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

CASE NO: 133273/24

HEARD ON: 20 JANUARY 2026

JUDGMENT: 2 FEBRUARY 2026

(1) REPORTABLE: ~~YES~~/NO

(2) OF INTEREST TO THE JUDGES: ~~YES~~/NO

(3) REVISED.

DATE: 2 FEBRUARY 2026

SIGNATURE:

In the application of:

UNIVERSITY OF SOUTH AFRICA

First Applicant

**PRINCIPAL AND VICE CHANCELLOR OF
THE UNIVERSITY OF SOUTH AFRICA**

Second Applicant

and

SIMAMKELE YONGA XANI

Respondent

JUDGMENT

Strijdom J

1. This is an urgent application in which the applicants seek an order holding the respondent in contempt of Court for breach of the Court order granted by this court

on 27 November 2024 ("the Potterill J order"). It is attached to the Notice of Motion as annexure "A".

2. The material portions of the order reads as follows:

"2. The respondent is interdicted, prevented and/or prohibited and/or restrained from publishing any false or misleading information about the applicants, in any manner and/or on any media platform.

3. The publication and/or statement made through a video by the respondent on 13 November 2024 on his TikTok account under the name @s[...] is referred to as an "impugned statement" in this Order.

4. It is declared that the allegations made by the respondent about the applicants through a video on his TikTok account in the impugned statement are false and defamatory.

5. The respondent is directed to permanently retract and/or remove / or delete the video containing the impugned statement made by him on his TikTok account on the 13 November 2024.

6. The respondent is further ordered to: -

(a) Publish within 24 hours of the granting of this Order, an apology to the applicants in which he apologises for false allegations he made in the impugned statement; and

(b) The respondent shall publish the apology referred to above on his TikTok account and or on any of his social media accounts where he had previously made same or similar allegations against the applicants, as well as all the media houses he had tagged on his TikTok video.

7. The respondent is interdicted from publishing or causing to be published any defamatory statements about or otherwise concerning the applicants in terms to that of the impugned statement, wherein he repeats or causes to be repeated the same or similar allegations are those made in the impugned statements statement in any manner whatsoever."

3. At the commencement of the proceedings the respondent conceded that the application is urgent and abandoned his counter claim.

4. The respondent raised a point *in limine* that "in the absence of a Council resolution, the second applicant cannot unilaterally clothe herself with institutional authority, nor can she manufacture standing for the first applicant by relying on her own position. Simultaneously with this affidavit I have delivered a notice in terms of Uniform Rule 7(1), placing in issue the authority of the applicant's attorneys to act on behalf of the first applicant and the authority of the second applicant to represent and bind the first applicant in these proceedings."¹. The respondent abandoned the remaining points *in limine*.

5. This application flows from the application that was launched in 2024 and resulted in the Potterill order that was granted on 27 November 2024. The respondent did not contest the authority of the first and second applicants and their lawyers when the order was granted on 27 November 2024. Prove of the authority was provided by the applicants.²

6. Subrule (1) of Rule 7 does not prescribe the method of establishing authority where such authority is challenged. When such authority is challenged the requirement of the sub-rule is that he or she shall satisfy the Court "that he is authorized so to act." This he or she may do by adducing any acceptable form of proof and not necessarily by filing a written power of attorney.

7. I am satisfied that the authority exists when prove of it is preferred. There is nothing in the rule which suggests that the Court is required to investigate the validity of past acts in the context of the authority to act.³

8. The respondent raised two primary defences namely:

8.1 He is a whistleblower and;

8.2 The impugned statements were made by his legal representatives and on legal advice.

¹ Answering affidavit - caselines 25 - 129 para 22

² Replying affidavit- annexure "R1" caselines 25-197.

³ See *Johannesburg City Council v Elesander investments (Pty) Ltd* 1979 (3) SA 1273 (T) at 1280 A and *Marais v City of Cape Town* 1997 (3) SA 1097 (C) at 110 I D.

9. The respondent never asserted to be a whistleblower in the past, let alone in the impugned statement of 26 November 2025, 2 December 2025 and 3 December 2025.

