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**IN THE HIGH COURT OF SOUTH AFRICA
WESTERN CAPE DIVISION, CAPE TOWN**

Not Reportable

Case no: 2025-181557

In the matter between:

**KENNETH KUNENE
GAYTON MCKENZIE**

**FIRST APPLICANT
SECOND APPLICANT**

and

**MEHMET VEFA DAG
CHANON MERRICKS**

**FIRST RESPONDENT
SECOND RESPONDENT**

**Coram: COOKE AJ
Heard: 14 October 2025
Order: 17 October 2025**

Reasons: 30 October 2025

ORDER

1. Pending the final determination of an action to be instituted by the applicants to, amongst other things, declare various statements made by the first respondent defamatory (the action), the first respondent is interdicted and restrained from making or publishing statements to any person, organisation, public office bearers or political parties and on any medium or social platform, including but not limited to social media, emails, letters or messages, that refer or relate to the first and second applicants in the following terms:

(a) Stating that they caused, commissioned, or orchestrated the murder of Farouk Meyer, Ray Forbay, or the police investigator in the Meyer case.

(b) Referring to them as:

(i) the main suspects in relation to cases of murder; or

(ii) gang or mafia leaders, or organised criminals.

(c) Stating that they sent people to assault the second respondent.

- (d) Stating that they are politicians who utilise organised crime, or who corruptly control law enforcement by making dockets disappear.
2. If the applicants fail to commence the action within twenty days of this order, the relief described in paragraph 1 shall fall away.
3. Costs shall stand over for determination in the action.

REASONS FOR ORDER

Introduction

[1] In *UDM v Lebashe Investment Group*¹ (*UDM*) the Constitutional Court expressed a basic rule of the law of defamation: there must be evidence and truth to a defamatory statement one makes about another. This is a case where the first respondent, Mr Dag, made grave allegations against the applicants, Mr Kunene and Mr McKenzie. Yet, when called upon to produce evidence substantiating these allegations, with one exception, he failed to do so.

[2] Mr Kunene is the Deputy President of the Patriotic Alliance, a businessman, and a serving councillor and former member of the

¹ *United Democratic Movement and Another v Lebashe Investment Group (Pty) Ltd and Others* 2023 (1) SA 353 (CC) para 59.

Mayoral Committee for Transport in the City of Johannesburg Metropolitan Council, while Mr McKenzie is the President of the Patriotic Alliance and a serving Cabinet Minister in charge of the Sports, Arts and Culture portfolio. Mr Dag, on the other hand, is the President of the Truth and Solidarity Movement, a civil society organisation which is said to be dedicated to promoting accountability, transparency and ethical governance.

[3] The applicants brought an application to interdict the respondents from persisting with various allegations. In response, the second respondent, Mr Merricks, signed a settlement agreement in terms of which he undertook not to repeat the allegations. The applicants no longer seek relief against him. Mr Dag, on the other hand, opposed the application and continued making allegations against the applicants. Mr Dag admitted that he was the author of the statements which form the subject of this application. He submitted, however, that the applicants do not have good reputations, and therefore, his statements did not infringe their right to a good name. In the alternative, he relied on three possible justifications, namely truth and public interest, fair comment and reasonable publication.

[4] On Tuesday, 14 October 2025, I heard argument in relation to this application. At the conclusion of argument, I advised the parties that I required a few days to consider the matter. On Friday, 17 October 2025, I handed down an order, without reasons, interdicting Mr Dag from making certain statements and directing that the applicants launch their

action within 20 days, failing which the interdict would fall away. The terms of the order are set out above. These are the reasons for the order.

[5] In essence, I find that certain, but not all, of the statements were defamatory, and that Mr Dag did not, save for one instance, disclose any evidence to justify the defamatory statements. I find further that the requirements for an interim interdict have been met by the applicants. In my view, this is a case where Mr Dag's freedom of expression must yield to the applicants' right not to be defamed.

[6] At the outset, I note that Mr Dag made several submissions at the hearing which were not based on the evidence contained in the affidavits. He tended to 'give evidence from the bar'. This was impermissible² and I have not taken these submissions into account in deciding the application.

Preliminary matters

[7] At the hearing I addressed several preliminary matters before I heard argument on the merits of the application. First, I considered argument in relation to the question of urgency. Mr Dag submitted that the attempt to bring this application as an urgent application constituted a gross abuse of court process and that the 'defamation campaign' described in the founding affidavit had spanned several months. According to Mr Dag, the applicants could obtain substantial redress through ordinary channels.

² *PM v RM and Another* 2022 JDR 1403 (WCC) para 16.

[8] The statements complained of commenced on Saturday, 20 September 2025 and escalated through the ensuing week. On Friday, 26 September 2025 the applicants' attorneys addressed a letter of demand to the respondents demanding that they (a) cease making the statements and (b) provide a written undertaking confirming that they will do so by no later than 16h00 on Monday, 26 September 2025. The reference to 26 September appears to have been an error, and I assume the attorneys intended to refer to 29 September. In the absence of any such undertaking, the applicants launched this application on Friday, 3 October 2025. The notice of motion provided that the respondents were required to indicate if they intended to oppose the application by Monday, 6 October 2025 and to file their answering affidavits, if any, by Wednesday, 8 October 2025. I was satisfied that the application was brought within a reasonable period after it became evident that an application would be required. I also considered that commensurate time had been afforded to the respondents to deliver their answering papers.

[9] Mr Dag argued further that he required more time to prepare his response and requested a postponement for two months. To my mind, if Mr Dag's statements were based on evidence, he should have been able to produce such evidence within a short period. Having regard to the nature of the statements persistently made by Mr Dag, I was satisfied that the applicants would not be able to obtain substantial redress at a hearing in due course, and in the circumstances, at the hearing I held that I was satisfied that a case for urgency had been established and that I would therefore hear the matter in the fast lane.³

[10] The second preliminary matter concerned the settlement agreement apparently concluded between Mr Merricks and the applicants. The applicants sought an order, pursuant to a requested amendment to the notice of motion, by which this agreement would be made an order of court. Mr Dag contended, however, that the settlement agreement was concluded under duress. According to Mr Dag, the settlement agreement was signed because Mr Merrick's life was in danger. An affidavit deposed to by the applicants' attorney was handed up at the hearing. This affidavit stated that Mr Merricks had 'duly agreed to' the settlement agreement, which he initially signed electronically and, thereafter, he signed with a physical signature. This affidavit did not address the allegation of duress. In my view, the making of the settlement agreement an order of court was not urgent and having regard also to the contention that it was not entered into voluntarily, I decided not to grant the amendment sought. It is open to the applicants to bring a separate application for the making of the settlement agreement an order of court.

[11] The third preliminary matter related to an application by the applicants to amend the notice of motion to include within the scope of the interdict the following further statements by the respondents:

'2.9 Stating that the applicants' attorneys (Mayet Attorneys Incorporated) are service providers to the City of Johannesburg.

³ See in this regard *Cavanagh and Another v Mann and Others* (2025/057909) [2025] ZAGPJHC 566 (5 June 2025) paras 6-10.

2.10 Stating that the applicants' attorneys (Mayet Attorneys Incorporated) are involved in corruption in the City of Johannesburg.

