

REPUBLIC OF SOUTH AFRICA



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

(1) REPORTABLE: ~~YES~~/NO
(2) OF INTEREST TO OTHER JUDGES: ~~YES~~/NO
(3) REVISED: ~~YES~~/NO

CASE NUMBER: 2023-112452

6 February 2026 _____

DATE

SIGNATURE

In the matter between:

BARLOWORLD SOUTH AFRICA (PTY) LTD

APPLICANT

And

NOT IN MY NAME INTERNATIONAL NPC

FIRST RESPONDENT

SIYABULELA WALTER JENTILE

SECOND RESPONDENT

MPOMELELO IGNATIUS MASANGO

THIRD RESPONDENT

THEMBA MARTIN MASANGO

FOURTH RESPONDENT

Heard: 14 October 2025

Delivered: 6 February 2026

Headnote: Defamation — Final interdict — Social-media publications and targeted correspondence to customer alleging racism and sexism — Publication admitted — Wrongfulness and intention presumed — Defences of truth and public interest, reasonable publication, fair comment and freedom of expression not established — Retraction — Targeted defamatory communication justifying mandatory written retraction — Costs — Punitive costs on attorney-and-client scale warranted.

JUDGMENT

WINDELL J:

Introduction

[1] This is Part B of an application in which the applicant, Barloworld South Africa (Pty) Ltd, seeks final interdictory relief restraining the respondents from publishing defamatory material concerning it. The applicant also seeks ancillary relief directing the respondents to retract a letter addressed to one of its longstanding customers.

[2] The applicant is a large corporate entity operating nationally. The first respondent, Not in My Name International NPC, is a non-profit company. The second to fourth respondents are directors of the first respondent and were at all material times responsible for the conduct complained of.

[3] The factual background is set out in detail in the founding affidavit and the joint practice note and need not be repeated in full. The salient facts are the following.

[4] Following the termination of contractual arrangements between the applicant and an entity known as Fisokuhle Multi Services CC (“Fisokuhle”), allegations of racism and abuse were made against the applicant by Ms Felicia Buthelezi (“Buthelezi”), the sole member and representative of Fisokuhle, including on various social media platforms. Those allegations were investigated by the applicant and subsequently formed the subject of litigation before the Equality Court. On 27 October 2022, after considering the evidence, the presiding magistrate determined that the matter should not be referred to the Equality Court in terms of section 20(3)(a) of the Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000.

[5] In the interim, the applicant approached the urgent court for interdictory relief. On 26 October 2022, Dosio J, under case number 2022-032755, granted an order interdicting Fisokuhle and Buthelezi, pending the determination of Part B of those proceedings, from publishing information concerning the applicant or its employees on social media or other public platforms (“the Dosio order”).

[6] Thereafter, during September and October 2023, the respondents published statements on social media platforms, including Twitter/X, accusing the applicant of racist and sexist conduct. Despite being placed on terms by the applicant’s attorneys, the respondents persisted in publishing such statements. On 22 October 2023 the applicant launched urgent proceedings to hold Fisokuhle and Buthelezi in contempt of the Dosio order.

[7] The following day, on 23 October 2023, the respondents addressed a letter to Tharisa Minerals (South Africa) (Pty) Ltd (Tharisa Minerals), a longstanding customer of

the applicant, in which those allegations were repeated and the applicant's business relationship with that entity was invited to be scrutinized.

[8] On 27 October 2023 the applicant launched urgent proceedings against the respondents. Part A was heard on an urgent basis and, on 8 November 2023, an interim interdict (per Twala J) was granted pending the determination of Part B in the following terms:

"Pending the determination of Part B, the Respondents are interdicted and restrained from:

5.1.1. publishing defamatory matter of or concerning the applicant, regarding any aspect of the ongoing dispute between the applicant, on the one hand, and Fisokuhle Multi Services CC and/or Ms Felicia Buthelezi, on the other, whether on a social media platform or in any other manner.

5.1.2. contacting, corresponding with or engaging any of the applicant's customers and/or employees, regarding any aspect of the ongoing dispute between the applicant, on the one hand, and Fisokuhle Multi Services CC and/or Ms Felicia Buthelezi, on the other.

5.2 The respondents shall remove, within 24 hours of this order being granted, all statements and/or allegations that state or imply that the applicant is racist, sexist, unethical and/or unprofessional, from all their social media platforms and/or websites."

