REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

Case Number: 2026-105783

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

28 May 2026
DATE

[redacted]
SIGNATURE

In the matter between:

COLLEN MALATJIE Applicant

and

VLADIMIR MODIBA Respondent

Delivered: This judgment was prepared and authored by the judge whose name is reflected and is handed down electronically and by circulation to the parties/their legal representatives by email and by uploading it to the electronic file of his matter on Caselines. The date for handing down is deemed to be 28 May 2026.

ORDER

(a) The application is heard as one of urgency and non-compliance with the Uniform Rules of Court is condoned.

(b) It is declared that the statements published by the respondent on X on or about 5 May 2026 alleging that:

i. the applicant is associated with corrupt companies benefitting from the City of Ekurhuleni;

ii. the applicant is corrupt;

iii. the applicant has been unlawfully enriched; and

iv. a lifestyle audit of the applicant would reveal corruption or unlawful enrichment, are false, defamatory and unlawful.

(c) The respondent is directed to remove and delete the impugned publications from X and any other social-media platforms under his control within 48 hours of service of this order.

(d) The respondent is interdicted from publishing any further statements of like import.

(e) The applicant's claims for apology, retraction and damages are reserved for determination in separate proceedings should the applicant elect to pursue such relief.

(f) The respondent is ordered to pay the applicant's costs on the attorney and client scale.

JUDGMENT

CARELSE AJ

Introduction

[2] This is an urgent application in which the applicant seeks declaratory and interdictory relief arising from publications made by the respondent on the social media platform X.

[3] The applicant is the President of the African National Congress Youth League ("ANCYL"). The respondent describes himself as a freelance journalist.

[4] The applicant seeks orders declaring certain statements published by the respondent to be false, defamatory and unlawful; directing their removal; interdicting further publication of statements of similar import; compelling a retraction and apology; and costs on the attorney and client scale.

[5] The respondent opposes the application.

The relevant facts

[6] On 5 May 2026, the respondent published the following statement, which was accompanied by a photograph of the applicant, on the social media platform X:

> *"If you want to understand the mess in Ekurhuleni and corrupt companies that are benefiting in the city, please do a lifestyle audit of the President of the ANCYL Collen Malatjie.*
>
> *I'll release more EVIDENCE on Friday night."*

[7] The publication, under the circumstances, expressly identified the applicant by name, office, and photograph and without a doubt conveyed to the ordinary reasonable reader, who would understand it to mean that the applicant was corrupt, associated with corrupt companies benefitting from the City of Ekurhuleni, and unlawfully enriched and that a lifestyle audit of the applicant would reveal this.

[8] The publication further represented that the respondent possessed evidence substantiating those allegations.

[9] On 6 May 2026, one day after the impugned publication, the applicant's attorneys addressed a cease-and-desist letter to the respondent demanding removal of the publication, a retraction, an apology, and an undertaking against repetition.

[10] In response to the demand, the respondent, on the same day, published a further post attaching the cease-and-desist letter and stating:

> *"So Collen Malatjie sent his lawyers to send me a cease and desist letter after I said I'll release everything on Friday. Kanti what is he scared of if he's innocent? So I hereby state that we shall go to court and I shall release my EVIDENCE in an open court. There 's no retraction or apology I'll issue. Whether they like if or not, the truth shall come out. Once again, TRY ME BOYS"*

[11] The respondent's response did not merely refuse compliance. It republished and amplified the original allegations, expressly refused retraction, and threatened further disclosure of purported "evidence".

[12] The present application was thereafter launched on an urgent basis and served on the respondent by email on 11 May 2026 at 13:40. The applicant's attorneys explained in their service email that, due to the urgency of the matter, the applicant's founding affidavit was unsigned, but that a duly commissioned one would be served in due course. The commissioned affidavit was served on the respondent by email on 12 May 2026 at 13:49.

[13] In terms of the notice of motion, the matter was enrolled for hearing on 19 May 2026. The respondent had until 16:00 on 12 May 2026 to indicate whether he would oppose the application and until 16:00 on 14 May 2026 to deliver his answering affidavit.

