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

**Reportable/Not Reportable**

Case no: 2025-212089

In the matter between:

**ADRIAAN DE WAAL  
DE WAAL ATTORNEYS INC.**

**First Applicant  
Second Applicant**

and

**CHAD NICOLAS THOMAS  
IRS FORENSIC INVESTIGATIONS (PTY) LTD  
LEGAL PRACTICE COUNCIL, WESTERN CAPE  
Respondent**

**First Respondent  
Second Respondent  
Third**

**Coram:** Mangcu-Lockwood, J

**Heard:** 5 May 2026

**Delivered:** 21 August 2026

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**ORDER**

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1. The relief granted in the court order of 9 November 2025 is hereby made final.
2. The following two publications posted by the respondents regarding the applicants are defamatory and unlawful:
  - a. *'When a law firm does a runner and the neighbours are fuming because of all the inquiries...'; and*
  - b. *'...anyway the investigation relates to funds held in trust allegedly being allocated for the purchase of non-existent commodities and their "client" claiming that they were trading out of their trust account'.*
3. The respondents are ordered to remove the two publications within 24 hours of the issue of this judgment, from the 'IRS Forensic Investigations' Facebook page.
4. The first and second respondents are ordered to, within 24 hours of the issue of this judgment, publish a notice on the 'IRS Forensic Investigations' Facebook page, in which they unconditionally retract and apologise for the publications and the allegations made about the applicants in the publications (the apology).

- a. The apology must be published and remain pinned or as a top post of the page for a continuous period of no less than 7 days; and
    - b. The apology must reference and provide a link to this judgment.
  5. The first and second respondents are ordered jointly and severally to pay the applicants' costs on an attorney and client scale.
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## JUDGMENT

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**MANGCU-LOCKWOOD, J**

### **A. Introduction**

[1] This is the return day of a rule *nisi* which was granted on 9 November 2025 on an urgent basis. In terms of the interim interdict order, the first and second respondents were to remove two specific publications from a Facebook page operated by them; and were interdicted from making any further publication of similar statements with similar innuendos. They were also to prominently publish the interim order on their Facebook page.

[2] The first applicant is an attorney of some 30-odd years who conducts a practice bearing his name, which is cited as the second applicant, and together they are cited as 'the applicants'. The first respondent is a registered private investigator and chief executive officer of the second respondent, which is a private investigation firm specializing in the investigation of complex financial crimes, asset-tracing and strategic intelligence, and together they are referred to as 'the

respondents'. The third respondent, the Legal Practice Council (LPC), did not participate in these proceedings, and is merely cited as an interested party under whose professional regulatory authority the applicants resort.

[3] The two publications at issue were published on 6 and 7 November 2025 on the respondents' public Facebook page labelled 'IRS Forensic Investigations'. The first commenced with the words: *'When a law firm does a runner and the neighbours are fuming because of all the inquiries...'*, and it was accompanied by photographs depicting the applicants' premises which were clearly identified by name.

[4] The second publication commenced with the words: *'...anyway the investigation relates to funds held in trust allegedly being allocated for the purchase of non-existent commodities and their "client" claiming that they were trading out of their trust account'*.

[5] The applicants state that these statements are defamatory in that they impute to the reasonable reader that they are dishonest and cowardly fugitives who absconded from their premises to evade clients, creditors and all legal obligations. Further, that they are the subjects of a forensic investigation; have committed theft by trading out of their trust account; and are involved in fraudulent schemes relating to non-existent commodities. The first applicant states that the statements constitute an attack on his personal dignity (*dignitas*) and his professional reputation which he has built for over 30 years. The applicants dispute the truthfulness of the publications and their insinuations. They explain that they moved premises in execution of a long-planned, orderly and lawful business relocation, which was well-communicated to their clients and the public.

## **B. Respondents' case**

[6] The respondents deny that the statements complained of are false. The statements, according to them, are substantially true and were made in the course of a lawful investigation into serious allegations of financial misconduct. They state that their publication served public interest and was not actuated by malice.

[7] They explain that they were appointed by Industrial Brand Importers (Pty) Ltd ('IBI'), represented by one Shaun Vermaak, to investigate certain fraudulent conduct committed by one Byron Smallman and an entity known as Mineset Trading (Pty) Ltd (Mineset). The crux of the investigation was that Smallman had made a misrepresentation in respect of a commodities' transaction involving chrome which was funded by IBI by causing monies to be paid into the trust account of the applicants. The respondents further allege that, on the instruction of Smallman, the applicants made unauthorized payments to accounts appointed by Smallman and those funds were not used for intended purpose, to the prejudice of IBI.

[8] In support of these allegations, the respondents point to previous correspondence of legal representatives of IBI, Nicqui Galaktiou Incorporated (Galaktiou) who had sent a letter to the applicants dated 18 February 2025 alleging, amongst other things, that the second applicant had failed to comply with Financial Intelligence Centre Act 38 of 2001 (FICA) obligations prior to receiving and disbursing the said funds by informing the IBI thereof.

