



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

Case 2025-081458

(1) REPORTABLE: Yes
(2) OF INTEREST TO OTHER JUDGES: No
(3) REVISED: Yes

Date: 09 June 2025

In the matter between:

ZA ONLINE STORE (PTY) LTD T/A ISTORE

Applicant

and

TOTHILL DEREK

First Respondent

BLACK ENTREPRENEURS ALLIANCE NPC

Second Respondent

NEWS NEXUS CITY

Third Respondent

Headnote:

Urgent application – interdict – false information and reputational harm – applicant targeted in coordinated social media and protest campaign to compel payment in subcontractor dispute – no contractual nexus – Rule 6(12) urgency established – defamatory statements on online platforms – content creators not subject to press code – constitutional rights to dignity (s 10), freedom of expression (s 16), and protest (s 17) considered – distinction drawn between

media freedom and general expression – unlawful coercion and falsehoods interdicted – final interdict granted.

JUDGMENT

DU PLESSIS J

Introduction

[1] This is an urgent application seeking interdictory relief restraining the respondents from publishing or disseminating certain statements alleged by the applicants to be false, misleading, and defamatory, from harassing, threatening or intimidating the applicant's staff, not to obstruct entrance to the applicant's retail stores and to not attempt to induce or coerce the applicant to make any payment to the first respondent. They also added a prayer that some of the posts on the respondents' social media be removed relating to the allegation that the applicant is indebted to the first respondent or has failed to pay its contractors.

[2] The applicants contend that, if not restrained, the respondents' statements will cause them imminent and irreparable harm. The respondents oppose the application, raising both procedural objections, including a denial of urgency, and substantive concerns, asserting that the relief sought infringes their constitutional rights to freedom of assembly, protest, and media expression.

[3] In this matter, urgency and the merits are closely intertwined and depend heavily on the factual matrix that gave rise to the application. These facts will be presented in some detail before turning to the legal framework and the appropriate remedy.

Factual background

[4] The applicant contracted with Teqtire to renovate some of its stores. Teqtire, in turn, subcontracted with Muneris, and Muneris, in turn, concluded a sub-sub contractual agreement with the first respondent, Mr Tothill. Mr Tothill did not provide the scope of the works, the remuneration or the manner in which the work was

performed, nor any particulars regarding his contract with Muneris. Very little is known about the subsequent dispute between Muneris and Mr Tothill.

[5] On 29 January 2025, Mr Tothill's attorney addressed a letter of demand to Muneris, alleging that Mr Tothill had performed sub contractual work and that the balance of R239 266,47 was due and payable to Mr Tothill. In the letter, the attorney stated that he was representing Mr Tothill. The letter referenced a reconciliation sent by Muneris and demanded proof of all expenditures deducted from the account as per the reconciliation.

[6] On 7 May 2025, Mr Tothill sent an email to the applicant's Chief Executive Officer ("CEO") requesting payment. The email stated that he would go to social media and Carte Blanche to expose his story if he did not get his money. He then admitted that he was a sub-subcontractor under the Teqtire group, whom he claimed to have tried to meet in private but received death threats, so he would appreciate a meeting at the applicant's head office to resolve the matter. He ends the letter with:

"Urgent assistance is needed. Or it leaves me with no choice but to get Apple headquarters of America involved to recovery (sic) money owed to me.

TEQTURE needs to pay there (sic) contractors."

[7] The applicants view this communication as an attempt to pressure them into intervening in a dispute to which they are not a party. They reasonably interpreted the reference to social media, Carte Blanche, and Apple's international headquarters as an effort to escalate public pressure should they decline to assist Mr Tothill in pursuing payment from Teqtire.

[8] On 14 May 2025, the applicant informed Mr Tothill that it had paid Teqtire in full and stated that it is thus no longer involved in the dispute. It requested not to be included in further correspondence and not to be drawn into further disputes that it is not a party to.

