



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

**Case number: 2025-123276**

|                                                                            |                                       |
|----------------------------------------------------------------------------|---------------------------------------|
| (1)                                                                        | REPORTABLE: YES / NO                  |
| (2)                                                                        | OF INTEREST TO OTHER JUDGES: YES / NO |
| (3)                                                                        | REVISED: YES / <del>NO</del>          |
| <div style="background-color: black; width: 150px; margin: 0 auto;"></div> |                                       |
| 27 August 2025 _____                                                       |                                       |
| DATE                                                                       | SIGNATURE                             |

In the matter between:

**MALUSI SHEZI**

**Applicant**

and

**SUNDAY TIMES (ARENA GROUP DIVISION)**

**First Respondent**

**SABELO SKITI**

**Second Respondent**

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**JUDGMENT**

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**WINDELL J**

**Introduction**

[1] This is an urgent application. The applicant, Mr Shezi, who is the CEO of the Construction Education and Training Authority (the CETA), seeks wide-ranging relief

arising from three articles authored by the second respondent, Mr Skiti, and published by the first respondent (the Sunday Times) between 5 and 20 July 2025. The relief includes (a) declaratory orders that the publications were ‘false and defamatory’, (b) an order that Sunday Times retract the publications; (c) an apology in respect of the publications (the precise wording of which is set out in the notice of motion), and (d) an interdict prohibiting further publication.

[2] The application must be dismissed for lack of urgency, principally for three reasons. First, it is trite that claims for unliquidated damages must be pursued by way of action. Rules 17(2) and 18(10) of the Uniform Rules make this clear. Defamation claims, by their nature, involve claims for unliquidated damages. The Supreme Court of Appeal in *EFF v Manuel*<sup>1</sup> and *NBC Holdings*<sup>2</sup> held that apologies and retractions are compensatory in character and must be treated as unliquidated claims. The applicant’s reliance on *Du Toit v Becket*<sup>3</sup> and *Ramos v Independent Media*<sup>4</sup> is therefore misplaced. Those cases do not displace the binding authority of the SCA. Relief of this kind must, if competent at all, be sought in action proceedings. The applicant’s attempt to obtain it by motion is impermissible.

[3] Secondly, the interdictory relief sought is misconceived. The applicant seeks to restrain the Sunday Times ‘from publishing any statements about the applicant in respect of an ongoing investigation by the Auditor-General (AG’) without verification from the main

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<sup>1</sup> *Economic Freedom Fighters and Others v Manuel* 2021 (3) SA 425 (SCA) paras 92-93; *IRD Global Ltd v The Global Fund to Fight AIDS, Tuberculosis and Malaria* 2025 (1) SA 117 (SCA) para 24.

<sup>2</sup> *NBC Holdings (Pty) Ltd v Akani Retirement Fund Administrators (Pty) Ltd* [2021] 4 All SA 652 (SCA) para 20.

<sup>3</sup> *Du Toit v Becket and Another* (8687/2023) [2024] ZAWCHC 56 (21 February 2024).

<sup>4</sup> *Ramos v Independent Media (Pty) Ltd and Others* (01144/21) [2021] ZAGPJHC 60 (28 May 2021).

source.’ The relief purports to regulate both past and future speech. The publications identified in the founding affidavit are already in the public domain. It is trite that a prohibitory interdict cannot undo what has already occurred and is therefore pointless when directed at past publications. Nor would an interdict prohibiting future publication of material that has already been published serve any purpose; it would amount to an impermissible form of prior restraint. As the court held in *Lieberthal v Primedia Broadcasting (Pty) Ltd*,<sup>5</sup> drawing on Burchell’s commentary,<sup>6</sup> once defamatory matter is in the public domain, an interdict is not an effective remedy but rather a form of ineffective censorship. The balance between protecting reputation and safeguarding free expression is better achieved through the remedy of reply and ongoing public debate, rather than by judicially silencing speech.

[4] The point may be illustrated by the applicant’s own conduct. He launched this application only after the relevant information had already been published and, worse still, permitted a further article repeating the very same allegations about the AG’s investigation to be circulated without any attempt to prevent its publication. This conduct underscores why interdictory relief is untenable and is best understood against the background of the publications themselves.

[5] Between 22 June and 27 July 2025, the Sunday Times published five articles about the CETA, although only three are the subject of this application. The first, on 22 June, reported that Minister Nkabane was facing pressure for turning a blind eye to corruption at the CETA. A whistleblower alleged that the applicant engaged in tender rigging,

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<sup>5</sup> *Lieberthal v Primedia Broadcasting (Pty) Ltd* 2003 (5) SA 39 (W) at 48D.

<sup>6</sup> *The Law of Defamation* 1st ed at 315.

awarding contracts to unqualified service providers and intervening in procurement processes. The applicant, through his spokesman, dismissed the allegations as ‘false and malicious.’ No relief is sought in relation to this article.

[6] On 5 July a headline board proclaimed, “SETA BOSS ‘LIED TO MPS’ ON OFFICE PURCHASE,” followed the next day by an article alleging that the CETA’s R49m building acquisition had been flagged as irregular by the Auditor-General. The article reported that this finding contradicted the applicant’s assurances to The Standing Committee on Public Accounts (SCOPA) that the transaction was approved by National Treasury and noted valuations which put the building’s worth far below the R78m he had claimed.

[7] On 20 July another article alleged that the CETA had paid for a biometric system which did not exist. The Sunday Times cited a leaked AG document, an IT manager’s statement that he had never seen the system in operation, and records of payments authorised under the applicant’s watch. The article also drew links between the applicant and the former NSFAS head, Mr Nongogo, including a grant approved for Mr Nongogo’s former wife without disclosure of a potential conflict of interest.

