair, Ilse de Wet", is defamatory. There are reams of examples of patently non-defamatory and even complimentary statements in the publications. Further, Cavanagh complains about Mann's use of the word "cronies" but this word does not appear in any of the four publications.

[23] Similarly, it is pleaded that the publications consist purely of false factual matter. However, a cursory glance at the publications demonstrates that the publications consist as much opinion as fact, and that at least some of the factual matter has a proper basis, for example, that Cavanagh completed the Explorer event referred to in the previous paragraph.

[24] While it may be the prerogative of a defendant or respondent to complain about such an approach, perhaps by taking exception to the manner of pleading, it is also not the function of the Court to attempt to sift out what may be defamatory and how.

In *Kruger v Johnnic Publishing*,¹⁰ an authority relied on by neither of the parties, this court confirmed that while in some circumstances it may be appropriate to simply refer to a publication as a whole, in others, particularly where the publication is discursive and contains material that is plainly not defamatory, it is necessary to identify the passages complained of.¹¹

[25] *Kruger* was a decision on an exception raised by the defendant, that the plaintiff's claim was vague and embarrassing, and that the defendant was embarrassed by not being able to identify which parts of the publication it needed to defend. In this case, I am constrained to find that the court itself is embarrassed by having to trawl through the publications, of which proper copies are not provided, to work out what the applicant's case is. This is not acceptable.

THE APPLICANTS' ONUS

[26] Even if it were acceptable in this case for the applicants to claim simply that the publications in their entirety are defamatory, with broad generalisations about their meaning, there is a further shortcoming with their pleadings which I have difficulty in overcoming.

[27] As stated above, the applicants do not provide any factual background or information on the basis of which a context for the publications and their alleged defamatory nature can be established. This approach seems to be based on an understanding that all they have to do is show publication of uncomplimentary

¹⁰ 2004 (4) SA 306 (T)

¹¹ *Kruger* aton my way 390G.

statements about themselves, in order to cast upon Mann the onus to demonstrate that there is no wrongfulness or intention.

[28] This understanding appears to be based on the *dictum* of the Constitutional Court in *Le Roux v Dey* (“*Le Roux*”),¹² that the applicants have to establish only that there was publication of defamatory matter concerning themselves. Once this is established, wrongfulness and intention are presumed, and a defendant must establish a defence that negates one or both of these requirements.¹³

[29] However, the question of whether the publications are defamatory is for the applicants to establish.¹⁴ In certain circumstances the defamation is obvious *ex facie* the publication. This was the case in *Le Roux*, on which the applicants rely heavily. Generally, though, it is accepted that the meaning of the statements is established with reference to their context, both the context in which the statements are made, and the context in which the applicants exist.

[30] In *Le Roux*, the court was dealing with a school deputy principal, Dr Dey, who claimed that he was defamed by a manipulated image in which his head was superimposed. The basis on which the image was found to be defamatory *per se* was that it “would probably undermine the esteem in which Dr Dey is held by others”.¹⁵ The purpose of the image was “to tarnish the image of two figures representing authority; to reduce that authority by belittling them and by rendering them the objects of contempt and disrespect; and to subject these two figures of authority to ridicule in the

¹² *Le Roux* at footnote 6 above

¹³ *Le Roux* para 85.

¹⁴ *Le Roux* para 89.

¹⁵ *Le Roux* para 106.

eyes of the observers who would predominantly be learners at the school. This means that the average person would regard the picture as defamatory of Dr Dey.”¹⁶

[31] This finding would not be possible had Dr Dey not established that he was a school deputy principal, an authority figure, and held in a particular type of esteem by others. This was part of what he had to establish, and did establish, to discharge the onus to show defamation.

[32] In argument Mr Premhid for the applicants referred to the judgment of the Supreme Court of Appeal in *Cadac (Pty) Ltd v Weber-Stephen Products Co and Others*,¹⁷ referred to in *Economic Freedom Fighters v Manuel* (“*Manuel*”),¹⁸ for the proposition that the decision in the applicant’s favour can be based on facts contained in the answering affidavit. Neither the paragraph referred to in *Manuel*,¹⁹ nor anything in the *Cadac* judgment supports this proposition. Even if it did, it would not, in my view, absolve an applicant from setting out facts in support of its case. And even if it were appropriate for an applicant to rely on the facts in the answering affidavit to make out its case, the facts in the answering affidavit do not suffice in this case.

[33] The applicants contend that on both the natural and ordinary meanings of the publications they are defamatory. They list their interpretations of what the publications, taken together, convey, and submit that the publications are both false and harmful. They rely on the SCA’s decision in *Manuel* for the contention that defamation exists when a publication tends to lower a person’s esteem in the eyes of the community. According to the applicants, the only relevant dispute of fact would be

¹⁶ *Le Roux* para 107.

