



**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

JUDGMENT

Reportable

Case no: 2026-161021

In the matter between:

CASPER JACOBUS STRYDOM

APPLICANT

And

SANLAM LIFE INSURANCE LIMITED

FIRST RESPONDENT

**SANLAM CONNECT (A DIVISION OF
SANLAM LIFE INSURANCE LIMITED)**

SECOND RESPONDENT

Coram: AG CHRISTIANS AJ

Heard: 21 July 2026

Delivered: 31 July 2026

JUDGMENT

Christians AJ

Introduction

1. The applicant seeks an interim interdict to restore and preserve the contractual relationship between himself and the first respondent pending the institution and determination of an action in which he intends to seek a declaration that the termination of his Financial Adviser Contract (the contract) with the first respondent is unlawful, invalid and of no force and effect.
2. The applicant is a financial advisor who, for the past 28 years, has acted in that capacity as an independent contractor for the first respondent, Sanlam Life Insurance Limited (Sanlam). On 17 June 2026 Sanlam's Heinrich Punt informed the applicant that, on the basis of a report which concluded that he (the applicant) had breached Sanlam's Workplace Harassment Policy (the Harassment Policy), Sanlam intended to terminate his contract. The letter advised that Sanlam's Thesen Naicker and Etienne Marais would discuss the practical implementation of the termination with the applicant. The applicant attempted to persuade Sanlam to reconsider its decision but, on 1 July 2026, Mr Punt confirmed Sanlam's decision to terminate the applicant's contract with it. While certain steps were taken on 7 July 2026 to implement the termination, it is

common cause that the termination, unless interdicted, will take full effect on 31 July 2026.

3. The application was launched on 8 July 2026. At the commencement of the hearing, I indicated that I was satisfied that the application is urgent and counsel proceeded to address me on the merits of the application.

The issues

4. The applicant's case is premised on the contention that Sanlam terminated the contract because of a statement made by him in a telephone conversation with a consultant, Ms Kelsey Visagie, on 18 January 2026. As pointed out by the applicant, and as appears from Sanlam's answering papers, Sanlam considered the statement to be in breach of its Workplace Harassment Policy (the Harassment Policy).
5. The statement in question was to the effect that there was "*nou weer n bobbejaan op die lyn*" (the impugned statement).
6. Ms Visagie and Sanlam interpreted the impugned statement as being directed at or about Ms Visagie. Having so understood the statement, they took the view (understandably) that it was racist in nature and a breach of the Harassment Policy.
7. The applicant explains that the impugned statement is an Afrikaans expression referring to a poor connection. He contends that Ms

Visagie and Sanlam misunderstood him and that he did not breach the Harassment Policy in uttering the impugned statement.

8. I discuss the reasonable interpretation of the impugned statement later in this judgment. The point for present purposes is that the applicant argues that he is entitled to challenge, at a trial in due course, Sanlam's termination of the contract on the basis that Sanlam wrongly found that, in uttering the impugned statement, the applicant breached the Harassment Policy. He further contends that, if he is successful on this score, the termination would have been unlawful and he will be entitled to reinstatement. However, so the argument went, if the *status quo* is not preserved, he will irreversibly lose the goodwill he has built with his clients over decades through trust, continuity and personal service. On this basis, the applicant contends that success at a trial in due course will be meaningless if he is not granted the interim relief that he seeks.
9. Sanlam, on the other hand, holds firm in its view that the impugned statement was racist in nature and that it was entitled to terminate the contract because of it. In support of its interpretation of the impugned statement, Sanlam referred to an earlier complaint against the applicant in 2022 which, although amicably resolved at the time, Sanlam views as relevant to the interpretation of the impugned statement. Sanlam also referred to a more recent interaction which it similarly contends adds context to the manner in which the phrase should be interpreted. Sanlam further contends that these two further incidents point to the character of the applicant and that, because he

has shown himself to have prejudicial tendencies against people of colour, Sanlam was entitled to terminate the contract even if its interpretation of the impugned statement is wrong.

10. Sanlam described the two other incidents as follows:

10.1. The first concerned a complaint in October 2022 by four employees from Sanlam's head office about the applicant's treatment of them at an adviser session. They reported that the applicant told them that Afrikaans was the local language in Oudtshoorn in a manner that appeared hostile to them. The last name of one of the complainants, a coloured woman, was Van der Merwe and the applicant asked her about the origin of her "traditionally Afrikaans" surname and persistently asked her whether she knew any "Van der Merwe jokes". The complainant was offended by the applicant's conduct (the implication being that she found his comments to be racially motivated). The applicant treated another one of the complainants, a Black man, with hostility, including by accusing the complainant of not understanding his questions and inviting another colleague to translate his questions from Afrikaans. Although the applicant initially brushed off the complaints by suggesting that the complainants were "*sensitive*", he ultimately apologised to them and the complaint was resolved amicably. I shall refer to this complaint as "*the 2022 complaint*".

10.2. The second is alleged to have occurred during a conversation with one Ms Erika Hagan in which the applicant expressed his view to Ms Hagan that service levels have gone down since Sanlam “*verkleur*”, which Sanlam took to mean that service levels had gone down since it appointed people of colour. I shall refer to this incident as “*the Hagan conversation*”.

