



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

JUDGMENT

**Not Reportable
Case No: 2025-245623**

In the matter between:

**OLOF ABRAHAM JOUBERT
CHANDRÉ GOOSEN**

First Applicant
Second Applicant

And

MORNÉ VAN VUUREN

Respondent

**Coram: DA SILVA SALIE, J
Heard on: 11 March 2026
Delivered on: 12 March 2026**

Summary:

Threatening communications – interdict – motion proceedings – respondent denying sending text messages – respondent seeking to introduce affidavit and report of private

investigator analysing cellphone call log data – applicants disputing reliability and methodology of report – admission of further affidavit creating material disputes of fact central to merits – disputes concerning interpretation and reliability of technical cellphone data – such disputes not capable of resolution on papers – Uniform Rule of Court 6(5)(g) – matter referred to oral evidence on specified issues – rule nisi to remain in force pending determination – costs reserved.

ORDER

1. The affidavit of Ms Wendy Pascoe and the accompanying report are admitted into the record.
2. The applicants' conditional counter-application succeeds.
3. The matter is referred to the hearing of oral evidence in terms of Uniform Rule of Court 6(5)(g) on the following issues:
 - (a) whether the cellphone number from which the threatening text messages were sent was used or controlled by the respondent;
 - (b) the reliability and interpretation of the cellphone call log data relied upon by the parties; and
 - (c) any other issue arising from the evidence of Ms Wendy Pascoe and any expert evidence led by the applicants in response thereto.

- (d) the first applicant and respondent is permitted to testify (both in person).
 - (e) the applicant is granted leave to supplement their papers within 15 days from date hereof.
 - (f) the respondent may reply within 15 days (only in respect of new issues raised).
4. The *rule nisi* issued on 19 December 2025 shall remain in force pending the final determination of the matter.
5. Costs are reserved for determination upon the final adjudication of the main application.

JUDGMENT

DA SILVA SALIE J:

Introduction:

[1] This matter came before this Court on the return day of a rule nisi issued by me on the urgent roll on 19 December 2025.

[2] In terms of that order the respondent was called upon to show cause why a final interdict should not be granted restraining him from conduct including harassment,

intimidation, extortion, the use of confidential information belonging to the applicants and approaching the applicants or their residence and business premises.

[3] The proceedings have however today given rise to an in limine procedural dispute concerning the admission of a further affidavit by a private investigator Ms Wendy Pascoe (“the Pascoe Affidavit”) and the consequences flowing therefrom.

[4] Mr Holland for the applicants object to the admission of the Pascoe Affidavit. In the alternative, and only in the event that it is admitted, they seek an order referring the matter to oral evidence or trial in terms of Uniform Rule of Court 6(5)(g) and leave to file a further affidavit. Ms Rütther for the respondent submits that there is no basis to refer the matter to oral evidence and only the facts which are undisputed by the respondent can be relied upon. The respondent denies that he sent the messages.

Background

[5] The dispute between the parties arises from a prior employment relationship. The respondent previously worked for the first applicant, who is an attorney practising through a law firm with offices in Cape Town and Pretoria.

[6] The applicants contend that during the respondent’s employment various difficulties arose between the parties. Allegations were made that the respondent had been frequently late for work, that complaints had been lodged against the first applicant with the Legal Practice Council, and that the respondent had misappropriated money belonging to the first applicant. The respondent disputes these allegations and contends that they are irrelevant to the present proceedings.

[7] What is common cause is that the employment relationship between the parties deteriorated and culminated in a labour dispute which was resolved during April 2025.

[8] Several months thereafter the applicants allege that they began receiving threatening and defamatory text messages from a cellphone number which they contend is associated with the respondent. According to the applicants, the messages contained threats directed at them, their lives and their minor son, were to intimidate them and undermine their professional activities. The applicants further allege that the respondent telephonically contacted them and threatened members of the first applicant's family. The applicants were compelled to employ a private security firm at a great expense and they experienced other far reaching emotional damage to their family.

[9] The respondent denies these allegations. He maintains that he did not send the text messages relied upon by the applicants and disputes that the cellphone number from which the messages were sent was used or controlled by him. The respondent further contends that he resides in Pretoria while the applicants reside in Cape Town. However the cellphone call log data relating to the number in question indicates that the phone was predominantly active in the Western Cape during periods when he was not present there.

[10] In response to a question from the Court, Mr Holland indicated that the threatening messages had completely stopped since the granting of the interim order on 19 December 2025.

The rule nisi

[11] On 19 December 2025 the applicants launched urgent proceedings in this Court seeking interdictory relief.

[12] A rule nisi was granted calling upon the respondent to show cause why a final interdict should not be granted restraining him from, inter alia:

- (a) harassing, threatening or intimidating the applicants;
- (b) utilising confidential information belonging to them;
- (c) approaching their residence or business premises; and
- (d) otherwise interfering with their professional activities.