2.11 Stating or inferring that the applicants sexually assault or rape young/minor boys.'

[12] At the hearing, I indicated to the applicants' counsel that I had reservations regarding whether the applicants had standing to seek the relief in paragraphs 2.9 and 2.10.⁴ It also appeared that the statement in 2.11 was made by Mr Merricks rather than Mr Dag. The applicants' counsel elected not to persist with the amendment introducing paragraphs 2.9-2.11. Again, it remains open to the applicants and their attorneys to seek this relief in separate proceedings.

[13] The fourth preliminary matter concerned the admission of Mr Dag's answering affidavit. This affidavit was dated 4 October 2025, although a handwritten annotation indicated that it had been signed on 8 October 2025. The affidavit was also signed and initialled by a constable in the South African Police Service on 8 October 2025. The applicants complained that the affidavit was defective in that it did not comply fully with the regulations promulgated under the Justices of the Peace and Commissioners of Oaths Act 16 of 1963. More particularly, the applicants pointed out that there was no declaration by the Commissioner of Oaths that Mr Dag appeared before him, that an oath was administered, or that Mr Dag affirmed the truthfulness of the contents. It was argued that in the absence of this essential attestation,

⁴ See in this regard *Ahmadiyya Anjuman Ishaati-Islamlahore (South Africa) and Another v Muslim Judicial Council (Cape) and Others* 1983 (4) SA 855 (C) at 865A-C.

the document lacked the fundamental character of an affidavit and carried no evidentiary weight before the court.

[14] The requirements of regulation 4 are directory and non-compliance may be condoned by the court.⁵ The affidavit does state that it was signed and sworn to, and the introduction to the affidavit says that Mr Dag ‘hereby makes oath and states that...’. Furthermore, Mr Dag signed a supplementary affidavit in which he made similar points to those in his answering affidavit. The latter affidavit appears to have been properly commissioned and there was no objection to the commissioning of this affidavit by the applicants. I also had regard to the fact that the answering affidavit is mostly made up of legal argument, and I did not consider that there would be material prejudice to the applicants if the affidavit were admitted. In all the circumstances, I was satisfied that the non-compliance should be condoned, and the answering affidavit was therefore allowed.

[15] Finally, both parties sought to admit supplementary affidavits. The applicants’ supplementary affidavit was deposed to on 13 October 2025 and addressed a number of different issues including seeking leave to file the further affidavit in terms of uniform rule 6(5)(e), placing new facts before the court which had arisen since the delivery of the replying affidavit, informing the court of the resolution of the dispute between the applicants and Mr Merricks, addressing the amendment to the notice of motion and providing an explanation for the late delivery of the confirmatory affidavit of Mr McKenzie. Mr Dag also handed up a

⁵ DE Van Loggerenberg *Erasmus: Superior Court Practice* D3-10A-B.

supplementary affidavit, which was deposed to on 12 October 2025. Having regard to the tight periods allowed for the delivery of affidavits, and having regard also to the approach adopted in the recent judgment of Mabindla-Boqwana JA (as she then was) in *De Kock*,⁶ and the fundamental consideration that a matter should be adjudicated upon all the facts relevant to the issues in dispute, I was satisfied that it was in the interests of justice to allow the supplementary affidavits.

[16] Finally, and for the sake of completeness, I mention that Mr Dag suggested that there had been an improper joinder, and that the applicants had failed to establish the authority of Mr Kunene to depose an affidavit on behalf of Mr McKenzie. In my view, the applicants correctly proceeded against both respondents. In any event, having regard to the withdrawal of the claim against Mr Merricks, the question of joinder became a non-issue. On the issue of authority, Mr Kunene did not require any authorisation from Mr McKenzie to depose to the founding affidavit. At any rate, Mr McKenzie did sign an affidavit in which he confirmed the contents of the founding affidavit, and that Mr Kunene was duly authorised to depose to this affidavit on his behalf. There is accordingly nothing in the authority point.

Legal Principles

[17] The usual rules in relation to interim interdicts apply. It is therefore incumbent upon the applicants to show:

(a) a prima facie right;

⁶ *De Kock v Du Plessis and Others* 2024 JDR 3115 (SCA) para 24ff.

(b) a well-grounded apprehension of irreparable harm if the relief is not granted;

(c) the balance of convenience favours the granting of an interim interdict; and

(d) the applicants have no other satisfactory remedy.⁷

[18] As regards the right, the proper approach to claims of defamation was definitively set out in *Le Roux v Dey*.⁸ All the applicants must prove at the outset is the publication of defamatory matter concerning themselves. The question whether a statement is defamatory in its ordinary meaning, or is *per se* defamatory, involves a two-stage inquiry.⁹ The first is to establish the ordinary meaning of the statement. The second is whether that meaning is defamatory. At the first stage, the test to be applied is an objective one. This Court is not concerned with the meaning which the maker of the statements intended to convey, or with the meaning those to whom it was published gave to it or whether they believed it. In accordance with the objective test, the question is what meaning the reasonable reader or listener of ordinary intelligence would attribute to the statement in its context. In applying this test, it is accepted that the reasonable reader or listener would understand the statement in its context and that he or she would have regard not only to what is

⁷ *Hix Networking Technologies v System Publishers (Pty) Ltd and Another* 1997 (1) SA 391 (A) (*Hix Networking*) at 398I-J; *UDM* para 47.

⁸ *Le Roux and Others v Dey (Freedom of Expression Institute and Restorative Justice Centre as amici curiae)* 2011 (3) SA 274 (CC) (*Le Roux*) para 85.

⁹ *Le Roux* para 89; *UDM* para 53. See also the helpful summary in *Katz v Welz and Another* (22440/2014) [2021] ZAWCHC 76 (26 April 2021) paras 21-7.

expressly stated but also to what is implied.¹⁰ At the second stage, our courts accept that a statement is defamatory of an applicant if it is likely to injure the good esteem in which he or she is held by the reasonable or average person to whom it had been published.¹¹ Put differently, a publication is defamatory if it tends to lower the person in the estimation of ordinary intelligent or right-thinking members of society'.¹²

[19] Once the applicant has shown that the statement is defamatory, it is presumed that the statement was both wrongful and intentional. A respondent wishing to avoid liability for defamation must then raise a defence which excludes either wrongfulness or intent. The onus on the respondent to 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 balance of probabilities. A bare denial by the respondent will therefore not be enough. Facts must be pleaded and proved that will be sufficient to establish the defence.¹³

[20] As regards the first defence raised by Mr Dag - truth and public interest - it is only necessary that the respondent prove that the remarks are substantially true, ie that the sting of the charge is true. What is in the public interest will depend on the convictions of the community, and in this regard, the time, the manner and the occasion of the publication play an important role. Past transgressions should, for example, not be raked up after a long lapse of time.¹⁴

¹⁰ *Le Roux* para 89.

¹¹ *Le Roux* para 91.

¹² *Hix Networking* at 403H.

¹³ *Le Roux* para 85; *UDM* para 51.

¹⁴ Neethling-Potgieter-Visser *Law of Delict* 7th ed (2014) page 360.

