



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

CASE NO: 2024/148555

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

5 June 2026

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DATE

██████████

SIGNATURE

In the matter between:-
VUSI THEMBEKWAYO

APPLICANT

and

SIZWE DHLOMO

RESPONDENT

JUDGMENT

Mazibuko J

INTRODUCTION

- [1] This is an opposed application seeking final interdictory relief against the respondent, Sizwe Dhlomo ('Dhlomo'), a radio and television presenter, to restrain him from posting, disseminating or publishing, directly or indirectly,

false and or defamatory statements about the applicant, Vusi Thembekwayo ('Thembekwayo'), a Chief Executive Officer of MyGrowthFund Venture Partners, a regular keynote speaker, mentor and business coach, in any form or manner, including on any social media platform. He further seeks an order directing Dhlomo, within seven days of service of the order, to remove all false and or defamatory publications and statements he made regarding him (Thembekwayo) from any platform, including social media platforms, and to deliver, within seven days of service of the order, to Thembekwayo's attorneys an unconditional written apology and retraction of the false and or defamatory publications and statements he made against him (Thembekwayo).

COMMON CAUSE FACTS

- [2] What was common cause between the parties was that they had no personal or professional relationship with each other, except for a single interview arranged by Primedia, Dhlomo's former employer, many years ago.
- [3] It was also not disputed that between 2020 and 2024, Dhlomo posted on media platforms, including social media, stating that Thembekwayo was a punk and a fraud, and that everything about him was a scam. He was the worst kind of opportunist, taking advantage of the vulnerable and having scammed many people. He would listen to their show on 702 and then post on Facebook. Further, he believed that Thembekwayo was laying hands on his wife.
- [4] Responding to the correspondence dispatched by Thembekwayo's attorneys on 11 September 2024, which called for a retraction of the postings, an apology, and an irrevocable undertaking to cease publishing further defamatory material, he refused to do so and told them to tell Thembekwayo that he could go to hell. Subsequently, he posted on social media, claiming that Thembekwayo plagiarised content from 702.

CONDONATION

- [5] Both parties brought condonation applications. For Dhlomo, it was for the late filing of his answering affidavit, and for Thembekwayo, it was for the late filing

of his answering affidavit in response to Dhlomo's condonation application, and of his replying affidavit in the main application. Both Thembekwayo and Dhlomo consented to the granting of the respective condonation applications. I find that none of the parties would be prejudiced by the consideration of the condonation applications. Accordingly, the respective condonation applications by consent between the parties are granted.

ISSUE

- [6] The questions to be answered are whether Thembekwayo has made out a case for a restraining order against Dhlomo, requiring him not to post defamatory statements about Thembekwayo, and for a retraction order requiring him to remove any such statements or postings from the media. Further, whether an apology can be ordered in motion proceedings, and whether Thembekwayo has met the requirements for a final interdict in the relief sought.

PARTIES' ASSERTIONS

Thembekwayo's case

- [7] Thembekwayo averred that he is a public figure with over two decades of experience as a professional speaker and as the author of two published works on business and personal leadership. He commands a substantial online following of approximately five million people and has carefully cultivated a reputation grounded in integrity, leadership, and expertise in strategy and sales. This reputation, built over 22 years, is inextricably linked to his business ventures and income streams, which directly or indirectly employ between 20 and 50 people. He also operates a mentorship programme locally and internationally.
- [8] He was enrolled in the Fitch Learning programme as a CFA Level 1 candidate in November 2015. He served as a director of a JSE-listed company, a non-executive director of RBA Holdings, and a member of the Board of Directors.

- [9] He denied having scammed people and responded to the allegations levelled against him by Dhlomo regarding Mr Kunene. He stated that Mr Kunene had received 4 months of mentorship, training, tutoring, and support without making any payments. He emphasised that many people expressed their gratitude for the MyGrowthFund Initiative.
- [10] Regarding another issue raised by Dhlomo, the 10,000-hour rule, he stated that the debate among scholars and international motivational speakers, including himself and the psychologist Donald Hambrick, began in 2012. It was not first raised during the interview by Dhlomo years later. Regarding piggybacking on Dhlomo's suggestions about Santiago, Thembekwayo denied it, stating that he could not have saved favourites on Twitter, as at that time, 2015, Twitter had rebranded favourites as "likes".
- [11] He stated that, to his knowledge, Dhlomo began in 2020 with a derogatory statement on the 'MacG' YouTube channel, and the video garnered over 272,000 views. In 2023 and 2024, he continued to post defamatory tweets, including baseless allegations of fraud, opportunism, and abuse on social media platforms such as X (formerly Twitter) and YouTube. These included claims that he scammed participants in his incubator programme. Dhlomo also published inaccurate personal information about him, including an attempt to disclose Thembekwayo's residential address. The 2024 statements attracted widespread attention, including a media article published by "Briefly" on 12 August 2024.
- [12] It was argued on Thembekwayo's behalf that the statements, posted to a wide audience, were false and caused irreparable harm to his reputation, dignity, and business interests. Further, his rights to dignity, privacy, and reputation warranted protection against Dhlomo's unlawful conduct. In his replying affidavit, it was emphasised that the application sought interdictory relief and did not seek to claim damages from Dhlomo for his self-admitted defamatory actions. Dhlomo's reliance on defences available to defendants in defamation actions was misplaced.