[9] The respondents also rely on another letter of Galaktiou addressed to Mineset on 6 March 2025, which alleged that Mineset had given instruction for

IBI's monies which were meant to be held in trust, to be paid by the applicants, which was contrary to their intended purposes.

[10] The first respondent states that it took some time and effort to get ahold of Smallman, and when he did, he recorded the telephonic discussion he held with him and has attached a copy of the transcript thereof. In effect, Smallman, according to the first respondent, alleged that the applicants were misusing their trust account and were using it to trade.

[11] Armed with these allegations, the first respondent travelled to Cape Town to confront the applicants or, as he puts it, to 'unravel questions that his investigation demanded'; and to find answers for his client IBI and 'advance his investigation to its next logical step'.

[12] On 6 November 2025 he confirmed the address of the applicants through a colleague at his firm, Ms Carla Botes, and it was the same address that his office had established from Bizportal on 30 April 2025, namely Unit [...] B[...] Office Park, [...] E[...] Street, Tygervalley, Western Cape. The same address appeared on the applicants' letterhead.

[13] Upon arrival at the premises on 6 November 2025, the first respondent noted that the signage for the second applicant's law firm was affixed to the wall of the office building and on the glass doors of the office. However, the doors were locked, the lights switched off, the furniture removed, with some boxes on the floor. He states that there were no indications to suggest that there was a move in progress, such as a sign announcing such a move or a forwarding address or new contact details. Instead, he saw a handwritten note affixed to the glass door of an

office situated directly opposite the second applicant's office, which read as follows:

‘PLEASE DO NOT RING OUR DOORBELL TO FIND OUT WHERE DE WAAL HAVE MOVED TO! WE DO NOT KNOW! RE: DE WAAL.’

[14] He concluded from all this that the offices had been hastily abandoned, and that the applicants did not wish to be found. The applicants state that they had in fact left a note containing their relocation details, and have annexed a copy thereof to the founding papers. It states as follows:

‘DE WAAL INC HAS MOVED TO UNIT [...] CASCADE TERRACES [...] RD, TIGER WATERFRONT. PHONE NUMBER +2[...].’

[15] The first respondent says he saw no such notice. He denies that there was a sign affixed to the glass door with the applicants' relocation address. He points to the photographs he took on that day which do not contain any such notice from the applicants. He also points to the neighbours' handwritten notice quoted above, which he says supports his version that there was no such relocation notice, otherwise it would not have been necessary for the neighbors to put up their notice.

[16] On the same day of his visit, 6 November 2025, the first respondent posted both publications on his Facebook page. From 7 November 2025 the applicants demanded removal of the posts through a letter of demand and WhatsApp messages. After some exchange of WhatsApp messages between the parties, including proposals by the first respondent for a meeting to allow the first applicant to clear his name, the messages were not removed, and the urgent proceedings

were launched on 8 November 2025. The interim order was granted on 9 November 2025.

### **C. The applicable law**

[17] This being an application for a final interdict, the applicant is required to establish the existence of the well-known requirements of *Setlogelo v Setlogelo*<sup>1</sup>, namely: (a) a clear right; (b) an injury actually committed or reasonably apprehended; and (c) the absence of similar protection by any other ordinary remedy.

[18] As stated in *National Director of Public Prosecutions v Zuma*<sup>2</sup>, motion proceedings, unless concerned with interim relief are all about resolution of legal issues based on common cause facts. Unless the circumstances are special, motion proceedings cannot be used to resolve factual issues because they are not designed to determine probabilities.<sup>3</sup>

[19] It is generally undesirable to endeavour to decide an application upon affidavit where the material facts are in dispute<sup>4</sup>, and a final interdict may be granted on application if no *bona fide* dispute of fact exists.<sup>5</sup> In terms of the *Plascon-Evans*<sup>6</sup> rule where in motion proceedings disputes of fact arise on the affidavits, a final order can be granted only if the facts averred in the applicant's affidavits, which have been admitted by the respondent, together with the facts alleged by the latter, justify such order.<sup>7</sup> It may be different if the respondent's

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<sup>1</sup> *Setlogelo v Setlogelo* 1914 AD 221 at 227.

<sup>2</sup> *National Director of Public Prosecutors v Zuma* 2009 (2) SA 277 (SCA) paras [26] – [27].

<sup>3</sup> *NDPP v Zuma* para [26].

<sup>4</sup> Harmse *Civil Procedure in the Supreme Court*, B6.45

<sup>5</sup> *Plascon-Evans* supra.

<sup>6</sup> *Plascon-Evans Paints (TVL) Ltd v Van Riebeck Paints (Pty) Ltd* 1984 (3) SA 623 (A).

