

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA

LIMPOPO DIVISION, POLOKWANE

CASE NO: 2025-250591

- (1) REPORTABLE: YES/NO
 (2) OF INTEREST TO THE JUDGES: YES/NO
 (3) REVISED.

DATE: 2026/03/04 SIGNATURE: [REDACTED]

In the matter between:

FETAKGOMO TUBATSE LOCAL MUNICIPALITY

First Applicant

EDWIN EDDIE MAILA

Second Applicant

and

RUFUS MPHAHLELE

First Respondent

DIMAKATSO MAMMA MANTHATA

Second Respondent

JUDGMENT

BURNETT, AJ**INTRODUCTION**

[1] This is an urgent application in terms of which the First and Second Applicant seek *inter alia*, the following: -

[1.1] That the First and Second Respondents are directed to immediately remove the defamatory material, i.e. both the videos and as a written caption, which remain publicly accessible no less than 24 hours from the date on the order from all platforms on which it was published or disseminated.

[1.2] The First and Second Respondents are directed to retract the allegations in their entirety, in the same manner and with comparable prominence along with the original publication.

[1.3] That the interim *mandamus* interdict will remain enforceable pending the applicant's institution for an action for defamation and damages against the First and Second Respondents within 60 days of granting the interim *mandamus* interdict.

[2] The First Respondent opposed the application and counsel appeared on his behalf at the hearing of the matter.

[3] It is common cause that the court application was not served on the Second Respondent, hence no appearance on her behalf. The court will not address the

case that was made against the Second Respondent specifically, because the court cannot grant an order against her without the papers having been served upon her.

BACKGROUND

- [4] This case is about one politician allegedly defaming another politician.
- [5] The First Applicant is a Municipality, and the Second Applicant is the mayor of that Municipality. The First Respondent is the president of a political organisation named Defenders of the People.
- [6] The First Respondent made certain verbal utterances, on 4 separate occasions, wherein he stated the following about the Second Applicant: -
- [6.1] He stole VBS Funds.
- [6.2] He authorizes payments on non-existing Requests for Quotations to unnamed companies with corrupt intentions.
- [6.3] The Second Applicant and/or the Municipality made an unlawful R 20 000 000.00 (twenty million rand) donation to an unlicensed entity
- [6.4] He awarded tenders improperly or to municipal employees (suggesting institutional corruption).
- [6.5] He engages in nepotism and discriminatory conduct.
- [6.6] He accepts bribes from foreign nationals for the operation of illegal business.

[6.7] He disapproves of protest applications to conceal bribery and contempt dealings.

[6.8] He accepts bribes from mining companies to suppress protests.

[6.8] He built a house without a title deed while allegedly refusing others their title deeds.

[6.10] That he is stupid and he cannot hold an erection.

[7] These utterances were made by the First Respondent in person verbally, which were captured on video and then circulated on social media, and more specifically posted on a Tik Tok account belonging to the Second Respondent. The Second Respondent has over Tik Tok 33 000 followers, and at the time that the Second Applicant deposed to his founding affidavit, the videos had been viewed 87 000 times.

[8] The First Respondent does not deny that he made the utterances listed in paragraph 6.1 to 6.10 and accordingly the court accepts that these utterances were made. It cannot thus be said that there is a dispute of fact in as far as the utterances are concerned. The First Respondent states that the utterances amount to fact and political commentary.

LEGAL QUESTIONS

[9] Normally in urgent applications an applicant must first satisfy the court that the matter is urgent, however the urgency of this matter is so intertwined with the merits

of the matter, that they cannot be separated from one another. The court will accordingly deal with the merits first, whereafter urgency will be addressed.

[10] Urgency aside, the first question to be answered is whether Second Applicant has the *locus standi* to bring this application on behalf of the First Applicant?

[11] The second question is whether the First and Second Applicant has met the requirements to obtain an interim interdict, namely: -

[11.1] There must be a clear right, which right has been violated.

[11.2] The violation of the right has caused harm to the bearer of the right, or harm to the bearer is imminent.

[11.3] The balance of convenience favors the granting of the interdict.

[11.4] There is no other remedy available to the bearer of the right.

