



**IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL LOCAL DIVISION, DURBAN**

Case no.: 2026-038779

In the matter between:

LIEUTENANT GENERAL NHLANHLA MKHWANAZI

APPLICANT

and

CALVIN MOJALEFA MATHIBELI

RESPONDENT

Delivered electronically: This judgment is deemed to be handed down electronically on 27 February 2026 at 15h00 by circulation to the parties' representatives via email.

ORDER

In the result, the following order is made:

1. The forms and service procedures of the Uniform Rules of Court are dispensed with, and this matter is heard on urgent basis in terms of Rule 6 (12) (a).
2. Pending the finalization of the action for damages:
 - 2.1. The respondent is Interdicted and restrained from publishing, repeating or disseminating any statements alleging or implying that:
 - a) the Applicant is a criminal or corrupt;
 - b) the Applicant abuses police authority;

- c) the Applicant is captured by private interests;
- d) the Applicant issues instructions to kill persons or participates in unlawful killings;
- e) the Applicant acts unlawfully or dishonestly in the execution of his official duties;

2.2 The respondent is ordered to remove, delete and retract all defamatory publications concerning the applicant from all social media platforms, websites and digital media within 24 hours of service of this order.

2.3 Where the respondent has repeated these defamatory statements on TV or radio interviews, the respondent is ordered to publicly, and on the same platforms, retract such statements.

3. The action for damages allegedly suffered by the applicant, is to be instituted within 60 days from the date of this order.

4. The respondent is directed to pay costs of the application including those consequent upon the employment of two Counsel on scale B

JUDGMENT

Hlatshwayo J

Introduction

[1] This is an urgent application for an interdict and a declaratory order. The applicant has approached the court seeking an order prohibiting the respondent from publishing, repeating and disseminating any statements on social media and television on the basis that they are defamatory. The applicant further seeks an order directing the respondent to remove, retract and delete all the alleged defamatory publications made against him from the respondent's social media platforms and digital media within 24 hours of the court order.

[2] The premise of the application is that the said statements are false, unlawful

and defamatory. In addition, the statements seriously impair the applicant's right to dignity, reputation and good name. Moreover, although the statements are directed at the applicant personally, he contends that, by extension, the said statements impugn the reputation of the police work and the confidence of the public in the police in the province of KwaZulu-Natal. The application is opposed by the respondent.

[3] The applicant is the Provincial Commissioner of the South African Police Service (SAPS) in KwaZulu-Natal. However he brings this application in his personal capacity. The respondent is a businessman based in Durban and mainly involved in the security sector.

Factual background

[4] The application has its genesis in the statements attributed to the respondent which were published on social media platforms and on television. The alleged offending material is found in annexures "FA1", "FA2" and others were streamed on a television station known as Newsroom Afrika on DSTV channel 405. Some of the statements allegedly made by the respondent are:

1. "...Nhlanhla Mkhwanazi has given instruction that I should be killed and it will be said that I shot at them which is modus operandi."
2. "... [it is a] strategy he used to kill the guys at Mount Moria of which it has been found that those innocent people killed were not wanted as he had claimed. In fact people were killed because IFP politics."
3. "... an ice-boy to taxi and security company owners amongst others."
4. "I don't survive through protection fees from criminals, government officials and politicians you threaten to arrest if they don't dance for your music because you have their Ace Cards."

[5] According to the applicant these statements portray him as a public official who is corrupt, abuses his powers, is involved in criminal conduct and instructs other police officers to kill innocent members of the public.

[6] The applicant alleges that on the morning of 16 February 2026 one of his colleagues alerted him to social media posts circulating on Facebook containing serious allegations casting him in bad light and accusing him of criminal conduct. He

proceeded to view the said posts which had gone viral and widely shared and commented upon by other social media users.

[7] Concerned about the damage to his reputation, the applicant consulted with his legal representative on the same day. On the following day, 17 February 2026, a letter was delivered by his lawyer to the respondent calling upon him to cease and desist from making defamatory statements and to retract those statements. The applicant alleges that on the same day the respondent continued to make further statements including accusing the applicant of criminal conduct, issuing instructions to kill persons and abusing his police powers. These remarks were made at 13h30 during an interview with television channel, Newsroom Afrika.