11. I deal with these two incidents later in this judgment as well.
12. Although not expressly stated in the answering affidavit, it was argued on Sanlam’s behalf that it is entitled to rely on one or both of the other two incidents to justify the termination of the applicant’s contract. The relevance of this submission is that, if correct, it will not be sufficient for the applicant to show, at a trial in due course, that he did not breach the Harassment Policy when he uttered the impugned statement. If Sanlam is correct, the termination of the applicant’s contract may well be upheld based on the strength of Sanlam’s alternative justification. This enquiry goes to the heart of whether the applicant has established a *prima facie* right to reinstatement in these proceedings.
13. The issues to be determined in these proceedings, therefore, are the following:
 - 13.1. whether this court should accept the applicant’s explanation as to the meaning of the impugned statement;

- 13.2. even if the court accepts the applicant's explanation, did uttering the impugned statement breach the Harassment Policy on the basis that Ms Visagie's and Sanlam's interpretation thereof was objectively reasonable?
- 13.3. if the answer to both of the above enquiries is in the applicant's favour, should this court consider the other two incidents and, if so, to what extent, in deciding whether to grant or refuse the interdict sought?
- 13.4. flowing from all of the above, has the applicant met the requirements for interim interdictory relief in these proceedings?

The impugned statement

14. The applicant explains his interaction with Ms Visagie as follows:
 - 14.1. The conversation occurred on 18 January 2026, while he was attempting to obtain information relating to the investments of one of his clients.
 - 14.2. From the commencement of the conversation the telephone connection was poor. Both he and Ms Visagie experienced difficulty hearing one another and repeatedly had to repeat information.

- 14.3. Despite the communication difficulties, the conversation was courteous, cooperative and directed solely towards resolving his client's enquiry.
- 14.4. While his conversation with Ms Visagie continued, he also experienced persistent problems with his computer system and internet connection. He became increasingly frustrated with the technical difficulties.
- 14.5. Read with the content of his initial response to Sanlam, it appears that he was trying to access the relevant Sanlam online platform so that he and Ms Visagie could view a particular document simultaneously. When he was unable to do so, he enquired from his colleague in the adjacent office, Mr Francois Beets, if he was able to access the platform. Mr Beets indicated that he was not experiencing the same difficulty, to which the applicant responded "*nou weer n bobbejaan op die lyn*".
- 14.6. From his perspective, his conversation with Ms Visagie carried on in the courteous and cooperative manner in which it had started.
15. Ms Visagie, who was still on the line during the applicant's brief exchange with Mr Beets, heard the statement and assumed it was directed towards her, a coloured woman.

16. There was not dispute, nor could there be, that if the statement was directed to or about Ms Visagie (or any person of colour for that matter), that the impugned statement would have been grossly racist and unacceptable. There would, then, be no question that Sanlam would have been entitled to terminate the applicant's contract.
17. The difficulty in this case, however, arises from the applicant's explanation that the impugned statement was not directed at or about Ms Visagie at all, but was an expression of frustration about the technical difficulties he was experiencing during his conversation with her.
18. The first step in the enquiry before me, therefore, is to decide whether the applicant's explanation should be accepted for purposes of these proceedings for interim interdictory relief. The proper interpretation of the impugned statement goes (at least in part) to the heart of the enquiry into whether the applicant has established a *prima facie* right deserving of protection pending the outcome of proceedings in due course.
19. In determining whether a *prima facie* right has been established; the proper approach to the affidavits is as follows:

"In determining whether or not the applicants crossed the threshold, the right relied upon for a temporary interdict need not be shown on a balance of probabilities, it is enough if it is prima facie established though open to some doubt."

The proper approach is to take the facts set out by the applicants together with any facts set out by the respondents, which the applicants cannot dispute, and to consider whether having regard to the inherent probabilities the applicants should, not could, on those facts obtain final relief at the trial.

It is also necessary to repeat that although normally stated as a single requirement, the requirement for a right prima facie established, though open to some doubt, involves two stages. Once the prima facie right has been assessed, that part of the requirement which refers to the doubt involves a further enquiry in terms whereof the Court looks at the facts set up by the respondent in contradiction of the applicant's case and if there is a mere contradiction or unconvincing explanation, then the right will be protected.”¹

20. Put differently, the test requires a court to consider an application for interim relief on the strength of the applicant's version unless the respondent puts up facts that cast serious doubt on whether the applicant should obtain final relief at trial in due course.
21. As far as the impugned statement is concerned, I am of the view that the applicant's explanation must be accepted at this stage. Not only does it accord with my own interpretation of the phrase upon my first reading of the founding affidavit, but the applicant presented the expert evidence of Dr Karien Van Den Berg, a forensic linguist and senior lecturer at the University of the North-West, who conducted a linguistic analysis of the impugned statement in the context within

which it was made. It bears mentioning that Dr Van Den Berg's expertise and assistance were accepted and endorsed by the Equality Court in *South African Human Rights Commission and Another v Malema and Another*.²

22. Having listened to the audio recording of the applicant's conversation with Ms Visagie, and his brief interaction with Mr Beets whilst Ms Visagie remained on the line, Dr Van Den Berg concluded that, in her expert opinion, *"the linguistic evidence provides substantially stronger support for interpreting the disputed expression as a figurative expression relating to ongoing technological difficulties than as a racially offensive reference directed at the call-centre consultant"*. She went on to opine that *"[w]hile the latter interpretation may be theoretically conceivable in other communicative, social, or historical contexts, the linguistic evidence contained in this interaction does not support it as the most linguistically justified or most probable interpretation"*.
23. In support of these conclusions, Dr Van Den Berg highlighted the following:

"The expression occurs within an uninterrupted discourse thread that begins with references to poor audibility and a deteriorating telephone connection, develops through recurring comments about the computer system stalling and repeated technological difficulties, includes progressively stronger expressions of frustration such as die verdomde internet, followed by the browser error message Site can't

be reached, *and culminating in Mr Strydom suggesting that he would phone back later, once he has managed to access the system.*”

