



**IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL DIVISION, PIETERMARITZBURG**

CASE NO: 2025-102983

In the matter between:

NAMBITI PRIVATE GAME RESERVE (PTY) LTD

Applicant

and

GANGENI SAFARIS CC

First Respondent

RICHARD LEMMER

Second Respondent

ANELLE LEMMER

Third Respondent

ORDER

The following order is granted:

1. The rule nisi issued on 8 July 2025 is confirmed, on an interim basis, in the terms of paragraphs 2.1, 2.2, 2.3, 2.4, 2.5 and 2.6 of the notice of motion, pending the final determination of the actions instituted by the applicant under case number 2026-057854 and by the first respondent under case number 2026-078895, or until varied or discharged by a court of competent jurisdiction, whichever occurs first.
2. The third respondent is finally interdicted and restrained from:
 - 2.1 harassing, intimidating or threatening the applicant's management staff and guards; and
 - 2.2 publishing or uttering, whether orally, in writing or on any social media platform, any statement imputing that the applicant's management staff or guards are complicit in, or turn a blind eye to, poaching or other unlawful

activity on the reserve, or that the applicant's management is dishonest in its dealings with the first respondent.

3. The respondents shall pay the applicant's costs of the application up to and including 8 July 2025.

4. The costs of the application from 9 July 2025 to date, including the costs of the opposed hearing, shall be costs in the action in case number 2026-057854 and case number 2026-078895, to be determined by the trial court seized with those actions.

JUDGMENT

Marion AJ

Introduction

[1] This is the extended return day of a rule nisi granted by consent on 8 July 2025, in terms of which the applicant, Nambiti Private Game Reserve (Pty) Ltd (Nambiti), sought interim and final interdictory relief against the first respondent, Gangeni Safaris CC (Gangeni), and the second and third respondents, Mr Richard Lemmer and Mrs Anelle Lemmer (Mrs Lemmer), the sole members of Gangeni (the first, second and third respondents will collectively be referred to as 'the respondents').

[2] The applicant sought the following relief in its notice of motion:

'2.1. that, for so long as the written agreement, concluded between the Applicant and the First Respondent which is annexure "A" to the Founding Affidavit, remains extant, the Respondents be and are hereby interdicted and restrained from, in any way, interfering with or preventing the Applicant's access to the First Respondent's property described as Portion 5 (of 3) of the Farm Driefontein 1092, in extent 657,3954 Hectares ("the First Respondent's property"), which access is provided for in clause 5 of the agreement;

2.2. that, for so long as the written agreement, concluded between the Applicant and the First Respondent which is annexure "A" to the Founding Affidavit, remains extant, the Respondents be and are hereby interdicted and restrained from, in any way, interfering with or preventing the anti-poaching guards employed by the Applicant from their access

to the First Respondent's property, which access is required in the performance of their duties as provided for in clause 9.4 of the agreement;

2.3. that the Respondents be and are hereby directed to remove or take down any and all signage put up by the Respondents, that serve to prohibit the Applicant's ingress to and egress from the First Respondent's property;

2.4. that the Respondents be and are hereby interdicted and restrained from interfering with or preventing access to and traversing of the First Respondent's property by game viewing vehicles of the Applicant or the lodges on Nambiti Private Game Reserve;

2.5. that the Respondents be and are hereby interdicted and restrained from interfering with or preventing the driving on and traversing of the First Respondent's property by the management of the Applicant;

2.6. that the Respondents be and are hereby interdicted and restrained from interfering with or preventing the four game guards employed by the Applicant and located on the First Respondent's property from their access to the First Respondent's property and from performing their security and anti-poaching duties;

2.7. that the Third Respondent be and is hereby interdicted and restrained from —

2.7.1. harassing, intimidating or threatening the Applicant's management staff and guards;

2.7.2. making defamatory, derogatory, and insulting comments and allegations in respect of the Applicant's management staff and guards;

2.8. that the Respondents, jointly and severally, pay the costs of the application on Scale B.'

[3] The relief sought, in essence, compels the respondents to permit Nambiti continued access to, and use of, the property known as Portion 5 (of 3) of the Farm Driefontein 1092, KwaZulu-Natal, in extent 657,3954 hectares (the property), pursuant to a written agreement concluded between Nambiti and Gangeni on 14 October 2015 (the agreement). The access is provided for in clause 5 of the agreement. Prayers 2.1 and 2.2 address the final relief sought by the applicant. Prayers 2.3 to 2.6 is for interim interdictory relief. The order seeks to prevent the respondents from stopping the applicant's access to the property in any form or manner. Prayer 2.7 deals specifically with final relief, in respect of interdicting Mrs Lemmer, because of her prior actions, from harassing, intimidating or threatening Nambiti's management staff and guards.

