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REPUBLIC OF SOUTH AFRICA



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

CASE NO: 065220/23

1. REPORTABLE: NO
 2. OF INTEREST TO OTHER JUDGES: NO
 3. REVISED: NO
- DATE 08 May 2026
SIGNATURE

In the matter between:

ANNA THOKOZILE MKHWANAZI

APPLICANT

and

**ARENA HOLDINGS (PTY) LTD
RESPONDENT**

FIRST

**DEPARTMENT OF CORRECTIONAL SERVICES
RESPONDENT**

SECOND

**MINISTER OF JUSTICE AND CORRECTIONAL
RESPONDENT**

THIRD

SERVICE

JUDGMENT

MOGALE, AJ

Introduction

[1] This is an opposed application seeking leave from this court to grant an order directing the first respondent to remove a video, and an article published on its website. The relief is only sought against the first respondent.

Parties

[2] The applicant is Anna Thokozile Mkhwanazi, an unemployed adult female, residing at Unit 1[...], 2[...] A[...] Road, Pretoria East, Pretoria.

[3] The first respondent is Arena Holding (Pty) Ltd, a private company registered and incorporated in terms of the Companies Act 71 of 2008, with enterprise No. K2012074397, and with principal business address situated at 16 Empire Road, Parktown, Johannesburg.

[4] The second respondent is the Department of Correctional Services, situated in the Zonderwater area, with its principal place of business and the recipient of all service of process at 1[...] A[...] Street, Hatfield, Pretoria. The second respondent is formally cited; however, the applicant does not seek any relief from the second respondent.

[5] The third respondent is the Minister of Justice and Correctional Service, cited in his capacity as the head of the Department of Correctional Services, accepting all services of all proceedings at Salu Building, 3[...] T[...] S[...] and Francis Baard Street, Pretoria. There is no relief sought against the third respondent.

Background

[6] The applicant was employed as a security officer by the second respondent on 01 March 2014.

[7] On 19 December 2022, an incident took place at the applicant's place of employment, during which she was accused, searched, and alleged to have smuggled contraband and illegal cell phones into the prison.

[8] The search and interrogation were conducted in the presence of other senior male management personnel and male police officers without her consent. During the search, no items were discovered on the applicant; the search was extended to her residence, but still, nothing was found.

[9] The senior management recorded footage of the incident and subsequently shared it within the applicant's internal WhatsApp work group, of which the applicant was a member. From this group, the applicant received numerous calls and messages regarding the circulating video.

[10] On the same day, the applicant was informed that the video was trending on Facebook and Twitter. Upon reviewing the comments on these two platforms, the applicant was deeply distressed by the disturbing remarks.

[11] Following the video's dissemination on social media, the applicant was unable to attend to her duties due to anxiety and suicidal ideation. She was also unable to engage with the second respondent's employees after the video's circulation, owing to unfair comments, misjudgement by colleagues, and union members who were expected to protect her. Concerned for her mental and physical well-being, she submitted her resignation on 23 December 2022.

[12] On 3 January 2023, the applicant was notified that the second respondent had forwarded the video to Sowetan Newspaper, owned by the first respondent. Subsequently, the first respondent published an article featuring the video.

[13] On that day, the applicant engaged with her legal representatives regarding the first respondent's publication. The applicant formally requested that the first respondent retract both the article and the video they had published.

[14] The applicant states in her founding affidavit that she was searched, charged, and arrested at Cullinan Police Station for possession of drugs on 19 December 2022. However, the charges against her were subsequently withdrawn pending investigations by the South African Police Service on the same day.

[15] The applicant was subsequently warned to appear before the Cullinan Magistrate's Court to attend court proceedings on 27 December 2023. She attended multiple court sessions until she was acquitted of the criminal charges against her on 16 October 2025.

[16] The applicant is presently unemployed; as a consequence of this video and article, she has consequently forfeited numerous employment opportunities. It remains unclear to what extent these materials have been disseminated, as they have positioned the applicant in a challenging situation regarding her employment prospects.

[17] This application was initiated by the applicant on the 5 of July, 2023, and was subsequently opposed. The first respondent petitioned for leave to submit a supplementary answering affidavit in accordance with Rule 6(5)(a). The applicant opposed this application and requested leave to file a supplementary founding affidavit.