[9] Mr Tothill replied to this by stating:

[....] my next step is to take this to the public. Apple istore brand will be affected and hopefully Apple core and texture come forward and explain when am I getting paid.

[...]

I will be contacting Apple headquarters in America and laying complaints. Shanil Bruce and Anton has had multiple meetings with me and delivered empty promises...

I hope you all understand the next step ill do is take this to the media."

[10] On 20 May 2025, Teqtire responded that it had paid the subcontractor, Muneris Construction, in full, and that Teqtire had never employed Mr Tothill.

[11] On 20 May 2025, Mr Tothill approached the Black Entrepreneurs Alliance ("BEA") for support. In their letter to the CEO of the applicant, they state that they "champion ethical business practices, corporate accountability, and equitable economic participation for black-owned enterprises."

[12] They are concerned about the applicant's failure to ensure fair payment practices within its iStore-linked supply chain. They support Mr Tothill's efforts to obtain payment. They state that "this is not an isolated incident" and that multiple subcontractors had raised similar concerns, without specifying which subcontractors.

[13] The letter lists several demands and states that failure to act will lead to various escalations, including "[m]edia exposure via News Nexus City, which has already begun investigating this story."

[14] On 21 May 2025, the applicant requests that the respondents engage directly with Teqtire for proof of payment, as this will be reflected in their banking systems. News Nexus replied to this email (jointly signed by News Nexus and BEA), informing the applicant that the claim that payment has been effected is proven to be false, as there is no proof of payment from their contractor sent to Mr Tothill. They expressed dissatisfaction with the fact that neither iStore nor Teqtire are cooperating and that

they would then publish the story. They also informed the applicant of a planned protest action at the iStore offices, which would continue until iStore took appropriate and public action against the contractors.

[15] On 21 May 2025, the applicant nonetheless undertook to investigate and engage with Mr Tothill. The applicant informed Mr Tothill that Teqtire had confirmed its account with Muneris was fully settled, and that the applicant would work with Mr Tothill to resolve the issue and clarify the alleged non-payment to him. Mr Tothill stated that his invoices had still not been settled.

[16] During this process, the applicant sent another email to Mr Tothill to acknowledge his concerns and to inform him that they were investigating the matter. They asked Mr Tothill to supply them with copies of quotations, payment reconciliation statements, invoices, and any other document relevant to the respondent's complaint, to help them conduct a thorough investigation. No such information or documentation was provided, which hampered the applicant's ability to act meaningfully.

[17] On 25 May 2025, a day before the public protest, Mr Tothill sent a demand to Teqtire, Muneris, and the applicant, stating that he would fly from Cape Town to Johannesburg and that the applicant must refund his ticket as they had not provided timely feedback nor sent him proof of payment. He requested their presence to engage with him and the media.

[18] On 26 May 2025, a public protest took place outside the applicant's head office in Sandton. The respondents coordinated the protest. The protesters stated that the applicant mistreats contractors and withholds payments. News Nexus distributed the information on their platform, creating the narrative that the applicant mistreats contractors and withholds payments.

[19] The applicant's CEO engaged Mr Tothill during the protest action in a private meeting, where Mr Tothill admitted that his actions should not be directed at the applicant. However, he stated that he is using the applicant's brand name to put pressure on Muneris, with whom he has a dispute.

[20] On the same day, Ms Byron from the legal department of the applicant indicated that:

“As discussed between Chris Dodd [CEO] and Derek Tothill this morning, we confirm that all amounts owing by iStore to Teqture, in respect of the services rendered to iStore, have been paid in full.

In the interest of resolving any remaining matters, we propose that the related parties – Bruce (Teqture), Shimel (EvolutionOne), Anton (Muneris), and Derek (Rapid Construction) meet to discuss and clarify any amounts owed between the parties. Bruce has confirmed that he has reached out to Derek to set up a virtual meeting later today.

Should this not result in a resolution between the parties, we will arrange for an independent contractor mediator to facilitate a further meeting at the earliest opportunity.”

