

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA



Case number: 2025-158161

Date of hearing: 18 September 2025

Date delivered: 1 October 2025

DELETE WHICHEVER IS NOT APPLICABLE	
(1) REPORTABLE: YES /NO	
(2) OF INTEREST TO OTHERS JUDGES: YES /NO	
(3) REVISED	
1/10/25	[REDACTED]
DATE	SIGNATURE

In the application between:

INVADER TRAILERS CC

Applicant

and

DC & SOLAR POWER CC
PIETER JACOBUS BARNARD

First Respondent
Second Respondent

This judgment is handed down electronically by the Judge whose name is reflected herein, and is submitted to the parties or their legal representative by email. This order is further uploaded to the

electronic file of CaseLines by the Judge or his Registrar. The date of this order is deemed to be 1 October 2025.

JUDGMENT

SWANEPOEL J:

[1] This is an urgent application seeking an order that the respondents shall remove a video that the second respondent, the sole member of the first respondent, has posted to Facebook and Youtube. The applicant alleges that the video is defamatory of it. The applicants also seek an interdict restraining the respondents from publishing, disseminating or displaying defamatory material regarding the applicant, its products and services.

[2] The applicant manufactures off-road trailers. The respondents install electrical systems in trailers. On 17 August 2025 the second respondent posted a video on Youtube and on Facebook with the title:

“Trailer and Vehicle Installation gone wrong. Why proper wiring and battery setup matters.”

[3] At the outset the parties requested me to view the video so that I could have a full understanding of its contents. The video is 9 minutes 28 seconds in length. At the beginning of the video the second respondent features with an Invader trailer prominently situated behind him on which

the Invader logo is clearly displayed for some 2 minutes and 28 seconds.

Later in the video the Invader logo is again displayed.

[4] On two occasions a banner was displayed which read:

“Not the trailer brand but the work done on it.”

[5] Below the video, in the commentary section, the respondents wrote that the video:

“....does not target a specific brand of trailer vehicle or system manufacturer but is used as an example of a badly installed system by some installer and what the difference is between a bad installation and a typical good installation.”

[6] The second respondent then proceeded to show the electrical installation on the trailer. He demonstrated that the installation was insecurely attached to the trailer and he explained that especially in an off-road trailer, which will likely traverse harsh terrain, there is a danger of such an installation being damaged and catching alight. The second respondent also opined that some of the wiring was inadequate for the purpose for which it was intended. The second respondent contrasted the installation in the Invader trailer with an installation that he has done, opining that his installation was superior to the installation on the Invader trailer.

[7] At no stage did the second respondent say that the applicant was responsible for the allegedly improper installation. The applicant contends

that the video contained the innuendo that the applicant's product was inferior. The applicant alleges that the second respondent omitted to mention that the installation in the particular trailer had been done by a third party and not by the applicant.

[8] I am not convinced that the reasonable viewer, "*of average intelligence, sophistication and education with no legal training or other special discipline*"¹ would have come to the conclusion that the second respondent was criticizing the applicant's workmanship. The respondents clearly stated in the video, and in the comments thereto, that the video was not intended to target any specific product, but was aimed at comparing different installations, not different makes of trailer. I do not believe that the applicant has established the innuendo that it relies upon.

[9] However, even if I were to accept the applicant's contention, that the video was defamatory, then the respondents contend that the comments made by the second respondent were fair. The elements of this defence were set out in *The Citizen 1978 (Pty) Ltd and Others v McBride (Johnson and Others, Amici Curiae)*²:

[9.1] The defamatory statements are comment or opinion;

[9.2] The comments are fair;

[9.3] The factual allegations being commented on are true;

[9.4] The comments relate to a matter of public interest.

[10] The Constitutional Court explained the defence as follows in *The Citizen (supra)*:³

[81] Nearly a century ago, in the judgment that firmly authenticated the defence in South African law, Innes CJ remarked that the use of the term 'fair' to describe the defence is 'not very fortunate'. He was right. As he explained, the criticism sought to be protected need not 'commend itself' to the court. Nor need it be 'impartial or well-balanced'. In fact, 'fair' in the defence means merely that the opinion must one be that a fair person, however extreme, might honestly hold, even if the views are 'extravagant, exaggerated, or even prejudiced'. The comment need be fair only in the sense that objectively speaking it qualifies 'as an honest, genuine (though possibly exaggerated or prejudiced) expression of opinion relevant to the facts upon which it was based, and not disclosing malice'. . .

[82] So to dub the defence 'fair comment' is misleading. If, to be protected, comment has to be 'fair', the law would require expressions of opinion on matters of fact to be just, equitable, reasonable, level-headed and balanced. That is not so. An important rationale for the defence of protected or 'fair' comment is to ensure that divergent views are aired in public and subjected to scrutiny and debate.

[83] Protected comment need thus not be 'fair or just at all in any sense in which these terms are commonly understood. Criticism is protected even if extreme, unjust, unbalanced,

exaggerated and prejudiced, so long as it expresses an honestly-held opinion, without malice, on a matter of public interest on facts that are true. In the succinct words of Innes CJ, the defendant must 'justify the facts'; but he need not justify the comment."

[11] There is no suggestion in the applicant's papers that the second respondent's comments were motivated by malice. In fact, the respondents specifically pleaded that the comments were fair and not motivated by malice, and the applicant did not take issue with the respondents' assertion.

[12] The second respondent was clearly stating an opinion regarding certain electrical installations. He explained in the video why he criticized a specific installation, and why he regarded it as dangerous. I have no doubt that the second respondent's opinions are honestly held, are 'fair' in the manner explained in *The Citizen*, and that his opinion regarding potentially dangerous electrical installations are in the public interest.

[13] For the aforesaid reasons the application must fail. The respondents were not represented by an attorney, and although the respondents seek the costs of two counsel, none were on record in the matter and thus a costs order in favour of the respondents is inappropriate.

[14] I make the following order:

The application is dismissed.

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SWANEPOEL J
JUDGE OF THE HIGH COURT
GAUTENG DIVISION PRETORIA

Counsel for the applicant:	Adv. JH Lerm
Instructed by:	De Wet Attorneys
Counsel for the respondents:	None (in person)
Hearing on:	18 September 2025
Judgment on:	1 October 2025

¹ Moyse and Others v Mujuru 1999 (3) SA 39 (ZS) at page 46 E

² The Citizen 1978 (Pty) Ltd and Others v Mc Bride (Johnson and Others, Amici Curiae) 2011 (4) SA 191 (CC)

³ At para [81]