Subsequent affidavits

[13] The respondent delivered an answering affidavit in which he denied responsibility for the text messages relied upon by the applicants. On 16 February 2026 the respondent delivered a supplementary affidavit which referred to a report obtained from a private investigation firm, Pascoe (Pty) Ltd. The report related to cellphone call log data associated with the number from which the disputed messages were sent.

[14] The further affidavit also make allegations that the applicants are most likely the transmitter of these messages to themselves. The respondent also attached to his supplementary affidavit a media article published on the Netwerk24 platform referring to allegations that the second applicant expended substantial sums on SMS votes during the 2021 Mrs South Africa competition. The article itself constitutes hearsay and cannot serve as proof of the truth of the allegations contained therein. Nevertheless, the competing explanations advanced by the parties regarding the origin, purpose and

volume of the text messages illustrate the broader difficulty confronting the court in motion proceedings. The applicants contend that the respondent was responsible for sending threatening messages, whereas the respondent disputes that the messages emanated from him and relies on cellphone records and the Pascoe report to support that denial. These competing factual narratives, together with the technical nature of the cellphone evidence, underscore that the dispute cannot satisfactorily be resolved on the papers alone and reinforce the appropriateness of referring the matter to oral evidence in terms of Rule 6(5)(g).

[15] On 3 March 2026 the respondent delivered a further affidavit seeking leave to append an affidavit by Ms Wendy Pascoe, together with a report analysing the cellphone records.

[16] The applicants objected to the admission of this affidavit and report. They contend that the material was introduced without proper leave of the Court and that it constitutes expert evidence which cannot properly be evaluated without cross-examination.

[17] Should however the Court admit the affidavit into the record, the applicants brought a conditional counter-application seeking a referral of the matter to oral evidence or trial.

Admission of the Pascoe affidavit

[18] A court retains a discretion to admit further affidavits in motion proceedings where the interests of justice require it.

[19] In the present matter the Pascoe affidavit is directed at substantiating the respondent's denial that the cellphone number relied upon by the applicants was used by him.

[20] The affidavit therefore addresses an issue central to the dispute between the parties. In the circumstances I am satisfied that the affidavit should be admitted into the record.

Determination of the matter on the papers:

[21] The admission of the Pascoe affidavit, however, introduces further factual disputes.

[22] The applicants dispute the methodology employed by the investigator, the reliability of the information relied upon, and the conclusions drawn from the cellphone data including the location from which the cellphone was used.

[23] These disputes are fundamental to the issues and concern the central question in the litigation, namely whether the respondent was responsible for the threatening messages relied upon by the applicants.

[24] The Court is therefore faced with the interpretation and reliability of technical cellphone data. Such evidence ordinarily requires testing by way of cross-examination.

Rule 6(5)(g)

[25] Uniform Rule of Court 6(5)(g) provides that where an application cannot properly be decided on affidavit the court may direct that oral evidence be heard on specified issues. In the present matter the admission of the Pascoe affidavit inevitably creates disputes of fact that cannot satisfactorily be resolved on the papers.

[26] The Court would be required to evaluate the interpretation of cellphone records and assess the credibility and reliability of the investigator whose report is relied upon. If the applicants elect to appoint an expert, the Court would be presented with compelling interpretations. Clearly those issues are quintessentially matters for oral evidence.

Conclusion

[27] The applicants' conditional counter-application was brought precisely in anticipation of this difficulty. Once the Pascoe affidavit is admitted into the record the matter cannot properly be determined on affidavit alone. The interests of justice therefore require that the matter be referred for the hearing of oral evidence.

Order

[28] The following order is made:

[28.1] The affidavit of Ms Wendy Pascoe and the accompanying report are admitted into the record.

[28.2] The applicants' conditional counter-application succeeds.

[28.3] The matter is referred to the hearing of oral evidence in terms of Uniform Rule of Court 6(5)(g) on the following issues:

- (a) whether the cellphone number from which the threatening text messages were sent was used or controlled by the respondent;
- (b) the reliability and interpretation of the cellphone call log data relied upon by the parties; and
- (c) any other issue arising from the evidence of Ms Wendy Pascoe and any expert evidence led by the applicants in response thereto.
- (d) the first applicant and respondent is permitted to testify (both in person).
- (e) the applicant is granted leave to supplement their papers within 15 days from date hereof.
- (f) the respondent may reply within 15 days (only in respect of new issues raised).

[28.4] The *rule nisi* issued on 19 December 2025 shall remain in force pending the final determination of the matter.

[28.5] Costs are reserved for determination upon the final adjudication of the main application.

G. DA SILVA SALIE
JUDGE OF THE HIGH COURT
WESTERN CAPE DIVISION

Appearances

For Applicant: Adv. M Holland
Instructed by: LP Hendricks Attorneys

For Respondent: Adv. G Ruther
Instructed by: J A Pieterse Attorneys