[21] In response, Mr Tothill acknowledged the reputational impact of his campaign but justified it on the basis that iStore allegedly had sufficient opportunity to assist. He stated, in part (quoted directly):

“I do apologise to Istore for taking the reputation damage but istore had sufficient time to intervene. [Teqture/EvolutoinOne] must just pay me and walk away from this. I approach this matter with integrity and honesty, unlike your supplier...

This is going to escalate to a point none of us can control due to TEQTURE/EvolutionOne skelm business ethics.”

[22] Later in the afternoon, News Nexus and BEA sent another email stating that there had not been a resolution, that the virtual meeting was not held, and that if the matter is not resolved by close of business the next day, further action will follow, including (quoting from the email):

- “A larger protest at your head office,
- Protests at the residence of your CEO

- Escalation to the Department of Trade and Industry
- Engagement with relevant Portfolio Committees in National Parliament
- A public boycott of iStore and all associated products
- Pickets at iStore locations renovated by Derek Tothill.

We expect payment to be made without further delay.”

[23] In the days to follow, Mr Tothill phoned various employees of the applicant, who stated that the tone was allegedly threatening and that alarmed the employees. None of these employees were in a position to address Mr Tothill's demands.

[24] On 27 May 2025, the applicant's attorneys sent a letter to the respondents asserting that the conduct complained of was unlawful and requested a written undertaking that it would cease. They requested that the respondents cease their actions and they were given until 28 May 2025 to provide a written undertaking confirming that they would comply.

[25] Mr Tothill replied to this request, stating that the protest was peaceful and lawful and conducted in accordance with his constitutional right to freedom of expression and peaceful assembly. He denied threatening any person. He requested an investigation and answers regarding iStores' subcontracting policies and practices. He did not give a written undertaking.

[26] To summarise: the applicant contracted with Teqtire, who subcontracted to Muneris, who in turn sub-subcontracted Mr Tothill. The applicant paid Teqtire in full; Teqtire states it has paid Muneris in full. Mr Tothill asserts that Muneris has not paid him, but Muneris's version is not before the Court. A letter from Mr Tothill's attorneys in January 2025 suggests that a reconciliation was provided, but that he disputed deductions. The reconciliation was not attached to any affidavit.

[27] On the evidence before this Court, the applicant has no contractual relationship with Mr Tothill. Whether a moral or ethical obligation exists to ensure subcontractor payment in its value chain is not a matter this Court can determine. The sole question

before the Court is whether, on the legal facts as presented, the relief sought is competent.

[28] The applicants submit that Mr Tothill's campaign is calculated to apply reputational pressure on them to intervene in a dispute involving a third party, despite having no direct contractual obligation to him. They contend that his actions are deliberate and intended to compel their involvement.

[29] The applicant is also of the view that it made bona fide attempts to assist Mr Tothill, which he rejected, and that he furthermore refused to provide documents to assist the applicant to come to a bona fide resolution.

[30] The respondents disagree. They state that they are exercising their lawful rights of freedom of expression, and that the actions of News Nexus City are protected in terms of section 16(1)(a) of the Constitution (media freedom). They state that the protest was peaceful and that it was an ordinary protest captured by bystanders on cell phones.

[31] Mr Tothill remains unpaid, and even though there is no legal nexus between iStore and Mr Tothill, they assert that iStore bears some responsibility to ensure that subcontractors and sub-subcontractors are paid. Mr Tothill's case is that the applicants benefit unfairly from his work while he remains unpaid, and that he is homeless and his workers remain unpaid.

Procedural questions

[32] The respondents also raised procedural objections, stating that they had not had sufficient time to respond, as they had only received the papers on Friday, 29 May 2025, instead of Thursday at noon. They objected to the truncated timeframes and stated that it does not make sense to launch the urgent application if the protest had already taken place the previous week. No future protest has been confirmed or announced; therefore, the claim of prospective harm is entirely speculative.