Dhlomo's case

[13] In his answering affidavit, Dhlomo admitted to posting and publishing the impugned statements and publications on social media, as alleged by Thembekwayo.

[14] In his defence, he raised five grounds: a) The postings were not unlawful, as he expressed an opinion or comment; b) The application breaches the 'once and for all' rule; c) An apology cannot be sought in motion proceedings; d) There was a material dispute of fact; and e) The interdict sought was overbroad.

[15] Regarding his first ground of defence, namely that the social media posts were not unlawful, Dhlomo asserted as follows.

a) The social media posts

'Calling Thembekwayo a punk'

[16] Dhlomo contended that it was not unlawful for him to express his opinion or comment, as Thembekwayo is a prominent public figure and comments on his conduct, character, and integrity are matters of legitimate public interest. Even if it were unlawful, Thembekwayo's claim has prescribed because the comment was made more than four years ago.

[17] Thembekwayo made false claims when he stated that he was a chartered financial analyst and the youngest director of a JSE-listed company.

'Calling Thembekwayo a fraud, the worst kind of opportunist who takes advantage of the vulnerable and has scammed plenty of people'

[18] Dhlomo accepted that these statements were defamatory; however, he argued that they were not unlawful, as he was expressing an opinion or comment relevant to the facts underlying them and concerning a matter of public interest. Further, Thembekwayo has not pleaded or proved that the comments were actuated by malice, and Dhlomo denied that they were.

[19] Notwithstanding his admission that his social media post stating ‘everything about Thembekwayo was a scam’ was defamatory, Dhlomo contended that it was not unlawful, as he was expressing an honest opinion or comment, not a statement of fact, on a matter of public interest. Thembekwayo also failed to plead or prove that the comment was actuated by malice, and Dhlomo denied that it was.

‘I think he lays hands on his wife’

[20] Although Dhlomo admitted posting that he believed Thembakwayo was laying hands on his wife, he argued that, even if defamatory, the post was not unlawful. He was expressing an honest and genuine opinion or comment, not a statement of fact, on a matter of public interest. Thembakwayo did not plead or prove that the comment was actuated by malice, and denied as much.

[21] Further, it was public knowledge, as reported in the news media and widely discussed on social media platforms, that Thembekwayo’s then-wife laid criminal charges of assault against him arising from an alleged incident on 4 December 2021. He was prosecuted and later acquitted. He argued that his post was made long before Thembekwayo was acquitted.

“He’d listen to our show on 702 and then post on Facebook”

[22] Dhlomo denied that this posting was defamatory. He argued that it merely meant that the applicant had copied content from their show on radio 702 and posted it on Facebook. Even if it were defamatory, it would not be unlawful, as it was true and in the public interest.

[23] To substantiate this claim, Dhlomo cited his show, on which he hosted psychologist Anders Ericsson in June 2016 to discuss the 10 000-hour rule. Thembekwayo published a video titled “Is 10,000 Hours of practice enough?” on his YouTube page in August 2017.

Thembekwayo lived in “Blue Valley Estate”

[24] He denied ever having published, in any form, a statement disclosing Thembekwayo's place of residence. He contended that even if he had, it would not have been unlawful or defamatory. Further, there was no explanation of how it was or would be defamatory.

b) The application breaches the ‘once and for all’ rule

[25] It was argued on behalf of Dhlomo that a claimant seeking final relief must seek all relief in a single legal proceeding. Thembakwayo has not expressly or impliedly abandoned a claim for damages, leaving open the possibility, and indeed the likelihood, that he would seek damages in a separate subsequent action, particularly if this application were dismissed. In these circumstances, this application would afford the applicant a second bite at the cherry on the merits of the matter. The ‘once and for all’ rule exists to preclude this unfairness. By failing to abandon a claim for damages, the applicant has brought the application in breach of the ‘once and for all’ rule.

c) An apology cannot be claimed in motion proceedings

[26] Dhlomo, through his counsel, contended that a defamation claimant can seek an apology only in action proceedings.

d) Material disputes of fact

[27] Dhlomo stated that, in bringing the application, Thembekwayo disregarded the foreseeable material disputes of fact. It was argued that his application ought to be dismissed with costs, as at the time of its launch, Thembekwayo should have realised that a material dispute of fact was bound to arise as to whether:

[27.1] He plagiarised content from the 702 radio show.

[27.2] He lied about having written a substantial portion of Minister Gigaba’s budget speech.