[9] The matter now serves before this Court for the final determination of the relief sought. The applicant seeks confirmation of the interim interdict restraining the respondents from publishing defamatory matter concerning the applicant in relation to

any aspect of the dispute between the applicant, on the one hand, and Fisokuhle and/or Buthelezi, on the other; interdicting them from contacting, corresponding with, or engaging any of the applicant's customers or employees regarding that dispute; directing them to deliver an unconditional retraction of the letter dated 23 October 2023 addressed to Tharisa Minerals; and ordering them to pay the costs of the application on the attorney-and-client scale.

[10] The respondents oppose the application through answering affidavits deposed to by the third respondent, Mpomelelo Ignatius Masango, and the fourth respondent, Themba Martin Masango. They thereafter delivered supplementary answering affidavits on 1 February 2024 and 26 September 2025.

[11] The supplementary affidavit dated 1 February 2024 falls to be struck out. It is, in substance, identical to the original answering affidavit and merely refers to letters purportedly marked "Annexure NIMNI01", which are said to confirm that the applicant's employee was found guilty of racial offences. However, although correspondence is attached, it is not marked as "Annexure NIMNI01", the affidavit does not identify the portions relied upon, and the documents themselves do not state that any employee was found guilty of racial offences. The affidavit was furthermore filed out of time and was not accompanied by any application for condonation. It is accordingly irrelevant and scandalous and falls to be struck from the record.

[12] By contrast, the supplementary answering affidavit delivered on 26 September 2025 was accompanied by an application for condonation and is admitted in the interests

of ensuring that the matter is determined on a full and complete factual conspectus, any prejudice to the applicant being appropriately addressed in the costs order.

Legal principles applicable to defamation

[13] Defamation consists of the wrongful and intentional publication of a defamatory statement concerning another.¹ Once the applicant establishes publication of a defamatory statement, wrongfulness and intention are presumed, and the onus shifts to the respondent to rebut one or both by establishing a recognised defence.²

[14] The test in determining whether a statement is defamatory is objective.³ The Court must determine the meaning that a reasonable reader would attribute to the words used in their proper context, and whether that meaning is defamatory. A statement is defamatory if it has the tendency to undermine reputation; proof that readers in fact thought less of the applicant is not required.⁴

The publications

[15] The respondents published statements on social media and addressed correspondence to a longstanding customer of the applicant alleging, expressly or by clear implication, that the applicant is racist, sexist, unethical and abusive of black women in a professional environment.

¹ *Khumalo & Others v Holomisa* 2002 (5) SA 401 para 18.

² *Ibid.*

³ *Modiri v Minister of Safety and Security and Others* 2011 (6) SA 370 (SCA) para [13]

⁴ *Ibid.*

[16] Publication of the various statements is not in dispute. The statements were disseminated on the first respondent's Twitter/X account and directly communicated to Tharisa Minerals.

[17] Although some statements are framed as "allegations" or "questions", the ordinary reader would understand them, in context, as assertions of fact. The repeated references to racist slurs and unethical conduct convey a clear and damaging meaning. It follows that the statements complained of are defamatory of the applicant.

[18] Publication of defamatory matter concerning the applicant having been established, wrongfulness and intention are presumed. The onus shifts to the respondents to rebut one or both by establishing a recognised defence in law.

Defences

[19] The respondents' opposition proceeds on several bases. They contend that the posts and correspondence complained of were justified in light of what they describe as the applicant's failure to adequately address allegations of racism and abuse; that the publications were made in the public interest, particularly in relation to the empowerment of women and black-owned businesses; that reasonable steps were taken to verify the allegations, and that certain statements in the letter to Tharisa Minerals were framed as questions or expressions of opinion rather than assertions of fact.

[20] They further submit that the statements are not false, alternatively that they are protected by considerations of public interest and freedom of expression, emphasising that similar allegations had previously been reported in a *City Press* article published in November 2022 and that the applicant did not seek urgent relief at that time. The

respondents also contend that the order granted by Dosio J on 26 October 2022 does not preclude complaints to third parties and that they are not affiliated with Fisokuhle or Buthelezi. In addition, they argue that the dismissal of proceedings in the Equality Court is of limited relevance and rely instead on correspondence said to reflect that an employee's conduct was inconsistent with the applicant's internal policies.