[33] As the respondents had not provided a written undertaking, the applicants initiated this urgent application. The papers were served on the first respondent at 18:00 on Friday, 29 May 2025, but without a case number due to technical difficulties with CourtOnline. A version with a case number was served on Monday afternoon, 2 June 2025. The matter was initially set down for hearing on Tuesday 3 June 2025, but after representations from the respondents, I agreed to postpone the hearing to Friday 6 June 2025 morning via MicrosoftTeams.

[34] The respondents state that the matter is not genuinely urgent as contemplated in Rule 6(12). This is because the protest occurred on 26 May 2025 and was peaceful. There was no evidence of harm, violence or disruption to public order. They further asserted that there was a delay in bringing this application, as the applicant had to act before or immediately after 26 May 2025, but instead delayed in doing so.

[35] The respondents also objected to the manner in which the application was brought. They submit that it did not comply with the Practice Directive, including the "Thursday for Tuesday" rule. The unissued notice of motion was served on Friday, after the roll had closed, and only an issued and filed version was served on Monday afternoon. They submit that this timing undermined the procedural safeguards that ensure both parties have a fair opportunity to prepare.

Urgency

[36] However, this must be considered in light of Rule 6(12)(b), which provides:

"In every affidavit filed in support of any application under paragraph (a) of this subrule, the applicant shall set forth explicitly the circumstances which it is averred render the matter urgent and the reasons why the applicant claims that the applicant could not be afforded substantial redress at a hearing in due course." (my underlining)

[37] The notion of "substantial redress at a hearing in due course", as contemplated in Rule 6(12)(b), requires that the remedy be not merely available, but also effective and meaningful in the circumstances. The question of harm is not the pivotal question,

but an absence of substantial redress in due course.¹ This was set out in *East Rock Trading 7 (Pty) Ltd v Eagle Valley Granite (Pty) Ltd*:²

"[6] The import thereof is that the procedure set out in rule 6(12) is not there for taking. An applicant has to set forth explicitly the circumstances which he avers render the matter urgent. More importantly, the applicant must state the reasons why they claim that they cannot be afforded substantial redress at a hearing in due course. The question of whether a matter is sufficiently urgent to be enrolled and heard as an urgent application is underpinned by the issue of the absence of substantial redress in an application in due course. The rules allow the court to come to the assistance of a litigant because if the latter were to wait for the normal course laid down by the rules it will not obtain substantial redress.

[7] It is important to note that the rules require the absence of substantial redress. This is not equivalent to the irreparable harm required for the granting of interim relief. It is something less. He may still obtain redress in an application in due course but it may not be substantial. Whether an applicant will not be able obtain substantial redress in an application in due course will be determined by the facts of each case."

[38] In other words, the essence of the test for urgency lies in whether the applicant can obtain substantial redress in due course. A matter is urgent if the applicant demonstrates, through facts, that immediate judicial intervention is necessary, and that waiting for a hearing in the ordinary course would render any later order ineffective or meaningless in protecting the applicant's rights. When a court is satisfied that there will be no substantial redress in due course, then and only then does the court enrol the matter to consider the merits of the case.

[39] The primary question the court must ask is whether the applicant can obtain substantial redress in due course. If the answer is no, the matter may be enrolled on the urgent roll. Only once that threshold is crossed do secondary considerations arise. These include whether the applicant unduly delayed launching the application, whether the procedural timeframes were unreasonably truncated, whether there was

¹ V de Wit 'The correct approach to determining urgency' (2021) 21(2) *Without Prejudice* 13.

² [2011] ZAGPJHC 196.

non-compliance with the court's practice directives, whether notice to affected parties was adequate, and broader considerations of the administration of justice. While these factors are relevant, they cannot displace the core requirement under Rule 6(12)(b). Procedural imperfections should not bar urgent relief where warranted, unless they show that the matter is not genuinely urgent or that the non-compliance is so severe that it undermines the orderly administration of justice.³

[40] During argument, Mr Mafu submitted that the application was premature and that the issues could be addressed through less intrusive measures, such as continued engagement between the parties, particularly now that all are legally represented. He further submitted that, insofar as reputational harm is alleged, the applicant retains the ability to rebut or clarify the contested statements in the public domain.