10. It is irrelevant whether he is a whistleblower or not, the core question is whether he has contravened a binding Court order willfully. The respondent seems to argue that to take the approach that being a whistleblower gives him free reign to breach a court order.

11. It was contended by the respondent that the impugned statements were made by his legal representatives on legal advice.

12. The respondent argued that the applicant failed to prove that the impugned e-mail ("annexure UN9") was sent by the respondent. However, in his own answering affidavit the respondent states as follows: "I admit that on or about 3 December 2025 an e-mail was sent in my name to a number of recipients, including council members and others and that it is attached as "UN-9". I admit that it contains the wording quoted in paragraph 40 of the founding affidavit.⁴

13. An example of the extent that the respondent has gone in his smear campaign is visible in his 3 December 2025 e-mail. Some of the content is repeated:

"Dear respected UNISA council members

... I acted independently and with a clear conscience. My attorneys acted on my clear instruction and cannot be held liable.

I wish to confirm without any fear of contradiction, favor or prejudice that UNISA threatened me after the instruction to my lawyers. They also offered me RS00,000 million and shares in the university. I know for a fact that professor Lenkabula who didn't even have matric, has shares at FNB. This is the same FNB that is based at UNISA. I was also offered a permanent job as

⁴ Answering affidavit para 175 sub-para 4.1

Deputy Dean of students. The corruption that is taking place at UNISA allegedly involves the ANC Secretary General, the Chair of Parliament Committee for higher education and I was told that Ms Zanela Mbeki allegedly worked with professor Lenkabula. This is why they paid for the ANC gala dinner National Convention at the expenses of poor students. That money was channeled back to the farm of the senior leaders of the ANC. They also wanted to provide an honorary degree to the ANC Treasurer General, advocate Marung Moerane and Mr John Steenhuisen to protect them. Advocate Moerane is Mr. Thabo Mbeki's family relative, who happens to be UNISA councilor.

There are many South African women who have talent, unlike professor Lenkabula who is from Lesotho."

14. The respondent does not dispute that he has made the following allegations without producing any evidence to substantiate his allegations:

14.1 He alleges that the 2nd applicant do not have matric;

14.2 He alleges that UNISA offered him a permanent job as Deputy Dean of Students;

14.3 He alleges that UNISA paid for the ANC gala dinner and National Convention at the expense of poor students and that monies were channeled back to the farm of senior ANC leaders, without identifying who this alleged leader was.

14.4 He alleges that he was offered R800 000 million and shares in the university.

15. When the respondent published the above statement he knew that it is false because he knew that there is no such post as Deputy Dean of Students at UNISA and he ought to know that UNISA does not have shareholders and could offer shares to no one. He also knew or ought to have known that UNISA was among the other institutions which paid for a table at the gala dinner and did not pay for the ANC gala dinner.

16. In my view the allegations above are sufficient to show the falsity of the defamatory statements and the contempt of the Court order.

17. These false allegations are made with the sole purpose of eroding the reputation of UNISA and the dignity and reputation of the second applicant.

18. I must agree with the applicants that "The greatest indicators that the respondent does not act in the public interest is that despite his claims that he has pursued this matter since 2020:

18.1 He is unable to provide any evidence to substantiate his allegations five (5) years later.

18.2 He fails to identify the sources of the hearsay he relies on.

18.3 He did not launch any legal proceedings since 2020, for example to challenge my appointment as Principal and Vice Chancellor five (5) years ago or challenge my extension or tenure which was announced in December 2024."

19. The respondent also published his 3 December 2025 email to Johan Jonker and Dirk Kotze via email who as of 3 December 2025 were not Council members. Their tenure as Council members ended in November 2025.

20. It is trite that contempt proceedings are *quasi* criminal in nature. The applicants bear the onus of proving beyond reasonable doubt that the following has occurred:

- (a) A valid order exists;
- (b) The respondent had knowledge thereof;
- (c) The order was breached; and the breach was willful and mala fide.

21. The respondent disputes both breach and intent.

22. It was submitted on behalf of the respondent that there is a reasonable possibility that the respondent's conduct was *bona fide*.