[21] The requirements for the second defence - fair comment - were set out in *Economic Freedom Fighters and Others v Manuel (EFF)*:¹⁵

- (a) the statement must be a comment and not a statement of fact;
- (b) it must be fair, by which is meant only that it must be an honestly-held opinion, not that it is balanced or temperate;
- (c) the facts on which it is based must be true and must be clearly stated or clearly indicated, or matters of public knowledge; and
- (d) the comment must relate to a matter of public interest.¹⁶

[22] In *Bogoshi*, the Supreme Court of Appeal recognised that publication of defamatory matter by the media would not be unlawful if the publication was reasonable.¹⁷ This is the third defence – reasonable publication. Our appellate courts have not yet extended this defence to non-media respondents.¹⁸ In *EFF*, the Supreme Court of Appeal noted that on a correct reading of *Bogoshi*, the judgment left untouched the defence of absence of *animus iniuriandi* (intention to injure) for non-media respondents.¹⁹ In terms of this defence, a genuine belief that publication of defamatory material was lawful is capable of

¹⁵ *Economic Freedom Fighters and Others v Manuel* 2021 (3) SA 425 (SCA).

¹⁶ Para 38.

¹⁷ *National Media Ltd and Others v Bogoshi* 1998 (4) SA 1196 (SCA).

¹⁸ The defence was allowed by the High Court in *Manuel v Economic Freedom Fighters and Others* 2019 (5) SA 210 (GJ) paras 61-70. On appeal, however, the court found that it was not in a position to consider developing the common law to make such a defence available (*EFF* paras 58-67). See also *Reddell and Others v Mineral Sands Resources (Pty) Ltd and Others* 2023 (2) SA 404 (CC) paras 40-45 (majority) and 209 (minority).

¹⁹ Para 65.

rebutting the *animus iniuriandi*.²⁰ In my view, as in *EFF*,²¹ the facts of this case are such that it makes no difference to the outcome whether I approach the defence of reasonable publication on the basis that it is a defence that seeks to rebut *animus iniuriandi*, or that it is a defence on the lines set out in *Bogoshi*.

[23] In *Hix Networking*, the Supreme Court of Appeal held that an applicant is not entitled to the intervention of the court by way of interdict, unless it is clear that the respondent has no defence. Thus, if the respondent sets up that he can prove truth and public benefit, the court is not entitled to disregard his or her statement on oath to that effect, because, if the statement were true, it would be a defence, and the basis of the claim for an interdict is that an actionable wrong, ie conduct for which there is no defence in law, is about to be committed. The mere say-so of a respondent would, however, not suffice to prevent a court from granting an interdict. What is required is that a sustainable foundation be laid by way of evidence that a defence such as truth and public interest or fair comment is available to be pursued by the respondent. It is not sufficient simply to state that at a trial the respondent will prove that the statements were true and made in the public interest, or some other defence to a claim for defamation, without providing a factual basis therefor.²²

[24] A court has a wide discretion as to the granting or refusing of an interim interdict.²³ In the exercise of its discretion, and when assessing the balance of convenience, regard should be had, amongst other things, to

²⁰ Para 64.

²¹ Para 68.

²² *UDM* para 52; see also the discussion in *Herbal Zone* paras 37-8.

²³ *Hix Networking* at 399A.

the strength of the applicant's case, the seriousness of the defamation, the difficulty a respondent has in proving, in the limited time afforded to it in cases of urgency, the defence which it wishes to raise, and the fact that the order may, in substance though not in form, amount to a permanent interdict.²⁴

[25] Cases involving an attempt to restrain publication must be approached with caution. This is underlined by section 16 of the Constitution.²⁵ Freedom of speech is a right not to be overridden lightly. The appropriate stage for this consideration would, in most cases, be the point at which the balance of convenience is determined.²⁶ In granting an interdict, the court must exercise its discretion judicially upon a consideration of all the facts and circumstances. An interdict is not a remedy for the past invasion of rights; it is concerned with the present and future. The past invasion should be addressed by an action for damages. An interdict is appropriate only when future injury is feared.²⁷

[26] In what follows, I first discuss whether the applicants have shown a *prima facie* right against Mr Dag. After that I consider the other requirements for an interim interdict.

²⁴ *Hix Networking* at 402E-F.

²⁵ Subsection (1) provides that 'Everyone has the right to freedom of expression, which includes— (a) freedom of the press and other media; (b) freedom to receive or impart information or ideas; (c) freedom of artistic creativity; and (d) academic freedom and freedom of scientific research.'

²⁶ *Hix Networking* at 402 C-E.

²⁷ *UDM* para 48.

Prima facie right against Mr Dag

Defamatory statements

[27] In this section, I start by examining whether Mr Dag made defamatory statements, ie statements which, based on their natural meaning, tend to lower the applicants in the estimation of ordinary intelligent or right-thinking members of society. I identify the different kinds of allegations in turn and then assess whether they are defamatory.

Murder

[28] The applicants seek to interdict Mr Dag from ‘stating that they caused, commissioned or orchestrated the murder of Farouk Meyer, Ray Forbay, or the police investigator in the Meyer case.’ This relief is based on the following statements:

(a) In a statement, published by Mr Dag on X on 20 September 2025, through his @a[...] handle, the following was said about the applicants:

‘The assassination of Farouk Meyer is of utmost significance. Kenny Kunene summoned him to Lenasia to discuss the tender for Eldorado Park and provided him with a five location. Farouk Meyer was killed while en route.

I am openly inquiring of Gayton McKenzie: who was the individual working for you after she left your office, Whose brother was subsequently murdered?

Are you planning to flee?

Your time is up.

Resign from the ministry immediately.’

(b) Two days later, on 22 September 2025, Mr Dag posted a message on the handle @a[...] stating:

‘Kenny Kunene needs to be incarcerated.

Jerry Boshoga and Farouk Meyer were murdered by the same group of individuals.

Kenny Kunene remains at large.’

(c) On 25 September 2025, a video featuring Mr Merricks was published on X under the handle @a[...] in which Mr Merricks stated, amongst other things, ‘Farouk Meyer’s head will be pinned on Kenny Kunene, Gayton McKenzie and Vicky Fly...’ At the time that this post was printed, the video appeared to have received 47,100 views. In the text which accompanied the video, Mr Dag stated:

‘Detain Kenny Kunene.

Detain Gayton McKenzie.

We will soon present over 10 murder cases...

These two individuals must be apprehended.

How much more evidence does SAPS require...

We are insisting on the arrest of Kenny Kunene and Gayton McKenzie.’

(d) The following day, on 26 September 2025, Mr Dag turned his attention to the murder of Mr Ray Forbay, posting the following on the @a[...] handle:

‘Franklin Ray Forbay

Murdered 02/04/2022

Was murdered once more by Kenny Kunene and Gayton McKenzie instructions.

Nothing happened.

Case disappeared.

They said some one killed him

That person also got killed

This occurred due to his business associations with Farouk Meyer, Kenny Kunene, and Gayton McKenzie, as well as his origins from Eldorado Park...

Arrest Gayton McKenzie.

Arrest Kenny Kunene’.