<sup>7</sup> Harmse *Civil Procedure in the Supreme Court* B6.45.

version consists of bald or uncreditworthy denials, raises fictitious disputes of fact, is palpably implausible, far-fetched or so clearly untenable that the court is justified in rejecting them merely on the papers.<sup>8</sup> The Court has to accept those facts averred by applicant that were not disputed by respondents, and respondents' version insofar as it was plausible, tenable and credible.<sup>9</sup>

[20] On the other hand, it is equally undesirable for a court to take all disputes of fact at their face value. If this were done a respondent might be able to raise fictitious issues of fact and thus delay the hearing of the matter to the prejudice of the applicant.<sup>10</sup> In every case the court should examine the alleged disputes of fact and determine whether in truth there is a real issue of fact that cannot be satisfactorily resolved without the aid of oral evidence.<sup>11</sup>

[21] As for defamation, its requirements were summarised by the Constitutional Court in *Khumalo*.<sup>12</sup> It involves the wrongful and intentional publication of a defamatory statement, and it protects injury of personality rights, including the right to reputation (*fama*).<sup>13</sup> Once the publication of a defamatory statement is established, it is presumed that the publication was unlawful and intentional, and

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<sup>8</sup> *Media 24 Books (Pty) Ltd v Oxford University Press Southern Africa (Pty) Ltd* 2017 (2) SA 1 (SCA); *National Director of Public Prosecutions v Zuma* [2009] 2 All SA 243; 2009 (2) SA 279 (SCA).

<sup>9</sup> *Airports Company South Africa Soc Ltd v Airports Bookshops (Pty) Ltd t/a Exclusive Books* [2016] 4 All SA 665 (SCA).

<sup>10</sup> *Petersen v Cuthbert & Co Ltd* 1945 AD 420 428. A hollow denial or a detailed but fanciful and untenable version does not create a dispute of fact: *Truth Verification Testing Centre CC v PSE Truth Detection Centre CC* 1998 (2) SA 689 (W) 698; *Rosen v Ekon* [2000] 3 All SA 23 (W) 39; *Ripoll-Dausa v Middleton NO* [2005] 2 All SA 83 (C), 2005 (3) SA 141 (C).

<sup>11</sup> *President of the Republic of South Africa v South African Rugby Football Union* 2000 (1) SA 1 (CC) pars 234-239. It has variously been called a "genuine" or "bona fide" dispute.

<sup>12</sup> *Khumalo and Others v Holomisa* [2002] ZACC 12; 2002 (5) SA 401 (CC) paras 18 - 19.

<sup>13</sup> *Ibid*, para 18.

published with the intention to injure (the *animus iniuriandi*), and it is not necessary to prove that the statement was false.<sup>14</sup>

[22] The determination of whether a statement is defamatory involves a twofold enquiry.<sup>15</sup> First, one establishes the meaning of the words used. Second, one asks whether that meaning is defamatory in that it was likely to injure the good esteem in which the person was held by the reasonable or average person to whom the statement was published.<sup>16</sup> The meaning of the statement is determined objectively by the legal construct of the reasonable reader,<sup>17</sup> and is whether a reasonable reader would attribute to the words, having regard to the context in which they are used, a meaning that is defamatory.<sup>18</sup>

[23] A publisher relying on the defence of truth and public interest must plead and prove that the statement is substantially true and was published in the public interest.<sup>19</sup>

[24] As for the defence of fair comment, it has four elements<sup>20</sup>, namely that the defamatory statement: (a) must be a comment and not a statement of fact; (b) must be fair, by which is meant only that it must be an honestly-held opinion, not that it is balanced or temperate; (c) the facts on which it is based must be true and must be clearly stated or clearly indicated, or matters of public knowledge; and (d) the

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<sup>14</sup> Ibid.

<sup>15</sup> *Economic Freedom Fighters and Others v Manuel* (711/2019) [2020] ZASCA 172; [2021] 1 All SA 623 (SCA) ; 2021 (3) SA 425 (SCA) (17 December 2020) (EFF v Manuel) para 30. *Le Roux and Others v Dey (Freedom of Expression Institute and Restorative Justice Centre as amici curiae)* [2011] ZACC 4; 2011 (3) SA 274 (CC) (*Le Roux v Dey*) para 89.

<sup>16</sup> Ibid.

<sup>17</sup> Ibid.

<sup>18</sup> *Le Roux v Dey* para 89.

<sup>19</sup> *EFF v Manuel* para 37; Laws, Vol 14(2), 3 ed (2017), by Justice FDJ Brand, para 124.