LOCUS STANDI

[12] The principle of *locus standi in judicio* essentially relates to the right or legal capacity of a party to sue or be sued. The Appellant Division held in **Gross v Pentz**¹ that: -

"The general rule is that it is for the party instituting proceedings to allege and prove its locus standi, and the onus of establishing it, rests on that party. It must accordingly appear ex facie the founding papers that the parties have the necessary legal standing (locus standi in judicio)."

[13] *Locus standi* must be established before a determination is made on the merits of the case. If the First Applicant cannot establish *locus standi*, the matter must be

¹ 1996 (4) SA 617 (A).

dismissed against it, without adjudicating the merits of the matter. The onus rests on the First Applicant to prove *locus standi* in its founding affidavit and if he does not do this; it is irrelevant what the merits of the case are insofar as the First Applicant is concerned.

[14] The Second Applicant is the mayor of the First Applicant. The Second Applicant deposed to the founding affidavit on behalf of himself in his personal capacity as well as on behalf of the First Applicant in his official capacity. The Second Applicant is a political officer bearer and a member of the municipal council. The Second Applicant does not plead the full circumstances under which he has the *locus standi* to bring the application on behalf of the First Applicant and neither does he attach any documentation pertaining to his *locus standi* to the founding affidavit.

[15] The Constitutional Court held in ***Fedsure Life Assurance Ltd v Greater Johannesburg Transitional Metropolitan Council***² that: -

"It is central to the conception of our constitutional order that the Legislature and the Executive in every sphere of government are constrained by the principle that they may exercise no power and perform no function beyond that conferred upon them by law."

[16] **Section 151 (2) of the Constitution of the Republic of South Africa** states that: -

"The executive and legislative authority of a municipality is vested in its Municipal Council."

[17] **Section 157 of the Constitution of the Republic of South Africa** states that: -

*"(1) A Municipal Council consists of—
 (a) members elected in accordance with subsections (2) and (3); or
 (b) if provided for by national legislation—*

² 1999 (1) SA 374 (CC).

- (i) members appointed by other Municipal Councils to represent those other Councils; or
 - (ii) both members elected in accordance with paragraph (a) and members appointed in accordance with subparagraph (i) of this paragraph.
- (2) The election of members to a Municipal Council as anticipated in subsection (1)(a) must be in accordance with national legislation, which must prescribe a system—
 - (a) of proportional representation based on that municipality's segment of the national common voter's roll, and which provides for the election of members from lists of party candidates drawn up in a party's order of preference; or
 - (b) of proportional representation as described in paragraph (a) combined with a system of ward representation based on that municipality's segment of the national common voter's roll.
- (3) An electoral system in terms of subsection (2) must result, in general, in proportional representation.
- (4) (a) If the electoral system includes ward representation, the delimitation of wards must be done by an independent authority appointed in terms of, and operating according to, procedures and criteria prescribed by national legislation.
- 5) A person may vote in a municipality only if that person is registered on that municipality's segment of the national common voter's roll.
- (6) The national legislation referred to in subsection (1)(b) must establish a system that allows parties and interests reflected within the Municipal Council making the appointment to be fairly represented in the Municipal Council to which the appointment is made."

[18] Section 160 of the Constitution of the Republic of South Africa states that: -

- "(1) A Municipal Council—
 - (a) makes decisions concerning the exercise of all the powers and the performance of all the functions of the municipality;
 - (b) must elect its chairperson;
 - (c) may elect an executive committee and other committees, subject to national legislation; and
 - (d) may employ personnel that are necessary for the effective performance of its functions.
- (2) The following functions may not be delegated by a Municipal Council:
 - (a) The passing of by-laws.
 - (b) the approval of budgets.
 - (c) the imposition of rates and other taxes, levies and duties; and
 - (d) the raising of loans.
- (3) (a) A majority of the members of a Municipal Council must be present before a vote may be taken on any matter.
- (b) All questions concerning matters mentioned in subsection (2) are determined by a decision taken by a Municipal Council with a supporting vote of a majority of its members.