24. Other contextual indicators highlighted by Dr Van Den Berg were the following statements made during the course of the conversation: “*haak vas*”, “*sukkel*”, “*hierdie ding haak nou eers weer {bietjie} vas vanmôre*”, which were followed shortly by the impugned statement, “*nou weer n bobbejaan op die lyn*”. She also highlights the use of “*weer*” in both of the last two statements as being indicative that both statements were concerned with the same thing: the poor connection. The applicant’s frustration appeared to continue even after the impugned statement was uttered, because he again complained by stating “*nou sukkel ek alweer met die verdomde bleddie internet*”.
25. Dr Van Den Berg also explained that the broader context of the conversation did not support an interpretation of the impugned statement as a racially offensive utterance.
26. This, then, explains what the applicant likely intended to convey when he uttered the impugned statement. But what of the objective interpretation to be attributed to it?
27. While the specific phrase “*bobbejaan op die lyn*” does not appear to be an official Afrikaans idiom, Dr Van Den Berg further explained:

“*One of the most productive conceptual source domains in Afrikaans is the use of animals to characterise human behaviour and everyday*

*experiences. Animal names frequently function as figurative vehicles through which speakers conceptualise personality traits, social interaction, emotions, and events. Among these, references to bobbejaan are particularly salient in colloquial Afrikaans, because they evoke culturally familiar observations of baboon behaviour, including curiosity, opportunism, boldness, disorder, destructiveness, social disruption, and mischievousness. These behavioural characteristics motivate numerous figurative expressions and colloquial usages, including *ń bobbejaanstuipe kry*; *bobbejaanstreke*, *die bobbejaan agter die berg gaan haal* and other creative uses in which the animal serves as a conceptual metaphor for troublesome or disruptive behaviour rather than referring to the animal literally.*

...

... the mere presence of the lexical item bobbejaan does not determine the meaning of an utterance. Rather, linguistically appropriate interpretation depends on identifying which aspect of the conceptual frame is activated by the surrounding discourse. Accordingly, where competing interpretations are possible, the expression should be interpreted in relation to its immediate co-text, the broader discourse organisation, and the communicative purpose of the interaction, rather than by attributing a single symbolic meaning to the lexical item in isolation.”

28. The reason I draw so comprehensively from Dr Van Den Berg's opinion is because, in addition to the many creative and colourful ways the term *bobbejaan* may be or is used in Afrikaans discourse, it is also one of the most abhorrent appellations by which Black South Africans are referred to by racist individuals.
29. But what Dr Van Den Berg's opinion demonstrates is that not every colloquial use of the term *bobbejaan* carries with it racist connotations.
30. The impugned statement also appears to have been used enough times for Google's artificial intelligence tool to offer an explanation that is consistent with the applicant's explanation. This, then, brings me to the manner in which Sanlam handled Ms Visagie's complaint and whether the outcome of that process casts serious doubt on the applicant's version as to the meaning of the impugned statement.
31. Although I am not required to in these proceedings, I nevertheless accept, without reservation, that Ms Visagie, when she heard the applicant utter the impugned statement, believed that it was directed at her. From her vantage point, and because the applicant was clearly talking to somebody else and not to her, it is understandable that she assumed the statement was about her. Her understanding would have been informed by her own experiences, direct or indirect, of life under apartheid South Africa or the ever persistent remnants of its racist regime. All too frequently, Black people in this country are still referred to as baboons in contexts that are plainly

intended to be racist and degrading. While the term, as far as my limited knowledge goes, is not usually used to refer to coloured people, it could not have been expected of Ms Visagie, in that instance, to evaluate whether *baboon* was reserved as a particularly degrading appellation for Black people only or whether it was indiscriminately used towards anyone of colour. The debate, really, is irrelevant as far as Ms Visagie's understanding is concerned. It is enough that, given the history of this country, and likely her own lived experiences, she cannot be faulted for, in the moment, interpreting the impugned statement as being directed at her.

32. Sanlam, for its part, and at the applicant's request, referred the matter for an independent enquiry by Ms Tanya Venter, an advocate employed by Tokiso Dispute Settlement (Pty) Ltd. The referral culminated in a report which the parties referred to as the *Tokiso report*. The Tokiso report essentially rejected the applicant's version on the basis that he was unable to prove that the impugned statement is an official and recognised Afrikaans idiom. Evidently, all that he provided to Ms Venter was a link to Google AI (known as 'Gemini') which stated the following:

“Die gesegde ‘n bobbejaan op die lyn’ verwys na n steurnis of onderbreking tydens n telefoongesprek. Dit word gebruik wanneer die lyn sleg is... Die oorsprong kom uit die dae van oop telefoondrade waar diere soms teen pale gestaan of aan kables gehang het...

In die ou dae is hierdie term ook algemeen gebruik wanneer mense gesukkel het om met telefoonoperateurs in verbinding te tree...”

33. In short, and although not an official literary source, the AI generated explanation is consistent with the applicant's. It indicates that the genesis of the impugned statement goes back to the days when telephone lines were above ground and animals interfered with them or hung on them. It also indicates that it was used in the past when people struggled to get through to an operator (evidently a reference to the manner in which telephone calls were connected in the past: i.e. when 'person A' would have to dial a central number for an operator who, in turn, would connect 'person B' to the call).
34. Be that as it may, Ms Venter did not accept the AI generated explanation and rejected the applicant's explanation.
35. She concluded that the impugned statement was reasonably received by Ms Visagie as racial harassment and that the applicant had breached the Harassment Policy. She further recommended that the applicant's contract be cancelled in terms of clause 29.1 of the extant contract between the applicant and Sanlam, read with section 5.1 of the Harassment Policy.
36. Clause 29.1 of the Contract provided the following:

“Each party may for any reason terminate this contract on 24 hours' notice of termination to the other party.”