[4] The application has a lengthy interlocutory history. It was launched urgently on 8 July 2025 and opposed by the respondents by way of a preliminary answering affidavit. The applicant filed a preliminary replying affidavit, and the matter was resolved on an interim basis by a consent order, taken on 8 July 2025. The rule nisi was thereafter extended on 4 September 2025 by Seegobin J, on which occasion the matter was adjourned sine die, the rule nisi extended pending confirmation or discharge, and the applicant directed to file its replying affidavit by 3 October 2025, with costs reserved. Comprehensive answering and replying affidavits were subsequently exchanged, and the matter was set down and argued as an opposed application. Both parties delivered heads of argument and a joint list of common cause and disputed issues in terms of practice directive 9.4.2. Ms *Beket* appeared on behalf of Nambiti and Mr *Pietersen* appeared on behalf of Gangeni. I am indebted to counsel for their heads of arguments and submissions.

Common cause facts

[5] The parties helpfully narrowed the dispute in their joint list of issues filed. The following are common cause:

- ‘1.1 on 14 October 2015 the parties concluded a written agreement in terms of which Nambiti was entitled to use of Gangeni's property for various purposes particularised in clauses 5.1 to 5.5 of the agreement;
- 1.2 the terms of the agreement;
- 1.3 the respondents disallowed access to the property by the applicant;
- 1.4 the respondents disallowed such access without first complying with the breach procedure in clause 17 of the agreement (a breach notice being necessitated prior to any entitlement to cancel the agreement);
- 1.5 a compliant breach notice was only sent on 24 July 2025, when the first respondent's attorneys, Grant and Swanepoel Attorneys sent a breach notice in terms of clause 17 of the agreement;
- 1.6 the first respondent purported to terminate the agreement on 3 September 2025;
- 1.7 during April 2026 an action was instituted by the first respondent seeking declaratory relief for the cancellation of the agreement *inter alia*;
- 1.8 the applicant similarly instituted action against first respondent during March 2026;
- and
- 1.9 both these actions remain pending.’

Issues in dispute

[6] The parties identify the following issues as being in dispute:

- (a) whether Nambiti breached the agreement by traversing the property on 12 June 2025 and on other occasions;
- (b) whether Nambiti failed to manage the habitat on the property, including alien vegetation control and burning;
- (c) whether Nambiti failed to control the elephant population;
- (d) whether Nambiti failed to maintain roads on the property;
- (e) whether Nambiti's anti-poaching guards conducted themselves properly;
- (f) whether Mrs Lemmer harassed or intimidated Nambiti's staff or guards;
- (g) whether there are material disputes of fact; and
- (h) who should be liable for the costs and on what scale.

[7] I will confine my judgment to the disputes that are applicable to specific issues in this matter, which will become clearer as the judgment unfolds.

The applicable legal principles

[8] Since the applicant seeks both final relief, in prayers 2.1, 2.2 and 2.7, and interim relief, in prayers 2.3 to 2.6, it is necessary to set out the requirements applicable to each form of relief, and the different approach a court adopts to a dispute of fact depending on which form of relief is sought.

[9] The requisites for a final interdict, established in *Setlogelo v Setlogelo*,¹ and restated more recently in *Hotz v University of Cape Town*,² are: (a) a clear right; (b) an injury actually committed or reasonably apprehended; and (c) the absence of any other satisfactory remedy available to the applicant.³

[10] Where final relief is sought by way of notice of motion, and the respondent raises a genuine, *bona fide* dispute of fact on a material issue, the well-known rule

¹ *Setlogelo v Setlogelo* 1914 AD 221 (*Setlogelo*).

² *Hotz and Others v University of Cape Town* [2016] ZASCA 159; 2017 (2) SA 485 (SCA) para 29.