- (c) *All other questions before a Municipal Council are decided by a majority of the votes cast.*
- (4) *No by-law may be passed by a Municipal Council unless—*
 - (a) *all the members of the Council have been given reasonable notice; and*
 - (b) *the proposed by-law has been published for public comment.*
- (5) *National legislation may provide criteria for determining—*
 - (a) *the size of a Municipal Council;*
 - (b) *whether Municipal Councils may elect an executive committee or any other committee; or*
 - (c) *the size of the executive committee or any other committee of a Municipal Council.*
- (6) *A Municipal Council may make by-laws which prescribe rules and orders for—*
 - (a) *its internal arrangements;*
 - (b) *its business and proceedings; and*
 - (c) *the establishment, composition, procedures, powers and functions of its committees.*
- (7) *A Municipal Council must conduct its business in an open manner, and may close its sittings, or those of its committees, only when it is reasonable to do so having regard to the nature of the business being transacted.*
- (8) *Members of a Municipal Council are entitled to participate in its proceedings and those of its committees in a manner that—*
 - (a) *allows parties and interests reflected within the Council to be fairly represented;*
 - (b) *is consistent with democracy; and*
 - (c) *may be regulated by national legislation.”*

[19] **Section 164 of the Constitution of the Republic of South Africa** states that: -

“Any matter concerning local government not dealt with in the Constitution may be prescribed by national legislation or by provincial legislation within the framework of national legislation.”

[20] **Section 53 of the Local Government Municipal Systems Act 32 of 2000** states that: -

“(1) A municipality must, within the framework of and in accordance with the relevant provisions of the Municipal Structures Act, this Act and other applicable legislation, define the specific role and area of responsibility of each political structure and political office bearer of the municipality and of the municipal manager.

(2) The respective roles and areas of responsibility of each political structure and political office bearer and of the municipal manager must: -

- (a) *be defined in precise terms by way of separate terms of reference, in writing, for each political structure or political office bearer and the municipal manager; and*
- (b) *be acknowledged and given effect to in the rules, procedures, instructions, policy statements and other written instruments of the municipality.*

(3) instruments defining, acknowledging or giving effect to the roles and areas of responsibility of these political structures and political office bearers and the municipal manager must be appropriate to the category and type in which the municipality falls.

(4) Terms of reference mentioned in subsection (2)(a) may include the delegation of powers and duties to the relevant political structure or political office bearer or the municipal manager in terms of section 59.

(5) When defining the respective roles and areas of responsibility of each political structure and political office bearer and of the municipal manager, the municipality must determine: -

- (a) the relationships among those political structures and political office bearers and the municipal manager, and the way they must interact.
- (b) appropriate lines of accountability and reporting for those political structures and political office bearers and the municipal manager;
- (c) mechanisms, processes and procedures for minimising cross-referrals and unnecessary overlapping of responsibilities between those political structures and political office bearers and the municipal manager.
- (d) mechanisms, processes and procedures for resolving disputes between those political structures and political office bearers and the municipal manager; and
- (e) mechanisms, processes and procedures for interaction, between: -
 - (i) those political structures and political office bearers and the municipal manager and other staff members of the municipality; and
 - (ii) councilors and the municipal manager and other staff members of the municipality.

(6) If a municipality has a decentralised regional administration in any part of its area, the municipality must determine mechanisms, processes and procedures for interaction between the regional management of the municipality and: -

- (a) the ward councilor or other councilor responsible for that part of the municipality's area.
- (b) any sub council or ward committee, where applicable, in that part of the municipality's area; and
- (c) the local community in that part of the municipality's area."

[21] **Section 59 of the Local Government Municipal Systems Act 32 of 2000** states

that: -

"(1) A municipal council must develop a system of delegation that will maximize administrative and operational efficiency and provide for adequate checks and balances, and, in accordance with that system, may: -

- (a) delegate appropriate powers, excluding a power mentioned in section 160(2) of the Constitution and the power to set tariffs, to decide to enter into a service delivery agreement in terms of section 76(b) and to approve or amend the municipality's integrated development plan, to any of the municipality's other political structures, political office bearers, councilors. or staff members:

