

REPUBLIC OF SOUTH AFRICA



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

Case Number: 247336/2025

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: NO
31 DECEMBER 2025	
DATE	SIGNATURE

In the matter between:

COUNCILLOR LOYISO MASUKU

Applicant

And

PHAPANO PHASHA

1ST Respondent

MASHIANE MASHIANE N.O

2nd Respondent

JUDGMENT

Mahomed J

INTRODUCTION

[1] This matter was on the urgent court roll, the applicant is a recently elected chairperson of the Johannesburg Region of the African National Congress.

THE PARTIES

[2] The applicant seeks an interdict, a declarator of unlawfulness and defamation, the withdrawal of offending words and an apology for defamatory allegations made by the first respondent on her podcast.

[3] The first respondent, a political/economic analyst, participated in and contributed to the publication and dissemination of defamatory material about the applicant. The applicant seeks to protect her dignity reputation and the integrity of her office.

[4] The second respondent hosted the podcast episode on 6 December 2025, when the offending statements were disseminated on the public platform. The publication has occurred and is accessible in the Gauteng region and continues to date. The publication is available on international platforms.

THE STATEMENTS

[5] In that episode, the first respondent made statements about the applicant which to any reasonable listener, conveyed that the applicant is corrupt, part of the PPE (personal protection equipment) cartel, that she purchased the regional conference, she stole municipal money and stated that the applicant is a psychopath. The allegations were conveyed as fact of criminality, and immoral. The applicant denied all allegations made and contended that they were false and malicious. The applicant argued that the first respondent bears the onus to prove that the statements she made were true.

[6] Advocate MQ Lebakeng for the applicant informed the court that the episode was published on 6 December 2025 and on 9 December 2025 the applicant's attorney delivered a cease and desist notice and demanded a retraction and an apology, within 48 hours.¹ The respondent was further warned that the applicant would approach the court for urgent relief if she failed to cooperate. The first respondent replied:

"nope I am not seizing and desisting she kindly take this matter to court please."

[7] It is noteworthy that the respondent in her publication stated that she was bitter about the applicants alleged behaviour, counsel for the applicant submitted that it cannot be said that the statements were made in the public interest. It was submitted that the first respondent is recalcitrant and reckless. The first respondent filed a notice to oppose, representing herself.

[8] Her answering affidavit was filed on the morning of the hearing of this matter. Counsel submitted his client ought to be afforded more time to respond, she was unrepresented and it took her while to obtain representation given the holiday period, and furthermore, his client is ill, she had a nerve extraction in her mouth and was unable to speak and could not fully consult with her legal team. He contended the affidavit was prepared in haste and argued that the respondent be afforded more time. He submitted that the statements complained of have been in the public domain for several months, articulated by both the Premier of Gauteng as well as the President, it was nothing new. In his view his client simply restated what is already known and the statements must be read in a context and can be interpreted differently if read in isolation.

¹ CL 001-41

He was unable to explain why the applicant did not respond initially by advising that the information was not new, she instead refused to retract, and invited the applicant to litigate in the courts.

[9] On the facts I noted that the statements complained of pertain to the applicant who was appointed chairperson on the day before they were made. Counsel' submissions that the statements were in public domain a long while back, cannot be correct. She was only appointed the day before, therefor the defense of fair comment cannot assist the respondent.

[10] The court was referred to articles which the first respondent relied on and it was argued that the statements in those articles was significantly different from that which the first respondent claimed was already in the public domain. During further submissions, the first respondent offered to remove the article off the platform. Counsel for the applicant argued it was not sufficient and that an apology and retraction is necessary, she rejected her opponents submissions that the first respondent was ill and could not sufficiently and timeously instruct her legal team. Ms Lebakeng argued that the first respondent's attorney could have informed her attorney of her illness and requested for an extension of time , she contended that the late filing of the answering affidavit was deliberate to force a postponement. Ms Lebakeng submitted that the respondent's affidavit at this late stage on the morning of the hearing must be disallowed.

[11] I considered the submissions and noted the offer to remove the podcast was put when the first respondent realised that she may risk a cost order on scale C. The statements were clear and no doubt defamatory for the applicant in her position. The platform has wide reach and messages communicated at high speed; the content has been on the platform since 6 December 2025. The

offer to remove demonstrated to me that the first respondent had no defence, if she did she would have naturally put one up much earlier. She obviously was not justified in posting such statements on the podcast/ platform. The respondent could have avoided the litigation if she in her initial response informed the applicant that she simply repeated what was already in the media. Instead, she arrogantly invites the applicant into a contest, whilst the harm continues and gains in momentum by the day.

[12] In my view the applicant has satisfied the requirements for an interdict. The content identified her specifically, she therefore has a clear right, to protection of her privacy and reputation. The information was harmful, although counsel for the respondent tried to argue that the statements were a matter for interpretation and must be viewed in context. I found the statement conveyed a clear message and was clearly directed to the applicant. The timing of the publication conveys an intention to injure her reputation, and the chosen platform demonstrated an intention for wide publication. The respondent is a governance analyst and must have known the impact of her publication and her target audience. I find the statements were defamatory and reckless and demonstrated a clear intention to injure. The statement was unlawful.