[8] The respondent admits making the statements in question but denies that the applicant's name was mentioned in those statements. Moreover, it is the respondent's case that in September 2025, the applicant instituted an action in the South Gauteng High Court claiming damages against Mr. O'Sullivan. In this suit the applicant alleges that O'Sullivan made defamatory, unsubstantiated statements against him including calling the applicant a criminal. Accordingly, the respondent argues that his statements are true and in the public interest. The respondent argues that there exists a suitable remedy in the form of action proceedings for damages which is designed to determine defamation cases.

[9] I was also referred to the proceedings of the Madlanga Commission of Inquiry (Madlanga Commission) where the applicant testified on 19 September 2025 and alleged that:

'I know there's many allegations against me in the public domain which are widely publicized they are podcast channels that are hosting specific individuals that speak of bad things about me.'

The respondent contends that there are already many allegations against the applicant in the public domain and the matter is not urgent.

[10] The respondent further alleges that the applicant has attempted on numerous occasions to close his business down. My attention was also drawn to a letter sent by the respondent on 15 February 2026 to the Minister of Police, the National

Commissioner of Police and the applicant. In this letter the respondent filed a complaint regarding the conduct of and the treatment by certain members of the SAPS who descended on his business premises and seized firearms belonging to his company without making an inventory. His employees were disarmed and detained without any just cause. There were also threats allegedly made against the respondent, his staff and his children. He also complains that the applicant had imposed predetermined service providers during a security tender. The respondent submitted that the actions against him emanate from the direct instructions of the applicant and this application is an attempt to silence him after his complaint.

[11] Having regard to the dispute, I am called upon to decide whether the application is urgent and whether the requirements of an interdict, be it interim or final, have been satisfied. Closely connected thereto is a determination of whether the statements complained of are defamatory.

Urgency

[12] Uniform rule 6(12) regulates urgent applications. The applicant is required to set out circumstances which renders the application urgent and most importantly why he will not obtain substantial redress at a hearing in due course. Clarifying what is envisaged by substantial redress, the court in *East Rock Trading 7 (Pty) Ltd and Another v Eagle Valley Granite (Pty) Ltd and Others*¹ held that:

[6] ...An applicant has to set forth explicitly the circumstances which he avers render the matter urgent. More importantly, the Applicant must state the reasons why he claims that he cannot be afforded substantial redress at a hearing in due course. The question of whether a matter is sufficiently urgent to be enrolled and heard as an urgent application is underpinned by the issue of absence of substantial redress in an application in due course. The rules allow the court to come to the assistance of a litigant because if the latter were to wait for the normal course laid down by the rules it will not obtain substantial redress.

[7] It is important to note that the rules require absence of substantial redress. This is not equivalent to the irreparable harm that is required before the granting of an interim relief. It is something less. He may still obtain redress in an application in due course but it may not be

¹ *East Rock Trading 7 (Pty) Ltd and Another v Eagle Valley Granite (Pty) Ltd and Others* [2011] ZAGPJHC 196.

substantial. Whether an applicant will not be able obtain substantial redress in an application in due course will be determined by the facts of each case. An applicant must make out his cases in that regard.'

[13] The respondent submitted that other persons have made defamatory statements against the applicant and therefore there is no reason as to why the applicant is targeting him. He placed reliance on statements made by Mr O'Sullivan who referred to the applicant as the biggest criminal in July 2025. This culminated in the applicant instituting an action against O'Sullivan and the matter is pending before the High Court. The respondent also placed reliance on what the applicant testified to during the Madlanga Commission and contends that the applicant's own version is that there has been bad things said about him by a lot of people.

[14] This argument is flawed for a number of reasons. Firstly, the statements attributed to Mr O'Sullivan were not left unchallenged. The applicant instituted a legal action in vindication of his rights. This demonstrates that the applicant has not tolerated any defamatory statements being made against him. His action in this regard is crucial because it sends out a strong message to anyone who makes wrongful and harmful statements that they will be met with legal action. There is certainly no evidence placed before me that somebody else other than the respondent has subsequently made these types of statements.