- (b) instruct any such political structure, political office bearer, councilor, or staff member to perform any of the municipality's duties: and*
- (c) withdraw any delegation or instruction.*
- (2) *A delegation or instruction in terms of subsection (1): -*
 - (a) must not conflict with the Constitution, this Act or the Municipal Structures Act: -*
 - (b) must be in writing;*
 - (c) is subject to any limitations, conditions and directions the municipal council may impose;*
 - (d) may include the power to sub-delegate a delegated power;*
 - (e) does not divest the council of the responsibility concerning the exercise of the power or the performance of the duty; and*
 - (f) must be reviewed when a new council is elected or, if it is a district council, elected and appointed.*
- (3) *The municipal council: -*
 - (a) in accordance with procedures in its rules and orders, may, or at the request in writing of at least one quarter of the councilors, must, review any decision taken by such a political structure, political office bearer, councilor or staff member in consequence of a delegation or instruction, and either confirm, vary or revoke the decision subject to any rights that may have accrued to a person;*
 - (b) and may require its executive committee or executive mayor to review any decision taken by such a political structure, political office bearer, councilor or staff member in consequence of a delegation or instruction."*

[22] The Executive and Legislative authority of a municipality vests in its Municipal Council. A Municipal Council is established in terms of Section 157 of the Constitution of the Republic of South Africa. It is not in dispute that the Second Applicant is the mayor of the First Applicant and accordingly he forms part of the Municipal Council. The Municipal Council derives its powers in terms of Section 160 of the Constitution of the Republic of South Africa and the Local Government: Municipal Structures Act 117 of 1998.

[23] A mayor is a political office bearer and derives his powers from Section 53 of the Local Government: Municipal Systems Act 32 of 2000. As a political office bearer, the Second Applicant's role and area of responsibility must be defined in precise terms by way of separate terms of reference, in writing. Terms of reference may

include the delegation of powers and duties to the relevant political structure or political office bearer or the municipal manager in terms of section 59 the Local Government: Municipal Systems Act 32 of 2000. The council may delegate powers to the Second Applicant; however, the delegation of powers must be in writing and may be subject to limitations, conditions and directions as imposed by the Municipal Council.

- [24] There is nothing before this court to suggest that the Second Applicant has been delegated the power to institute proceedings on behalf of the First Applicant and neither has First Applicant attached a resolution signed by the municipal council of the First Applicant that legal action against the First and Second Respondents be instituted and that the Second Applicant may do so on its behalf.
- [25] The First Applicant's application must accordingly be dismissed on the basis that the Second Applicant has not established in his founding affidavit, that he had the necessary *locus standi* to bring this application on behalf of the First Applicant.
- [26] However, even if it is found that the Second Applicant had the *locus standi* to bring this application on behalf of the First Applicant, I am not convinced that it established a *prima facie* right because an organ of state cannot institute legal proceedings for defamation.³ It is not necessary to address the matter any further, because the application is already to be dismissed for the reasons stated above.

³

Director General Department of Justice and Constitutional Development and Another v Rocha (060931/2024) [2024] ZAGPPHC 548 (20 June 2024).

INTERDICT

[27] In light of the dismissal of the First Applicant's claim, the further issues will be addressed only in relation to the Second Applicant.

Clear right

[28] The law of defamation was articulated by the Constitutional Court⁴ as: -

"At common law, the elements of the delict of defamation are –

- (a) the wrongful; and*
- (b) intentional;*
- (c) publication of;*
- (d) a defamatory statement;*
- (e) concerning the plaintiff.*

It is not an element of the delict in common law that the statement be false. Once a plaintiff establishes that a defendant has published a defamatory statement concerning the plaintiff, it is presumed that the publication was both unlawful and intentional. A defendant wishing to avoid liability for defamation must then raise a defence which rebuts unlawfulness or intention. Although not a closed list, the most commonly raised defences to rebut unlawfulness are that the publication was true and to the public benefit; that the publication constituted fair comment and that the publication was made on a privileged occasion."

[29] The Constitutional Court, in the same judgment, endorsed a fourth defence that was appointed by the Supreme Court of Appeal in ***National Media Ltd and Others v Bogoshi***.⁵ The fourth defence is explained as follows: -

"... the publication in the press of false defamatory allegations of fact will not be regarded as unlawful if, upon a consideration of all the circumstances of the case, it is found to have been reasonable to publish the particular facts in the particular way and at the particular time."

⁴ *Khumalo and Others v Holomisa* 2002 (5) SA 401 (14 June 2002).

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

[30] The First Respondent does not deny that he made the verbal utterances about the Plaintiff set out in paragraph 6.1 to 6.10 above. Publication, within the context of the law of defamation, includes verbal utterances to one or more people. Even if the First Respondent uttered these statements to the Second Respondent only, it is still deemed to be a publication.

