

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

Case Number: 2025-112704

1. REPORTABLE: NO
2. OF INTEREST TO OTHER JUDGES: NO
3. REVISED: NO
<u>19 June 2026</u>
Date
Signature

In the matter between:

GREGORY HOGG

First Applicant

THERESA HOGG

Second Applicant

GTD EXPRESS (PTY) LTD

Third Applicant

and

MICHAEL LESTER BOLHUIS

First Respondent

MADUKA CARRIERS CC

Second Respondent

MLB DIENSTE (PTY) LTD

t/a SPECIALISED SECURITY SERVICES

Third Respondent

Neutral Citation: *Gregory Hogg & Theresa Hogg & Gtd Express (Pty) Ltd v Michael Lester Bolhuis & Maduka Carriers CC & MLB Dienste (Pty) Ltd t/a Specialised Security Services (112704-2025) [2026] ZAGPJHC ----- (19 June 2026)*

Coram: Khaba AJ

Heard: 30 April 2026

Delivered: 19 June 2026 – This judgment was handed down electronically by circulation to the parties’ representatives by email, by being uploaded to CaseLines and by release to SAFLII. The date for hand-down is deemed to be 19 June 2026.

Summary: Practice and Procedure – costs – urgent application for interim interdict – costs reserved – condition that defamation action be instituted – failure to institute action – premature application for costs – abuse of process – application dismissed.

ORDER

1. The application is dismissed.
2. The costs of the urgent application stand reserved, such costs to be determined upon the conclusion of the defamation action which the applicants are directed to institute pursuant to paragraph 4 of the court order granted by Malungana AJ on 21 July 2025.
3. The applicants are ordered to pay the respondents' costs of this application on the attorney and client scale.

JUDGMENT

KHABA, AJ:

Introduction:

- [1] This matter is an unfortunate sequel to what should have been the conclusion of a dispute. On 21 July 2025, the parties appeared before Malungana AJ and consented to a comprehensive court order that granted the applicants substantial interim relief, including an interdict against certain statements, provision for the exchange of information, and the reservation of costs for later determination. The applicants now seek an order that the respondents pay the costs of that urgent application. The respondents have opposed the application on the grounds that it is premature. The respondents contend that the applicants have not complied with a fundamental term of the court order they obtained. The respondents contend that the applicants' have acted *mala fide*, and the application should be dismissed.

The terms of the consent court order:

- [2] The court order of 21 July 2025 is not ambiguous. It must be read as a whole. Paragraph 4 of the court order provides that the interim interdict is granted "*pending the finalisation of a defamation action to be instituted by the applicants.*" Those words are not surplusage. They are not a polite suggestion. They are a condition. They are the very foundation upon which the interim relief rests.
- [3] The legal nature of an interim interdict is well established in our law. It is a temporary remedy. Its purpose is to preserve the status *quo* pending the final determination of the parties' rights in action proceedings. An interim interdict is not an end in itself; rather, it is a means to an end. The end is the final relief to be obtained at trial, where the merits of the dispute are fully ventilated.
- [4] The structure of the court order makes this clear. The applicants sought and obtained interim relief. In exchange, they undertook to institute a defamation action. That was the bargain. That was the basis upon which the respondents consented to the court order. The applicants cannot now ignore their part of the bargain while seeking to enforce the part that benefits them.

The applicants' failure to act:

- [5] The applicants have not instituted the defamation action. This is common cause. The respondents' attorney, Ms. Opperman, states this on oath. The applicants' attorney, Mr. Botha, does not deny it. Mr. Botha offers no real explanation. Mr. Botha rather points to the fact that the respondents have not delivered their enquiries in terms of paragraph 5 of the court order. That may be a legitimate contention. But it is not an answer.