[15] Secondly the right to dignity as enshrined in the Constitution does not cease to exist nor does it terminate. The applicant continues to enjoy this right and its protection under the law notwithstanding he may have previously been insulted. This is even moreso where he has acted to protect his rights. He is, thus, entitled to approach the court on urgent basis to seek protection. When it comes to the applicant's evidence given during the Madlanga commission about many people saying bad things about him, there were no specific defamatory statements attributed to those people. Saying something bad about a person does not necessarily translate to defamatory or injurious statements in the eyes of the law. Placing reliance on unknown bad things being said about the applicant is not an answer to urgent relief for an interdict.

[16] It is well established that the existence of the right to claim damages is not a

bar to an interdict where an applicant makes out a case for protection against further defamatory statements which continue to harm his dignity. The Supreme Court of Appeal in *Malema v Rawula*² restated the position in our law as follows:

‘...The remedy of an interdict is to restrain the imminent or continued publication of a defamatory statement is not new. In 1931 in *Heilbron v Bignaut*, an application for an interdict to stop publication of a newspaper article allegedly defaming a boxing referee as being dishonest and unfair, Greenberg J said:

“if an injury which would give rise to a claim in law is apprehended, then I think it is clear law that the person against whom the injury is about to be committed is not compelled to wait for the damage and sue afterwards for compensation, but can move the Court to prevent any damage being done to him...” (Footnotes omitted.)

[17] In *Mbalula v Mda*³ the court accepted that the matter was urgent based on “present and continuous harm to dignity that he (the applicant) cannot reasonably be expected to endure with the attendant anxiety and embarrassment brought about by the continued violation of his Dignitas and his rights”⁴ and “that there is ongoing and prolonged reputational harm, humiliation, and indignity accompanying the respondent’s acts, aided by the continuous accessibility of the tweets on X. This results in harm justifying the urgent relief sought.”⁵

[18] In this matter the applicant has outlined egregious statements attributed to the respondent that the applicant as a Provincial Commissioner of Police, instructs members of the police to kill persons or conduct operations with the intention of killing those individuals, is a criminal and corrupt. These allegations were made as recent as last week, 16 February 2026 and 17 February 2026. In my view the applicant acted promptly by approaching the court to protect his rights. From the evidence presented these statements continue to be shared on various social media platforms causing

² *Malema v Rawula* [2021] ZASCA 88 (*Malema*) para 23. In *Economic Freedom Fighters and Others v Manuel* [2020] ZASCA 172; 2021 (3) SA 425 (SCA) (*EFF*) para 111 it was held: ‘There is, of course, no problem with persons seeking an interdict, interim or final, against the publication of defamatory statements proceeding by way of motion proceedings, on an urgent basis, if necessary. If they satisfy the threshold requirements for that kind of order, they would obtain instant, though not necessarily complete, relief. There is precedent for this in the well known case of *Buthelezi v Poorter*, where an interdict was granted urgently in relation to an egregious piece of character assassination. Notably, however, the question of damages was dealt with separately.’ (Footnotes omitted.)

³ *Mbalula v Mda* [2025] ZAGPPHC 878.

⁴ *Ibid* para 4.

⁵ *Ibid* para 5.

harm to the applicant's reputation. I am satisfied that the matter is urgent.

Declaratory and interdictory relief

[19] The applicant seeks a final interdict preventing the respondent from publishing or repeating the defamatory statements. Included in the relief he seeks is a declaratory order that the said statements are defamatory. The applicant, submitted that in the event of the court being disinclined to grant a final interdict, as part of their prayer for an alternative relief, the applicant satisfies the requirements for an interim interdict to be granted pending the determination of a defamatory action.

[20] It is trite that an applicant who seeks a final interdict must satisfy the following requirements:⁶

- (a) a clear right;
- (b) injury actually committed or reasonably apprehended, and
- (c) the absence of any satisfactory remedy.

[21] Section 10 of the Constitution provides that everyone has inherent dignity and the right to have their dignity respected and protected. The applicant thus enjoys a clear right to dignity. Any unsubstantiated allegations that he is a criminal, corrupt and that, in his position as a Provincial Commissioner of the SAPS, he routinely instructs other members of the police to kill certain persons affect his reputation and demeans his dignity among members of the public.

[22] When it comes to the injury committed, the respondent admits to making the statements however he disputes that the statements were directed at the applicant, since his name was not mentioned in some of the posts, and that they are defamatory.⁷

[23] The respondent's submission that the statements were not directed at the applicants or that his name was not mentioned is untenable. In his answer the respondent stated that "save for the video, the applicant's name is not mentioned". One understands him to mean that the applicant's name is mentioned in the said video.