[31] The First Respondent also does not deny that the verbal utterances were video recorded by the Second Respondent and then posted on social media. The publication occurred for the first time when the First Respondent uttered the words in question to the Second Respondent and any other people that may have been present, and a second time when the video was made recording these utterances and posted on social media, and again each time the videos were re-posted.

[32] From a plain reading of the utterances in paragraph 6.1 to 6.10, they are defamatory, especially within the context of the current political climate.

[33] In the matter **Godongwana v Perry-Mason Mdwaba**⁶ it was held that: -

“Once the statement has been shown to be defamatory, it is presumed that the statement was published wrongfully and with the intention to injure. It accordingly falls upon the respondent to produce facts and evidence which would exclude wrongfulness and intention to injure.”

[34] The First Respondent also does not deny that the utterances were intentional, and it is accordingly presumed that they were published wrongfully and with the intention of injuring the Second Applicant. There is no evidence presented by the First Respondent to rebut this.

⁶ 2024 JDR 0206 (GJ).

- [35] The First Respondent did raise two defenses regarding wrongfulness, namely a) the utterances were fact (or truthful) and b) the utterances were political commentary, however in respect of the first defence, the First Respondent has not provided any explanation in his papers as to why the utterances are fact (or truthful) or attach any evidence to support this contention. The defence of truthfulness therefore cannot succeed.
- [36] There is no common law defence of '*political commentary*' in defamation matters. It goes without saying that a career in politics is not for sensitive people. This career means continuous criticism from other politicians, the media and the public. When people decide to enter a career in politics, they must do so knowing that they will need thick skin. Politicians are, however, still human beings and members of the public, and they have a right to equality before the law, including protection against defamation.⁷ There is a difference between political criticism and defamation. Criticism is the act of "*expressing disapproval of somebody/something and opinions about their faults or bad qualities; a statement showing this disapproval.*"⁸ Defamation is a "*the intentional publication of an untrue defamatory statement*". Criticism can also be intentional, it can be published and it can cause harm, but it is not defamatory.
- [37] The court is satisfied that the First Respondent has committed defamation and the Second Applicant has a clear right to protect his dignity and reputation through the legal process.⁹

⁷ Section 9 (1) of the Constitution of the Republic of South Africa states that: - "Everyone is equal before the law and has the right to equal protection and benefit of the law."

⁸ The Oxford English Dictionary (2026).

⁹ *Motsepe and Others v Motsepe and Another* (2025/079559) [2025] ZALMPPHC 106 (2 June 2025).

Harm

- [38] The Constitution of the Republic of South Africa guarantees everyone the right to dignity.¹⁰ The value of the right was explained in the Constitutional matter of

Dawood and Another v Minister of Home Affairs and Others¹¹:

“The value of dignity in our Constitutional framework cannot . . . be doubted. The Constitution asserts dignity to contradict our past in which human dignity for black South Africans was routinely and cruelly denied. It asserts it too to inform the future, to invest in our democracy with respect for the intrinsic worth of all human beings. Human dignity therefore informs constitutional adjudication and interpretation at a range of levels”

- [39] The matter of ***Khumalo and Others v Holomisa***¹² took this statement further and said that: -

“In the context of the actio injuriarum, our common law has separated the causes of action for claims for injuries to reputation (fama) and dignitas. Dignitas concern the individual’s own sense of self-worth but included in the concept are a variety of personal rights including, for example, privacy. In our new constitutional order, no sharp line can be drawn between these injuries to personality rights. The value of human dignity in our Constitution is not only concerned with an individual’s sense of self-worth but constitutes an affirmation of the worth of human beings in our society. It includes the intrinsic worth of human beings shared by all people as well as the individual reputation of each person built upon his or her own individual achievements. The value of human dignity in our Constitution therefore values both the personal sense of self-worth as well as the public’s estimation of the worth or value of an individual. It should also be noted that there is a close link between human dignity and privacy in our constitutional order. The right to privacy, entrenched in section 14 of the Constitution, recognises that human beings have a right to a sphere of intimacy and autonomy that should be protected from invasion. These rights serve to foster human dignity. No sharp lines then can be drawn between reputation, dignitas and privacy in giving effect to the value of human dignity in our Constitution. No argument was addressed to this Court on the relevance of the right to privacy to this case and I shall not consider it further.”