(e) On the same day, Mr Dag also posted a video on the @a[...] handle in which he carried on:

‘Ray Forbay, 2nd April 2022 got shot and murdered. The Ray Forbay’s sister was employed by Gayton McKenzie. Ray Forbay’s sister was part of Patriotic Alliance. Ray Forbay knew something about this. Kenny Kunene and Gayton McKenzie result, Ray, Ray got murdered. We are demanding arrest of Kenny Kunene and Gayton McKenzie. As well as Ray was business partner of Farouk Meyer.’

(f) At around that time Mr Dag posted a further video on the @a[...] handle in which he stated:

‘Gayton McKenzie, we are going to publish your voice mail to Farouk Meyer when you threaten him. Why did you threaten Farouk Meyer? Why? Why did you invite Farouk Meyer to Lenasia? What happened to Farouk Meyer case investigator? Who killed him? Who killed that investigator officer? Listen carefully, from this moment you are not going to lead this South Africa with force. You are going to face us; you can take us any court you want. You are going to face us, and you need to be arrested.’

At the time of printing the post, it had 2,061 views.

(g) On 8 October 2025, after the answering affidavit had been delivered, Mr Dag posted a statement on the @a[...] handle stating as follows:

‘We are calling for the arrest of Gayton Mckenzie.

We are calling for the arrest of Kenny Kunene.

Here is the affidavit
that we will present to the Court
regarding the killings of Farouk Meyer.

Gayton Mckenzie has threatened Farouk Meyer.

He intends to kill Farouk Meyer...’

(h) The following day, on 9 October 2025, Mr Dag appears to have posted, and re-posted, the following statement: ‘GAYTON MCKENZIE IS THE ARCHITECT BEHIND THE MURDERS OF FAROUK

MEYER... WHY HAS HE NOT BEEN ARRESTED?’ At the time of printing, this post had received 2,210 views.

[29] In my view, considered cumulatively, these posts convey that the applicants caused, commissioned or orchestrated the murders of Farouk Meyer, Ray Forbay, and the police investigator in the Meyer case.

Main Suspects, Gang or Mafia Leaders and Organised Criminals

[30] The second statement in respect of which the applicants sought an interdict was to prevent Mr Dag from ‘referring to them as “main suspects” in murder, criminal masterminds, or gang leaders/role models for crime’. The statements related to this part of the interdict are as follows:

(a) In the post of 20 September 2025 referred to above, Mr Dag also stated: ‘These two individuals are mafia leaders; they have coerced colored (sic) communities into voting for them, threatening death if they refuse’.

(b) In the message posted on 22 September 2025 described above, Mr Dag also stated: ‘Kenny Kunene has transformed into a formidable figure and has become the most prominent mafia leader in South Africa’.

(c) In a video posted on the @a[...] handle on 25 September 2025, Mr Dag stated, after referring to the murder of Mr Meyer: ‘... and right now, the main suspect, Kenny Kunene, walking free. Main suspect, Gayton McKenzie, walking free’.

(d) In the video recorded by Mr Merricks, and posted by Mr Dag on the @a[...] handle on 25 September 2025, Mr Merricks stated: ‘So, you are saying to a young boy in Kliptown, he must not do crime, he must not do all this things when he look at Vicky Fly, when he look at Gayton McKenzie, when he looks at Kenny Kunene. You are mad, those are their role models.’

(e) On 8 October 2025, Mr Dag posted the following message on the @a[...] handle: ‘Arrest Gayton McKenzie. Arrest Kenny Kunene, **ORGANISED CRIMINALS ARE IN POWER RUNNING THE COUNTRY.**’ At the time of printing this message, it had received 393 views.

(f) On 10 October 2025, Mr Dag posted a message on the @a[...] handle in which he referred to this litigation as a historic case between ‘26th Gangs members Kenny Kunene/Gayton McKenzie’ and himself.

(g) On 12 October 2025, Mr Dag posted a message in which he referred to the applicants as part of the ‘26th Gangs.’

[31] In my view, the statements convey that the applicants are the main suspects in relation to cases of murder, and they are gang or mafia leaders, or organised criminals. (It does not appear to me that they have been described as ‘criminal masterminds’, nor is it clear that they are alleged to be ‘role models for crime’.)

Assault of Mr Merricks

[32] The applicants seek an order interdicting Mr Dag from ‘alleging that they sent people to assault or threaten journalist Chanon Merricks or any other person, or that they threatened Farouk Meyer via voicemail or any other communication’. The applicants’ concerns are based on the following statements made or repeated by Mr Dag:

(a) In the video of Mr Merricks, which was published on the @a[...] handle, Mr Merricks stated that ‘... they have sent under the instructions of, Vicky Fly and Gayton McKenzie and Kenny Kunene, they have sent people to my house to come and assault me as a journalist...’.

(b) As indicated above, in a video posted on the @a[...] handle on 26 September 2025, Mr Dag stated ‘Gayton McKenzie, we are going to publish your voice mail to Farouk Meyer when you threaten him. Why did you threaten Farouk Meyer? Why?...’.

(c) On 8 October 2025, Mr Dag posted a message described more fully above, which included the statement that ‘Gayton Mckenzie has threatened Farouk Meyer’.

[33] These statements convey that the applicants sent people to assault Mr Merricks (although they do not indicate that these people were sent to threaten him). These statements also convey that Mr McKenzie threatened Mr Meyer.

Tender fraud, corruption, theft etc.

[34] The applicants sought to interdict Mr Dag from ‘stating that they are responsible for “tender fraud”, corruption, theft of public funds, or enriching themselves through unlawful means (eg, the Nancefield tender)’. In his answering affidavit, Mr Dag stated that his comments of tender fraud related directly to the applicants’ public roles and their oversight of public funds. He said that he annexed a report from the public protector concerning irregularities in the tender, although he accepted that this report did not make a finding of personal guilt but rather confirmed systemic failures and procedural irregularities that justify public questioning and criticism. The report from the public protector was not, however, annexed to Mr Dag’s affidavit. Mr Dag stated further that his statements were a direct response to the documented evidence of maladministration. He contended that the questioning of how senior officials benefit from such systems is a matter of legitimate public interest.

[35] The applicants rely upon the video of Mr Merricks posted by Mr Dag on the @a[...] handle on 25 September 2025, in which Mr Merricks stated: ‘Now Nancefield Primary School for those of you that do not know, was where Vicky Fly, Gayton McKenzie, Kenny Kunene, Farouk Meyer that had a small *nyane* tender. That is why the school are not fixed today.’

[36] To my mind, this statement is obscure. The applicants did not explain what is meant by the word ‘nyane’ in this context. It is not clear to me exactly what is meant by this statement, and I am not persuaded that the

statement complained about may be derived from these words. Where a statement is ambiguous, unless it is shown that the defamatory meaning is more probable than the other, the applicant will have failed to discharge the onus which he or she bears.²⁸ In this instance, I was not persuaded that the defamatory meaning is more probable.