⁶ *Setlogelo v Setlogelo* 1914 AD 221 at 227.

⁷ See paras 7.10 and 8.9 of the answering affidavit.

In the same breath he states that he has not seen the video. This explanation is rather strange considering that he participated in the said television interview at 13h00 on 17 February 2026 conducted by Newsroom Africa and would clearly know whether or not he referred to the applicant during that interview. The respondent's subsequent statement that "the applicant is participating directly or indirectly in various unlawful acts, as alleged by me in various statements" is startling and contradicts his own version that the applicant is not mentioned in the statements.⁸

[24] Nonetheless the question of whether the statements were directed at the applicant and whether they are defamatory is to be determined by having regard to the meaning of the words used and the context of the statement made as a whole.⁹ The question is whether a reasonable or right thinking person will read the post in context and as a whole and will give a reasonable meaning to the words used within the context of the document or statements. Further I agree with Mr. Sikhakhane on behalf of the applicant that the respondent portrayed the applicant as a criminal, a corrupt official and the police officer who abuses his powers by giving unlawful instructions to kill other human beings. This is obvious from the statements contained in annexures "FA1" and "FA2" posted on social media and the undisputed television interview.

[25] A reasonable reader would certainly understand the statements to mean that the applicant is not worthy of the office he holds because he is a criminal and corrupt. They would understand these statements to mean that the applicant is complicit in murder of members of the public. The harm caused by these statements not only affects the applicant's personal and professional life but also diminishes his standing in the community as a public official who is tasked with crime prevention and its prosecution. The allegations of an "ice boy to taxi and security owners" and suggestion of "surviving from protection fees from criminals, government officials and politicians" sends out a disturbing message that the applicant is captured by certain groupings in our society. I find that these statements are defamatory and extremely damaging to the applicant and the position he holds in society.

⁸ See para 38.11 of the answering affidavit.

⁹ See *Malema* para 36; *EFF* para 30.

[26] The continued publication and circulation of the damaging statements undoubtedly leads to lack of trust in the applicant as the head of police in the province of KwaZulu-Natal. The negative impact on the performance of his functions is immeasurable. I find that harm has been committed against the applicant.

[27] The respondent's defence to the allegations is that the statements are true and made in the public interest and made by him as a whistleblower. It is settled that a party may rely on the truthfulness of a statement to avoid an interdict or liability against a claim for defamation. The respondent must however show that the statements are substantially true and are published in the public interest. The respondent relies significantly on the statements attributed to Mr. O'Sullivan allegedly referring to the applicant amongst others as the biggest criminal. It is common cause that an action for damages against O'Sullivan is pending in court. The respondent failed to show that he is either in possession of evidence or reliable information that the applicant is a criminal and corrupt. He has made no attempts to establish or verify that the defamatory statements he made about the applicant are true nor has he established that the information relied upon by O'Sullivan is true.

[28] My attention was drawn to a letter by the respondent complaining about the ill treatment at the hands of the SAPS and the threats by SAPS to visit his children's school. The respondent was informed that the police intended to seize all of his firearms on the instructions of the applicant and that he imposed predetermined outcomes on service providers regarding the security tender. The latter allegations by the respondent were not substantiated. Mr. Riley on behalf of the respondent was unable to explain how the complaints of mistreatment justify the egregious defamatory statements made by the respondent against the applicant.

[29] The defence of truth and public interest is founded on the recognition of a right to publish a defamatory statement which is true and the publication is in the public interest. The respondent failed to place facts to support this and a mere bald allegation that he did so in the public interest would not suffice. In *Herbal Zone (Pty) Ltd and*

*Others v Infitech Technologies (Pty) Ltd and Others*¹⁰ Wallis JA held that:

'...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.' (Footnote omitted.)

[30] The same conclusion must be reached regarding the unsubstantiated allegation that the respondent is acting as a whistleblower. There were no facts placed before me to show that the respondent has information that links the applicant to corrupt and criminal activity described in his statements. I find that the respondent's defences that the statements are true and published in the public interest or that somehow he acted as a whistleblower are unsustainable.