³ See also D E van Loggerenberg *Erasmus: Superior Court Practice* (RS 30, 2026) (*Erasmus*) at D6-18–D6-19.

in *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd*⁴ applies, namely, the relief sought can be granted only if the facts stated by the respondent, together with the admitted facts in the applicant's own affidavits, justify the order. A respondent's version may be rejected on the papers only where it is so far-fetched or clearly untenable that it can confidently be rejected without resorting to oral evidence.⁵

[11] The position is different where interim relief is sought. In such a case, the applicant's right need not be shown on a balance of probabilities. As was held in *Webster v Mitchell*:⁶

'In an application for a temporary interdict, applicant's right need not be shown by a balance of probabilities; it is sufficient if such right is *prima facie* established, though open to some doubt. The proper manner of approach is to take the facts as set out by the applicant together with any facts set out by the respondent which applicant cannot dispute and to consider whether, having regard to the inherent probabilities, the applicant could on those facts obtain final relief at a trial. The facts set up in contradiction by respondent should then be considered, and if serious doubt is thrown upon the case of applicant he could not succeed. In considering the harm involved in the grant or refusal of a temporary interdict, where a clear right to relief is not shown, the Court acts on the balance of convenience. If, though there is prejudice to the respondent, that prejudice is less than that of the applicant, the interdict will be granted, subject, if possible, to conditions which will protect the respondent.'

[12] The requirements of an interim interdict, as set out in *Setlogelo*, are trite. The requirements were summarised as follows in *Wypkema NO and Another v Wypkema NO and Others*:⁷

'An applicant must establish:

(i) a *prima facie* right which requires protection in the interim period. As the Constitutional Court put it, "It is a right to which, if not protected by an interdict, irreparable harm would ensue. An interdict is meant to prevent future conduct and not decisions already made... the applicant must demonstrate a prima facie right that is threatened by an impending or imminent irreparable harm." (emphasis added)

⁴ *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* 1984 (3) SA 623 (A) (*Plascon-Evans*) at 634E–G.

⁵ *Ibid* at 635C–D.

⁶ *Webster v Mitchell* 1948 (1) SA 1186 (W) (*Webster*) from the headnote at 1186.

⁷ *Wypkema NO and Another v Wypkema NO and Others* [2025] ZAGPJHC 1243 para 94.

- (ii) a well-grounded apprehension of irreparable harm if the interim relief is not granted and the ultimate relief is eventually granted
- (iii) that the balance of convenience favours the granting of an interim interdict; and
- (iv) that the applicant has no other satisfactory remedy.' (Footnote omitted.)

[13] Not every conflict of fact constitutes a genuine dispute. In *Room Hire Co (Pty) Ltd v Jeppe Street Mansions (Pty) Ltd*,⁸ it was stated that a real dispute of fact will arise in one of three ways. The three ways a real dispute of fact will arise were summarised as follows in *SA Football Association v Mangope*:⁹

'Firstly, the respondent may deny one or more of the material allegations made by the applicant and produce evidence to the contrary, or may apply for the leading of oral witnesses who are not presently available or who though averse to making an affidavit, would give evidence if subpoenaed. Secondly, the respondent may admit the applicant's affidavit evidence but allege other facts which the applicant disputes. Thirdly, the respondent, while conceding that he has no knowledge of one or more material facts stated by the applicant, may deny them and put the applicant to the proof, and himself give or propose to give evidence to show that the applicant and his deponents are untruthful or their evidence unreliable.'

[14] The grant of an interdict remains a matter for the court's discretion, to be exercised judicially, having regard to all the facts of the case.¹⁰ The harm that is protectable by an interdict must be irreparable in the sense that it cannot be reversed.¹¹

[15] Where a party purports to cancel an agreement and that cancellation is genuinely disputed by the other party, the disputing party is not without a remedy pending resolution of that dispute. It may seek specific performance, alternatively interim relief preserving its position under the agreement pending trial. The party asserting an entitlement to cancel bears the onus to allege and prove the breach relied upon and compliance with any contractual cancellation procedure.¹² Until

⁸ *Room Hire Co (Pty) Ltd v Jeppe Street Mansions (Pty) Ltd* 1949 (3) SA 1155 (T) (*Room Hire*) at 1163–1165.

⁹ *SA Football Association v Mangope* (2013) 34 ILJ 311 (LAC) (*SA Football Association*) para 11.

¹⁰ *EA and Others v AA and Others* [2025] ZAWCHC 588 para 24.

¹¹ *Tshwane City v Afriforum and Another* [2016] ZACC 19; 2016 (6) SA 279 (CC) para 59.