37. Section 5.1 of the Harassment Policy, in turn, provides that:

“Sanlam has a zero-tolerance stance towards any form of harassment in the workplace, whether committed by or against employees. Consequences for violations may include termination of services, contracts or relationships, depending on whether the perpetrator is an employee or a non-employee.”

38. Sanlam accepted the recommendation and, hence, the termination of the applicant’s contract with it. As stated, Sanlam’s decision to terminate the applicant’s contract was conveyed to him by Mr Punt on 17 June 2026. In the letter, Mr Punt highlighted the following findings and recommendations from the Tokiso report:

“38. Mr Strydom breached Sanlam’s Workplace Harassment Policy on 18 January 2026 when he stated on a call that there is “al weer n bobbejaan of die lyn”. The comment was directed at Ms Visagie and was reasonably received as offensive and as racial harassment. Considering that Mr Strydom’s explanation for making the statement is rejected as improbable, it is probable that he was being racist and offensive about Ms Visagie when he said it.

39. Considering the seriousness of the racial harassment and the impact it had on Ms Visagie, it was warranted that Mr Strydom’s contract is cancelled in terms of clause 29.1 of the contract and section 5.1 of the Workplace Harassment Policy.”

39. For the reasons already discussed above, I disagree with Ms Venter's rejection of the applicant's version. His version as to what he meant and was referring to when he uttered the impugned statement is inherently plausible and, for purposes of these proceedings, I accept it. In making this finding, I in no way discount the possibility that further evidence and/or cross-examination at a trial in due course may result in a different conclusion. But based on the evidence before me, and the test to be applied in proceedings for interim relief, I cannot find that Sanlam has cast serious doubt on the applicant's explanation.
40. Sanlam, however, contended that the law and its policy are not concerned with the applicant's subjective state of mind when he uttered the impugned statement. It argues that both require an objective test based on the reaction of a reasonable person in the constitutional order.
41. I deal with this argument next.

Was Ms Visagie's and Sanlam's interpretation objectively reasonable?

42. The premise of Sanlam's contention stems from the general proposition that, White South Africans routinely referred to Black people as monkeys or baboons and that this is degrading.
43. Of this there is no doubt.

44. This particular issue was at the forefront in *SARS v CCMA*,³ where Mogoeng CJ explained the following:

*“South Africa’s special sect or brand of racism was so fantastically egregious that it had to be declared a crime against humanity by no less a body than the United Nations itself. And our country, inspired by our impressive democratic credentials, ought to have recorded remarkable progress towards the realisation of our shared constitutional vision of entrenching non-racialism. Revelations of our shameful and atrocious past, made to the Truth and Reconciliation Commission, were so shocking as to induce a strong sense of revulsion against racism in every sensible South African. But to still have some white South Africans address their African compatriots as monkeys, baboons or kaffirs and impugn their intellectual and leadership capabilities as inherently inferior by reason only of skin colour, suggests the opposite. And does in fact sound a very rude awakening call to all of us.”*⁴

and

“[I]f a person is called a baboon, when severely criticized, the purpose is to indicate that he is base and of extremely low intelligence. It was also stated that it can be inferred from the use of the word, in the circumstances, that the person mentioned is of subhuman intelligence and not worthy of being described as a human being. It follows that the person described as a baboon in those circumstances may rightfully perceive them to be hurtful. The

magistrate was accordingly not wrong to find that the words complained of fall within the definition of ‘hate speech’ as defined in section 10 of PEPUDA.”⁵

45. Sanlam argues that, because the term baboon is so widely used by White South Africans in this racist and degrading way, it is irrelevant that the applicant, when he uttered the impugned statement, did not intend to invoke the term baboon in a racist or derogatory manner. Sanlam’s reasoning relies on its understanding of the generally accepted legal test which requires an objective evaluation as to whether the words used are reasonably capable of conveying to the reasonable hearer that the phrase had a racist meaning.

46. Sanlam also relies on its own Harassment Policy which it says accords with the courts’ jurisprudence. The Harassment Policy states, in relevant part, that:

“... conduct is generally assumed to be offensive if it is reasonably capable of carrying a racist meaning to a reasonable audience”

and

“The test for racial harassment requires consideration of the following factors: an objective assessment of the reaction of a reasonable person in the context of the constitutional order.”

47. Sanlam’s argument is sound only to a point. The objective test and the interpretation of the reasonable person rests on the answer to an

anterior question: viz whether the words were directed at or about a particular person or group or class of persons.

48. The test does not provide the answer to determining that anterior question.
49. In *SARS v CCMA*, Mr Kruger had called his superior a “*kaffir*”. In discussing the historical context to that word, Mogoeng CJ included the terms *baboon* and *monkeys* to illustrate the multitude of ways White people sought to degrade Black people. It is hard to conceive of anybody using the term “*kaffir*” other than in an obviously racist context. Indeed, being brazen enough to utter the word out loud my, in itself, speaks volumes of the person doing so. But the same is not true of *baboon* or *monkey* and Mogoeng J certainly did not find that to be the case. The discussion of the meaning of *baboon* was specifically in the context of it being used to refer to a person.
50. In *Rustenburg Platinum Mine v SAEWA obo Bester and Others (Bester)*,⁶ in which the Constitutional Court confirmed that the test for whether words are derogatory and racist is objective, the court was concerned with the use of the term “*swart man*”. Again, there was no dispute that the phrase was directed at and was about a person. In any event, the judgment is not authority for the proposition that context and intention, which are not known to the listener, are irrelevant. After discussing the evidence that was before the Labour Appeal Court and the test applied by that court, the Constitutional Court stated the following:

[49] The Labour Appeal Court, by sanitising the context in which the words were used, incorrectly applied the test to determine whether the words used are derogatory, in the context of this matter, to the facts in this matter. The Labour Appeal Court, as well as the commissioner, failed to approach the dispute in an impartial manner taking into account the “totality of circumstances”. Not only was “swart man” as used here racially loaded, and hence derogatorily subordinating, but it was unreasonable to conclude otherwise. It was unreasonable for the commissioner, within this context, to find that using “swart man” was racially innocuous.