<sup>20</sup> *EFF v Manuel* para 38; *The Citizen 1978 (Pty) Ltd and Others v McBride* [2011] ZACC 11; 2011 (4) SA 191 (CC) (*McBride*) para 80.

comment must relate to a matter of public interest. If the comment is made maliciously, that is, with an improper motive, as opposed to being no more than the expression of an honestly-held opinion on a matter of public interest, it is wrongful and the defence is not available.<sup>21</sup> Where malice is alleged the evidence led to establish it may also be directed at rebutting the claims that the opinion was *bona fide* and that the matter was one of public interest.<sup>22</sup>

[25] As regards the defence of reasonable publication, the SCA stated as follows in *Bogoshi*<sup>23</sup>:

‘In considering the reasonableness of the publication account must obviously be taken of the nature, extent and tone of the allegations. We know, for instance, that greater latitude is usually allowed in respect of political discussion (*Pienaar and Another v Argus Printing and Publishing Co Ltd* 1956 (4) SA 310 (W) at 318 C-E), and that the tone in which a newspaper article is written, or the way in which it is presented, sometimes provides additional, and perhaps unnecessary, sting. What will also figure prominently is the nature of the information on which the allegations were based and the reliability of their source, as well as the steps taken to verify the information. Ultimately there can be no justification for the publication of untruths, and members of the press should not be left with the impression that they have a licence to lower the standards of care which must be observed before defamatory matter is published in a newspaper.’ (at 1212G - 1213A).

#### **D. Condonation**

[26] It is first necessary to dispose of a condonation application that was brought by the respondents in respect of their confirmatory affidavits. The answering affidavit was delivered on 19 November 2025, in compliance with the timeframes in the court order granted on 9 November 2025. It attached four draft confirmatory affidavits which were not commissioned, in the names of Ms Glenda Fay Paul the co-director of the first respondent; Ms Carla Botes, a senior forensic investigator at

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<sup>21</sup> *EFF v Manuel* para 38.

<sup>22</sup> *Ibid.*

<sup>23</sup> *National Media Ltd and Others v Bogoshi* [1998] ZASCA 94; 1998 (4) SA 1196 (SCA); 1999 (1) BCLR 1 (SCA) at 1212G - 1213A.

the second respondent; Ms Nicqui Galaktiou, the legal representative of IBI who had sent letters to the applicants; and Shaun Vermaak of IBI.

[27] The signed versions of the confirmatory affidavits were delivered on 9 February 2026, the day before the hearing, without seeking condonation, and after the applicants had filed their heads of argument. It also appeared that two of the affidavits had in fact been commissioned on 24 November 2025 but were not delivered to the applicants. The other two were commissioned on 6 February 2026 after delivery of the applicants' heads of argument

[28] On 10 February 2026 the applicants brought an application to strike, not only those confirmatory affidavits, but also those parts of the answering affidavit which sought to rely on those affidavits, namely paragraphs 41-62, 179, 176-181, 184-188. After some argument, the Court granted postponement for the respondents to bring a substantive application for condonation for the late filing of the confirmatory affidavits, and the matter was postponed to 5 May 2026.

[29] It was only on 28 April 2026 that the condonation application was delivered. It was opposed on account of the lateness of its delivery, which was a mere 4 days before the hearing, and the applicants characterized this as litigation by ambush. And this further delay between the two set-down dates is unexplained. The applicants point to the fact that the extent of the delay in the delivery of the confirmatory affidavits was 77 days.

[30] Apart from the respondents' attorney's busy diary, the main explanation provided for the late filing of the confirmatory affidavits between 19 November 2025 and 9 February 2026 is an oversight by the attorney, Mr Vally.

[31] After having considered the issues raised, it is clear that the respondents intended to file the confirmatory affidavits since the answering affidavit was filed. After all, the unsigned copies of the confirmatory affidavits were attached to the answering affidavit, with a promise to obtain signed copies. In the light of the urgency of the matter at the time, this is understandable.

[32] In fact, two of the confirmatory affidavits were deposed on 24 November 2025. While Mr Vally may be criticized for his tardiness and failure to deliver them timeously, this indicates an intention to submit the affidavits all along. There is otherwise no reason to conclude that the signed confirmatory affidavits were deliberately withheld to somehow advantage the respondents' case. No such evidence exists. What the papers show rather, is Mr Vally's tardiness for which I do not think the respondents should be punished.

[33] Similarly, the affidavits of Paul Vermaak and Ms Galaktiou were signed late, on 6 February 2026. Similar considerations apply in that the lateness was due to the remissness of their legal representative, to the inconvenience of the applicants and of this Court such that the matter had to be postponed for a proper condonation application to be delivered.

[34] Nevertheless, I am of the view that what is important is that both sides have now had opportunity to place their cases before the court and I consider it in the interests of justice to allow the admission confirmatory affidavits so that all the relevant issues may be considered in the determination of this matter. I do consider that the wasted day and postponement rendered by the tardiness relating to the late delivery of the confirmatory affidavits should be laid at the feet of the respondents on an attorney and client basis.