[21] In argument, the respondents rely on authority dealing with reasonable publication, public interest, and freedom of expression, including *National Media Ltd and Others v Bogoshi (Bogoshi)*⁵ and *Reynolds v Times Newspapers Ltd and Others (Reynolds)*.⁶ They invoke these authorities in support of the proposition that a public-interest organisation is entitled to interrogate and expose the conduct of a large corporate entity.

[22] The defence of reasonable publication in matters of public interest was firmly recognised by the Supreme Court of Appeal in *Bogoshi*. That approach was subsequently endorsed and constitutionally grounded by the Constitutional Court in *Khumalo and Others v Holomisa*,⁷ which located the enquiry within the balance between the rights to dignity and freedom of expression. The ultimate question remains whether, having regard to the nature of the information, the reliability of its source, the steps taken to verify it, and the overall manner of publication, the defendants acted reasonably.

⁵ *National Media Ltd and Others v Bogoshi* 1998 (4) SA 1196 (SCA).

⁶ *Reynolds v Times Newspapers Ltd and Others* [2001] 2 AC 127 (HL).

⁷ *Supra*.

[23] On the facts of the present matter, those requirements are not satisfied. The respondents did not place before the Court admissible evidence establishing the truth of the allegations of racism and sexism advanced. Absent proof of substantial truth, publication cannot be justified on the basis of public interest. Nor does the evidence support reasonable publication. The correspondence and subsequent posts demonstrate that the respondents had already formed a concluded view regarding the applicant's culpability, accompanied by threats of protest action and statements indicating that no court order would deter them. Such conduct is inconsistent with an investigative or measured approach.

[24] The defence of fair comment likewise fails. The statements complained of go beyond protected opinion and rest upon factual assertions not shown to be true or to constitute matters of public record. Although the respondents invoke the constitutional importance of freedom of expression, that right does not extend to the unsubstantiated publication of defamatory allegations, particularly where such allegations are directed at damaging existing commercial relationships.

[25] In these circumstances, none of the pleaded defences avail the respondents.

Final Interdict

[26] The applicant has established a clear right to its good name and reputation. The injury is both actual and reasonably apprehended. The respondents have persisted in publication despite warnings and court orders and have targeted the applicant's commercial relationships.

[27] There is no adequate alternative remedy. Damages would not prevent continued publication, and undertakings have proven ineffective. The requirements for a final interdict are satisfied.

Retraction

[28] The letter addressed to Tharisa Minerals was not a general commentary but a targeted communication to a longstanding customer of the applicant, repeating defamatory allegations and inviting reconsideration of its business relationship with the applicant.

[29] A prohibition on future publication does not, on its own, remedy the harm already occasioned by that communication. In the circumstances, a direction compelling an unconditional written retraction is both proportionate and necessary to vindicate the applicant's rights.

[30] In the result, the applicant has established the requirements for final interdictory relief and the ancillary relief sought.

Costs

[31] The respondents persisted in publishing serious allegations without placing before the Court evidence capable of justifying them. They ridiculed the applicant's attempts to resolve the dispute through legal channels and escalated the matter.

[32] The applicant was accordingly compelled to approach the Court to protect its reputation and commercial interests.

[33] In these circumstances, costs should follow the result. The respondents' conduct justifies an award of costs on the attorney-and-client scale.

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

1. The interim interdict granted on 8 November 2023 is confirmed and made final.
2. The respondents are interdicted and restrained from publishing, causing to be published, or disseminating defamatory statements concerning the applicant, whether on social media platforms, in correspondence, or otherwise.
3. The respondents are directed, within 7 days, to deliver to the applicant's attorneys an unconditional written retraction of the letter dated 23 October 2023 addressed to Tharisa Minerals (South Africa) (Pty) Ltd.
4. The respondents are ordered, jointly and severally, to pay the costs of the application on attorney and client scale.



L WINDELL

JUDGE OF THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, JOHANNESBURG

Delivered: This judgment 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 6 February 2026.

Appearances

For the applicant:	L Nkosi
Instructed by:	NSC Inc.
For the respondents:	K Masupye
Instructed by:	The Deborah's 972 Legal Clinic.
Date of Hearing:	14 October 2025
Date of Judgment:	6 February 2026