[41] The central question is not merely whether alternative remedies exist in law, but whether they would adequately mitigate or reverse the harm that the applicant seeks to avoid. While engagement and public clarification may have value in specific contexts, they are not legal remedies in the strict sense. In the present matter, and on the facts before this Court, I am not convinced that such alternatives would constitute substantial or effective redress.

[42] While alternative remedies, such as damages or a final interdict, may be available, they are not effective in these circumstances. As the oft-used metaphor goes, a plate once broken and glued may still resemble a plate, but it will never be whole. The same is true of reputation. The applicant seeks protection against future infringement, not redress for past harm. What is sought is not an interdict against lawful protest, but against false claims regarding a legal obligation that does not exist. Should the public campaign be based on misinformation, the applicant will not have substantial redress in due course.

[43] I am satisfied that the applicant has made a case for a targeted campaign that includes threats of protest action at both its business premises and, of particular concern, the private residence of its CEO. The correspondence demonstrates an

³ V de Wit 'The correct approach to determining urgency' (2021) 21(2) *Without Prejudice* 14.

intention on the part of the respondents to escalate the campaign until they achieve the desired outcome. The volatility of the situation and the respondents' refusal to provide an undertaking to cease and desist from spreading false information that is detrimental to the applicant's reputation justify the approach taken by the applicants to the urgent court.

[44] Of particular concern is the ongoing publication of false claims about the applicant's contractual liability, disseminated on a platform that does not appear to subscribe to any recognised journalistic standards or formal editorial accountability. If these posts are not removed, the harm already suffered by the applicant will continue, as the publication may indefinitely perpetuate reputational damage. In the absence of a remedial order, the injury becomes ongoing, rather than confined to a single act of defamation.

[45] In a world where it is increasingly difficult to distinguish between facts and falsehoods, it is essential to uphold the obligation to ensure accurate reporting on social media pages with large followings that present themselves as media outlets. The dangers of such platforms are that, regardless of any engagement users may have with the platform, they are not guaranteed accurate and fair reporting, as they would be if News Nexus adhered to the Press Code. Once such a narrative takes hold, based on demonstrably false information, it can spread like wildfire. This situation cannot be meaningfully remedied in due course by any ordinary legal means.

[46] That then leaves the court to consider the secondary factors and whether the secondary factors preclude the court from enrolling the matter on the urgent roll. *Luna Meubel Vervaardigers (Edms) Bpk v Makin*⁴ allows for three degrees of urgency, placing the issue of urgency on a spectrum. These degrees determine the level of relaxation of court rules. The standard rule is that papers must be filed by noon on Thursday for a hearing on the following Tuesday at 10:00. In more urgent cases, but not extreme urgent cases, there may be a deviation from filing on Thursday, but the hearing is still set for the following Tuesday. In extreme urgent cases that require

⁴ 1977(4) SA 135(W).

immediate action, papers can be filed for a next-day or even same-day hearing. This is also provided for in the Practice Manual.

[47] While I appreciate Mr Mafu's concern regarding the deviation from the standard practice of filing before Thursday noon, it is not entirely accurate to say that a party cannot file on any other date, as indicated above.

[48] The applicant did not provide detailed reasons for its inability to comply with the Thursday-for-Tuesday filing convention. The facts show it was already evident by Wednesday that the respondents would not furnish a written undertaking. The founding papers were served on Friday afternoon, although they had not been issued. This is common practice to alert the other side that an urgent application is imminent, affording them extra time to respond while awaiting a case number.

[49] The respondents only secured legal representation on Monday. At the first hearing on Tuesday, I stood the matter down to Friday, giving the respondents maximum time to file their papers.