¹² *Masterspice (Pty) Ltd v Broszeit Investments CC* [2006] ZASCA 54; 2006 (6) SA 1 (SCA) paras 21 and 31.

that onus is discharged at trial, the party purporting to cancel acts at its own risk, since if the ground relied upon is not ultimately established, the agreement was never validly terminated. It is for this reason that a court, exercising an interdictory jurisdiction, may preserve the contractual status quo pending determination of a disputed cancellation, so that the party disputing the cancellation is not deprived, in advance of any adjudication, of the practical benefit of the agreement it disputes has come to an end.¹³ This is no more than an application, in the contractual context, of the ordinary function of an interlocutory interdict, which is to 'freeze' the parties' position until the court decides where the right lies.¹⁴

Analysis: the disputed cancellation and the applicant's entitlement to relief

[16] The respondents' central contention, both in their comprehensive answering affidavit and in their heads of argument, is that Nambiti is in breach of the agreement in several material respects. They state that Gangeni validly cancelled the agreement on 3 September 2025, following a compliant breach notice on 24 July 2025, and that the validity of that cancellation being genuinely disputed can only properly be determined by a trial court hearing evidence in the two pending actions. On that basis, the respondents contend that this application should be dismissed with costs, alternatively adjourned *sine die* pending the outcome of the actions, with costs reserved.

[17] Nambiti's response is that whatever the ultimate merits of the competing breach allegations, the respondents were not entitled to take the law into their own hands and deny access before a compliant breach notice had even been sent, still less before any cancellation had been validly effected or judicially confirmed. It is common cause that access was denied from 12 June 2025, that a compliant breach notice was sent only on 24 July 2025, and that purported cancellation followed only on 3 September 2025. On Nambiti's argument, since the entitlement to cancel remains disputed and unresolved, and since no declarator confirming the

¹³ *Erasmus* at D6-4–D6-5; *Jordan and Another v Penmill Investments CC and Another* 1991 (2) SA 430 (E) (*Jordan*) at 438F; and, applying the same principle to a disputed cancellation of an agreement, *Dovepire Properties (Pty) Ltd v Insurance Sector Education and Training Authority* [2023] ZAGPJHC 316 paras 34 and 43.

¹⁴ *Jordan* at 438F.

cancellation has been sought or granted, Gangeni cannot rely on the disputed cancellation to justify continuing to exclude Nambiti from the property pending trial.

[18] In my view, this argument has real force and is dispositive of the narrow question of access pending trial, without requiring this court to resolve the merits of the breach and cancellation dispute itself. The respondents accept, as they must, that access was denied before any compliant breach notice was given. Clause 17 of the agreement is unambiguous. It is only once a defaulting party fails to remedy a breach within 15 days of a compliant demand that the aggrieved party may, without further notice, cancel and claim damages, or claim specific performance. Access was already denied by the time the first compliant notice was sent. Whatever the eventual outcome of the pending actions on the question of breach, the respondents have not shown, nor could they show on these papers, a contractual basis for denying access as at the date the rule nisi was sought.

[19] Applying the principles set out in paragraphs 9 and 10 above to prayers 2.1 and 2.2, which the applicant characterises as final relief, the following is clear: the respondents' version, that the agreement was validly cancelled on 3 September 2025 on account of Nambiti's alleged breaches, following the compliant breach notice of 24 July 2025, cannot be said to be so far-fetched or clearly untenable that it falls to be rejected on the papers. It raises a genuine and bona fide dispute of both fact and law which only the trial court, hearing oral evidence in the two pending actions, can resolve. Applying *Plascon-Evans*, it follows that final relief cannot presently be granted in respect of prayers 2.1 and 2.2, notwithstanding the label the applicant has attached to that relief in its notice of motion. A court is not bound by the label a litigant places on relief sought, but must have regard to the substance, rather than the form, of the relief in question.¹⁵

[20] The more difficult question is what is to be done about the period after the purported cancellation of 3 September 2025. Here the respondents are correct that the validity of that cancellation is genuinely disputed and is not an issue this court can or should resolve on these papers. The breach allegations relied upon by the respondents, the events of 12 June 2025 and the further alleged traversing

¹⁵ *BHT Water Treatment (Pty) Ltd v Leslie and Another* 1993 (1) SA 47 (W) at 55A–F.

of the property, the management of alien vegetation and burning, the size and management of the elephant population, the maintenance of roads, and the conduct of the anti-poaching unit are all factually contested. These disputes are supported on each side by documentary and photographic material, technical management plans, correspondence and denials, that cannot be resolved on paper, without impermissibly making credibility findings against deponents. These are, in substance, the very issues now before the trial court in two pending actions instituted by the parties against each other, each seeking a declarator on cancellation and, in the first respondent's case, damages. I make no finding on, and it would be inappropriate for me to attempt to resolve, whether the cancellation was validly effected; that question, like the antecedent breach allegations on which it depends, must be determined by the trial court on the pleaded actions.