Organised crime / disappearance of dockets

[37] The applicants seek an interdict restraining Mr Dag from ‘alleging that they are politicians who utilise organised crime for political gain or who corruptly control law enforcement by making dockets disappear or by protecting themselves from justice’. This claim finds support in the following statements:

(a) On 22 September 2025, Mr Dag stated on the @a[...] handle:

‘The docket related to the disappearance of Jerry Boshoga is allegedly at Head Office, with Shadrack Sibiya. Why?
Arrest Kenny Kunene’.

(b) In Mr Merricks’ video, he stated in relation to the murder of five boys in Extension 9: ‘What happened to the case? Docket gone, docket silent’ and after referring to the murder of a person in Extension 2, ‘and that docket disappeared, the docket of those boys in Extension 9 disappeared. You know, all the dockets disappeared’. Having regard to the overall tenor of the video, it appears implicit that the applicants were involved in the vanishing dockets.

²⁸ *Le Roux* para 91(b); see also *Cele v Avusa Media Ltd* [2013] 2 All SA 412 (GSJ) para 38.

(c) In the statement on X dated 26 September 2025 described above, Mr Dag said that the ‘case disappeared’ in relation to the murder of Mr Forbay. The statement concludes by calling for the arrest of the applicants.

(d) In a message of 8 October 2025, Mr Dag referred to the applicants as ‘organised criminals’.

(e) In the video posted on the @a[...] handle on 25 September 2025 Mr Dag stated: ‘And right now, the main suspect, Kenny Kunene, walking free. Main suspect, Gayton McKenzie, walking free.’

[38] In my view, these statements, read together, amount to an allegation that the applicants are politicians who utilise organised crime (although I do not consider that it has been shown that it was alleged that this was done for political gain) and they corruptly control law enforcement by making dockets disappear (although I would not go as far as saying that the statements convey that the applicants more generally protect themselves from justice through corruption).

Unfit for public office

[39] The applicants seek an interdict restraining Mr Dag from ‘stating that they are unfit for their public offices (Minister, Deputy President, Councillor) due to alleged involvement in murder or organised crime.’ Reliance is placed on a statement which appears to have been made to a News24 journalist regarding this matter in which Mr Dag stated: ‘They

are both guilty; they must be charged. Kenny Kunene is the most dangerous criminal in SA. Neither of them should be involved in politics at all. I'm glad they brought this case because we have an opportunity to bring all our evidence against them. They cannot be in charge. We, as Truth and Solidarity, condemn them for being in government. We want a serious investigation into them'. Mr Dag did not dispute that he made this statement to the journalist.

[40] In my view, the objective reader of this article would understand Mr Dag to be alleging that the applicants are unfit for their public offices because of their involvement in murder or organised crime. This comment, however, is encompassed by the specific allegations regarding murder and organised crime. If Mr Dag is restrained from saying the applicants are murderers, it follows that he is also restrained from saying that they are unfit for public office because they are murderers. Having regard to the requirement that interdicts be narrowly tailored, I do not think it is necessary that a further interdict be granted prohibiting the allegation as to unfitness for office.

Calling them pansies

[41] The applicants sought to interdict Mr Dag from 'calling them a "pansy" or any other derogatory term intended to ridicule their character or dignity.' This claim flowed from the video posted on Mr Dag's @a[...] handle on 25 September 2025, in which he supposedly stated: 'Pansy PA, pansy. Pansy Gayton McKenzie, pansy. Pansy Gayton McKenzie, pansy. Pansy Kenny Kunene, pansy. Time has arrived.'

[42] In his answering affidavit, Mr Dag appeared to accept that he had used the term ‘pansy’. He argued that political discourse is not a tea party. It is often impassioned, figurative and sharp and the use of a term like ‘pansy’ in a political context, while perhaps intemperate, is rhetorical hyperbole intended to critique a perceived lack of political resolve, not to assert a literal fact. In oral argument, Mr Dag took a different approach and suggested that the word he used was not ‘pansy’ but rather ‘phantsi’ (down with). The latter approach is consistent with a message posted by Mr Dag on 12 October 2025 in which he stated: ‘Phansi Gayton Mckenzie, phansi Kenny Kunene.’

[43] Counsel for the applicants accepted that if Mr Dag had simply been using the word ‘phantsi’, then the claim in this regard would fall away. Having regard to the context of the video, it seems to be more likely that the word ‘phantsi’ was used rather than the word ‘pansy’. In any event, even if the word ‘pansy’ had been used, in my view, the term is not sufficiently serious to justify interdictory relief. The law requires politicians to be robust and thick-skinned in relation to negative comments about them.²⁹

²⁹ *Law of Delict* page 356; see also Neethling Potgieter Roos *Neethling on Personality Rights* (2019) page 211.

Calling for their arrest without due process / removal from public life

[44] The applicants sought an interdict prohibiting Mr Dag from ‘calling for their immediate arrest outside of due process or calling for them to be eliminated or removed by force from public life.’ I was not referred to any statements where Mr Dag called for the arrest of the applicants without the exercise of due process, or where he called for the applicants to be eliminated or removed by force from public life. In the circumstances, I do not consider that the applicants established a factual foundation to interdict such a statement.

Are these statements defamatory?

[45] Mr Dag argued that the statements published by him were not defamatory of the applicants because they already had a poor reputation. Mr Dag pointed to photographs of Mr Kunene, indicating that at some stage he had been photographed eating sushi off the body of a naked woman. Mr Dag also put up evidence of various media reports which cast the applicants in a negative light. In a signed statement annexed to his supplementary affidavit, Mr Dag submitted that the reputations of both applicants have been the subject of ongoing and serious public scrutiny on various social media platforms and in public discourse. He alleged that numerous allegations have been made concerning their misconduct, moral impropriety, nepotism, involvement in questionable tenders or business dealings, and even self-confessed criminal behaviour, including an admission of sexual assault. Mr Dag also suggested that Mr Kunene was linked to Mr Katiso (KT) Molefe, said to be one of the most

notorious criminal figures in South Africa and apparently a suspect in the murder of Oupa John Sefoka, known as DJ Sumboddy. Mr Dag concluded that these facts and allegations, taken collectively, raise serious and legitimate concerns regarding the credibility, moral standing, and integrity of the applicants in circumstances where they present themselves publicly as reformed ex-convicts and principled citizens committed to ethical governance.

[46] The applicants, on the other hand, emphasised that they are senior political figures who have sought to rebuild their lives after previously being incarcerated. Mr Kunene pointed to the fact that he is a successful businessman, motivational speaker and entrepreneur. He alleged further that he is held in high esteem within his professional and local communities. As to Mr McKenzie, it was alleged that his public career is defined by a transformative journey from a background of crime to becoming a best-selling author, highly sought-after motivational speaker, and successful entrepreneur with interests in publishing, mining and consulting. According to Mr Kunene both him and Mr McKenzie are fathers and respected members of their respective communities, and the allegations of murder and conspiracy published by Mr Dag has caused profound and irremediable harm to their personal dignity. This harm extends beyond personal injury to electoral reputation and the general standing of the Patriotic Alliance.

[47] In *Suliman*³⁰ the Supreme Court of Appeal declined to accept the proposition that the reasonable reader is bound to equate a statement that a person is suspected by the police of committing a crime with a

³⁰ *Independent Newspaper Holdings Ltd v Suliman* [2004] 3 All SA 137 (SCA) para 24.

statement that the person has actually committed that crime.³¹ But in this case Mr Dag went further than simply alleging that the applicants were suspects. The messages, read as a whole, clearly communicate that the applicants were guilty of participating in the murders in question.