[50] I am satisfied that, in these circumstances, the deviation from the Thursday-for-Tuesday timeline does not displace the applicant's entitlement to relief. The matter is accordingly enrolled as an urgent matter.

Merits

[51] Before addressing the competing constitutional rights involved in this matter, it is essential to outline the legal requirements for the relief sought. The applicants are requesting final interdictory relief. The well-established criteria for a final interdict are:⁵

- a. a clear right;
- b. a continuing injury or an injury reasonably apprehended; and
- c. the absence of similar protection by any other ordinary remedy.

[52] The applicants primarily rely on a clear right not to be defamed and not to be coerced into acting on a legal dispute to which they are not a party, asserting that the

⁵ *Setlogelo v Setlogelo* 1914 AD 221 at 227.

respondents' conduct infringes this right. The applicant contends that its right to reputation is violated by the continued dissemination of false information and the threat of coercive conduct. Whether the interdict should be granted must therefore be assessed against these requirements, with due consideration given to the constitutional rights involved.

[53] The constitutional rights involved are the applicants' right to dignity and reputation (in terms of the common law specifically, but also section 10 of the Constitution), as well as the respondents' right to freedom of expression (section 16) and their right to peaceful assembly and protest (section 17). Depending on the context, aspects of privacy (section 14) concerning the CEO's residence may also be indirectly implicated.

[54] The applicant's right to reputation was not seriously contested. The key dispute lies in whether injury has occurred or is reasonably apprehended.

[55] Section 16(1) of the Constitution provides explicit protection for freedom of expression, which encompasses freedom of the press and other media, the freedom to receive or impart information or ideas, freedom of artistic creativity, academic freedom, and freedom of scientific research.

[56] A difficulty that arises in this case concerns the unclear nature of News Nexus City. In his confirmatory affidavit, Mr Dinesh Haribhai, the Chief Executive Officer of News Nexus City, neither describes the legal nor the editorial character of the platform, nor does he clarify whether it subscribes to the Press Code of South Africa. Mr Tothill, in his answering affidavit, refers to News Nexus as a "media outlet." The applicant, by contrast, describes it in the founding affidavit as an "online content channel." The applicant could not ascertain that they are subject to the press code.

[57] Such platforms often operate without formal editorial oversight or adherence to recognised journalistic standards. They appear to inhabit a regulatory no-man's-land, primarily governed by the platform's terms and conditions, not subject to the same institutional accountability mechanisms as traditional media. Yet, they assert protections under media freedom without demonstrating the existence of institutional

safeguards. This distinction becomes crucial in assessing whether such platforms and their contributors fall under section 16(1)(a) of the Constitution, the right to freedom of the press and other media, or under section 16(1)(b), which guarantees freedom of expression more generally. While everyone enjoys the latter, traditional media institutions bear additional responsibilities and may benefit from a distinct level of protection under the former.

[58] Because the second respondent, in their heads of argument, asserts that News Nexus City is a media company and therefore enjoys the protections of section 16(1)(a) of the Constitution, which confers specific freedom upon the press and other media, I will proceed on the assumption that this claim is made seriously. However, I do not need to decide whether News Nexus City qualifies as a media entity, other than to state that, while they brand themselves as a news platform, it remains unclear whether it operates with journalistic accountability or editorial oversight that would distinguish it from general public expression, or whether it relies on “citizen journalism”. According to the link provided in the supplementary affidavit and practice note, the content appears to be disseminated through TikTok and Facebook posts by unaffiliated individuals. Their content is not curated through formal editorial processes, but rather appears as ad hoc-created content distributed via social media platforms.

[59] Even accepting, for argument's sake, that News Nexus qualifies as “media”, the conduct at issue in this matter falls outside the bounds of constitutionally protected reporting. Section 16(1)(a) does not immunise reckless or false publication, nor does it protect reporting intended to exert coercive pressure rather than to inform the public. What follows, then, is an assessment of whether the relevant statements and conduct meet the constitutional and common-law standards for lawful publication and expression.