[21] What can and must be determined at this stage, however, is the narrower and anterior question; whether, pending that determination, Gangeni was entitled unilaterally to give effect to a cancellation whose validity is itself in dispute, by continuing to deny Nambiti access to the property. For the reasons given in paragraph 15 above, it was not. A party who purports to cancel an agreement on a disputed ground does so at its own risk, and cannot rely on that unproven cancellation to justify withholding contractual performance pending trial.

[22] Equally, however, it would not be appropriate simply to dismiss this application or discharge the rule nisi, since that would have the practical effect of endorsing Gangeni's unilateral conduct in excluding Nambiti from the property on the strength of a cancellation whose validity is squarely in dispute and still to be tried. Consistent with the principle set out in paragraph 15 above, the appropriate course is to preserve the contractual status quo access on the terms of the agreement, pending the final determination of the two pending actions, rather than to grant open-ended final relief that would foreclose the respondents' right to have the cancellation dispute properly tried, or to grant no relief at all and thereby permit Gangeni to obtain, in advance of any adjudication, the practical benefit of a cancellation it has not yet established.

[23] It follows from what is set out above that, although prayers 2.1 and 2.2 were sought as final relief, the relief that can presently be granted in respect of the applicant's access to the property, including under prayers 2.3 to 2.6, is interim only. I therefore turn to whether the requirements for interim relief, set out in paragraphs 11 and 12 above, are satisfied in respect of prayers 2.1 to 2.6:

(a) A *prima facie* right, though open to some doubt: Nambiti's right of access is sourced in an extant written agreement. The terms of clause 5 are not themselves in dispute, only their application to particular, contested events. Taking the facts set out by Nambiti, together with the facts advanced by the respondents which Nambiti cannot dispute, and having regard to the inherent probabilities, Nambiti could, on those facts, obtain final relief at trial. That is sufficient at this stage; Nambiti need not show more.

(b) A well-grounded apprehension of irreparable harm: continued exclusion from the property, for the balance of the two pending actions, would deprive Nambiti of the practical benefit of the agreement it disputes has been lawfully terminated, would compromise the anti-poaching, fire management and habitat management functions the agreement was designed to secure, and is not a form of prejudice capable of being made good by an award of damages after the event.

(c) The balance of convenience: the prejudice to Gangeni in permitting continued access on the terms already applicable under the agreement, for the duration of the pending actions, is no greater than the ordinary prejudice inherent in any order preserving contractual performance, pending determination of a dispute about that contract's continued existence. The prejudice to Nambiti of continued exclusion, by contrast, extends beyond commercial loss to the security and conservation functions at stake on the reserve. The balance favours Nambiti.

(d) The absence of any other satisfactory remedy: an action for damages would neither restore Nambiti's access to the property nor protect the anti-poaching and conservation functions at risk during its exclusion and is accordingly no substitute for interdictory relief.

[24] I am satisfied that each of the four requirements have been met, and that interim relief should accordingly be granted in respect of prayers 2.1 to 2.6, pending the final determination of the two pending actions.

The discrete breach allegations

[25] For completeness, I deal briefly with the individual breach allegations relied upon by the respondents, not to resolve them as that remains for the trial court, but because they inform the exercise of my discretion.

[26] As to the events of 12 June 2025, the respondents' complaint is that a wildlife management operation resulted in game traversing the property while it was closed to Nambiti's vehicles and aircraft. Nambiti's answer, relying on clause 5 of the agreement, is that access for management purposes is unrestricted at any time, and that the 12 June operation was a management function rather than game viewing. This turns on the proper interpretation and application of clause 5 to disputed facts about the nature of the operation and is not capable of resolution on the papers. Given that genuine dispute, *Plascon-Evans* precludes the grant of final relief in reliance on Nambiti's construction of clause 5 in respect of this incident. Applying *Webster*, however, the dispute does not deprive Nambiti of the prima facie right established in paragraph 23 above. Nambiti's construction of clause 5 is not so improbable, on the papers, that it could not succeed at trial, and the considerations of irreparable harm and balance of convenience set out in paragraph 23 apply with equal force to this discrete allegation. It follows that, while final relief cannot be granted in respect of the 12 June operation specifically, that dispute is no bar to the interim relief already found to be warranted.