[48] To my mind, the applicants' colourful past does not afford Mr Dag, or anyone else, a license to make false allegations about them. To put it bluntly: the fact that Mr Kunene ate sushi off a naked woman several years ago, does not mean that the public is now at liberty to accuse him of all manner of heinous, and completely unrelated, crimes. If Mr Dag were to comment that Mr Kunene's record of having objectified women rendered him unfit for public office, that would be a different matter. That is not, however, the tenor of the statements made about Mr Kunene. Even if the applicants are not held in very high regard by the public (in respect of which I make no finding), this does not mean that their reputations, such as they are, cannot be lowered further. In my view, there will be very few instances, if any, where a person's name would not be diminished by allegations of murder and corruption.

[49] In addition, I do not believe that allegations in other media may assist Mr Dag. As pointed out by the Supreme Court of Appeal in *Mthembi-Mahanyele*³² the logical consequence of this reasoning is that the more an applicant is defamed the less likely it is that he or she will have a claim. The court in *Mthembi-Mahanyele* found that the extent to which an applicant's reputation has already been tarnished should be considered only in assessing the quantum of damages to be awarded. I

³¹ See in this regard *Modiri v Minister of Safety and Security* 2011 (6) SA 370 (SCA) para 15.

³² *Mthembi-Mahanyele v Mail & Guardian Ltd and Another* 2004 (6) SA 329 (SCA) para 31.

therefore conclude that the statements described above were defamatory of the applicants.

Conclusion on the defamatory statements

[50] I accordingly find that the following defamatory statements have been made by Mr Dag in respect of the applicants:

- a. Stating that they caused, commissioned, or orchestrated the murder of Farouk Meyer, Ray Forbay, and the police investigator in the Meyer case.
- b. Referring to them as:
 - i. the main suspects in relation to cases of murder; and
 - ii. gang or mafia leaders, or organised criminals.
- c. Stating that they sent people to assault Mr Merricks, and they threatened Mr Meyer.
- d. Stating that they are politicians who utilise organised crime, and who corruptly control law enforcement by making dockets disappear.

[51] These defamatory statements are presumed to be both wrongful and intentional. Mr Dag therefore bears an onus to raise a defence which

excludes either wrongfulness or intent. To this end, facts must be pleaded and proved that will be sufficient to establish the defence. In the next section I assess whether Mr Dag has succeeded in proving a defence to the statements.

The defences

[52] In my view, the impugned statements listed above are statements of fact, rather than comment. It is therefore necessary for Mr Dag to show that the statements are substantially true and in the public benefit.

Murders

[53] Mr Dag did not put up any evidence in his answering affidavits which supported the statements alleging that the applicants caused, commissioned or orchestrated the murders of Farouk Meyer, Ray Forbay, and the investigator. It is perhaps telling that in his answering affidavit Mr Dag seemed to shift ground and alleged only that his statements were commentary on matters of grave public concern that have been widely reported and are the subject of intense public speculation. Mr Dag annexed a compilation of news articles and social media posts which he contended discussed the alleged political connections to these murders. He alleged further that the public record shows that these cases remain unsolved and are shrouded in allegations of high-level interference. According to Mr Dag, his role, as a public advocate, is to give voice to these widespread public concerns and to call for transparency and a proper investigation into these allegations.

[54] The news articles and social media posts annexed by Mr Dag do not provide any evidence that the applicants were involved in the murders in question. The material presented in relation to Mr McKenzie consists of: an article published three years ago relating to Mr McKenzie's time as Central Karoo District Mayor; a headline from an article published more than two years ago relating to R3 million 'missing' from a gala dinner fundraiser held by Mr McKenzie; a headline published more than two years ago stating that Gayton McKenzie is 'the face of the devil' according to a fired official; a headline from more than a year ago regarding a court directing Mr McKenzie to hand over documents for a corruption probe; a headline and the first four lines of an article relating to Mr McKenzie being ordered to disclose the financials of a Karoo fundraising projects; a headline published more than two years ago relating to swimming pools, bucket toilets and Eskom debt from Mr McKenzie's time as Mayor; a headline dated 4 June 2024 that a court ruled that Mr McKenzie must come clean about 'Beaufort-money'; a headline that Mr McKenzie launched another legal bid over a R3 million Central Karoo fundraising probe; a document bearing the words, 'Mr McKenzie explained how he and Kenny Kunene made woman drunk and raped them' (although the source of this document is not explained); and a post on X by @L[...] relating to Mr McKenzie's supposed knowledge of what happened to Joshlin Smith' (the young girl who was kidnapped and trafficked in February 2024).

[55] As regards Mr Kunene, the following articles were annexed: a headline indicating that Mr Kunene was 'caught at murder suspect Katiso

Molefe's house'; a headline suggesting that Mr Julius Malema said that Mr Kunene's claims about KT Molefe are 'pure lies'; a headline indicating that Mr Kunene's 'young journalist' could not run with the KT Molefe arrest story; a headline and the first few lines of an article relating to Mr Kunene visiting KT Molefe; an article concerning an allegation that Mr Kunene awarded a US\$128 000 tender to an entity 'linked to Nigeria'; a headline stating 'what was Kenny Kunene doing at home of DJ Sumbody's alleged killer? DA says his explanation is laughable'; a further article with the headline 'DA wants Joburg tenders linked to Kenny Kunene investigated'; a further headline 'Patriotic Alliance's Kenny Kunene in hot water for "underworld links"'; an article describing the arrest of four men in connection with the murder of DJ Sumbody; a headline 'Kenny Kunene under fire over links to suspect'; a headline 'Kenny Kunene suspended for visiting DJ Sumbody murder suspect' and the first few lines of the article, and a post, seemingly by Mr Dag himself, showing photographs of Mr Kunene eating sushi off a naked woman.

- [56] It is apparent from the description of the media annexed to the answering affidavit that not a single item relates to the murders of Mr Meyer, Mr Forbay, or the police investigator in the Meyer case. Many of the articles refer to the case of DJ Sumbody. But the applicants do not seek specific relief in relation to the allegations made by Mr Dag in connection with this murder. Even if the articles did relate to the murders in question, and to the extent that the case of DJ Sumbody is relevant to certain of the statements made by Mr Dag, most of the documents relied upon by Mr Dag are simply headlines from news articles. I do not consider that a

headline from a news article, or even an article itself, would suffice as evidence for the purposes of substantiating a defence to a claim of defamation. These articles are hearsay,³³ and Mr Dag did not suggest that the evidence should be admitted in terms of section 3(2) of the Law of Evidence Amendment Act 45 of 1988. It is also no defence to say that defamatory allegations were first published by someone else. A person who publishes a defamatory statement that was made by another is as much the publisher of the defamation as the originator is.³⁴

[57] In an affidavit annexed to his supplementary affidavit, Mr Dag stated that he has in his possession affidavits of various individuals which confirm that the applicants were implicated in the murder of Mr Meyer. These affidavits were not, however, placed before me. Mr Dag thus failed to show that his statements attributing the murders of Mr Meyer, Mr Forbay, and the police investigator to the applicants, are substantially true. It is therefore not necessary to decide whether the statements are in the public benefit. Although, having regard to the public roles occupied by the applicants, it seems to me that if the statements were substantially true, then it would be in the public benefit to air them. The publication of true statements about public officials and figures is generally for the public benefit.³⁵

[58] Even if these statements constitute comment, I do not believe that Mr Dag has shown that the facts upon which the comment was based are

³³ *President of the Republic of South Africa and Others v South African Rugby Football Union and Others* 2000 (1) SA 1 (CC) para 105. See also *Pioneer Foods (Pty) Ltd t/a Essential Foods v Shear N.O.* (JA21/22) [2024] ZALAC 46; (2025) 46 ILJ 344 (LAC) (18 October 2024).