## E. Discussion

[35] At the very least, the first of the two publications, which stated that the applicants '*did a runner*' has a defamatory meaning. A reasonable reader would understand it to mean that the applicants surreptitiously and cowardly evaded justice and/or their creditors, and that they are dishonest fugitives who absconded to evade accountability. For anyone's reputation, that would be damaging, but for an attorney who runs a practice as a sole practitioner and whose career depends on a good name and reputation, there is no doubt that any such statement would significantly lower his esteem and reputation in the minds of 'right-thinking' or reasonable readers. The high premium placed on these attributes for an attorney was expressed in *Vassen*<sup>24</sup> where the SCA stated as follows:

'In this regard, it must be borne in mind that the profession of an attorney, as an officer of the Court, is an honourable profession which demands complete honesty, reliability and integrity from its members...A client who entrusts his affairs to an attorney must be able to rest assured that that attorney is an honourable man who can be trusted to manage his affairs meticulously and honestly.'

[36] As for the second publication, while it may be accepted that, objectively speaking, there is an ongoing investigation relating to funds held in trust involving the applicants, the first respondent's mention that the said funds were allocated for the purchase of non-existent commodities, and that the client claimed that the attorneys were trading out of their trust account has a defamatory meaning. A reasonable reader would understand the second publication to mean that the applicants are the subject of a forensic investigation in which they are accused of having committed theft by trading out of their trust account and are involved in fraudulent schemes relating to non-existent commodities.

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<sup>24</sup> *Vassen v Law Society of the Cape of Good Hope* [1998] ZASCA 47; 1998 (4) SA 532 (SCA) at 538G.

[37] But the real sting of the second publication is best realized when read in conjunction with the first one. After all, the second publication was posted as a thread, or a comment-within-a-comment, of the first publication. When considering the two posts which relate to the same attorney, a reasonable reader would have concluded that the first applicant ‘did a runner’ because he was the subject of an investigation relating to trust funds; and that he committed theft by trading out of his trust account; and was involved in fraudulent schemes relating to non-existent commodities. For a practicing attorney, even an insinuation of that kind is a death knell for his name and practice. That is because a failure to exercise proper oversight over a trust account constitutes a material breach of a legal practitioner's highest duty, and can, in certain circumstances, justify a finding that a practitioner is not a fit and proper person.<sup>25</sup> As the SCA continued in *Vassen*:

‘When money is entrusted to an attorney or when money comes to an attorney to be held in trust, the general public is entitled to expect that that money will not be used for any other purpose than that which it is being held, and that it will be available to be paid to the persons on whose behalf it is held, whenever it is required... The theft of money held by him in trust ... is, in my view, indeed a weighty consideration militating against any lesser stricture than his removal from the roll...’<sup>26</sup>

[38] On the facts of this case, one does not have to guess how the readers of the publications interpreted them because their reactions are part of the record. Some of the reactions were the following: ‘*thieving thugs and suits*’, ‘*criminals with law degrees always on the run*’; ‘*did they steal everyone's trust money?*’. These comments demonstrate that the readers did not interpret the posts as nuanced, or as a description of an investigative hypothesis, but took them as a declaration of guilt. To the extent that any clarity was sought, it was only as regards the degree of the guilt of the applicants, as displayed by the last of the three quoted comments.

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<sup>25</sup> *Barlett & another v Hirschowitz Flionis* [2005] 2 All SA 567 (W); [2005] JOL 14311 (W) at 579g; *Hirschowitz Flionis v Bartless & another* [2006] ZASCA 23; 2006 (3) SA 575 (SCA) at 589C-F.

<sup>26</sup> *Vassen op cit.*

[39] At the same time, there is no serious opposition to the applicants' claim that they were relocating at the time of the first respondent's visit, and that they have in fact moved to the new location whose address is provided in the papers. Nevertheless, the respondents persist that the posts were substantially true and were made in the course of a lawful investigation into serious allegations of financial misconduct. They state that their publication served public interest and was not actuated by malice. The main basis for all these defences is the ongoing IBI investigation.

[40] The applicants do not dispute the fact that the respondents were engaged in the IBI investigation, the existence of which must be accepted in the light of *Plascon-Evans*. It is not the task of this judgment to make findings regarding whether or not the investigations conducted by the respondents were warranted. It is rather to find out whether, in light of those investigations, the publications were defamatory.

[41] The first applicant admits that funds were deposited into his trust account by Mindset or on its behalf, in execution of a written mandate from his client Smallman who authorized the payments, contrary to his denial in the transcript. He disputes that he acted in contravention of FICA. He denies that he was trading out of his trust account. He points out that, in any event, Smallman states in the transcript he did not know what happened to the money, and that it was therefore unreasonable for the first respondent to conclude that he was trading out of his trust account.

[42] Indeed, Smallman's claims constitute hearsay evidence which is not admissible in terms of the first two exceptions specified in s 3 of the Law of Evidence Amendment Act 45 of 1988, namely agreement between the parties and Smallman himself testifying. The only other basis for admission of the evidence is the Court's admission after having regard to: (i) the nature of the proceedings; (ii) the nature of the evidence; (iii) the purpose for which the evidence is tendered; (iv) the probative value of the evidence; (v) the reason why the evidence is not given by the person upon whose credibility the probative value of such evidence depends; (vi) any prejudice to a party which the admission of such evidence might entail; and (vii) any other factor which should in the opinion of the court be taken into account, is of the opinion that such evidence should be admitted in the interest of justice.