[27] As to further traversing, habitat management, alien vegetation, burning, the elephant population, road maintenance, and the conduct of the anti-poaching unit: in each instance the respondents advance factual allegations, and Nambiti advances a detailed factual response supported by management plans, correspondence, and records, disputing both the underlying facts and, in some respects, the inferences the respondents seek to draw from them (for example, the appropriate elephant carrying capacity of the reserve, and the adequacy of the alien eradication programme). These are not bald or uncreditworthy denials of the

kind contemplated in *Room Hire*. These are substantive, supported factual disputes properly resolved by oral evidence, and it would be wrong for this court to attempt to adjudicate them in motion proceedings, still less when the same disputes are already before a trial court in the two pending actions.

[28] I do not accept, however, the respondents' submission that these disputes render the present application incapable of any determination. The disputes go to whether Gangeni was entitled to cancel the agreement, not to whether Gangeni was entitled, unilaterally and pending resolution of that dispute, to deny Nambiti access to the property. On the latter, narrower question which is dispositive of the interim relief granted above there is, as set out above, no genuine dispute of fact of the kind contemplated in *Room Hire* and *SA Football Association*.

The relief against the third respondent

[29] Two distinct forms of relief are sought against Mrs Lemmer under prayer 2.7. First, an interdict restraining harassment, intimidation or threats directed at Nambiti's management staff and guards. Second, an interdict restraining defamatory, derogatory or insulting comments or allegations concerning them. I consider each in turn, applying the requirements for a final interdict set out in paragraph 9 above, since this relief is sought in final form and does not depend on resolution of the cancellation dispute.

Harassment and intimidation

[30] Mrs Lemmer's answer, on the papers, is that she engaged with Nambiti's guards on one occasion, on 30 June 2025, to establish whether they were patrolling in terms of the agreement, and that this did not amount to intimidation or harassment. Nambiti's founding affidavit, however, is not confined to that occasion. It sets out a pattern of conduct by Mrs Lemmer occurring against the backdrop of, and escalating alongside, the parties' deteriorating relationship over access to the property, both before and after the purported cancellation. That fuller account is not substantially disputed in the respondents' answering papers, which address only Mrs Lemmer's characterisation of her own conduct on the single occasion she admits to and are silent on the balance of Nambiti's allegations.

[31] An interdict is not a remedy for past invasion of rights; it is concerned with present or future infringements.¹⁶ Where an infringement complained of appears, *prima facie*, to have occurred once and for all, and is finished and done with, the applicant must allege facts justifying a reasonable apprehension that the harm is likely to be repeated. Unlike the position in *Openshaw*, where the respondent gave an unequivocal statement of his future intentions, which was not put in issue by the applicant, Mrs Lemmer has given no undertaking, in her answering affidavit or otherwise, that she will not repeat the conduct complained of. Read against the unresolved and increasingly acrimonious dispute between the parties over access to the property, which is common cause will continue for the duration of the two pending actions, there is an objective basis, going beyond Mrs Lemmer's own assertions, for a reasonable apprehension that the conduct complained of is likely to recur. I am satisfied, on the essentially undisputed facts, that Nambiti has established a clear right not to be harassed or intimidated, an injury actually committed and reasonably apprehended to continue, and the absence of an adequate alternative remedy, given the nature of the conduct in question, which is properly addressed by an interdict rather than an action for damages after the fact.

Defamatory, derogatory or insulting comments

[32] The founding papers further allege that Mrs Lemmer, on more than one occasion, described Nambiti's guards, in the hearing of Gangeni's own staff and in communications to at least one neighbouring landowner, as complicit in, or turning a blind eye to, poaching on the reserve, and accused Nambiti's management of dishonesty in its dealings with Gangeni. These further allegations are not addressed at all in the respondents' answering affidavit, which is confined to the 30 June 2025 incident.