¹⁷ 2011 (3) SA 570 (SCA)

¹⁸ 2021 (3) SA 425 (SCA)

¹⁹ *Manuel* para 93.

whether Mann was the author and/or publisher of the publications. The question of the accuracy of the content of the publications is one for which the onus lies on Mann, in an attempt to establish a defence. They contend that the content of the publications is enough, on its own, to demonstrate that they tend to lower their esteem in the eyes of the community.

[34] This is an inaccurate contention. In *Manuel*, for example, the statement complained on was found to be defamatory because it would diminish the esteem of the person about whom it was made in the eyes of the community.²⁰ The esteem of the person was a question of evidence. The SCA begins by describing Mr Manuel thus: "...Mr Trevor Manuel, formerly a member of parliament and South Africa's longest serving Minister of Finance, and at present the chair of a listed public company..."²¹.

[35] The basis for this description is that Mr Manuel

"... provided details of his lengthy political career, stretching from the beginning of his involvement in the ANC, to the long period of time he served as National Minister of Finance. He described the positions he had held in a number of well-known international organizations and set out his involvement in business and his association with academic institutions. He also provided details of a number of international and local awards he had received in recognition of 'my contribution to the country and to principles of democratic governance'. It was this commitment to country and democracy, so he asserted, that led to his participation in the selection panel."²²

²⁰ At para 35.

²¹ At para 1.

²² At para 9.

[36] Mr Manuel therefore provided a basis on which his esteem could be established, and a reduction of that esteem evaluated.

[37] In *Mthembi-Mahanyele v Mail & Guardian Ltd and Another*,²³ cited by the plaintiffs to support the proposition that a public figure is still entitled to protect their dignity, the SCA stated that “an explanation of the background to the making of the statement is required” before examining the “respective allegations of the appellant and the defences raised by the respondents”.²⁴ Evidence placing the statements in context is, thus, always required.

[38] To sum up, then, in discharging their onus to establish that the publications are defamatory, the applicants are required to establish both what their status or esteem is *and* that the publications tend to lower these in the eyes of the community.

[39] It is only then that the question whether the publications are defamatory can be determined, and only then that the onus to prove a defence is cast upon the respondent.

HAS DEFAMATION BEEN ESTABLISHED?

[40] In this case neither of the applicants have made out a case that the esteem in which they are held is of a particular type. Cavanagh does not favour the court with her own full history nor does she demonstrate that she is viewed with any particular esteem or that she has a reputation for integrity and good leadership. Two Oceans does not contend that it has run its events in a manner reasonably beyond criticism and above board. It does not even contend, let alone attempt to demonstrate that it

²³ 2004 (6) SA 329 (SCA)

²⁴ At para 7.

has conducted its events lawfully and in a manner compliant with its permits from the City of Cape Town. There is no attempt to demonstrate that any of the factual claims made in the publications is untrue, although there is a bald allegation that they are all false.

[41] The applicants do not set out any factual background in the context of which I can conclude that the publications are defamatory. The applicants also do not plead facts from which the alternative questions of violations of the rights to dignity and privacy can be properly determined.

[42] Even if I assume in the applicants' favour that the defamation was clearly and properly pleaded, I cannot find that the applicants have discharged their onus to establish that the publications are defamatory.

COSTS

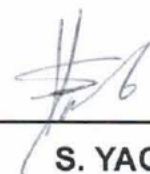
[43] Taking into account that the applicants are entirely unsuccessful, there is no reason that costs should not follow the result. The applicants sought a punitive costs order against Mann, while Mann seeks costs on ordinary scale C.

[44] It may be justified for the court to demonstrate its displeasure with the manner in which the application has been run by a punitive costs order, but on reflection I consider that the failure of the application is sufficient indication of the court's displeasure.

CONCLUSION

[45] In the result, I order:

1. The applicants' non-compliance with the Rules of this Court and the Practice Manual and Directives of this Division, relating to service and time periods is condoned, and the application is enrolled to be heard on an urgent basis.
2. The application is dismissed with costs, on Scale C, to be borne by the applicants jointly and severally.



S. YACOOB

**JUDGE OF THE HIGH COURT
GAUTENG DIVISION, JOHANNESBURG**

Delivered: This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the Parties/their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date for hand-down is deemed to be 05 June 2025.

APPEARANCES

For the applicants:	K Premhid, J Naidoo and I Macingwane (Pupil)
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For the respondent:	JA Ploos van Amstel
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