[14] After receipt of the application, on 13 May 2026, the respondent posted on X the following:

> *"I've got three legal challenges and all are on urgent basis.*
>
> *I don't money to challenge all Legal cases on urgent basis, so therefore*
>
> *I humble apologise to the President of the ANCYL AND retract.*

Goodnight"

[15] The matter was initially enrolled for hearing on Thursday, 21 May 2026, at 11:30. The respondent delivered his notice of intention to oppose only on 19 May 2026 and his answering affidavit on 20 May 2026. The applicant, notwithstanding the compressed time periods, delivered a comprehensive replying affidavit before the hearing. The matter ultimately served before me on Friday, 22 May 2026, at 14:00. The respondent seeks condonation for the late delivery of his answering affidavit, which the applicant opposes. In light of the view I take of the matter, it is unnecessary to deal with condonation in any detail. The applicant suffered no material procedural prejudice arising from the late filing and, in the interests of justice, the late delivery of the answering affidavit is condoned.

[16] The respondent admits publication of the impugned statements in his answering affidavit. He contends, however, that he acted as a journalist investigating allegations of corruption involving the City of Ekurhuleni; that he received information from a source; and that he was shown documents that revealed that various companies were giving kickbacks to officials of the said city and politicians in exchange for work and orders.

[17] He further stated in his affidavit that "*[t]he Applicant appears to be affiliated, albeit not directly, to some of these companies and appeared to be receiving kickbacks from these companies"* and that this conduct had been ongoing for a considerable amount of time.

[18] The respondent further, with reference to the 13 May 2026 post, alleges that he later apologised, retracted the statement and deleted the post. The replying affidavit deals extensively with those allegations.

[19] The applicant points out in reply that notwithstanding the alleged retraction:

(a) the publication remained accessible;

(b) the respondent persisted in opposing the application;

(c) the respondent continued defending the lawfulness of the publication;

(d) the respondent's subsequent publications continued drawing attention to the allegations; and

(e) the publication continued attracting substantial public engagement.

[20] By the time the cease-and-desist letter was transmitted on 6 May 2026, the publication had already attracted approximately 218 000 views. The replying affidavit further demonstrates that by 20 May 2026, at 19h03, the publication had attracted approximately 683 000 views, 12 000 likes, 4 700 reposts and 662 comments notwithstanding the alleged deletion.

[21] The applicant further demonstrated in reply that the respondent, on 18 May 2026, publicly withdrew his earlier apology and declared "LETS MEET IN COURT". The respondent's subsequent conduct is difficult to reconcile with any genuine withdrawal of the allegations. On the papers before me, the alleged retraction did little, if anything, to arrest continued dissemination of the defamatory material.

Urgency

[22] The allegations concern corruption and unlawful enrichment by a senior political office bearer. They are plainly serious.

[23] The publication achieved extensive dissemination and remained accessible online. The respondent thereafter publicly refused, at least initially, to retract the allegations and threatened further publication. The harm is ongoing.

[24] In matters involving online publication, reputational harm is capable of continuing repetition and amplification. Social-media publication may justify urgent interdictory relief because of the continuing nature of online dissemination.[1] The applicant acted promptly. I am satisfied that substantial redress cannot be obtained in due course and that the requirements of Rule 6(12) are met.

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1 *Xhakaza v Modiba*, unreported judgment of the Gauteng Division, Johannesburg, case number 2025-115868 (27 August 2025).

The respondent's defences

[25] The publication is plainly defamatory. It accuses the applicant of corruption and unlawful enrichment.

[26] The respondent admits publication. Wrongfulness and intention are therefore presumed. The respondent bears the evidentiary burden of advancing a recognised defence.[2]

[27] The respondent states that he acted as a journalist investigating allegations of corruption involving the City of Ekurhuleni; that he received information from a source; and that he was shown documents implicating politically connected persons and companies.

[28] The difficulty with the respondent's case is that no substantiating material is placed before Court.

[29] No affidavit from the alleged source is attached. No report, forensic investigation, procurement document or other evidential material implicating the applicant is annexed to the answering affidavit.

[30] More importantly, the respondent's own version is that the investigation remained incomplete when publication occurred.