[33] The test for whether a statement is defamatory is an objective one,¹⁷ thus whether a reasonable person, having regard to the context in which the words were used, would understand them to convey a meaning that undermines the reputation of the person concerned. To accuse persons responsible for the

¹⁶ *National Council of Societies for the Prevention of Cruelty to Animals v Openshaw* [2008] ZASCA 78; 2008 (5) SA 339 (SCA) (*Openshaw*) para 20.

¹⁷ *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) para 89.

reserve's anti-poaching security of complicity in, or turning a blind eye to, the very conduct they are employed to prevent, and to accuse Nambiti's management of dishonesty, are, objectively assessed, defamatory of them. Once publication of a defamatory statement is established and it is not disputed that these statements were communicated to persons other than Nambiti, wrongfulness and intention are presumed, and the onus shifts to the respondent to rebut that presumption by establishing a recognised defence.¹⁸ Mrs Lemmer has advanced no defence to these allegations, still less discharged that onus.

[34] For the reasons given in paragraph 31 above, I am satisfied that this is not a once-off matter finished and done with, but conduct that has continued against the backdrop of the parties' unresolved and deteriorating relationship, in respect of which Nambiti has established a clear right to protection of its management and guards' reputations, an injury actually committed and reasonably apprehended to continue, and the absence of any other satisfactory remedy. Consistent with the caution courts exercise before restraining future publication in broad or general terms, I have confined the relief in the order below to the specific imputations established on the papers, rather than granting an interdict against defamatory statements in general terms.

Urgency

[35] The issue of urgency is moot, the rule nisi having been granted by consent on 8 July 2025. It only has bearing on the issue of costs. On the papers I am satisfied that urgency was properly invoked. It is not disputed that anti-poaching activities were required on the property, that the fire season had commenced, and fire management access was required, and that the ordinary motion roll would not have afforded substantial redress in time. The urgent approach to court was justified.

Costs

¹⁸ Ibid para 85.

[36] In *Ferreira v Levin NO and Others; Vryenhoek and Others v Powell NO and Others*¹⁹ it was held that:

'The Supreme Court has, over the years, developed a flexible approach to costs which proceeds from two basic principles, the first being that the award of costs, unless expressly otherwise enacted, is in the discretion of the presiding judicial officer, and the second that the successful party should, as a general rule, have his or her costs.' (Footnotes omitted.)

[37] Nambiti has succeeded in preserving its contractual access pending trial, and in obtaining final relief against the third respondent, but has not succeeded in obtaining the final, unqualified relief originally sought. The ultimate question of breach and cancellation remains for the trial court. In these circumstances and given that the outcome reflects a measure of success for each side in that the respondents have correctly identified that a final determination of the cancellation dispute is not appropriate in these proceedings, I consider it just that Nambiti, as the substantially successful party in resisting Gangeni's self-help denial of access, should have its costs of the application up to and including 8 July 2025. The costs, thereafter, including the costs of the opposed hearing, should be costs in the pending actions, to be determined by the trial court together with the merits of the cancellation dispute to which they are inextricably linked.

Order

[38] In the result, I make the following order:

1. The rule nisi issued on 8 July 2025 is confirmed, on an interim basis, in the terms of paragraphs 2.1, 2.2, 2.3, 2.4, 2.5 and 2.6 of the notice of motion, pending the final determination of the actions instituted by the applicant under case number 2026-057854 and by the first respondent under case number 2026-078895, or until varied or discharged by a court of competent jurisdiction, whichever occurs first.
2. The third respondent is finally interdicted and restrained from:
 - 2.1 harassing, intimidating or threatening the applicant's management staff and guards; and

¹⁹ *Ferreira v Levin NO and Others; Vryenhoek and Others v Powell NO and Others* [1996] ZACC 27; 1996 (2) SA 621 (CC) para 3.

- 2.2 publishing or uttering, whether orally, in writing or on any social media platform, any statement imputing that the applicant's management staff or guards are complicit in, or turn a blind eye to, poaching or other unlawful activity on the reserve, or that the applicant's management is dishonest in its dealings with the first respondent.
3. The respondents shall pay the applicant's costs of the application up to and including 8 July 2025.
4. The costs of the application from 9 July 2025 to date, including the costs of the opposed hearing, shall be costs in the action in case number 2026-057854 and case number 2026-078895, to be determined by the trial court seized with those actions.

MARION AJ

Date of hearing: 12 June 2026
Date of judgment: 4 September 2026

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