[60] Section 16 not only confers certain rights on the press but also obligations.⁶ The content of this obligation has been laid out in various cases. For instance, in *Khumalo v Holomisa*,⁷ O'Regan stated that “[a]s primary agents of the dissemination

⁶ *Khumalo v Holomisa* 2002 (8) BCLR 771 (CC) para 22.

⁷ 2002 (8) BCLR 771 (CC).

of information and ideas, they have a constitutional duty to act with *vigour, courage, integrity and responsibility*" (own emphasis). She continues by stating that this requires the media to be scrupulous and reliable when performing their constitutional obligations.

[61] Freedom of expression, like all other rights, is not an unlimited right. Again, in *Khumalo v Holomisa*⁸ it was acknowledged that the right to free speech often intersects with the law of defamation, where people and companies are entitled to protect their reputation and good name. This requires that a balance be struck between the protection of freedom of expression and the protection of reputation and good name on the other.

[62] The *actio iniuriarum* protects the personality rights of individuals and juristic persons, including dignity, privacy, and reputation. In the context of defamation, it is the common-law mechanism for pursuing delictual damages or interdictory relief. Defamatory statements include statements that are aimed at injuring the reputation of a person (or entity) in its character, trade and business.⁹

[63] One of the elements that must be proven in such an action is "unlawfulness". For a statement to be lawful, it must be substantially true.¹⁰ There are various defences against unlawfulness, including fair comment and that the publication of the statement, although false, was reasonable.

[64] The defence requires a factual basis. Commentary must be based on facts that are either true or clearly stated as assumptions, clearly indicating that it is such, and deducible from the facts on which it is based.¹¹

⁸ 2002 (8) BCLR 771 (CC).

⁹ *Dhlomo NO v Natal Newspapers (Pty.) Ltd* 1989 1 SA 945 (A).

¹⁰ Lion-Cachet, F. N. (2020). *An analysis of press regulation and the proposed Media Appeals Tribunal in line with the constitutional imperative of a free and independent press* (LLM dissertation, North-West University) p 38.

¹¹ Brand Media Law in South Africa 65.

[65] When delving into the question of reasonableness of the false comment, the court in *National Media Ltd v Bogoshi*,¹² (quoting *Lange v Australian Broadcasting Corporation* [1997] HCA 25; (1997) 189 CLR 520) states:

"Whether the making of a publication was reasonable must depend upon all the circumstances of the case. But, as a general rule, a defendant's conduct in publishing material giving rise to a defamatory imputation will not be reasonable unless the defendant had reasonable grounds for believing that the imputation was true, took proper steps, so far as they were reasonably open, to verify the accuracy of the material and did not believe the imputation to be untrue. Furthermore, the defendant's conduct will not be reasonable unless the defendant has sought a response from the person defamed and published the response made (if any) except in cases where the seeking or publication of a response was not practicable or it was unnecessary to give the plaintiff an opportunity to respond."

[66] The court later makes it clear that there can be no justification for publishing untruths. The press does not have lower standards of care with regard to defamatory matter published on their platforms. The press occupies a powerful position in our society. The press does not enjoy a relaxed standard of care when publishing potentially defamatory material. While mistakes may occur, the test is whether reasonable steps were taken to verify accuracy and whether the publisher believed the statement to be true at the time.

[67] This is not such a case. News Nexus knew, or ought reasonably to have known, that the statements were false. Nonetheless, they chose to publish and retain them on their platform. The continued availability of these statements prolongs the reputational harm and is not justified by any of the recognised defences to defamation.

[68] I have already stated that the right that the applicants have to their good name or reputation is not in dispute. The applicants have a right to protect it. The first requirement for an interdict is thus met.

¹² 1998 (4) SA 1196 (SCA).

[69] As for the reasonable apprehension of harm, the following: Based on the evidence before this Court, the statements complained of are prima facie defamatory and lack substantiation. The statements suggest that the applicant does not fulfil its contractual obligations towards small enterprises, which are then left on the streets. These statements appear intended not to inform, but to damage the reputation of the applicants and to coerce them into assisting Mr Tothill in obtaining payment from a third party with which the applicant has no contractual connection.