[43] What weighs heavily with this Court is that the respondents' own version is that Smallman was the only source who notionally implicated the applicants. But he himself was the subject of the respondents' fraud investigation. There is every likelihood that he might seek to implicate others in order to exonerate himself. And, when asked to commit his allegations concerning the applicants to a written statement, he only promised to think about it, and to date no such statement has been furnished. In fact, from the respondents' evidence regarding their relentless efforts to contact Smallman, the respondents' papers reveal a hint of distrust, if not suspicion, towards him and imply that he did not want to be found. Yet the respondents seek for this Court to place reliance on that hearsay evidence. Besides, Smallman could not give any information regarding what happened to the trust funds – the very issue that the sting of the publications is directed at. For all these reasons this Court declines the invitation to place any reliance on the hearsay evidence of Smallman, and regards it as unreliable. It would be prejudicial to the

applicants to place any reliance on those allegations and would not be in the interests of justice. Besides, the purpose of these proceedings is to determine the defamatory claim. It is not to determine veracity of the claims levelled against the applicants in the IBI investigation. In that respect the allegations of Smallman are only tangentially relevant to these proceedings.

[44] The first applicant highlights that the high watermark of the respondents' claim as regards the IBI investigation is that he failed to answer questions posed *via* Ms Galaktiou's correspondence, regarding the flow of the deposited funds. He states that the respondents have elevated his silence to mean that he was trading out of his trust account or was hiding something. He highlights that he has a duty of confidentiality towards his clients. I do not find that explanation unreasonable. In the face of that silence, if Ms Galaktiou, or the respondents or IBI had any information or evidence of impropriety committed by the applicants, one would have expected them to elevate the issue to the LPC, which is the regulatory body of the applicants. As the SCA has stated, it is the custodian of the *boni mores* of the legal profession, which acts in the public interest to protect, maintain and enhance the integrity of the legal profession.<sup>27</sup>

[45] It is axiomatic that the fact that there was an ongoing investigation does not mean the allegations made there were true. The first respondent's own version is that he traveled to Cape Town to obtain first-hand answers from the first applicant. In his own words, he *'intended to confront the applicants with Smallman's statement and other documentary evidence that [he] was in possession of'*, and

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<sup>27</sup> *Matsi and Another v South African Legal Practice Council (Gauteng Province)* (184/2024) [2026] ZASCA 12 (6 February 2026) para 56.

*'had every intention of seeking confirmation that the applicants had a reasonable explanation for the issues identified'* regarding the investigation. Elsewhere, he states that he *'prefer[s] to meet with suspects and persons of interest in person, to not only give effect to their right to be heard, but also to permit me an opportunity to gauge their reaction and body language'*. All of this means that, in the respondents' own version, the allegations made regarding the applicants were not yet confirmed and were as yet unverified.

[46] What is more is that when he travelled to Cape Town, his only source that possibly implicated the first applicant was Smallman who was the subject of a fraud investigation himself and could therefore not be a reliable source of the allegations, and at best had to be treated with extreme skepticism. And even Smallman was reluctant to commit to a commissioned version of his allegations. One would have expected the first respondent to exercise similar caution before accusing the applicants of those allegations.

[47] As regards the first respondent's observations upon arriving the applicants' premises, he saw boxes on the floor, lights switched off, locked premises and the neighbour's handwritten note. The first respondent never explains why it could not have been a possibility that the applicants were involved in a lawful relocation. Based on what he observed, such a conclusion would be within the realm of objective possibilities.

[48] The fact that a neighbour posted the handwritten notice already mentioned is not proof, or support of proof, that the applicants had fled their premises. If anything, it exhibited exasperation on the neighbour's part at being asked regarding the whereabouts of the applicants. It is possible that there were other

people who had asked for the new address of the applicants, but without querying the motive for the relocation. For all that the first respondent knew, the applicants could have informed other neighbours apart from this one of their relocation.

[49] As the applicants point out, the neighbour's handwritten note also did not say that the applicants had fled. Even if it had, no basis has been established for the said neighbour's insight, if any, into the affairs of the applicants. There is no basis to conclude that the neighbour's note would somehow provide authoritative information regarding the status of the business of the applicants or whereabouts of the applicants. If anything, the handwritten note indicates that the neighbours did not have a close relationship with the applicants. The note simply states in express terms that the neighbours had no knowledge regarding the move of the applicants.

[50] There is furthermore no evidence that the first respondent approached any other nearby business to ask about the vacation of the applicants' premises that anyone nearby might have observed. One would have expected the first respondent to have conducted such a search if he was interested in locating the applicants.