23. The respondent refers to documents in his answering affidavit, however, there is no annexures attached to his answering affidavit. When the order was made against him on 27 November 2024, the Court impressed on him that he should follow the Protection of Access to information Act ("PAIA if he needs disclosure of information from the applicants. The respondent failed to do so.

24. The common cause facts demonstrate that the:

24.1 Respondent has knowledge of the Potterill J order;

24.2 Respondent does not dispute that he has made similar statements such as those interdicted from being made by him in the future;

24.3 Statements were published to the persons and emailed addresses that are included in the correspondence;

24.4 Probabilities favour that it was the respondent himself who also disseminated the correspondence to the media.

25. Once it is shown that an order was granted and the respondent has disobeyed it or neglected to comply with it, willfulness will normally be inferred and the respondent will bear the evidential burden to advance evidence that establishes a reasonable doubt as to whether non-compliance was willful and *mala fide*.

26. It is clear from the Potterill J order granted on 27 November 2024 that:

"2. The respondent is interdicted, prevented, and or prohibited and/or restrained from publishing any false or misleading information about the applicants in any manner and/or any media platform."

27. I conclude that the respondent is in flagrant violation of the Potterill J order granted on 27 November 2024 and does so with full knowledge of the reputation harm he causes on the applicants. The respondent intentionally disobeys the Court order which is binding and clearly enforceable against him. There is no reasonable possibility that the respondent's conduct was *bona fide*. His conduct is unmistakably willful and *mala fide*.

28. It was submitted by counsel for the respondent that the Court must award wasted costs in favour of the respondent for failure of the applicants' legal representatives to appear on 17 December 2025.

29. I was informed by the senior counsel for the applicants that his junior council was present on 17 December 2025 but the matter was not enrolled for 17 December 2025 by the Court.

30. As a result of insufficient information placed before me on who was responsible that the matter was not enrolled for 17 December 2025, it would not be proper for me to grant a cost order against the applicants.

31. The general rule is that the successful party is entitled to his costs and this rule should not be departed from except where there be good reasons for doing so.

32. In the result it would be appropriate under the circumstances to award costs on party and party scale, which costs are to be taxed in accordance with scale B. Such costs to include the costs of senior and junior counsel.

33. The following order is made:

1. The rules of this court relating to service and process are hereby dispensed with and this application is heard as one of urgency in terms of rule 6(12).

2. The Respondent is in contempt of the order of this court per her Ladyship, Honourable Potterill J dated 27 November 2024.

3. The Respondent is incarcerated for a period of 60 days, alternatively a fine of R50 000,00 is imposed on the Respondent. (Fifty thousand Rand).

4. The order in paragraph 3 above is suspended and it is not to be executed unless the Respondent breaches the terms of the court order of 27 November 2024.

5. The Applicants are granted leave to approach this Court on these papers duly supplemented for an order that paragraph 3 of the order be put

into operation should the Respondent breach the court order dated 27 November 2024 subsequent to this order.

6. The Respondent is interdicted and prohibited from disseminating and/or publishing or causing to be published, any further defamatory information or statements about or otherwise concerning the applicants in terms of or similar to the correspondence dated 26 November 2025, 2 December 2025 and 3 December 2025 forthwith.

7. The Respondent is directed to retract the defamatory statements made through his attorneys in letters dated 26 November 2025 and 2 December 2025, and personally via email on 3 December 2025 by sending a written retraction to the same platforms that were used to publish the said defamatory and/or false statements.

8. The Respondent is directed to issue a written Apology to the Applicants within 48 hours from the issuing of this order.

9. The Respondent is to pay the costs of this application on party and party scale which costs are to be taxed in accordance with scale B. Such costs to include the costs of senior and junior counsel.

10. Further and/or alternate relief.

Strijdom JJ
Judge of the High Court, South Africa
Gauteng Division, Pretoria

Appearances:

For the applicants: Adv W Mokhare SC
 Adv L Pillay

Instructed by: SM Vakalisa Inc

For the respondent: Adv MPT Maluleke

Instructed by: Ngobese Attorneys Inc