[18] On 05 August 2024, the interlocutory application order was granted by Honourable Justice Kubishi J with the following relief:

[18.1] Condonation for the late filing of the answering affidavit in the main application is granted, costs to be costs in the main application.

[18.2] The application by the applicant in the main application for leave to file a further affidavit is granted. Costs to be costs in the main application.

[18.3] The application by the applicant (the first respondent in the main application), for leave to file a further affidavit is granted. No order of costs is made.

[18.4] The main application is postponed sine die, and costs for the postponement are reserved.

[18.5] The respondent (the applicant in the main application), is granted leave to respond to the allegations contained in the supplementary affidavit of the applicant (the first respondent in the main application)

The disputed article

[19] The Sowetan Newspaper article published on 03 January 2023 reads in relevant parts as follows:

“Zonderwater prison warder arrested for smuggling contraband for inmates. The prison warder was confronted by police at her house, where tins allegedly containing contraband were found.

A Zonderwater prison warder spent Christmas behind bars after allegedly being caught trying to smuggle contraband into the facility. Thokozile Anna Mkhwanazi arrived at the prison Cullinan, East of Pretoria, on December 12 carrying her lunch and two Ultramel custards. According to the internal report seen by TimesLive, Mkhwanazi attempted to enter the prison through the visitors’ gate when she was searched.

“The official who was researching females was suspicious after searching Mkhwanazi [as the Ultramel containers] felt too hard to be liquid,” the report read.

When asked about this, she said it was frozen and volunteered to leave it in her locker. It is understood that the official reported the incident to security management. Mkhwanazi was called to open her locker, at which point she confessed that the containers contained cell phones, the report said, adding that one container was missing.

“She said it was probably taken by offenders who were cleaning the office,” it added,

She was taken to the prison's head of centre (HCC).

One official at her unit suspected the movements of cleaning offenders and checked the frozen chicken strips that were in Mkhwanazi's lunch box as the offenders were preparing to cook them.

"They discovered a wrapped ball, which was immediately taken to the HCC office. SAPS was called, and the items were opened... in front of Mkhwanazi.

Thirty tablets (pills), six cell phones, and seven SIM cards were discovered. Security officials were then instructed to search the warder's house on prison grounds, where more contraband, enclosed in food tins, was allegedly discovered. According to the report, four cell phones, five SIM cards and 2kg of dagga were found."

The suspect was arrested on December 19 and charged with possession of drugs. She appeared at Cullinan Magistrate's court on December 27"

Oral submissions

[20] On behalf of the applicant, Advocate Naidoo argued that the first respondent's article contains incorrect information. It claims that the applicant spent Christmas behind bars after allegedly being arrested while attempting to smuggle contraband into the facility. The factual circumstances are that the applicant had already resigned from her employment on 23 December 2022. Consequently, it is inaccurate to assert that she spent Christmas behind bars after being apprehended on 19 December 2022. Furthermore, the applicant was detained, formally charged, appeared before the court on 19 December 2022, and was subsequently released on warning. It is therefore unreasonable to contend that she spent Christmas behind bars.

[21] The applicant further contended that a media organisation holds the right to publish articles that are truthful, justified, and serve public interest. Prior to publishing any article, such an organisation is obligated to verify the accuracy of the facts. The applicant was exonerated on 16 October 2025, and the first respondent was duly informed of this development and requested to retract the article. It is not in the applicant's interest for false information to be disseminated under her name.

The article and video published by the first respondent adversely affect her ability to obtain employment. There are no justifiable grounds for the continued existence of the video and article; the refusal to remove them undermines the applicant's dignity and constitutional rights.

[22] On behalf of the first respondent, Advocate De Beer stated that on 3 January 2023, the Sowetan published an online article regarding the applicant's arrest. The article detailed the search, the subsequent charges, and the applicant's arrest. It extensively referenced an internal report concerning items allegedly recovered during the search, including tablets and mobile phones. Additionally, the first respondent republished the video as part of the article.

[23] It was submitted by the first respondent that, by the time it published the video, it had already garnered widespread attention, as it had been circulated through the applicant's WhatsApp, Twitter, and Facebook accounts. The founding affidavit indicated that as of 7 September 2023, social media viewership exceeded 5 million, with the first respondent's video being viewed 5,545 times.