[27.3] MyGrowthFund is an enrichment scheme for him rather than a genuine empowerment programme for entrepreneurs; and

[27.4] He has lied about his qualifications.

e) The interdict sought is overbroad

[28] It was argued on behalf of Dhlomo that the Court should not interdict him from making any “false and or defamatory” statements about Thembekwayo in the future, as it cannot know in advance whether as-yet-unpublished statements would be unlawful or justified, for example, by truth, public interest, protected comment, or qualified privilege. Rather, a Court interdicts specific statements that have been proved unlawful.

THE LAW

[29] Claims for unliquidated damages must be brought by way of action.¹

[30] In *IRD Global Limited v The Global Fund to fight AIDS, Tuberculosis and Malaria*,² it was held:

‘[M]otion proceedings remain unsuited to dealing with defamation allegations. A trial is necessary to determine the veracity of the alleged defamatory statements, and thereafter an award can be made consisting of an apology, a monetary amount, a retraction, or a combination of same.’

[31] ‘[A] claim for damages for defamation, whether general or special, was always unliquidated and the damages could only be determined in proceedings by way of action, or possibly in special circumstances after hearing oral evidence in application proceedings. The position has not changed as a result of courts now being empowered to grant other compensatory remedies, either in addition to, or to the exclusion of, a claim for damages. Relief such as an apology or the publication of a retraction remains compensatory relief and, for that reason,

¹ Rule 17(2) of the Uniform Rules of Court read with Rule 18(10)

² *IRD Global Limited v The Global Fund to fight AIDS, Tuberculosis and Malaria* [2024] ZASCA 109; 2025 (1) SA 117 (SCA) paras 24-26.

requires oral evidence in the same way as a claim for damages requires oral evidence.³

DISCUSSION

- [32] In relation to the alleged defamatory postings and their retraction, for the court to grant a restraining order against Dhlomo prohibiting further posting and to order the removal of the posts, it must first assess the evidence before it and find that the posts are defamatory. Based on the aforementioned Supreme Court of Appeal cases, courts have been discouraged from making such a finding on the basis of evidence contained in affidavits.
- [33] It has been held that apologies and retractions are compensatory in nature and must be treated as unliquidated claims. There is no reason the court cannot align itself with the decisions of the Supreme Court of Appeal, which are binding on it. In my view, the applicant's reliance on *Du Toit v Becket* and *Ramos v Independent Media* is misplaced.
- [34] Regarding the restraint order sought against Dhlomo to prevent future posts about Thembekwayo and to remove existing posts, it seems to me that the relief sought is intended to regulate both past and future postings. The impugned postings are already in the public domain, including on social media. It has been held that a prohibitory interdict cannot undo what has already occurred and is therefore pointless when directed at past publications. Nor would an interdict prohibiting future publication of material that has already been published serve any purpose; it would amount to an impermissible form of prior restraint. Once defamatory matter is in the public domain, an interdict is not an effective remedy but rather a form of ineffective censorship. The balance between protecting reputation and safeguarding free expression is better achieved through the remedy of reply and ongoing public debate, rather than by judicially silencing

³ *NBC Holdings (Pty) Ltd v Akani Retirement Fund Administrators* [2021] ZASCA 136; [2021] 4 All SA 652 (SCA), para 29.

speech. See *Lieberthal v Primedia Broadcasting (Pty) Ltd*,⁴ drawing on *Burchell's commentary*.⁵

[35] In *Primedia (Pty) Ltd v Speaker of the National Assembly*,⁶ it was held that prior restraint on publication is permissible only where the prejudice is demonstrable and substantial, and outweighs the public's right of access to information; mere conjecture is not enough. Although there was an allegation that Dhlomo was unpredictable, no facts or evidence were disclosed to support apprehension of future defamatory statements or postings about Thembekwayo. Accordingly, there is no justification for the sought restraining order.

[36] Notwithstanding that the parties raised a number of issues and defences, respectively, the court has already found that this kind of matter ought to be brought by way of action. The other issues would be better determined in a different forum. I therefore elect not to deal with some of the issues and defences raised, as the findings on the issue of a restraining order for future postings and the retraction of the existing posts in the public domain, and on the delivery of an apology, are, in my respectful view, dispositive of the application. For the reasons aforementioned, the application stands to be dismissed with costs.

[37] In the result, the following order is made.

Order:

[37.1] The application is dismissed with costs, including those of counsel at scale B.

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NGM MAZIBUKO

Judge of the High Court

⁴ *Lieberthal v Primedia Broadcasting (Pty) Ltd* 2003(5) SA 39 (W) at 48D.

⁵ *The Law of Defamation* First edition at 315.

⁶ *Primedia (Pty) Ltd v Speaker of the National Assembly* 2017(1) SA 572 (SCA) para 50.

This judgment was handed down electronically by email to the parties' representatives and uploaded to Case Lines.

Heard on: 4 March 2026

Judgment delivered on: 5 June 2026

For the applicant: Adv BC Bester

Instructed by: Van Heerden & Krugel Attorneys

For the respondent: Adv BE Winks

Instructed by: Webber Wentzel Attorneys