[51] Although the applicants state that they left a relocation notice with their details, it is possible that the first respondent did not observe it. I have considered the respondents' counter that there would have been no need for the neighbour's handwritten notice if the applicants' relocation notice was indeed displayed. But once again that does not mean the relocation notice was not displayed by applicants. It could simply mean that those who had not noticed the relocation noticed, similar to the respondents, inquired about the whereabouts of the applicants from that neighbour. On the other hand, the applicants state that it is highly improbable that a law firm such as itself which relies on accessibility for its revenue, would relocate without posting such a notice. It is, after all, not disputed

that the applicants had similarly sent notifications to existing clients via SMS and WhatsApp.

[52] Whether the relocation notice was in fact displayed by the applicants is an issue I consider to be a dispute of fact, which could rather be resolved by evidence regarding the timing of when and where exactly the neighbours' handwritten notice was displayed, and when the applicants' relocation notice was displayed. On the evidence before me, and based on *Plascon-Evans*, I accept that the first respondent did not see the relocation notice posted by the applicants.

[53] Even so, and even if the applicants had not displayed a relocation notice, the nodes of verification that the first respondent failed to make prior to publication of his facebook posts are as considerable as they are elementary. He did not contact the Legal Practice Council (LPC) to verify the correct address of the applicants. It is not an answer to now say that the address had not been changed by the applicants. What matters is the reasonable verification conducted at the time by the respondents. Nor did the first respondent approach the office building management or landlord at the applicants' premises to verify his suspicions or to ascertain the terms of the applicants' tenancy of the premises. He did not send an e-mail to their address, or phone the number listed on the second applicant's letterhead, which he claims to have possessed. There is no evidence of a bounced email or disconnected telephone line connection.

[54] What is remarkable is that nowhere does the first respondent allege that he ever tried to contact the first applicant with regards to his investigation, other than the visit at the premises on 6 November 2025. It is startling to consider how little time and consideration the first respondent gave before publishing his posts. He

could have performed some or all the verifications identified above in a space of another few hours or a day. There is no reason given for the need to post the publications at all, or at the point when they were posted. Even if the respondents were engaged in a *bona fide* investigation, it has not been shown that it was necessary to post the publications as part of an investigation.

[55] The allegation that the applicants had ‘done a runner’ for any reason, including the trust irregularities alleged, is therefore objectively false. It is, in any event, not in dispute on the papers that the applicants executed a planned relocation. There is no public interest in posting untrue and unverified statements regarding an experienced attorney. Instead, the first respondent engaged in self-indulgent sensationalism. He was too hasty in reaching the most negative conclusion regarding the applicants whom he had never met, assessed or heard, contrary to his stated approach in investigations. One can only conclude that he was tainted with suspicions of the applicants. That is the only plausible explanation for his premature conclusion of an alleged flight or a runner on the part of the applicants. The inference is irresistible that his intention in posting the publications was to harm the reputation of the applicants in the public eye. That malicious intent excludes any possibility that the publications could be characterized as fair comment.

[56] The result of the first respondent’s conduct is that the public has now been given the false impression that the applicants ‘did a runner’ in circumstances where they relocated lawfully. In response to the respondents’ posts members of the public have been prompted to make comments regarding, not only the applicants but also the legal profession as being ‘*criminals with law degrees*’ and ‘*thieving thugs in suits*’, and the LPC as being ‘*beyond useless*’. Given that all this

commentary was based on the false narrative that the applicants ‘did a runner’, it cannot possibly serve the public interest. It only serves to unduly and unfairly undermine the applicants, the legal profession and its regulatory mechanisms in the eyes of the public.

[57] Furthermore, the publications do not constitute reasonable commentary. I have already opined that the posts were unnecessary, self-serving and sensationalist in nature and tone, and were based on untrue, unverified conclusions.<sup>28</sup> That is the antithesis of what may be expected of a registered forensic investigator. In this regard, the applicants point out that the first respondent failed to act in accordance with the standard of a reasonable investigator that he must be held to, including the Code of Conduct for Security Service Providers, 2003 (the Code), and specifically regulations 9, 16 and 24. There was some debate about the exact applicable provisions of the Code, and in the end, the applicants were not able to point to specific applicable provisions. I do not consider that to be a necessary requirement for their case based on defamation, or to show the unreasonable conduct of the first respondent as a forensic investigator. At the very least, he was expected to conduct the elementary verification steps I have discussed, and he failed to do so.

[58] There is also no merit to the respondents’ belated argument raised in the heads of argument that their conduct was ‘honest in their belief at the time’, which is a standard based on English law. As already discussed, the test in our law is an objective one, not based on a publisher’s belief in his or her truth, which is subjective.

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<sup>28</sup> See *Bogoshi* op cit at 1212G - 1213A.

[59] The conclusion of all this is that the respondents' posts were defamatory and there is no merit to any of the defences raised by the respondents. The applicants have established a clear right to safeguard their dignity and reputation. The harm caused by the publications is indisputable. Within hours of the first respondent posting the statements, the publications were shared across numerous other public and professional facebook groups. I have already mentioned the public comments made in response and the labels accorded to the applicants in particular.