[31] Defamatory statements may nevertheless be lawful if it is found that their publication was reasonable in the circumstances, having regard to the specific facts, the manner of publication, and the time at which they were published.[3] The respondent claims he attempted to obtain feedback from the applicant, and when it failed, he published these defamatory allegations. No explanation was provided as to why publication occurred before the allegations were properly verified or why further investigation could not first be undertaken.[4]

[32] The respondent nevertheless published allegations of corruption, publicly claimed to possess "evidence", and threatened further disclosure, yet ultimately placed

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2 *Economic Freedom Fighters v Manuel* 2021 (3) SA 425 (SCA) ("EFF v Manual") para 36.

3 *National Media Ltd and Others v Bogoshi* 1998 (4) SA 1196 (SCA) at 1212G-H.

4 *EFF v Manual supra* paras 75 to 77 and 85.

no substantiating evidence before the Court. He also relied on his unsuccessful attempts to contact the applicant before publication. But the absence of a response to media enquiries cannot, without more, justify publishing serious allegations of corruption unsupported by verified evidence.

[33] The respondent's reliance on the alleged apology and retraction sits uneasily with his continued opposition to the application, his continued defence of the lawfulness of the publication, and the continued dissemination of the impugned material, as demonstrated in the reply.

[34] Serious allegations published without adequate verification will not satisfy the requirements of reasonable publication.[5]

[35] The defence of reasonable publication cannot succeed on these papers.

[36] The respondent publicly asserted that he possessed evidence implicating the applicant in corruption and repeatedly represented that such evidence would be disclosed. Yet when called upon to justify those allegations on oath, the respondent produced no admissible evidential material substantiating them. The answering affidavit ultimately rests on assertion rather than proof.

[37] Nor does the defence of fair comment avail the respondent.

[38] Fair comment protects comment or opinion rather than assertions of fact and requires that the facts upon which the comment is based be true. A hallmark of comment is that it derives from discernible facts that are either true or not disputed. While the commentator need not justify the opinion itself, the underlying factual foundation must be justified.[6]

[39] The publication in the present matter was, in any event, framed as a statement of fact. The respondent expressly linked the applicant to: "corrupt companies".

[40] He further represented that he possessed additional evidence implicating the applicant.

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5 *EFF v Manual supra* paras 75 to 77 and 85.
6 *Hardaker v Phillips* 2005 (4) SA 515 (SCA).

[41] The publication was not framed as conjecture, suspicion or opinion.

[42] The factual substratum necessary for fair comment has not been established.

[43] The respondent further relied on the applicant's own social-media publications and submitted that the applicant himself participates in robust and aggressive political discourse. The respondent contended that the applicant, therefore, could not genuinely have regarded the impugned publication as defamatory.

[44] The submission cannot be upheld.

[45] Public office bearers must tolerate robust scrutiny and criticism. Allegations concerning corruption and abuse of public office plainly concern matters of public interest. However, this does not extend to the unreasonable publication of defamatory factual allegations unsupported by verified material.

[46] Even if the applicant himself previously published intemperate or defamatory material concerning others, that would not render the respondent's publication lawful. The issue before this Court is whether the respondent lawfully published allegations that the applicant was corrupt and associated with corrupt companies benefitting from the City of Ekurhuleni.

[47] The publication was framed as factual assertion, not political hyperbole or rhetorical abuse. The respondent expressly represented that evidence existed implicating the applicant in corruption.

[48] The respondent's reliance on the applicant's own publications, therefore, does not avail him.

[49] In *Xhakaza v Modiba*,[7] Windell J granted urgent declaratory and interdictory relief against this same respondent arising from defamatory social-media publications. Although this prior judgment does not determine the present dispute, it is, however, relevant to demonstrate that, absent an interdict, there exists a reasonable apprehension of repetition.

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7 *Xhakaza v Modiba*, unreported judgment of the Gauteng Division, Johannesburg, case number 2025-115868 (27 August 2025).

Relief

[50] The requirements for final interdictory relief are trite.

[51] The applicant has established a clear right to dignity and reputation.

[52] The harm is ongoing. The publication achieved substantial dissemination and remained accessible online.