[50] Furthermore, in scrutinising the version of the witnesses as to whether they viewed the statement made by Mr Bester as being racist, the Labour Appeal Court applied a test that was too strict. The test was not whether they were correct in the context of the statement to have understood it as being racist; the test was whether, objectively, the words were reasonably capable of conveying to the reasonable hearer that the phrase had a racist meaning. Only Mr Bester could have given evidence that he uttered the words with no racist intent. He failed to do so. The commissioner made a similar error in coming to the conclusion that Mr Bester used the words “swart man” to identify and not to denigrate a person whose vehicle was parked next to his. The commissioner failed to have regard to the evidence before him and failed in particular to appreciate the context in which the words concerned were uttered. During the arbitration proceedings both parties were ad idem (of one mind) in this respect. They agreed that using such language at the

applicant's workplace would be detrimental and could warrant dismissal.

51. The Constitutional Court, therefore, recognised that a person in the position of the applicant may give evidence to establish that the impugned words were not uttered with racial intent. It also confirms that the meaning of the words must be evaluated with reference to the context within which they were uttered.

52. Sanlam also relied on *KPMG v Securefin*⁷ and *Le Roux v Dey*⁸ in support of its argument that the test is a purely objective one.

52.1. *KPMG* was concerned with the interpretation of a document and the extent to which evidence relating to the context of the impugned document should be entertained. It was not evaluating whether words were discriminatory or derogatory in nature. The case, in any event, is consistent with the well-established principle that context, together with text and purpose, forms part of the holistic and unitary approach to interpretation.⁹ These are crucial elements of an objective enquiry.

52.2. *Le Roux v Dey*, on the other hand, was also concerned with defamatory material directed at and about a person. Even there, where the Court was dealing with the 'objective test' to be applied in respect of statements that are alleged to be defamatory '*per se*', the Court emphasised that regard must be had to the "*ordinary meaning of the statement*".¹⁰ The

dispute in this case is precisely because the impugned statement does not carry an *ordinary meaning*. The *ordinary* meaning of the word *baboon* is in reference to the animal and not as a racist insult (however, frequently it may be used in the latter sense).

53. In *Quelane*,¹¹ too, the Constitutional Court recognised that, even though the test is an objective one, context plays a role in determining whether words constituted hate speech. In this respect, the court stated:

[99] Importantly, an objective standard gives better effect to the spirit, purport and objects of the Bill of Rights. On the one hand, if it were based on the subjective perception of the target group, it would unduly encroach on freedom of expression, since claims could be based on “a multiplicity of trivial actions by hypersensitive persons”. On the other hand, if it were based on the subjective intention of the speaker, the threshold for civil liability would be considerably higher than usual.

*[100] An objective approach, accounting for the general circumstances and context, as well as other factors elucidated by the Special Rapporteur, is appropriate for what hate speech laws aim to prohibit. In *Whatcott*, the Supreme Court of Canada underscored the effects of hate speech, not the intent, and notes that systemic discrimination tends to be more widespread than intentional discrimination. This Court has acknowledged that*

“systemic motifs of discrimination” are part of the fabric of our society. This analysis is apt when considering the philosophical underpinnings of hate speech prohibitions that attach civil liability, coupled with the role of hate speech and systemic discrimination in this country. However, when plugging in an abstract reasonable person test in order to construe the meaning of alleged hate speech, courts ought to be mindful of our diverse and dynamic society and not inadvertently reify prejudices.

54. Against these principles, it cannot be ignored that White Afrikaners in South Africa have developed phrases utilising the term ‘baboon’ in many different contexts, not all of which are racist in nature. I dare say that, unless the word is used in isolation and with reference to a person or group of persons, the expressions which use the imagery of a baboon are usually innocuous and artfully specific to the context in which the expression is used. “*Haal n bobbejaan agter die berg*” being a particularly colourful example.
55. In the result, if the applicant *had* referred to Ms Visagie as a baboon, the only reasonable and objective interpretation that could have been attributed to his statement would have been that it was racist and derogatory.
56. But the available evidence does not support the conclusion that he uttered the impugned statement about Ms Visagie.
57. That is also not to discount how Ms Visagie received the words that she heard and her reaction to it. She did not have the full context to

understand that it was not directed at her. The papers are silent on whether the applicant's explanation was ever conveyed to and discussed with Ms Visagie. It may be that, with the full context, she would have accepted, and found relief, in the explanation that the statement was not directed at her.

58. Be that as it may, and applying the appropriate objective test, with due regard to the context within which the impugned statement was uttered, I am not persuaded that Sanlam has cast serious doubt on the applicant's explanation as to the meaning of the words uttered by him. Thus, to the extent that Sanlam's termination of the applicant's contract relied on the impugned statement as constituting a breach of the Harassment Policy, the applicant could, at the very least, obtain declaratory relief to that effect at a trial in due course.
59. However, since the interim relief sought by the applicant relies on whether reinstatement will follow, as a matter of course, if he successfully proves that the impugned statement did not violate the Harassment Policy, it is necessary to consider whether Sanlam has cast serious doubt on this aspect of the applicant's case. And it is to this enquiry that the 2022 complaint and the Hagan conversation become relevant.