[13] In *Financial Mail (Pty) Ltd and Others v Sage Holdings Ltd and Another*,² 2 Corbett CJ stated, “ in demarcating the boundary between the lawfulness and unlawfulness in this field [infringement of personal privacy], the court must have regard to the particular facts of each case and judge them in the light of boni mores and the general sense of justice of the community as perceived by the court. Often a decision on the issue of unlawfulness will involve a consideration

² 19913 (2) SA 451 (A)

and a weighing of competing interests.” If one has regard for the position of the first respondent, it may well serve her career aspirations to comment as she had, furthermore, she conveyed that “she was bitter.”

[14] In *Borgin v De Villiers and Another*,³ the court stated that, “malice and or improper motive by the perpetrator of the comment also acts to defeat the defence of fair comment.” This could not be fair comment as argued by counsel for the respondent. The harm continued and, in my view, there is no other remedy available to avoid further dissemination of the information.

DAMAGES

[15] The applicant referred to court of judgments of the SCA⁴ in which it was held that a court may in motion proceedings make an award for damages in the circumstances or refer the matter for oral evidence on the aspect of the quantum of damages. I am of the view that the respondent is entitled to address the court on this issue and therefore think it appropriate to refer this to oral evidence, to determine the quantum.

[16] The application for a final order succeeds.

COSTS

[17] Counsel for applicant argued that costs on a party scale C are appropriate. Obviously, the usual approach to costs must apply, costs are awarded to the successful party. I agree that costs on scale C are appropriate, having regard to the complexity of the matter, the refusal to mediate when the

³ 1980 (3)SA 556(A), 1981 (1) SA 1157 (A) 1998(4) SA 1196 (SCA), 2002 ZACC 12 para 18

⁴ See *EFF and Others v Manuel* 2021 (3) SA 425 (SCA)

matter could have been resolved, and the opposition in court followed by an offer to withdraw the statements and podcast during the hearing of this matter.

Accordingly, I make the following order:

1. The forms and service provided for in the Uniform Rules of Court are dispensed with and this matter is heard as one of urgency in terms of Rule 6(12).
2. The Applicant's non-compliance, if any, with the Rules relating to time periods, forms and service is condoned to the extent necessary.

INTERDICT AND RESTRAINT

3. The Respondents are interdicted and restrained, and any person acting in concert with them or at their instance, or with knowledge of this Order and participating in further publication is likewise restrained from, publishing, republishing, distributing, disseminating, sharing, endorsing, repeating, or causing the publication of any defamatory allegations concerning the Applicant to the effect that the Applicant: -
 - 3.1 is part of a "PPE cartel"; and/or
 - 3.3 "bought conference" and/or that "bags were going around"; and/or
 - 3.3 stole money from the City of Johannesburg and/or diverted municipal monies and/or is corrupt; and/or
 - 3.4 Is a "psychopath" (or any allegation of similar import).

TAKE-DOWN AND REMOVAL

4. The First and/or Second Respondent is/are directed to take all steps within their power to procure the immediate removal/withdrawal of the impugned podcast episode and all clips/extracts/posts containing the defamatory content from all on which it is hosted or disseminated, including (without limitation) YouTube, Spotify, Apple Podcasts, the host's website, and any social media pages under their control or to which they contributed the content.

5. The Respondents shall, within 24 hours of service of this Order, provide the Applicant's attorneys with written confirmation of steps taken and proof thereof (including screenshots, links and/or correspondence evidencing requests to hosts/platforms)

. RETRACTION

6. The First Respondent is directed, within 24 hours of service of this Order (or such time as the Court deems fit), to publish a clear and unequivocal retraction expressly recording that the allegations are false, unsubstantiated and withdrawn in their entirety. (as per schedule A)

APOLOGY

7. The first respondent is directed to within 24 hours of service of this order to publish a clear and unequivocal retraction expressly recording that the allegations are false, unsubstantiated and withdrawn in their entirety.

PLATFORM AND PROMINENCE

8. The retraction and apology in paragraphs 6 and 7 must be published on the same platform(s) and channels through which the defamatory statements were disseminated, with equal prominence and reach, including by a pinned post and/or description update and/or corrective segment/episode (where applicable).

UNDERTAKING

9. The First Respondent is directed, within 24 hours of service of this Order (or such time as the Court deems fit), to furnish the Applicant's attorneys with a written undertaking to desist from repeating, endorsing, sharing, or amplifying the defamatory allegations (or any allegation of similar import).
- 10.
11. The issue of damages is referred to oral evidence for determination of the quantum of damages.
12. The first respondent shall pay the party party costs of this application on Scale C.

A handwritten signature in black ink, appearing to be 'Mahomed J', is written over a solid black rectangular redaction box.

Mahomed J
JUDGE OF THE HIGH COURT
JOHANNESBURG

MAHOMED J

Date of hearing: 23 December 2025

Date of Judgment: 31 December 2025

Appearances:

Applicants's Counsel

Advocate M Lebakeng

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Vaughanschwartz@icloud.com

For 1st Respondent

Advocate BC Nyabane