[24] The first respondent conceded that the claim that the applicant spent Christmas behind bars is incorrect, as the facts and information presented were obtained from the internal report. However, the first respondent maintained that the article is otherwise lawful and accurate, reporting that the applicant was searched, charged, and arrested.

[25] The first respondent argued that section 16(1) of the Constitution enshrines the right to freedom of expression, including the freedom of the press and other media, as well as the freedom to receive and disseminate information and ideas. These media freedoms are not exercised solely for their own benefit but in the public interest. The public has the right to know about people smuggling illegal items into prison, and the press has the right to report on it.

[26] The first respondent further submitted that the removal of the article constitutes an extreme measure of relief. If an error exists within the article, the

appropriate course of action to rectify such an error is to amend or edit the specific item requiring correction.

[27] Issues of common cause

[27.1] A search was conducted at Zonderwater Correctional Centre on 19 December 2022. Consequently, the applicant was subject to a search, charged, and subsequently arrested at Cullinan Police Station for possession of drugs.

[27.2] On the same day, the video of the incident was uploaded and disseminated within the applicant's internal WhatsApp group for work, as well as on Facebook and Twitter. Due to the emotional trauma of the accusations, the applicant resigned on 23 December 2022.

[27.3] The first respondent published the video and article about the incident in the Sowetan Newspaper on 3 January 2023, stating that the applicant spent Christmas behind bars. The statement is factually incorrect.

[27.4] The applicant was acquitted of the criminal charges on 16 October 2025

Issues to be decided

[28] This court must consider the following issues:

[28.1] Whether the publication by the first respondent of the statement that the applicant spent Christmas behind bars constitutes a defamatory or otherwise unlawful publication that infringes upon the applicant's constitutional rights to dignity and privacy.

[28.2] Whether the first respondent can successfully raise the defence of reasonable publication in respect of the inaccurate statement.

[28.3] Whether the applicant is entitled to the relief sought, namely, an order directing the first respondent to remove the video and article from its website.

The legal principles

[29] The present application concerns two fundamental rights enshrined within the Constitution. The first pertains to the right to human dignity, serving as the foundational principle of our constitutional framework. Section 10¹ stipulates that “*everyone has inherent dignity and the right to have it respected and safeguarded*”. The second pertains to the right to freedom of expression, which is protected under Section 16.

Section 16(1) ‘*provides that everyone has the right to freedom of expression, which includes freedom of the press and other media, as well as the freedom to receive or impart information or ideas*’.²

[30] In *Case and Another v Minister of Safety and Security and Others; Curtis v Minister of Safety and Security and Others*,³ the court held that freedom of expression is one of a “web of mutually supporting rights” in the Constitution. The Constitutional Court in that matter affirmed that freedom of expression is a cornerstone of our democratic society but recognised that it is not an absolute right and may be limited under the terms of section 36 of the Constitution.

[31] The right to freedom of expression must be balanced against other rights, particularly the rights to dignity and privacy.

[32] In *Tshabalala-Msimang and Another v Makhanya and Others*,⁴ the court observed that this approach has two principal virtues.

“Firstly, it seeks to harmonise as much as possible respect for human dignity and freedom of the press, rather than to rank them in terms of precedence. Secondly, by stressing the need for the media to take reasonable steps to verify the information to be published, it introduces objective standards that can be determined in advance by

¹ The Constitution, 1996

² The Constitution, 1996.

³ 1996 (3) SA 617 (CC) at para 27.

⁴ 2007 ZAGPHC 161; 2008 (6) SA 102 (W) at para 48.

*the profession and then evaluated on a case-by-case basis by the courts. The result is the creation of clearly identifiable and operational norms, and the fostering in the media of a value of care and responsibility.”*⁵

The law of defamation and the reasonable publication defence

[33] Under common law, the dissemination of a defamatory statement concerning the applicant is presumed to be unlawful. The burden then shifts to the respondent to establish a defence that renders the publication lawful. The most invoked defences are that the publication was truthful and served public interest, or that it constituted fair comment on a matter of public concern.

[34] In *National Media Ltd and Others v Bogoshi*,⁶ the Supreme Court of Appeal introduced and developed the defence of reasonable publication in South African defamation law.

