

**REPUBLIC OF SOUTH AFRICA**



**GAUTENG DIVISION, JOHANNESBURG**

Case No: 2022-032755

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
(3)	REVISED: YES/NO
DATE	SIGNATURE

In the matter between:

**BARLOWORLD SOUTH AFRICA (PTY) LTD**

Applicant

and

**FISOKUHLE MULTI SERVICES CC**

First Respondent

**FELICIA FISOKUHLE BUTHELEZI**

Second Respondent

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**JUDGMENT**

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**ROBERTSON, AJ**

## *Introduction*

1. This is the return day of Part B of an application brought by the applicant for final relief arising from a series of social media publications made by or on behalf of the respondents.
2. The applicant seeks, in substance, an order declaring certain publications defamatory, directing their removal, and interdicting the respondents from publishing further defamatory matter concerning the applicant and its employees.
3. Part A of the application was heard in the urgent court on 26 October 2022 before Dosio J. An interim interdict was granted pending the determination of Part B.
4. The matter initially proceeded on an unopposed basis. It was set down before Fischer J on 12 October 2023. The respondents filed a notice of opposition shortly before that hearing and were directed to deliver an answering affidavit.
5. The respondents' answering affidavit was filed late. They seek condonation. The delay is explained principally by reference to the urgent contempt proceedings subsequently brought by the applicant, and to the personal circumstances of the second respondent. The applicant did not persist in opposing condonation at the hearing. In the interests of justice, and because the matter was fully argued on the merits, condonation is granted.

## *The Parties and Background*

6. The applicant is Barloworld South Africa (Pty) Ltd. The first respondent is Fisokuhle Multi Services CC. The second respondent is Ms Felicia Fisokuhle Buthelezi, the sole member of the first respondent.
7. The first respondent previously rendered services to the applicant. These included canteen services and security services. The relationship arose in the context of the applicant's Siyakhula programme, which is described in the papers as a programme aimed at supporting small businesses, particularly those owned by historically disadvantaged persons.
8. The applicant terminated the contracts. The lawfulness of those terminations is

disputed in other proceedings. That dispute is not before me, and I make no finding on it.

9. The second respondent also raised complaints concerning alleged racist and abusive conduct by a former employee of the applicant, Mr Marais. Those complaints were investigated by KPMG. The respondents contend that the applicant has refused to provide them with the KPMG report and that this refusal lies at the heart of the present dispute.
10. The applicant accepts, at least on the basis of correspondence referred to in the papers, that the KPMG investigation found that certain conduct by Mr Marais was in breach of the applicant's policies. The applicant says, however, that Mr Marais resigned during the investigation and that the matter was thereafter closed. The applicant also contends that the KPMG report is privileged and confidential.
11. The papers also reflect that allegations relating to racism and sexism were referred to the Equality Court. On 27 October 2022, after considering the evidence then before it, the presiding magistrate determined that the matter should not be referred to the Equality Court in terms of section 20(3)(a) of the Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000. I mention this only as part of the broader factual context. Nothing in this judgment turns on the correctness of that decision.
12. It is neither necessary nor appropriate for this Court to determine the full merits of the underlying complaints concerning the contracts, the KPMG report, or the allegations made against Mr Marais. Those issues are either the subject of other proceedings or are not properly before this Court. The question in this application is narrower: whether the publications identified by the applicant are defamatory and, if so, whether the respondents have established a defence to their publication.

### *The Publications*

13. The publications were made on social media platforms, principally LinkedIn and Facebook, during or around public online events hosted by the applicant.

14. The applicant relies on a number of publications set out in the founding affidavit. They include statements to the effect that:
- 14.1. the applicant and its employees bullied, deceived and tortured the second respondent;
  - 14.2. the applicant unlawfully terminated the first respondent's contracts;
  - 14.3. the applicant was involved in corruption and racism;
  - 14.4. the applicant used, abused and exploited black women and black-owned businesses for BEE scoring and public relations purposes;
  - 14.5. the applicant presented a false image of transformation in public while acting differently in private; and
  - 14.6. black employees or staff were referred to by grossly racist and sexist terms.
15. By way of illustration, two of the impugned publications, on which the applicant principally relies, read as follows:

“... I reported what were referred to baboons and pussy while trying to save Barloworld. Nothing have happened. KPMG was appointed to investigate my allegations until today no report was shared with me. I was chased out of ...” (LinkedIn, during the “Table Is Big” virtual live event hosted by the applicant on 19 August 2022, founding affidavit paragraph 38.7)

“Friday there as a celebration of transformation at Barloworld which is a lie. It is not true” (LinkedIn, 19 August 2022, founding affidavit paragraph 38.8).

16. The statements were made in public-facing online spaces. They were directed at the applicant, its employees, and its public reputation.
17. Publication by the respondents is effectively common cause.