Does Sanlam have an alternative justification for termination?

60. In its answering affidavit, Sanlam contended that the 2022 complaint and the Hagan conversation are relevant to the proper interpretation of the impugned statement. Given the analysis above, I do not agree.

61. However, in light of Sanlam's interpretation of these two incidents, it was submitted on Sanlam's behalf, that it was, in any event entitled to terminate the contract, even if its interpretation and treatment of the impugned statement is wrong.
62. This thread is not directly drawn in Sanlam's answering papers but reliance was placed on the general statement that "[e]ven if every complaint in the founding papers about the investigation, the findings and the fairness of the process were sound (and none is), Sanlam Life was entitled to terminate the contract for any reason, or none, on 24 hours' notice."
63. The import of the general right to terminate is, as I understood the argument, twofold:
 - 63.1. First, regardless of the applicant's right to challenge the lawfulness of Sanlam's termination to the extent that it relates to the impugned statement, Sanlam is entitled to cancel the contract, in any event. Flowing from this, to grant the applicant the relief he seeks, pending the trial in due course, would be to grant him more rights than the contract provides.
 - 63.2. Second, and on the basis of the information about the two other incidents, Sanlam is entitled to justify its termination of the applicant's contract – whether before me or at the trial in due course – based on these incidents alone.

64. The first point can easily be remedied by an order expressly limiting its ambit to the termination based on the impugned statement, thereby leaving Sanlam's right to terminate for any other reason intact. In response, it was submitted that such an order would be a *brutum fulmen* because, on the facts already before me, Sanlam could terminate the contract immediately after I grant such an order. The response flows into the second point.
65. Sanlam relied on *Datacolour International*¹² in submitting that it is settled law that a party may cancel a contract for one reason, but then justify that cancellation on the basis of any other objective reason – even one it did not rely on at the time or know of.
66. The proposition made in *Datacolour* can be tracked back to *Matador Buildings (Pty) Ltd v Harman*,¹³ in which it was held that:
- “Falsa causa demonstration non nocet.¹⁴ A party who repudiates a contract giving a wrong reason for his repudiation is not bound by the reason he gives, and if in fact there exists a justifiable reason for his repudiation he is entitled to take advantage of it, notwithstanding the wrong reason he may have given.”
67. As stated, Sanlam contends that it is entitled to justify the termination of the applicant's contract based the 2022 complaint and/or the Hagan conversation. It was also submitted that Sanlam could terminate the contract for no reason at all. I am not moved by the latter submission.

68. The first submission, however, is compelling.
69. The applicant has elected not to deal with the 2022 complaint or the Hagan conversation. His only defence is that Sanlam was not entitled to raise these issues in its answering affidavit because (a) they had nothing to do with the impugned statement and (b) Sanlam did not rely on either of them when it terminated the applicant's contract.
70. On the strength of *Datacolour* and *Matador*, the approach adopted by the applicant cannot be sustained as a matter of law.
71. But even on the facts, the applicant's approach is unsatisfactory. Sanlam attached to its answering affidavit a letter from Mr Naicker to the applicant dated 15 April 2025. The letter is headed **"CONTEMPLATION OF CONTRACT TERMINATION"** and specifically raises the 2022 complaint and the Hagan conversation in addition to the complaint by Ms Visagie. In relevant part, the letter stated the following:

"5. Further, we have also considered [the impugned statement] in light of the statement you used in the telephone discussion with Erika Hagan. In the discussion with Visagie, it seems you're your (sic) frustration was related to the poor service levels and not the poor line. To this end, you confirmed in the discussion with Erika Hagan that the service levels went down since Sanlam 'verkleur', which suggest that since Sanlam appointed people of colour, the service levels went down.

6. At the same time, we confirmed that this statement is not an isolated incident. According to our records, the region received a report from colleagues during a session in which you stated that Afrikaans is the local language in Oudtshoorn. That may be so, but English is the Sanlam business language. In addition, you made comments about a person of colour with a surname Van der Merwe and made jokes about it. In this incident, you also relied on the view that in Afrikaans that statements are acceptable and it was not [your] intention.”

72. The letter is noteworthy because the applicant evidently made a conscious choice not to place it before the Court. In his founding affidavit, the applicant deals with the chronology of events by referring to Ms Visagie’s complaint and then stating simply:

“On 15 April 2026, Mr Thesen Naicker of the Second Respondent requested that I provide written representations as to why my Financial Adviser Agreement with Sanlam should not be terminated, as a result of the aforesaid complaint.”

73. He then attached his response, dated 29 April 2026, in which he only dealt with Ms Visagie’s complaint.
74. The applicant’s cursory treatment of the 15 April 2026 letter reveals two things:
- 74.1. First, he unduly sought to minimise the scope of Mr Naicker’s invitation by referring only to the impugned

statement. This, despite Mr Naicker expressly raising the 2022 complaint and the Hagan conversation as additional factors that were being considered by Sanlam.

74.2. Second, he made a deliberate choice in his response to Mr Naicker and in these proceedings, not to address those incidents at all. Sanlam, accordingly, correctly contends that those incidents have not been disputed by the applicant.

75. Even in reply, the applicant contended that *‘the sole complaint which gave rise to the investigation... and the termination... concerned the telephone conversation of 18 January 2026 involving Ms Visagie.’*

76. As is the case with the founding affidavit, the statement ignores entirely the fact that the 15 April 2026 letter expressly raised the 2022 incidents and the Hagan conversation as factors that compounded Sanlam’s (at that stage preliminary) decision to terminate its contract with the applicant.