*“The court held that 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 that the publication was reasonable.”*⁷

[35] In *Khumalo and Others v Holomisa*,⁸ the Constitutional Court confirmed that “the common law of defamation, as developed in *Bogoshi*, strikes an appropriate balance between the right to freedom of expression and the right to dignity. The court declined to develop the common law further to require a plaintiff to plead and prove falsity in all circumstances, holding that the existing framework, including the reasonable publication defence, sufficiently protects fundamental rights”.

[36] The reasonable publication defence is specifically applicable where the media is unable to substantiate the veracity of a defamatory publication.⁹ To succeed with this defence, the respondent must demonstrate that, given the circumstances, the

⁵ As above.

⁶ 1998 (4) SA 1196 (SCA).

⁷ Above n 7 at 1212G—H.

⁸ 2002 ZACC 12;2002 (5) SA 401 (CC) at para 43.

⁹ Above n 9 at para 39.

publication was reasonable. This entails an evaluation of various factors,¹⁰ including:

- [36.1] the nature, extent and tone of the allegations;
- [36.2] the nature of the information on which the allegations were based;
- [36.3] the reliability of the source of the information;
- [36.4] the steps taken to verify the information;
- [36.5] whether the person concerned was given an opportunity to respond to the allegations prior to publication;
- [36.6] the urgency of the publication; and
- [36.7] whether an appropriate apology or retraction was published upon discovery of the error.

[37] It is my view that if the media engages in unreasonable conduct in publishing defamatory statements, it must be held liable, even if there was no intent to defame the individual concerned. The media cannot rely solely on reports from official or internal sources without taking reasonable measures to verify their accuracy, especially when the allegations are grave and significantly prejudicial to the individual's reputation.

The right to the removal of defamatory content

[38] A court may order the removal of defamatory material from online platforms as a remedial measure to safeguard an individual's reputation and dignity.¹¹ In cases involving defamation, redress may be non-pecuniary and directly aimed at rectifying the harm caused by the defamatory statement, such as through an order for removal or retraction. The courts have previously issued orders requiring the elimination of defamatory statements from media platforms upon determining that the statements were indeed defamatory and that no valid defence was available.¹²

[39] The removal of an article is not an extreme measure when the publication contains an indefensible factual inaccuracy that persists in causing harm to the applicant's reputation. In such circumstances, the ongoing publication of the

¹⁰ Above n 9 at para 18.

¹¹ *RM v RB* 2015 (1) SA 270 (KZP) at para 31.

¹² *Isparta v Richter* 2013 (6) SA 4529.

inaccurate statement fails to serve any legitimate public interest and solely perpetuates harm to the applicant's dignity and reputation.

Evaluation

[39] This court must determine, on the facts and applicable law, whether the applicant is entitled to the relief sought.

[40] In determining whether the impugned statement is defamatory, the Court assesses the ordinary or primary meaning of the words used. If the words bear a latent or secondary meaning, such an innuendo must be established to demonstrate that the words convey a defamatory imputation.¹³

[41] I find that the statement issued by the first respondent, indicating that the applicant spent Christmas behind bars, to be a factual claim that is objectively verifiable. In my view, asserting that an individual spent Christmas in custody formulates various innuendos, including but not limited to being viewed as a dangerous individual by prospective employers. In my view, the statement is evidently defamatory. Alleging criminal conduct against an individual inherently constitutes defamation per se.

[42] The first respondent has acknowledged that this statement is factually inaccurate. The applicant did not spend Christmas behind bars as she was released on warning on 19 December 2022 and, in any case, had resigned from her employment on 23 December 2022. Therefore, the statement is false.

[43] The publication of a false statement imputing criminal conduct to the applicant is a serious infringement of her right to dignity and her right to a good name. As the court in *Tshabalala-Msimang* observed, human dignity includes the intrinsic worth of human beings shared by all members of the community, and an attack on a person's reputation through false allegations strikes at the core of this dignity.

¹³ *Flentov and Another v Koelma and Another* 2025 JDR 4589 (WCC) at para 10.

[44] The first respondent relies on the defence that the publication was reasonable. Therefore, this court must assess whether, in all the circumstances, the publication of the inaccurate statement was nevertheless reasonable.