*The applicable legal principles*

18. Defamation is the wrongful and intentional publication of a defamatory statement concerning another.

19. A statement is defamatory if, objectively assessed, it is likely to lower the plaintiff in the estimation of reasonable members of society or undermine the plaintiff's good name and reputation.
20. A juristic person does not enjoy human dignity in the same sense as a natural person, but it has a protectable common-law interest in its reputation and good name.
21. Once publication of defamatory matter concerning the applicant is established, wrongfulness and intention are presumed. The onus then rests on the respondents to establish a defence which rebuts wrongfulness or intention.
22. The relevant defences raised in the papers are truth and public interest, fair comment and, in the respondents' heads of argument, reasonable publication.
23. For truth and public interest, the respondents must establish that the defamatory sting of the publication is substantially true and that publication was in the public interest.
24. For fair comment, the respondents must establish that the statement was comment and not fact; that the comment was fair in the sense of being an honestly held opinion within permissible limits; that the facts on which the comment was based were true or notorious; and that the matter was one of public interest.

*Whether the publications are defamatory*

25. The statements complained of plainly bear defamatory meanings.
26. They convey, expressly or by implication, that the applicant is racist, sexist, dishonest, corrupt, unethical, exploitative, unprofessional and hypocritical in its public commitment to transformation and empowerment.
27. These are serious imputations. They are not mere expressions of dissatisfaction with a former contracting party. They strike at the applicant's reputation as a business, particularly in relation to ethics, transformation, race, gender, and the treatment of black women-owned businesses.

28. The publications are therefore defamatory of the applicant.

*Respondents' defence*

29. Read fairly and as a whole, the respondents' defence is, in substance, that:

29.1. the publications were true or substantially true;

29.2. they concerned matters of public interest, particularly racism and the treatment of black women-owned businesses;

29.3. they constituted fair comment based on the second respondent's personal experience; and

29.4. the applicant could have avoided the publications by providing the KPMG report.

30. In heads of argument, the respondents also referred to the principles in *National Media Ltd v Bogoshi* and reasonable publication. During argument, however, the respondents did not ultimately persist with a discrete defence of reasonable publication. In any event, the answering affidavit does not contain the factual allegations ordinarily necessary to sustain such a defence, including proper allegations concerning verification, source reliability and the reasonableness of publication.

31. The respondents accordingly bear the onus of establishing the pleaded defences of truth and public interest and fair comment.

*The KPMG report and the Attorney's letter*

32. The respondents place considerable weight on the applicant's attorney's letter dated 28 May 2021.

33. The respondents submit that the letter records that KPMG found that the conduct of Mr Marais was in breach of the applicant's policies. They argue that this supports the truth of the publications.

34. The letter does provide some support for the respondents' contention that they had raised complaints which were not frivolous and that at least some conduct

complained of was found to be contrary to the applicant's policies.

35. That is an important contextual matter. It explains why the second respondent may have felt aggrieved and why she may have believed that the applicant had failed to deal with her complaints adequately.
36. But that is not the end of the enquiry.
37. The KPMG report is not before the Court. The respondents do not have it. They cannot identify its full findings, the scope of its conclusions, the evidence on which those conclusions were based, or whether it made any findings concerning the broader allegations published on social media.
38. The letter does not establish that the applicant is racist as an organisation. It does not establish corruption. It does not establish that the applicant exploits black women-owned businesses for BEE scoring. It does not establish that the applicant presents fake transformation to the public. It does not establish that the first respondent's contracts were unlawfully terminated. It does not establish that the applicant's executives engaged in dishonest or unethical conduct in the broad terms published.
39. At most, the letter provides a factual basis for the respondents to say that they had complained of racist or abusive conduct by Mr Marais, and that the applicant's own investigation found that some conduct by him breached its policies.
40. That limited factual foundation does not justify the wider defamatory sting of the publications.

*Truth and public interest*

41. There is no doubt that allegations of racism, sexism and abuse in commercial relationships may be matters of public interest. Allegations of racism and the treatment of black women-owned businesses by large corporates are plainly matters capable of engaging legitimate public concern and debate.
42. But public interest alone is not enough. Where the defence is truth and public

interest, the respondents must establish substantial truth of the defamatory sting.

43. They have not done so.
44. The respondents rely principally on the attorney's letter and on the second respondent's personal experience. That evidence falls materially short of establishing the truth of the broader allegations of corruption, fake transformation, exploitation for BEE scoring, unlawful termination, dishonesty, unethical conduct and racism by the applicant.
45. Some of the issues raised by the respondents are also the subject of other pending proceedings. The question whether the contracts were lawfully terminated is not determined in this application. The respondents cannot establish the truth of the allegation that the contracts were unlawfully terminated merely by asserting it in opposition to a defamation application.
46. The defence of truth and public interest must therefore fail.

*Fair comment*

47. The respondents also rely on fair comment. The second respondent says that she was sharing her experience as a black woman who had been promised empowerment, and that the comments were a cry for the applicant to prioritise her complaints and provide the KPMG report.
48. I accept that portions of the publications reflect the second respondent's personal grievance. I also accept that fair comment need not be polite, moderate or pleasing to the subject of the criticism.
49. But the defence has limits.
50. The statements complained of were not merely comments on disclosed facts. Many were presented, objectively viewed, as assertions of fact or mixed statements of fact and opinion. They stated or implied that the applicant engaged in corruption, racism, exploitation, unlawful termination, fake transformation and unethical conduct.
51. To the extent that the statements were comments, the factual substratum for

them was not sufficiently established. The facts proved by the respondents do not support the full sting of the comments.