[53] Damages in due course do not constitute an adequate remedy for continuing online dissemination capable of ongoing repetition and amplification.

[54] In appropriate circumstances, courts are competent to grant removal and narrowly tailored interdictory relief in motion proceedings involving defamatory online publication.

[55] The applicant has accordingly established entitlement to interdictory relief.

[56] Certain aspects of the notice of motion are, however, too wide. Relief restraining publication of unspecified future "evidence" would constitute an impermissibly broad prior restraint.

[57] The interdict must therefore be confined to the defamatory allegations forming the subject matter of these proceedings.

[58] The applicant also seeks relief compelling a retraction and apology. The founding affidavit nevertheless draws a distinction between the urgent interdictory relief presently sought and any future claims for apology, retraction and damages, which the applicant states are reserved for determination in separate proceedings should this Court consider that course appropriate.

[59] In *IRD Global Limited v The Global Fund to fight AIDS, Tuberculosis and Malaria*[8] the Supreme Court of Appeal affirmed that it is now settled law that an apology or a retraction may serve the same purpose as an award of damages in a defamation action or may be ordered in conjunction with an award of damages.

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8 *IRD Global Limited v The Global Fund to fight AIDS, Tuberculosis and Malaria* 2025 (1) SA 117 (SCA) at [22] to [26].

However, the Court held that such relief ordinarily requires the institution of action proceedings.

[60] In the circumstances of the present matter, I am satisfied that declaratory, removal and interdictory relief adequately address the urgent ongoing harm established on the papers. The question whether further compensatory relief by way of apology, retraction or damages should ultimately be granted is best left for determination in separate proceedings should the applicant elect to pursue such relief.

[61] Finally, on costs. The respondent published serious allegations accusing the applicant of corruption and unlawful enrichment. When called upon to retract them, the respondent did not merely refuse. He publicly taunted the applicant, attached the cease-and-desist letter to a further publication, declared "TRY ME BOYS", and threatened further publication of purported "evidence".

[62] The subsequent apology relied upon by the respondent was, on the papers before me, equivocal and short-lived. Notwithstanding the alleged retraction, the respondent persisted in opposing the application, continued defending the lawfulness of the publication, publicly withdrew the apology shortly thereafter, and declared "LETS MEET IN COURT".

[63] The respondent, furthermore, failed to comply with the time periods stipulated in the notice of motion and delivered his notice of intention to oppose and answering affidavit only shortly before the hearing, notwithstanding the urgency of the matter.

[64] Most importantly, despite repeatedly representing publicly that he possessed "evidence" implicating the applicant in corruption, the respondent ultimately placed no substantiating admissible material before Court.

[65] In all the circumstances, I am satisfied that the respondent's conduct warrants a punitive costs order.

Order

[66] Consequently, the following order is made:

(a) The application is heard as one of urgency and non-compliance with the Uniform Rules of Court is condoned.

(b) It is declared that the statements published by the respondent on X on or about 5 May 2026 alleging that:

i. the applicant is associated with corrupt companies benefitting from the City of Ekurhuleni;

ii. the applicant is corrupt;

iii. the applicant has been unlawfully enriched; and

iv. a lifestyle audit of the applicant would reveal corruption or unlawful enrichment, are false, defamatory and unlawful.

(c) The respondent is directed to remove and delete the impugned publications from X and any other social-media platforms under his control within 48 hours of service of this order.

(d) The respondent is interdicted from publishing any further statements of like import.

(e) The applicant's claims for apology, retraction and damages are reserved for determination in separate proceedings should the applicant elect to pursue such relief.

(f) The respondent is ordered to pay the applicant's costs on the attorney and client scale.

[redacted]

CARELSE AJ

ACTING JUDGE OF THE HIGH COURT

JOHANNESBURG

Date of hearing:	22 May 2026
Judgment delivered:	28 May 2026

Appearances:

For the Applicant:	M.Q Lebakeng (Ms), assisted by G Zonke (Ms) instructed by Manyaka KW Attorneys
For the Respondent:	S Shamase (attorney) of Shamase Ramotswedi Attorney