[70] The situation escalated swiftly. The respondents themselves described the matter as potentially spiralling out of control. The correspondence reflects a pattern of increasingly forceful demands, accompanied by public and reputational pressure, to compel payment.

[71] Previous attempts to assist Mr Tothill were unsuccessful due to a lack of documentation that he failed to provide. There is no guarantee that media engagement will stop the campaign, and any media interaction is likely to only fuel the fire and escalate the engagement in a binary manner.

[72] The applicant is not seeking to remedy the past harm of the already published statements. While damages are backwards-looking, an interdict seeks to prevent future conduct. The order is thus aimed at preventing similar future conduct, which there is a reasonable cause to apprehend. The ongoing nature of posts left on social media may also be interdicted, as it is ongoing in nature.¹³ As shown above, the defences raised by the respondents are not valid in this instance.

[73] This leaves the applicants with the only remedy available: an interdict. The applicant cannot be compelled to wait for the harm to continue and escalate, only to vindicate their rights through a damages claim.¹⁴

¹³ *Hartland Lifestyle Estate (Pty) Ltd v APC Marketing (Pty) Ltd* [2023] ZAWCHC 150 para 98.

¹⁴ *Heilbron v Blignault* 1931 WLD 167 at 169, *EFF and Others v Manuel* 2021 (3) SA 425 (SCA) at para [111].

[74] That being said, the court cannot interdict lawful, peaceful protests. Any lawful concerns that parties may have, based on evidence, cannot be suppressed, and the right to protest based on demonstrable facts and lawful conduct will always remain protected. What is, however, not protected is the spreading of falsehoods and the attempt to intimidate and harass the applicant's staff into resolving Mr Tohill's business issues with a third party, Muneris.

[75] I am mindful of the need not to stifle legitimate criticism or public debate. The relief will therefore be narrowly tailored, focusing only on the specific false statements identified in the founding papers. This guarantees that the order is proportionate and does not inhibit broader expression.

Conclusion

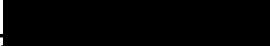
[76] The American legal scholar Stanley Fish famously argued that "there is no such thing as free speech, and it is a good thing." Properly understood, this is not a denial of the constitutional right to freedom of expression, but rather a reminder that all speech is subject to legal, institutional, and ethical boundaries. Our Constitution protects free expression, but not expressions that are false, coercive, or abusive of the rights of others. The law recognises that speech may be limited to protect other rights, including dignity, privacy, and reputation. The order granted here carefully balances those rights without silencing legitimate criticism.

Order

[77] Accordingly, the following order is made:

1. The applicant's non-compliance with the forms, time periods and service requirements provided for in the Uniform Rules of Court is condoned, and the matter be heard as one of urgency in terms of Rule 6(12).
2. The respondents are interdicted and restrained from:
 - 2.1. making, publishing or from disseminating false statements that the applicant is in any way indebted to first respondent;
 - 2.2. harassing, threatening or intimidating the applicant's employees or staff;

- 2.3. obstructing or harassing access to the applicant's retail stores by members of the applicant's staff or members of the public; and
- 2.4. in any way attempting to induce or coerce the applicant to make any payment to the first respondent.
3. The respondents, are ordered to, jointly and severally, within 24 hours of service of this order, remove from all social-media platforms and websites under their control any video, post or statement alleging that the applicant is indebted to the first respondent or has failed to pay contractors.
4. The costs of this application are to be paid by the respondents, jointly and severally, the one paying the others to be absolved, taxed on scale B.


WJ du Plessis

Judge of the High Court Gauteng Division,
Johannesburg

Date of hearing:	6 June 2025
Date of judgment:	9 June 2025
For the applicant:	J Peter SC instructed by David Shapiro & Associates
For the respondent:	P Mafu instructed by Ntozake Attorneys