

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO: 2026-089305

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

10/09/2026

DATE

SIGNATURE

In the matter between:

OFENTSE TLADI

Applicant

and

PHENYO MEKGOE

Respondent

JUDGMENT

MBONGWE, J:

INTRODUCTION

- [1] This is an application for leave to appeal against the judgment and order of this Court delivered on 22 May 2026. In that judgment, the Court granted a final interdict restraining the respondent in the main application from publishing defamatory statements concerning the applicant.
- [2] The applicant for leave to appeal advances several grounds upon which it is contended that this Court erred. These grounds may broadly be grouped under the following headings:
- (a) the finding that the matter was urgent;
 - (b) the treatment of the alleged disputes of fact;
 - (c) the granting of final interdictory relief; and
 - (d) the finding that no adequate alternative remedy existed.
- [3] The applicable test is contained in section 17(1)(a) of the Superior Courts Act 10 of 2013. Leave to appeal may only be granted where the Court is of the opinion that the appeal would have a reasonable prospect of success or where some other compelling reason exists why the appeal should be heard.
- [4] The threshold established by section 17(1)(a) is higher than that which previously applied. It is not sufficient that another court may come to a different conclusion. The applicant for leave must demonstrate a realistic and reasonable prospect that another court would do so.

URGENCY

- [5] It was submitted that this Court erred in finding the matter urgent. Reliance was placed on the principles enunciated in *Luna Meubel Vervaardigers Bpk v Makin and Another*.¹
- [6] I am unable to agree that there is merit in this contention. Before the Court was evidence of continuing publication of statements alleged to be defamatory and conduct said to pose an ongoing threat to the respondent's reputation and safety. The nature of the harm complained of was continuing and ongoing. Such circumstances justified the invocation of Rule 6(12).
- [7] The central question in urgency applications is whether substantial redress can be obtained in due course. Having considered the facts before me, I was satisfied that continued publication would result in ongoing harm for which a remedy at a later stage would not constitute adequate redress.
- [8] No basis has been advanced demonstrating that another court would reasonably interfere with that finding.

ALLEGED DISPUTES OF FACTS

- [9] The applicant for leave to appeal further contends that this Court failed properly to consider disputes of fact and ignored allegations relating to the publication of pornographic material allegedly involving the respondent in the main proceedings.

¹ 1977 (4) SA 135 (W).

- [10] This submission misconceives the basis upon which the judgment was delivered. The allegations concerning the alleged publication of pornographic material were not the subject matter of the relief that was sought before this Court. The Court expressly acknowledged the seriousness of those allegations but found that they fell outside the ambit of the relief sought and would have to be pursued through appropriate legal processes.
- [11] Furthermore, the disputes identified by the applicant for leave to appeal were not of such a nature as to prevent the Court from determining the matter. The material facts were either common cause or sufficiently established for purposes of determining the application.
- [12] I am therefore not persuaded that another court would conclude that the matter should have been referred for oral evidence or dismissed on account of a material dispute of fact.

FINAL INTERDICT

- [13] It was further argued that this Court erred in granting a final interdict and in finding that the requirements set out in *Setlogelo v Setlogelo*² had been established.
- [14] The requirements for a final interdict are well known:
- (a) a clear right;
 - (b) an injury actually committed or reasonably apprehended; and
 - (c) the absence of a satisfactory alternative remedy.

² 1914 AD 221.

- [14] The evidence established an ongoing threat to the safety or harm to the respondent in this hearing. The harm requirement was therefore satisfied.
- [15] As to alternative remedies, whilst an action for damages may possibly be available, such remedy would not arrest the continuing publication of the impugned statements. It would therefore not constitute an adequate alternative remedy in the circumstances.
- [16] The criticism that this Court failed properly to apply the requirements for final interdictory relief is unsupported by the record and carries no reasonable prospect of success on appeal.

BALANCE OF CONVENIENCE

- [17] Although the applicant for leave to appeal devoted attention to the balance of convenience, that consideration is principally associated with interim interdicts. In any event, the judgment carefully balanced the competing rights involved, including the right to freedom of expression.
- [18] Freedom of expression is a fundamental constitutional right. It does not, however, extend to defamatory speech or conduct that unlawfully infringes the dignity and reputation of others. The findings reached in the principal judgment remain sound.

CONCLUSION

- [19] Having considered all the grounds advanced, individually and cumulatively, I am not persuaded that there exists a reasonable prospect that another court would arrive at a different conclusion.

[20] Nor has any compelling reason been demonstrated why an appeal should be heard.

[21] The application for leave to appeal accordingly falls to be dismissed.

ORDER

[22] The following order is made:

1. The application for leave to appeal is dismissed.
2. The applicant for leave to appeal shall pay the costs of the application, including the costs of counsel on scale B.


MPN MBONGWE
JUDGE OF THE HIGH COURT
GAUTENG DIVISION
PRETORIA

APPEARANCES

For the Applicant: **ADV BMW MAILA**

Instructed by: MBC Attorneys Inc.

For the Respondent: **ADV ML MAGOLEGO**

Instructed by: Magolego Attorneys

Date of Hearing: 10 September 2026

Date of Judgment: 10 September 2026

THIS JUDGMENT WAS ELECTRONICALLY TRANSMITTED TO THE PARTIES' LEGAL REPRESENTATIVES AND UPLOADED ONTO CASELINES ON 10 SEPTEMBER 2026.