[31] Regarding the absence of an adequate alternative remedy, the question that must be answered is whether there exists an adequate remedy that will protect the applicant's rights. The respondent contended that a suitable remedy is for the applicant to pursue an action for damages in the similar manner as he has done against Mr O'Sullivan. He submitted that he is a wealthy man who is able to meet any order for damages. It was also submitted that motion proceedings are not designed to deal with defamation matters. There is no substance to this submission and on the authorities cited above, motion proceedings is best suited for interdictory relief based on harmful defamatory statements.

[32] The award of damages at a later stage does not offer such sufficient redress where damage to the dignity and reputation of the applicant is continuous and causes serious damage that cannot be remedied or restored by a damages claim. The ability to pay any damages claim has no relevance to the question of whether the applicant

¹⁰ *Herbal Zone (Pty) Ltd and Others v Infitech Technologies (Pty) Ltd and Others* [2017] ZASCA 8; [2017] 2 All SA 347 (SCA) para 38.

requires immediate protection of his rights¹¹. The nature of the statements made by the respondent has wide implications for the applicant and the position he holds. The trust enjoyed by him would be significantly diminished if unfounded statements of criminality on his part are allowed to stand and circulated widely among members of the public. The applicant has made out a case for an interdict to protect his dignity from further harm.

[33] I am, however, mindful that there is a pending litigation in the South Gauteng High Court instituted by the applicant against Mr. O' Sullivan based on some of the statements made by the respondent in this matter. The question is whether It would be an appropriate remedy to grant a final interdict and a declarator in this matter in circumstances where another court must decide the lawfulness of the statements involving parties not before this court. In my view it would be improper and highly prejudicial to grant such a relief where some of the allegations are the subject of action proceedings involving different parties

[34] I am, nonetheless, satisfied that the applicant has made out a case for immediate protection of his rights. The interim interdict is a suitable remedy to prevent further harm to the applicant's dignity and reputation. I do not agree with the respondent that the court does not have the discretion to grant interim relief on the papers. The facts of this case clearly satisfy all the requirements for an interim interdict. I have found that the applicant enjoys more than a *prima facie* right. It is also plain there exists a well-grounded apprehension of irreparable harm if the interim relief is not granted. It has been shown that the statements were widely publicised and continue to circulate on various social media platforms. If no interim relief is granted, his reputation and the dignity of the office he holds will suffer irreparable harm.

[35] There is also no hesitation that the balance of convenience is heavily in his favour and he will suffer immense prejudice if his rights are not protected. I have also

¹¹ ZA Online Store (Pty) Ltd v Tothill and Others 2026 (1) SA 627 (GJ) para 73. It was held that the applicant cannot be compelled to wait for the harm to continue and escalate only to vindicate their right through a damages claim

found above that there is no adequate alternative remedy to protect his rights which continue to be infringed by the egregious statements made by the respondent.

[36] I am not persuaded that the granting of the interdict unjustifiably interferes with the respondent's right to free speech. I am also not satisfied that his possible evidence at the Madlanga Commission would be affected by the relief sought by the applicant. Nothing prevents the respondent from giving evidence based on factual material in his possession. He is certainly not entitled to make unfounded statements that infringe upon the applicant's rights. Accordingly, an interdict is an appropriate relief in this matter.

Order

[37] In the result I make the following order:

3. The forms and service procedures of the Uniform Rules of Court are dispensed with, and this matter is heard on urgent basis in terms of Rule 6 (12) (a).
4. Pending the finalization of the action for damages:
 - 2.1. The respondent is Interdicted and restrained from publishing, repeating or disseminating any statements alleging or implying that:
 - f) the Applicant is a criminal or corrupt;
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 - j) the Applicant acts unlawfully or dishonestly in the execution of his official duties;
 - 2.2 The respondent is ordered to remove, delete and retract all defamatory publications concerning the applicant from all social media platforms, websites and digital media within 24 hours of service of this order.
 - 2.3 Where the respondent has repeated these defamatory statements on TV or radio interviews, the respondent is ordered to publicly, and on the same platforms, retract such statements.
3. The action for damages allegedly suffered by the applicant, is to be instituted within 60 days from the date of this order.

4. The respondent is directed to pay costs of the application including those consequent upon the employment of two Counsel on scale B



HLATSHWAYO J

CASE INFORMATION

Date of Hearing: 24 February 2026

Date of Judgment: 27 February 2026

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