¹⁰ Section 10 of the The Constitution of the Republic of South Africa states that: - “Everyone has inherent dignity and the right to have their dignity respected and protected.”

¹¹ 2000 (8) BCLR 837 (CC) at para 35.

¹² 2002 (5) SA 401.

[40] In **Godongwana v Perry-Mason Mdwaba**¹³ it was held that: -

“It is clear to this court that there can be no doubt that the effect of these statements would in the eyes of the reasonable reader diminish the esteem in which any person about whom they were made was held by others in the community.”

[41] It has long been recognised in democratic societies that the law of defamation lies at the intersection of freedom of speech and the protection of reputation or good name.¹⁴ Despite its importance in a democratic society, the right to freedom of expression is not absolute. The right must be interpreted in the context of the values of human dignity, equality and freedom.¹⁵ Whilst a person has a right to freedom to speech, he/she cannot exercise that right in such a way that infringes upon another person’s right to dignity.

[42] The utterances that were made about the Second Applicant are harmful to his reputation and self-esteem as a person. It is noteworthy that when the Second Applicant alleged that the utterances were a personal attack against him, the First Respondent did not deny this. The allegations of corruption and underhandedness, without evidence, are especially damaging in the current political climate. The utterance that *“he is stupid and he cannot hold an erection”* is humiliating and an infringement on a persons’ right to dignity. Even if there was a common law defence of “political commentary”, this utterance has nothing to do with politics.

[43] A court ordered apology may alleviate some of the harm that has been caused by the First Respondent’s defamatory statements, and it may lead to the restoration of

¹³ 2024 JDR 0206 (GJ).

¹⁴ *Argus Printing and Publishing Co Ltd v Esselen’s Estate* 1994 (2) SA 1 (A) at 25 B-E.

¹⁵ *Khumalo and Others v Holomisa* 2002 (5) SA 401 paragraph 25.

the Second Applicant's dignity and hurt feelings, however the Second Applicant has not sought an apology in his Notice of Motion.

Balance of convenience

[44] In the matter of **Hix Networking Technologies v System Publishers (Pty) Ltd and Another**¹⁶ the court stated that:

"The appropriate stage for this consideration would in most cases be the point at which the balance of convenience is determined. It is at that stage that consideration should be given to the fact that the person allegedly defamed (if this be the case) will, if the interdict is refused, nonetheless have a cause of action which will result in an award of damages. This should be weighed against the possibility, on the other hand, that a denial of a right to publish is likely to be the end of the matter as far as the press is concerned. And in the exercise of its discretion in granting or refusing an interim interdict, regard should be had inter alia to the strength of the applicant's case; the seriousness of the defamation; the difficulty a respondent has in proving, in the limited time afforded to it in cases of urgency, the defence which it wishes to raise and the fact that the order may, in substance though not in form, amount to a permanent interdict."

[45] As in the above-mentioned matter, and for the same reasons, the balance of convenience favors the granting of this interim interdict.

Other remedies

[46] In **Economic Freedom Fighters and Others v Manuel**¹⁷ the Supreme Court of Appeal stated that: -

"In circumstances where the applicant was obdurate, and where the integrity of an institution of state was being undermined on the basis of Mr Manuel's alleged corrupt and nepotistic conduct, an award of damages, in due course, could hardly be said to be a viable and compelling alternative to an interdict prohibiting further publication."

¹⁶ 1997 (1) SA 391 (A).

¹⁷ 2021 (3) SA 425 (SCA) at paragraph 89.

- [47] There is no viable alternative remedy to prevent further publication of the defamatory statements. The Second Applicant cannot be expected to be compelled to wait for the harm to escalate, only to vindicate their rights through a damages claim.¹⁸

URGENCY

- [48] The test for urgency was articulated in ***East Rock Trading (PTY) Ltd and Another v Eagle Valley Granite and Another***¹⁹ where Justice Notshe AJ held that: -

“The import thereof is that the procedure set out in Rule 6(12) is not for taking. An applicant must 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.”