77. The applicant seeks to discount these issues by contending that they constitute inadmissible hearsay evidence. The contention insofar as it concerns the 2022 complaints is unpersuasive because the deponent to the answering affidavit has personal knowledge of the complaints and the manner in which they were resolved. As far as the Hagan conversation is concerned, it may be so that the deponent to the founding affidavit does not have personal knowledge thereof and that, ordinarily, the allegation might have been found to be inadmissible hearsay evidence. The problem the applicant faces,

however, is that *he has* personal knowledge of that conversation and he has not denied making the statement that Sanlam's standards have deteriorated since it *verkleur[ed]*.

78. The applicant is also wrong when he states in his replying affidavit that Sanlam introduced the historical allegations '*for the first time in the answering affidavit*'. As stated, both incidents were mentioned in the 15 April 2026 letter. It is the applicant who elected not to include that letter in his founding papers and not to deal with its contents. He persisted with that election in his replying affidavit. The ineluctable conclusion, therefore, is that Sanlam's version is correct and true.
79. In my view, the applicant's isolation of the Visagie incident was an opportunistic attempt to exploit what, as I have found, was a mistake in approach by Ms Venter and Sanlam. But, in doing so, the applicant has consciously (and to his peril) left Sanlam's other concerns unanswered. While it may be so that the 2022 complaints were resolved amicably, it may nevertheless shed light on the applicant's character. What is more, the conversation with Hagan is, at face value, racist in nature.
80. I need not decide whether Sanlam relied on these additional factors when it terminated the contract with the applicant. It is enough for me to be satisfied that the trial court might consider these factors as providing a valid justification (even if *ex post facto*) for the termination of the contract.

81. And since the applicant has elected not to deal with the possible consequences of the trial court taking these issues into account, he has not succeeded in establishing, on a *prima facie* basis, that reinstatement *should* be the outcome of his trial in due course if he succeeds in establishing that the Visagie incident did not justify Sanlam's decision to terminate the contract. Even if he succeeds on that score (which is likely), the trial court may well uphold the termination based on Sanlam's reliance on the 2022 complaint and/or the Hagan conversation.
82. I turn now to address whether the applicant has met the requirements for the interdictory relief he seeks.
83. It is trite that the requirements an applicant needs to establish in its founding affidavit in order to obtain interim relief are the following:
- 83.1. a *prima facie* right which requires protection pending the main case;
 - 83.2. a well-grounded apprehension of irreparable harm if the interim relief is not granted and the ultimate relief is eventually granted;
 - 83.3. a balance of convenience in favour of granting an interim interdict;
 - 83.4. the absence of any other adequate ordinary remedy.¹⁵

84. Although, as will be seen, the applicant fails at the first hurdle, I address each requirement in turn.

***Prima facie* right**

85. The applicant's sole contention in these proceedings is that the termination by Sanlam is *prima facie* unlawful. He further contends that, despite the factual dispute on this score, for present purposes, the right to a lawful termination and the fact that the termination is unlawful, has been *prima facie* established.
86. But all this means is that Sanlam erred in relying on the impugned statement to terminate the contract. It does not mean that reinstatement will follow.
87. Put differently, the applicant has not demonstrated a right, though open to some doubt, that he will be entitled to reinstatement in due course. That being the case, this Court cannot grant interdictory relief that gives the applicant more rights than what he is likely to achieve at the trial in due course.
88. It is necessary to mention that, according to the applicant, he intends to rely on the following grounds to prove the unlawfulness of Sanlam's termination:
- 88.1. that Sanlam acted contrary to the agreement;

- 88.2. they failed to exercise their contractual powers lawfully and rationally;
 - 88.3. they failed to afford him procedural fairness;
 - 88.4. they failed to disclose the Tokiso report; and
 - 88.5. the decision to terminate was disproportionate.
89. The difficulty the applicant faces is that, even if he is correct on each of these grounds, reinstatement will not necessarily follow as a matter of course. In any event, apart from the fact that, as I have found, the Tokiso report reached the wrong conclusion *vis a vis* the impugned statement, I am not persuaded, even *prima facie*, that any of the abovementioned grounds have merit.
- 89.1. Sanlam acted in accordance with clause 29.1 of the contract, read with section 5.1 of the Harassment Policy, when it cancelled the contract. Save for the flawed underlying reason, Sanlam acted in accordance with the contract.
 - 89.2. The second and third grounds are not recognised grounds for challenging the exercise of contractual provisions.¹⁶
 - 89.3. The fourth is moot because the report has now been furnished.
 - 89.4. As to the fifth, if Sanlam is entitled to terminate the contract *for any reason*, including a breach of the Harassment Policy,

then the consequence cannot be said to be disproportionate. Certainly, the enforcement of a contractual provision to terminate a contract on grounds of racial discrimination cannot be viewed as contrary to public policy. In South Africa, a company like Sanlam is entitled, if not obliged, to adopt a zero tolerance policy in respect of racial discrimination or harassment.

90. These factors will apply equally to Sanlam's reliance on the 2022 complaint and/or the Hagan conversation. In the circumstances, the applicant appears to have very limited prospects of successfully claiming reinstatement at a trial in due course.
91. I accordingly find that the applicant has not met the first requirement for an interim interdict.

Reasonable apprehension of irreparable harm

92. The only personal harm identified by the applicant is the loss of his goodwill which he says he will not be able to recover if the interim relief is not granted. He also contends that the harm cannot be restored by an award of damages.
93. The contention is unpersuasive. The harm identified by the applicant is precisely the kind of harm that can be quantified in a claim for damages. His existing clients and the income he generates from each are eminently quantifiable.