[60] The applicants had no remedy other than to approach this Court, first for interim relief and now for final relief. A future claim for damages cannot restore the 'wildfire' effect of the social media campaign to which the respondents resorted, whose effect was to harm their reputation.

[61] There is no merit to the argument that the application amounts to what is referred to as a SLAPP suit - Strategic Litigation Against Public Participation. The present litigation does not meet the requirements thereof, which were as set out in *Mineral Sands*<sup>29</sup>. There, the Constitutional Court established a defence for activists and whistleblowers who are targeted by meritless litigation brought by powerful corporations with the intention of silencing public interest speech.<sup>30</sup> As I have found, the applicants' application does have merit and cannot be characterized as an abusive process. Rather, it amounts to a vindication of rights. I am also unable to find that its aim is to silence or punish critics. It is rather the respondents who have been unfair by unduly slandering the applicants.

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<sup>29</sup> *Mineral Sands Resources (Pty) Ltd and Others v Reddell and Others* (CCT 66/21) [2022] ZACC 37; 2023 (2) SA 68 (CC); 2023 (7) BCLR 779 (CC) (14 November 2022).

<sup>30</sup> *Ibid* para 43.

[62] There is also no merit to the respondents' claim that the remedy of an interdict will bring their investigations to a halt. The interdict is aimed at the unlawful conduct of making unwarranted come untruthful and unreasonable publications regarding the applicants. It is not to stop the respondents' lawful conduct of their investigations.

## **F. Remedy**

[63] The relief sought by the applicants is firstly, the removal of the defamatory posts. The competency of such an order is beyond debate.<sup>31</sup> The correspondence between the parties before the launching of these proceedings rendered it necessary for the applicants to approach this Court for relief because the first respondent effectively refused to delete the posts, or sought to bargain before doing so, which amounts to the same thing. Given the finding of defamation, it is appropriate that the Court should come to the aide of the applicants and grant the relief sought.

[64] The applicants also seek an order compelling the respondents to publish an unqualified apology and retraction. The role and importance of this remedy has been endorsed as by our courts for securing redress and justice in cases of defamation where appropriate.<sup>32</sup> Given the public and reckless manner in which the publications were made, it is only appropriate that such an apology should be effected in a similar manner to help repair the dignity of the applicants, and vindicate them in the eyes of the public.

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<sup>31</sup> *Botha v Smuts and Another* (CCT 40/22) [2024] ZACC 22; 2024 (12) BCLR 1477 (CC); 2025 (1) SA 581 (CC) (9 October 2024); *Manuel v Economic Freedom Fighters and Others* (13349/2019) [2019] ZAGPJHC 157; [2019] 3 All SA 584 (GJ); 2019 (5) SA 210 (GJ) (30 May 2019); *EFF v Manuel* op cit.

<sup>32</sup> *Le Roux v Dey* op cit, para 197. *McBride* op cit, para 134.

## **G. Costs**

[65] There is no reason why the applicants, who have been successful, should not obtain their legal costs. That includes costs in the interim interdict and for the condonation application. The applicants engaged the respondents before launching these proceedings to remove the offending posts, to no avail. There is no reason why the applicants should be placed out of pocket for the reckless and malicious conduct discussed in this judgment. It is appropriate that the respondents should be ordered to pay costs on an attorney and client scale.

## **H. Order**

[66] In the result, the following order is made:

1. The relief granted in the court order of 9 November 2025 is hereby made final.
2. The following two publications posted by the respondents regarding the applicants are defamatory and unlawful:
  - a. *'When a law firm does a runner and the neighbours are fuming because of all the inquiries...'*; and
  - b. *'...anyway the investigation relates to funds held in trust allegedly being allocated for the purchase of non-existent commodities and their "client" claiming that they were trading out of their trust account'*.
3. The respondents are ordered to remove the two publications within 24 hours of the issue of this judgment, from the 'IRS Forensic Investigations' Facebook page.

4. The first and second respondents are ordered to, within 24 hours of the issue of this judgment, publish a notice on the 'IRS Forensic Investigations' Facebook page, in which they unconditionally retract and apologise for the publications and the allegations made about the applicants in the publications (the apology).
  - a. The apology must be published and remain pinned or as a top post of the page for a continuous period of no less than 7 days; and
  - b. The apology must reference and provide a link to this judgment.
5. The first and second respondents are ordered jointly and severally to pay the applicants' costs on an attorney and client scale.

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**N MANGCU- LOCKWOOD**  
**JUDGE OF THE HIGH COURT**

Appearances

For applicant: Adv. MA Basson & Adv GJ Victor

Instructed by: Johan Victor Attorneys/ Litigators

For respondent:

Instructed by: Mr Muhammed Vally, MVIP Attorneys