- [49] In the matter of ***Mbalula v Mda***²⁰ 5 it was found that: -

“The applicant submits, and I accept, that the matter is urgent because of the present and continuous harm to dignity that he cannot reasonably be expected to endure with the attendance anxiety and embarrassment brought by the continues violation of his dignitus and his right... he further submits that there is ongoing and prolongers reputational harm, humiliation and indignity accompanying the respondents’ acts, aided by the continuous accessibility of the tweets on X. This results in harm justifying the relief sought.”

- [50] It was held on ***ZA Online Store (Pty) Ltd t/a iStore v Tothill Derek and Others***²¹ that: -

“Of particular concern is the ongoing publication of false claims about the applicant’s contractual liability, disseminated on a platform that does not appear to subscribe to any recognised journalistic standard or formal editorial accountability. If these posts are not removed, the harm already suffered by the applicant will continue, as the publication may indefinitely perpetuate reputational damage. In the absence of a remedial order, the injury becomes ongoing, rather than confined to a single act of defamation. In a world where it is increasingly difficult to distinguish between facts

¹⁸ *Heilbron v Blignault* 1931 WLD 167 at paragraph 169; *ZA Online Store (Pty) Ltd t/a iStore v Tothill and Others* (2025/081458) [2025] ZAGPJHC 734; 2026 (1) SA 627 (GJ) (9 June 2025) paragraph 73.

¹⁹ (11/33767) [2011] ZAGPJHC 196 at paragraph 6.

²⁰ (121445/2025) [2025] ZAGPPHC 878 (20 August 2025) at paragraphs 4 and 5.

²¹ (2025/081458) [2025] ZAGPJHC 734 (9 June 2025) at paragraphs 44 and 45.

and falsehoods, it is essential to uphold the obligation to ensure accurate reporting on social media pages with large followings that present themselves as media outlets. The dangers of such platforms are that, regardless of any engagement users may have with the platform, they are not guaranteed accurate and fair reporting, as they would be if News Nexus adhered to the press Code. Once such a narrative takes hold, based on demonstratable false information, it can spread like wildfire. This situation cannot be meaningfully remedied in due course of any ordinary legal means.”

[51] The harm associated with defamation can be especially damaging when defamatory statements are re-published on social media. Social media has many benefits; however, it also has great pitfalls. People often do not understand that social media is dangerous. It is dangerous because once something has been posted, millions of people can see it within a few hours. Once a post has been placed on social media, you cannot control where it goes and who sees it. Every time a person re-posts a defamatory post on social media, they not only contribute to the harm caused, but can also commit defamation themselves depending on the circumstances. Every time the post is shared or re-posted, it is a new act of defamation, and it causes new harm.

[52] The fact that the defamatory utterances have entered the social media domain makes this matter urgent. It is urgent because of the way in which it spreads. An urgent order of this nature will curb the spread and contain it to some extent.

ORDER

[53] The court accordingly makes the following order: -

[53.1] That the rules of the above Honourable Court pertaining to forms, service and time periods be condoned and/or dispensed with, and the matter be heard as one of urgency in terms of Rule 6 (12).

- [53.2] The First Applicant's application is dismissed.
- [53.3] The First Respondent is directed to retract the defamatory allegations made against the Second Applicant in their entirety, in the same manner and with comparable prominence along with the original defamatory publications.
- [53.4] That the First Respondent is directed to immediately remove the defamatory material that he caused to be published, and which remains publicly accessible no less than 24 hours from the date on the order from all platforms on which it was published or disseminated.
- [53.5] That the interim mandamus interdict will remain enforceable pending the Second Applicant's institution of an action for defamation and damages against the First Respondent within 60 days of the granting of this order.
- [53.6] That the First Respondent shall pay the costs of the Second Applicant on a party and party scale B.


BURNETT, E J

ACTING JUDGE OF THE HIGH COURT,
POLOKWANE; LIMPOPO DIVISION

APPEARANCES

FOR THE APPLICANT: - ADV. J MODIBA

INSTRUCTED BY: - NOKO MAIMELA ATTORNEYS

FOR THE 1st RESPONDENT: - MS. NJ NDHLOVU

INSTRUCTED BY: - NJ NDHLOVU ATTORNEYS INC.

FOR THE 2nd RESPONDENT: - NO APPEARANCE

DATE OF HEARING: - 9 JANUARY 2026

DATE OF JUDGMENT: - 4 MARCH 2026

POLOKWANE HIGH COURT