94. The applicant also does not expressly state that his existing clients cannot be reallocated to him if he is ultimately reinstated. I don't see why this cannot be done.
95. The applicant also sought to invoke the rights of his clients to continue to receive his services. This contention, too, is unpersuasive. Unlike, the case in *Van Der Westhuizen and Others v Life Healthcare Holdings Group (Pty) Ltd and Others*,¹⁷ the applicant's clients do not rely on his services as a matter of life and death. Moreover, in *Van der Westhuizen*, the individual clients brought the proceedings in their own name to vindicate their right to continue to receive their preferred oncologist's medical expertise and services. Not only are the applicant's clients not before this court, no evidence has been furnished to suggest that they will be prejudiced if their portfolios were to be assigned to a different adviser.
96. I accordingly find that the applicant has not shown that he (or anyone else) is likely to suffer irreparable harm if the interim relief is not granted.

Balance of convenience and alternative remedy

97. The applicant contends that the harm he will suffer must be balanced against what he says is a minimal inconvenience to Sanlam if it has to endure the temporary continuation of the existing contractual relationship.
98. The contention is far too simplistic.

99. Sanlam explains that, in light of its concerns about the applicant's character, it cannot be expected to hold him out to its clients as a person accredited by it. Sanlam contends that the interim relief will require it to continue doing business with a person it no longer has trust and confidence in. Though the contention may be misplaced as far as the impugned statement is concerned, it nevertheless applies to what Sanlam has identified in relation to the 2022 incident and/or the Hagan conversation.
100. Given that I have already concluded that the applicant has an alternative remedy in the form of a damages claim, I find that the harm that Sanlam is likely to suffer if it is compelled to continue to contract with the applicant, outweighs the applicant's potential harm. The balance of convenience, therefore, does not favour the grant of interim relief against Sanlam.

Conclusion and order

101. Both parties sought costs in the event of success and I find no reason to depart from the default position that costs should follow the result. The complexity of the issues also justifies counsel's fees to be taxed on the highest scale.

102. In the result, I make the following order:

The application is dismissed with costs, with counsel's fees to be taxed on Scale C.

AG CHRISTIANS
ACTING JUDGE OF THE HIGH COURT

Appearances:

For plaintiff: J Van der Merwe SC

Instructed by: MSI Attorneys

For defendant: M de Beer

Instructed by: Werksmans Attorneys

¹ *Spur Steak Ranches Ltd v Saddles Steak Ranch* 1996 (3) SA 706 (CPD) at 714E – G; *Webster v Mitchell* 1948 (1) SA 1186 (W) at 1189; *Gool v Minister of Justice and Another* 1955 (2) SA 682 (C) at 688

² *South African Human Rights Commission and Another v Malema and Another* (EC16/2022 ; 17/2022) [2025] ZAEQC 6; 2025 (6) SA 288 (WCC); [2025] 4 All SA 484 (EqC) (27 August 2025).

³ *South African Revenue Service v Commission for Conciliation, Mediation and Arbitration and Others* (CCT19/16) [2016] ZACC 38; [2017] 1 BLLR 8 (CC); (2017) 38 ILJ 97 (CC); 2017 (1) SA 549 (CC); 2017 (2) BCLR 241 (CC) (8 November 2016).

⁴ *SARS v CCMA* para 2.

⁵ *SARS v CCMA* footnote 5, citing *Strydom v Chiloane* 2008 (2) SA 247 (T) para 13 which, in turn, referred to *Mangope v Asmal* 1997 (4) SA 277 (T) at 286J-287A.

⁶ *Rustenburg Platinum Mine v SAEWA obo Bester and Others* (CCT127/17) [2018] ZACC 13; (2018) 39 ILJ 1503 (CC); 2018 (8) BCLR 951 (CC); [2018] 8 BLLR 735 (CC); 2018 (5) SA 78 (CC) (17 May 2018).

⁷ *KPMG Chartered Accountants (SA) v Securefin Limited and Another* (644/07) [2009] ZASCA 7; 2009 (4) SA 399 (SCA) ; [2009] 2 All SA 523 (SCA) (13 March 2009).

⁸ *Le Roux and Others v Dey* (CCT 45/10) [2011] ZACC 4; 2011 (3) SA 274 (CC) ; 2011 (6) BCLR 577 (CC) (8 March 2011).

⁹ *Capitec Bank Holdings Limited and Another v Coral Lagoon Investments 194 (Pty) Ltd and Others* (470/2020) [2021] ZASCA 99; [2021] 3 All SA 647 (SCA); 2022 (1) SA 100 (SCA) (9 July 2021).

¹⁰ *Le Roux v Dey* para 89.

¹¹ *Qwelane v South African Human Rights Commission and Another* (CCT 13/20) [2021] ZACC 22; 2021 (6) SA 579 (CC); 2022 (2) BCLR 129 (CC) (31 July 2021).

¹² *Datacolour International (Pty) Ltd v Intamarket (Pty) Ltd* 2001 (2) SA 284 SCA para 28.

¹³ *Matador Buildings (Pty) Ltd v Harman* 1971 (2) SA 21 C.P.D at 28A.

¹⁴ Loosely translated to mean a false description does not invalidate a document if the intention is clear.

¹⁵ *Setlogelo v Setlogelo* 1914 AD 221; *Webster v Mitchell* 1948 (1) SA 1186 (WLD).

¹⁶ See *South African Forestry Co Ltd v York Timbers Ltd* 2005 (3) SA 323 (SCA)([2004] 4 ALL SA 168) para 27.

¹⁷ *Van Der Westhuizen and Others v Life Healthcare Holdings Group (Pty) Ltd and Others* (18544/2023) [2025] ZAWCHC 166; 2025 (5) SA 603 (WCC) (15 April 2025)