[8] The last article, on 27 July, described the dismissal of the acting HR executive in what it called “an apparent whistleblower hunt” and referred to irregular appointments within the CETA. Crucially, it repeated allegations from the earlier articles — that the AG had flagged procurement irregularities, and that the applicant had misled Parliament regarding both the office purchase and the biometric system. Despite this, the applicant did not seek to interdict its publication.

[9] In every instance the applicant was approached for comment before publication. His responses to the 22 June and 6 July articles were published in full, but he ultimately refused to comment on the 20 and 27 July articles despite being given extra time to do so. It is therefore clear that he knew these articles would be published, yet took no steps to prevent them. The 6 July article followed a negotiated timeline with his representative; the 20 July article was delayed by a week at his request, making its appearance inevitable; and the 27 July article was foreshadowed by an invitation to comment. Despite this knowledge, he did nothing to stop publication and has not challenged the 27 July article at all. Having allowed this information to enter and remain in the public domain, he now seeks to restrain future publications of it.

[10] It further bears emphasis that the allegations now complained of were not first revealed by the Sunday Times. They had already been ventilated in the public domain more than a year before this application was launched — through reports in other newspapers (including the *City Press* and *Independent Online*) and even an online petition endorsed by over 300 signatories. The applicant thus seeks to suppress information that was circulating widely long before the impugned articles appeared.

[11] Against this background, the allegations the applicant seeks to interdict are already firmly in the public domain. The articles have been published, and the founding affidavit discloses no reasonable apprehension of future defamatory statements about the AG's investigation of the CETA. The exceptional remedy of prior restraint requires proof of a reasonable apprehension of grave injustice — a threshold that cannot be met where the applicant knowingly allowed further publication of the very allegations he now seeks to restrain.

[12] This conclusion accords with settled jurisprudence. In *Midi Television*<sup>7</sup> the SCA held that prior restraint of publication is permissible only where the prejudice is demonstrable, substantial, and outweighs the public's right of access to information; mere conjecture is not enough. Likewise, in *Print Media*<sup>8</sup> the Constitutional Court described prior restraint as a "drastic interference" with free expression, justified only where there is a substantial risk of grave injustice. Measured against these principles, the present case falls far short of the stringent test.

[13] The same approach has been followed in subsequent cases. In *Tshabalala-Msimang v Makhanya*<sup>9</sup> this Court refused to interdict the publication of private medical records, despite the questionable manner in which the journalists had obtained them. Similarly, in *Mazetti*,<sup>10</sup> Sutherland DJP declined to restrain publication even on the assumption that the information was confidential. He emphasised that a court will not 'shut the mouth of the media' unless the facts convincingly demonstrate that the public interest is not served by publication — a threshold that is rarely met.

[14] These authorities illustrate that prior restraint is refused even where highly sensitive or confidential information is at stake. A fortiori, it cannot be granted here, where the subject matter is the financial management of a public entity and the information is

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<sup>7</sup> *Midi Television (Pty) Ltd t/a E-TV v Director of Public Prosecutions (Western Cape)* 2007 (5) SA 540 (SCA) para 19. See also *Primedia (Pty) Ltd v Speaker of the National Assembly* 2017 (1) SA 572 (SCA) para 50.

<sup>8</sup> *Print Media South Africa v Minister of Home Affairs* 2012 (6) SA 443 (CC) para 44.

<sup>9</sup> *Tshabalala-Msimang v Makhanya* 2008 (6) SA 102 (W) para 56.

<sup>10</sup> *Mazetti Management Services (Pty) Ltd v Amabhungane Centre for Investigative Journalism NPC* 2023 (6) SA 578 (GJ).

already in the public domain. The applicant's case falls far short of the exceptional circumstances required to justify such relief.

[15] That leaves only the prayer for declaratory relief. Standing alone, however, it cannot be granted. Declarators of past defamation serve no practical purpose, amount to no more than abstract opinion, and risk being used as a springboard for future claims, giving rise to piecemeal litigation and issue estoppel.<sup>11</sup> It is generally undesirable for a court to grant declaratory relief without competent consequential relief, particularly in urgent motion proceedings where the merits and the remedy are inextricably linked and must be determined in the light of the evidence as a whole.<sup>12</sup>

[16] Once it is accepted that retraction and apology relief cannot be pursued on motion, and that interdictory relief is inappropriate because the information is already in the public domain, nothing of substance remains. Declaratory relief of this kind can never justify urgent intervention, since it is neither time-sensitive nor capable of affording immediate redress.

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

1. The application is struck from the roll with costs on a party and party scale, Scale C.

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<sup>11</sup> *NBC Holdings (supra)* para 16.

<sup>12</sup> *Minister of Finance v Oakbay Investments (Pty) Ltd 2018 (3) SA 515 (GP)* para 59, cited with approval in *Competition Commission v Hosken Consolidated Investments 2019 (3) SA 1 (CC)* para 82; Also see *NBC Holdings (supra)* paras 11,16 and 26.

  

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**L. WINDELL**

**JUDGE OF THE HIGH COURT**

**GAUTENG LOCAL DIVISION, JOHANNESBURG**

Delivered: This judgement 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 27 August 2025.

**APPEARANCES**

|                           |                             |
|---------------------------|-----------------------------|
| For the Applicant:        | Kgomotso Kabinde            |
| Instructed by:            | Sithi and Thabela Attorneys |
| For the First Respondent: | Adrian Friedman             |
| Instructed by:            | Willem De Klerk Attorneys   |
| Date of hearing:          | 13 August 2025              |
| Date of judgment:         | 27 August 2025              |