[45] The first respondent asserts that the information was derived from an internal report and that the article otherwise accurately reports that the applicant was searched, charged, and arrested. Nonetheless, this argument does not address the specific inaccuracy concerning the applicant spending Christmas behind bars. The first respondent has not provided any clarification on measures taken to verify the claim that the applicant spent Christmas behind bars.

[46] The following factors weigh against a finding that the publication was reasonable:

[46.1] *Seriousness of the allegation:* The allegation that a person spent Christmas in custody is a serious imputation of criminal conduct and carries significant reputational harm.

[46.2] *Verification of information:* The first respondent has not demonstrated that it took any reasonable steps to verify the accuracy of the statement before publication. The sole reliance on an internal report without independent verification is insufficient, particularly where the statement could have been verified by a simple inquiry.

[46.3] *Failure to verify with the applicant:* There is no evidence that the first respondent contacted the applicant or her legal representatives prior to publication to confirm the accuracy of the statement or to give her an opportunity to respond to the allegations. In *Tshabalala-Msimang*, the court criticised the media for not affording the applicant an opportunity to respond to the contents prior to publication. The same criticism applies here.

[46.4] *Availability of correct information:* The information that the applicant had been released on warning and had resigned on 23

December 2022 was readily ascertainable. A reasonable media house would have verified the facts, particularly the highly prejudicial statement about incarceration, before publication.

[46.5] *Post-publication conduct:* Upon notification of the inaccuracy, the first respondent has declined to retract the article or issue a correction. While the defence of reasonable publication is evaluated at the time of publication, the media's conduct after publication remains pertinent to the overall evaluation of reasonableness and the legality of continued publication.

[47] The fact that the video and article had already been circulated on social media prior to the first respondent's publication does not absolve the first respondent from its obligation to report accurately. I believe that each publisher bears individual responsibility for the accuracy of their publications. Consequently, the first respondent cannot justify their actions by relying on prior publication by others when they elected to republish the material on their own platform.

In these circumstances, the first respondent cannot successfully rely on the defence of reasonable publication. The publication of the false statement was not reasonable in all the circumstances.

The remedy sought

[48] The applicant requests an order compelling the first respondent to delete the video and article from its website. This relief pertains to the ongoing publication of the incorrect statement, rather than the initial publication on 3 January 2023.

[49] The first respondent contends that the removal of the article constitutes an extreme measure and that a more appropriate approach would be to amend or edit the specific item requiring correction. Nevertheless, the first respondent has not proposed to amend or edit the article or to publish a correction. The refusal to undertake any corrective action results in the inaccurate statement remaining

published on the first respondent's website, thereby perpetuating harm to the applicant's reputation and adversely affecting her employment prospects.

[50] The continued publication of a known inaccuracy serves no legitimate public interest. While it is true that the public has an interest in knowing about the smuggling of contraband into prisons, and that the applicant was charged with criminal conduct, it is my view that the public has no interest in the publication of a false statement that the applicant spent Christmas behind bars. The false statement is not necessary to inform the public about the underlying events. The first respondent could have accurately reported the search, arrest, and charge without including the false assertion.

[51] The applicant's right to dignity and her right to have her reputation protected outweigh the first respondent's interest in continuing to publish the inaccurate statement. In balancing these rights, this court must give effect to the constitutional values of human dignity and the advancement of human rights. Where a media publisher continues to publish a known falsehood that causes ongoing harm to an individual's reputation, the remedy of removal is appropriate and necessary.

[52] The article concerning the first respondent has been available online since 3 January 2023, and the inaccurate statement remains accessible to the public. The applicant has been acquitted of the criminal charges brought against her, thereby emphasising the necessity to amend the public record.

[53] It is therefore ordered that the article be removed from the first respondent's website.

Order

[54] The first respondent is directed to remove the article published on the first respondent's website on 3 January 2023, from its website link within 10 (ten) days of the date of this order.

[55] The first respondent is to pay the costs of this application on the attorney and own client scale, including the costs of the interlocutory proceedings (as previously ordered by Kubishi J on 5 August 2024).

K MOGALE
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

Date of hearing: 23 April 2026

Date of judgment: 08 May 2026

Appearances

Applicants' council: I Naidoo

Instructed by: Ningiza Attorneys INC

Respondents' council: M De Beer

Instructed by: William De Klerk Attorneys