52. It is one thing for the second respondent to say that she complained about racist or abusive treatment, that she was dissatisfied with the applicant's response, and that she wanted the KPMG report. It is quite another to publish, as fact or as comment, broad allegations that the applicant is corrupt, racist, exploitative, dishonest and engaged in false transformation.

53. The defence of fair comment accordingly fails.

### *Freedom of Expression*

54. The respondents rely on freedom of expression. That right is important. It protects robust criticism, including criticism of powerful commercial entities.

55. But freedom of expression does not protect the unjustified publication of defamatory allegations.

56. This judgment does not prevent the respondents from pursuing lawful remedies. It does not prevent them from litigating the contractual disputes. It does not prevent them from seeking the KPMG report through lawful processes, if so advised. Nor does it prevent them from making truthful, lawful and non-defamatory statements.

57. Courts exercise caution when granting final interdictory relief in defamation matters, particularly where future publication is sought to be restrained. In the present matter, however, the impugned publications are identified with specificity, publication is admitted, and the order granted is narrowly confined to defamatory statements of the nature established on the papers.

### *Final interdict*

58. The applicant has a clear right to protect its reputation and good name.

59. The injury has already occurred. The publications were made on public social media platforms. They carried serious defamatory imputations. There is also a reasonable apprehension of repetition. The nature and persistence of the

publications indicate a reasonable apprehension of repetition.

60. Damages would not provide adequate protection in the circumstances. The applicant seeks primarily to restrain further defamatory publication and to secure removal of the identified posts.
61. The applicant has therefore established the requirements for final interdictory relief.
62. I do, however, consider the broad formulation in prayer 7 of the amended notice of motion to be impermissibly wide. An order restraining the respondents from publishing “any information” pertaining to the applicant or its employees would unjustifiably restrict lawful expression, including lawful criticism and commentary. The order must therefore be confined to defamatory publications of the nature established in this application.

#### *Costs*

63. The applicant seeks costs on the party-and-party scale, Scale B, including the costs of Part A, the adjournment before Fischer J on 12 October 2023, and the costs of two counsel where employed.
64. The respondents have been unsuccessful. There is no reason to depart from the ordinary rule that costs should follow the result.
65. The costs sought are appropriate. The matter justified the employment of two counsel where so employed.

#### *Order*

66. The following order is made:
  - 66.1. The late filing of the respondents’ answering affidavit is condoned.
  - 66.2. The following statements made about the applicant by the first and second respondents are declared defamatory:
    - 66.2.1. the post published on the LinkedIn profile of the Executive Head: Strategic Sourcing (CPO) at Barloworld South Africa


(Pty) Ltd, dated 19 August 2022, as more fully set out in paragraph 38.1 of the founding affidavit;

- 66.2.2. the posts published on the Facebook page of the applicant, dated 19 August 2022, as more fully set out in paragraphs 38.3 and 38.4 of the founding affidavit;
  - 66.2.3. the post published on the applicant's LinkedIn profile, dated 17 June 2022, as more fully set out in paragraph 38.6 of the founding affidavit;
  - 66.2.4. the posts published on the applicant's LinkedIn profile during a virtual live event hosted by the applicant, dated 19 August 2022, as more fully set out in paragraphs 38.7 to 38.9 and 47.1 to 47.5 of the founding affidavit; and
  - 66.2.5. the post published on the second respondent's LinkedIn profile, dated 19 August 2022, as more fully set out in paragraph 38.11 of the founding affidavit.
- 66.3. The first and second respondents are interdicted and restrained from publishing defamatory statements concerning the applicant and/or its employees which state or imply that the applicant and/or its employees are racist, sexist, dishonest, corrupt, unethical, exploitative, unprofessional or hypocritical, whether on Facebook, LinkedIn or any other social media platform, or in any other manner.
- 66.4. The first and second respondents are ordered, within five days of this order, to remove the posts referred to in paragraph 66.2 above from Facebook, LinkedIn or any other social media platform on which they have been posted, insofar as such posts remain under their control;
- 66.5. The first and second respondents are directed, jointly and severally, the one paying the other to be absolved, to pay the costs of the application on the party-and-party scale, Scale B, including:
- 66.5.1. the costs occasioned by Part A before Dosio J on 26 October

2022;

66.5.2. the costs occasioned by the adjournment before Fischer J on 12 October 2023; and

66.5.3. the costs of two counsel where so employed.

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**CL ROBERTSON**  
**ACTING JUDGE OF THE HIGH COURT**  
**GAUTENG DIVISION, JOHANNESBURG**

This judgment was handed down electronically by circulation to the parties' legal representatives by email and by upload to Caselines. The date for hand-down is deemed to be 2 June 2026.

Date of hearing: 13 May 2026

Date of judgment: 2 June 2026

#### **APPEARANCES**

For the Applicant: L T Nkosi

Instructed by: NSD Inc

For the Respondents: K D Masupye

Instructed by Lindy Matlala Attorneys