- [6] The institution of a defamation action did not depend on the delivery of enquiries. The applicants could have issued summons on their own initiative. They could have pleaded their case. They could have set the matter down for trial. They did none of these things. The applicants have allowed the matter to remain dormant for nearly a year, and now they are approaching this court for a costs order. This is not how the orderly administration of justice operates.
- [7] What inference can be drawn from the applicants conduct? The applicants obtained the interim interdict. They silenced the respondents. They achieved their immediate objective. Then they did nothing. No steps were taken to institute the defamation action. The only reasonable inference is that the applicants never intended to institute that action. They are content to remain in the interim position. Such conduct is inconsistent with that of a litigant who genuinely seeks final relief.

The premature nature of this application:

- [8] The question of who is the successful party in the urgent application cannot be determined in isolation. The interim relief was always intended to be temporary. The true measure of success will only be known once the defamation action is finalised. If the applicants succeed in that action, they may well be entitled to the costs of the urgent application. If they fail, or if the action is never instituted, a different outcome may follow.
- [9] To award costs at this juncture would effectively pre-judge the outcome of the main action, resulting in demonstrable prejudice to the respondents. Such a course would also be inimical to the clear terms of the court order granted by Malungana AJ, which expressly reserves costs for determination upon the finalisation of the action not before, and certainly not while the applicants remain in default of their own undertaking.

- [10] The applicants have invited this court to find that they are the successful party solely on the basis that they obtained interim relief. This submission is flawed. An interim interdict is, by its very nature, a temporary remedy. It is intended to preserve the status *quo* pending the final determination of rights in action proceedings. In this matter, the interim relief is expressly conditional upon the institution of an action, and the applicants have not complied with that condition, they cannot claim the status of a successful litigant entitled to costs. To hold otherwise would be to render the conditional nature of the order meaningless. The applicants cannot seek the benefit of the interim order while ignoring the very obligation that gave rise to it.

The conduct of the applicants:

- [11] The respondents submit that the applicants have acted *mala fide*. There is considerable force in this submission. The evidence shows that the applicants refused to include a timeframe for the institution of the defamation action in the draft order. They insisted on the interim interdict without any temporal limitation. That was a tactical choice.
- [12] A significant period has passed since the court order was granted. No action has been instituted. The applicants have not even taken preliminary steps. They have sat on the order. They have used it as a shield. Now they seek to use the court order as a sword to claim costs. This is an abuse of the process of this court.
- [13] A litigant who obtains interim relief must pursue the final relief with reasonable diligence. This is not merely a matter of good practice. It is a requirement of

fairness. The respondents have been subjected to an interim interdict for nearly a year without any final determination of their rights. The applicants cannot be allowed to prolong this uncertainty indefinitely while simultaneously claiming costs.

Conclusion:

- [14] The applicants have not demonstrated that they are entitled to an order for costs at this stage. The question of the costs of the urgent application must stand over until the finalisation of the defamation action. The proper time for determining the costs of the urgent application is after the finalisation of the defamation action. This is precisely what the court order of Malungana AJ contemplates. The applicants failure to institute that action is inexplicable. The applicants' pursuit of this cost's application is premature and unreasonable.

Costs:

- [15] The applicants have pursued this costs application unreasonably. They have forced the respondents to oppose it. They have done so despite their own failure to comply with a fundamental term of the order. In these circumstances, a punitive costs order is warranted. The applicants are ordered to pay the costs of this application on the attorney and client scale. This order is necessary to mark this court's displeasure at the applicants conduct. It is also necessary to deter other litigants from seeking interim relief and then failing to pursue final relief while claiming costs.

Order:

- [16] Accordingly, the following order is made:

1. The application is dismissed.
2. The costs of the urgent application stand reserved, such costs to be determined upon conclusion of the defamation action which the applicants are hereby directed to institute pursuant to paragraph 4 of the court order granted by Malungana AJ on 21 July 2005.
3. The applicants' are ordered to pay the respondents' costs of this application on the attorney and client scale.




KHABA AJ
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, JOHANNESBURG

Appearances:

For the Applicants':

Instructed by:

Adv. H Scholtz

JJR Botha Attorneys

For the Respondents':

Instructed by:

Adv. M van Der Westhuizen

Opperman Attorneys

C/O UMS Attorneys

Date of Hearing:

30 April 2026

Date of Judgment:

19 June 2026