³⁴ *Tsedu and Others v Lekota and Another* 2009 (4) SA 372 (SCA) (*Tsedu*) paras 4-5.

³⁵ See *Argus Printing and Publishing Co Ltd v Inkatha Freedom Party* 1992 (3) SA 579 (A) at 589G. In my view, the considerations identified by Wilson J in *Mbuyiseni v Media 24 t/a Daily Sun and Others* (21/25599) [2023] ZAGPJHC 1062 (19 September 2023) do not arise in this matter.

true and clearly stated or clearly indicated or matters of public knowledge. The defence of fair comment is therefore not available to Mr Dag.

[59] As to the defence of reasonable publication, there is no evidence that Mr Dag performed any investigation or verification of the allegations. Nor is there any evidence that he invited the applicants to comment on the serious allegations prior to publication. The intent to injure the applicants is evident from the failure to verify the information before publication, the continuation of the publication after the letter of demand, and the opposition of the matter to the bitter end.³⁶ To make egregious allegations against the applicants, without any endeavour to confirm their truth, is inconsistent with the absence of an intention to injure. As was found in *EFF*,³⁷ it demonstrates a willingness to wound irrespective of the truth of the allegations. In the circumstances, I do not consider the defence of reasonable publication to be available to Mr Dag, whether that be in the form of a rebuttal of the intention to injure, or a *Bogoshi*-type defence.

[60] Mr Dag states that his role, as a public advocate, is to call for transparency and a proper investigation into allegations. If this had been all that he had done, I would have had no difficulty with his statements. The problem, however, is that the statements made by Mr Dag went far beyond calling for transparency and a proper investigation. The warning issued by the Constitutional Court in *UDM* resonates in this matter: Mr Dag was not entitled to ‘wantonly defame the applicants under the

³⁶ See *Godongwana* para 69.

³⁷ Para 81.

pretext that he was executing a constitutional duty'.³⁸ Furthermore, if Mr Dag was in possession of evidence demonstrating that the applicants were involved in the murders in question, I would have expected him to provide this evidence to the police. There is no suggestion that he has done so.

[61] For these reasons, I find that Mr Dag did not lay a sustainable evidential foundation to justify implicating the applicants in the murders of Mr Meyer, Mr Forbay, and the investigator. I therefore granted the interdict in relation to these murders on the terms requested by the applicants.

Assault of Mr Merricks

[62] Mr Dag put up a seemingly incomplete affidavit purportedly signed by Mr Merricks on 7 October 2025, in which he stated that 'PA members came to my property to assault me...' This affidavit does not state that these persons were sent by the applicants. It is also not without relevance that Mr Merricks has not opposed this application and appears to have signed a settlement agreement in which he has promised not to state, amongst other things, that the applicants sent people to assault or threaten him. I therefore find that Mr Dag has not established a defence in relation to the allegation that the applicants sent people to assault Mr Merricks.

Threatening of Mr Meyer

³⁸ UDM para 62.

[63] Mr Dag put up an affidavit, seemingly signed on 6 October 2025 by Iman Abrahams, the daughter of Mr Meyer. This affidavit states, amongst other things, that before his murder, Mr Meyer informed Ms Abrahams and her sister that he had been receiving threats, including messages and audio recordings from Mr McKenzie. In my view, this affidavit corroborates the allegation that Mr McKenzie threatened Mr Meyer. Granted, the affidavit is dated after Mr Dag made his initial statements and it is therefore questionable whether he acted lawfully when he made such statements. This application, however, is concerned with future conduct. In so far as Mr Dag is now armed with evidence of Mr McKenzie having threatened Mr Meyer, this constitutes a defence to an interdict prohibiting such statements from being made in the future. Therefore, on this aspect I do not think that it can be said that Mr Dag has no defence, or that the facts put up in support of the defence of justification may be rejected out of hand.³⁹ In the circumstances, I am satisfied that Mr Dag has shown a valid defence in relation to the defamatory statements concerning threats made by Mr McKenzie to Mr Meyer, and Mr Dag was therefore not interdicted from making such statements.

The balance of the statements

[64] As regards the further defamatory statements, Mr Dag did not lay a sustainable evidential foundation for a defence of truth and the public benefit, or indeed any other defence. Although the media relied upon by Mr Dag casts aspersions upon the applicants, I do not consider this to

³⁹ Compare *Tau v Mashaba and Others* 2020 (5) SA 135 (SCA) (*Tau*) para 24.

constitute evidence that they are murder suspects, gang or mafia leaders, or organised criminals, nor that they are politicians who utilise organised crime, and who corruptly control law enforcement by making dockets disappear. Mr Dag may not prove the truth of his statements by the simple expedient of citing a similar statement made by a third party. The repetition rule holds that if you repeat a rumour, you cannot say it is true by proving that the rumour in fact existed; you must prove that the subject matter of the rumour is true.⁴⁰

[65] The applicants have a right to protect their dignity and reputation. As in *Godongwana*,⁴¹ the spurious allegations not only affect the applicants, but also the offices that they hold. I thus find that, save in relation to the allegations of threats by Mr McKenzie, the applicants have shown that they enjoy a prima facie right in relation to the defamatory statements identified above. I now turn to consider whether the applicants have satisfied the further requirements for an interim interdict.

Well-grounded apprehension of irreparable harm

[66] The interdict sought by the applicants is directed at preventing Mr Dag from making statements in the future. If granted, it impinges upon his constitutionally protected right to freedom of speech. In *Herbal Zone*, it was noted that interdicts of this kind are infrequently granted, the party

⁴⁰ *Tsedu* para 5.

⁴¹ Para 81.

claiming that they will be injured by such speech ordinarily being left to their remedy of a claim for damages in due course.⁴²

[67] The incessant allegations made by Mr Dag, even after the letter of demand, and even after the application was launched, suggest that there is a likelihood that, absent an interdict, he will continue to defame the applicants.⁴³ Even at the hearing, Mr Dag asserted that the applicants should be behind bars. Mr Dag argued that the applicants are nationally prominent political figures with immense media access and platforms. He argued further that they have every opportunity to publicly rebut the statements which they have already done. Mr Dag submitted that if any statement is proven false and defamatory in a subsequent trial, a claim for damages would be an adequate and complete remedy. The applicants argued, on the other hand, that the harm is irreparable because a reputation, once publicly tarnished by allegations of murder, cannot be fully restored by a future damages award.

[68] I do not consider that the opportunity to repudiate the allegations constitutes an adequate remedy for the applicants. In addition, and in relation to the prospect of a damages claim, I agree with the approach adopted by the Supreme Court of Appeal in *EFF*, where the court held that:

‘In circumstances where the applicants were obdurate, and where the integrity of an institution of state was being undermined on the basis of Mr Manuel’s alleged corrupt and nepotistic conduct, an award of damages, in due course, could hardly be

⁴² *Herbal Zone (Pty) Limited and Others v Infitech Technologies (Pty) Limited and Others* (204/2016) [2017] ZASCA 8; [2017] 2 All SA 347 (SCA); 2017 BIP 172 (SCA) (10 March 2017) para 36.

⁴³ By contrast, compare *Tau* para 26.

said to be a viable and compelling alternative to an interdict prohibiting further publication.’⁴⁴

[69] I am therefore satisfied that the applicants have established a well-grounded apprehension of irreparable harm. Put differently, the applicants have shown that a future injury is feared, and an interdict is therefore appropriate.

The balance of convenience

[70] Mr Dag argued that the harm to him, and more importantly to the public interest, if the interdict is granted, is severe and irreparable. He contended that the interdict would gag a public advocate from commenting on matters of corruption and governance, effectively granting public officials a licence to operate without public scrutiny. He asserted that this would create a chilling effect that extends far beyond this case.

[71] As indicated above, it is at this stage that consideration should be given to, among other things, the strength of the applicants’ case, the seriousness of the defamation, the difficulty Mr Dag had in proving, in the limited time afforded to him, the defence which he wished to raise and the fact that the order may, in substance though not in form, amount to a permanent interdict.

⁴⁴ Para 89. See also *UDM* para 72; *Godongwana v Mdwaba* [2024] ZAGPJHC 46 (26 January 2024) paras 85-86.

[72] I accept that Mr Dag had limited time to present his case, and I also accept that an interdict pending the determination of an action could restrain Mr Dag from making the statements concerned for several years. It is also true that the applicants would, in due course, be able to ask for the court to award damages in their favour. On the other hand, Mr Dag has made, and continues to make, grave allegations against the applicants, and I consider that the applicants' case, based on the evidence at hand, to be compelling. In addition, Mr Dag has already published his views on numerous occasions. All that the interdict seeks to accomplish is the prohibition on him repeating the allegations in the future. In so far as this may be a prior restraint, it is of an attenuated form. Mr Dag has already expressed his views regarding the applicants to his followers on social media, and these followers have received Mr Dag's views. To my mind, even on a cautious approach, the balance of convenience favours the granting of the interdict.

[73] The interdict which I have granted is narrowly formulated.⁴⁵ It does not prevent Mr Dag from commenting on matters of corruption and governance nor does it prevent him from scrutinising the conduct of public officials. What the interdict does seek to achieve is to restrain Mr Dag from making serious allegations against the applicants in respect of which he has not yet produced any evidence of their veracity.

No satisfactory alternative remedy

⁴⁵ Compare *Gen4foods (Pty) Ltd v Hadebe and Another* (D12392/2023) [2024] ZAKZDHC 67 (2 October 2024) paras 69-70.

[74] The applicants point out that the letter of demand was defiantly ignored by Mr Dag and a future claim for damages is not an adequate remedy as it will not stop the ongoing harm. According to the applicants the only effective remedy that can provide substantial redress by putting an immediate stop to the ongoing harm is an urgent interdict. Mr Dag argued, on the other hand, that the applicants have a more than satisfactory alternative remedy in a delictual action for damages. According to Mr Dag their choice to seek an interdict reveals their true purpose, namely, not to seek compensation, but to secure a gag order and avoid the discovery processes of a trial that would scrutinise their own conduct.

[75] This requirement has, to a degree, been addressed above in relation to the question of irreparable harm. In relation to Mr Dag's submissions, the interdict does not allow the applicants to avoid the discovery processes. The order provides that the action must be instituted within 20 days, failing which the interdict will lapse. As soon as pleadings have closed, Mr Dag will be entitled to call for discovery from the applicants. I am therefore not persuaded that the true purpose of the interdict is to secure a gag order and avoid discovery processes.

Relief

[76] I am thus satisfied that the applicants have met the requirements for an interim interdict. I have adjusted the relief sought in the notice of motion in a few respects. It was apparent from the founding affidavit that the relief contemplated in the action was not limited to a declaration that the

statements were defamatory. The interdict is therefore pending an action which, amongst other things, seeks such declaratory relief. Furthermore, in the notice of motion, action was to be instituted within 30 days of the order. It appeared to me that 30 days was an excessive period for Mr Dag to await the institution of action. Having regard to the prejudice which Mr Dag will suffer as a result of the interdict, and the fact that the issues in the matter have already been fully ventilated, I think it is reasonable to require the applicants to institute their action within a shorter period of 20 days. Moreover, the order granted provides for the lapsing of the interdict if the applicants fail to institute their action within this period.

[77] As regards costs, there are sound reasons for not awarding the costs relating to an interim interdict to a successful applicant in the absence of exceptional circumstances.⁴⁶ If the applicants are unsuccessful in the action, a costs order in respect of the application for interim relief may, in retrospect, turn out to have been unjust. There is no substantial prejudice to the applicants as they will be entitled to seek the costs of this application in the action. It is also relevant that Mr Dag was afforded only a short time to prepare papers. This was no doubt aggravated by the fact that he was not legally represented. Mr Dag alleged in his supplementary affidavit that he struggled to secure legal representation as several practitioners declined to act, while others were unavailable

⁴⁶ *Airoadexpress (Pty) Ltd v Chairman, Local Road Transportation Board, Durban, and Others* 1986 (2) SA 663 (A) at 682I-683A. See also CB Prest *The Law and Practice of Interdicts* (1996) page 381; and *Opposition to Urban Tolling Alliance v The South African National Roads Agency Ltd* 2012 JDR 0808 (GNP) page 30.

(although at the hearing it emerged that he had obtained advice and assistance from a legal practitioner in Kwazulu-Natal).

[78] Furthermore, Mr Dag foreshadowed in his papers that there were witnesses he would wish to call in relation to the allegations he made, subject to suitable witness protection being provided to them. It is therefore possible that relevant evidence will be placed before the trial court, which was not before me. I am also conscious that a costs order at this stage of proceedings would have a chilling effect on the right to freedom of expression. In addition, the applicants sought costs on a punitive scale. Even if they are entitled to the costs of the application, the scale of such costs may be better decided after the trial.

[79] For all these reasons, I decided to reserve the question of costs for determination at the trial.⁴⁷

DJ COOKE
ACTING JUDGE OF THE HIGH COURT

Appearances

For applicants: T Mathopo
Instructed by: Mayet Attorneys Inc.

⁴⁷ See also *EMS Belting Co. of SA (Pty) Ltd and Others v Lloyd and Another* 1983 (1) SA 641 (E) and *Ward v Cape Peninsula Ice Skating Club* 1998 (2) SA 487 (C) at 501I-J.

For first respondent: In person