REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 58023/2021

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED

9/3/2026
DATE: SIGNATURE

In the matter between:

AKANI RETIREMENT FUND ADMINISTRATORS (PROPRIETARY) LIMITED	First Applicant
ZAMANI ERNEST EPHRAIM LETJANE	Second Applicant
and	
INDEPENDENT MEDIA (PROPRIETARY) LIMITED	First Respondent
ANEEZ SALIE	Second Respondent
AYANDA MDLULI	Third Respondent
THABO MAKWAKWA	Fourth Respondent

JUDGMENT

Mia J

Introduction

[1] The applicants obtained interim relief by agreement, providing for the removal of two articles from media platforms under the respondents control in Part A of the application. This is Part B of the application seeking final relief arising from the alleged defamatory publications referred to in Part A. The respondents oppose the relief and raise procedural objections. They also rely, in the alternative, on defences including reasonable publication and truth/public benefit.

Background facts

[2] The first applicant is Akani Retirement Fund Administrator (Akani), a private company duly and registered under the Pension Funds Act, 1956 as a pension fund administrator. It has clients in South Africa and on the continent. The second applicant is the managing director of Akani. The first respondent is Independent Media (Pty) Ltd (Independent Media), a company registered in terms of the company laws of South Africa. It owns and operates various news and publication brands, including digital media publications with an extensive readership base. The second respondent is Mr Aneez Salie (Mr Salie), a director of Independent Media and the editor-in-chief of Independent Media publication brands. The third respondent is Mr Ayanda Mdluli (Mr Mdluli), an adult male editor employed as such by Independent Media. The fourth respondent is Mr Thabo Makwakwa (Mr Makwakwa), an adult male journalist for Independent Media and the author of the articles complained of.

[3] The respondents published a series of articles and tweets that called into question the applicants' commitment to responsibility, accountability and fairness in the sector and to their clients. The articles make allegations of bribery, extortion, and the exercise of undue influence. The publications consisted of two online news articles published on platforms under the control of the first respondent; and tweets published by the fourth respondent (both on

his personal account and via "The Insight Factor") which disseminated the articles. In at least one instance, Mr Makwakwa added an allegation of criminal misconduct, namely fraud. The applicants maintain that the allegations are unfounded, malicious and were published contrary to the code of ethics, which journalists are required to honour. They maintain that the respondents failed to comply with their obligations to verify the information and thus spread harmful and injurious allegations.

[4] The respondent object on a procedural basis contending that the application is impermissible as it requests piece meal relief. The defamation should be pursued by way of an action and not motion proceedings. Defamation remedies should be requested in one action. Moreover, the application does no contain elements relating to Aquilian liability or evidence to support the claim especially establishing causation for the damages it envisages. The respondents continue that interdict and damages proceedings should be claimed in separate proceedings.

[5] The respondents maintain that the publications are preceded by the word "alleged" which would not cause a reasonable reader to conclude that criminal conduct is attributed to the applicants. The fourth respondent called the applicants for their version, and they refused to comment. They cannot complain about a lack of balance when they refused the opportunity to comment. Where the applicants seek a final interdict they fail to indicate a reasonable apprehension of harm. The publication was reasonable where it was in the interest of the public and they attempted to verify information.

[6] By agreement, interim relief was granted in Part A directing the removal of the publications, deletion of the tweets and a desistance undertaking pending final determination of Part B. In this Part B of motion proceedings concerning the publication of allegations in publications under the first respondent's control and associated tweets published by the fourth respondent, the applicants seek final relief. The relief sought includes a declarator that the statements are defamatory and unlawful, final interdictory relief against republication, and

ancillary relief relating to an apology and retraction and a determination that the respondents are liable for damages to be determined later.

The issues

[7] The issues for determination are:

7.1 Whether the publications and tweets are defamatory of the applicants.

7.2 Whether any recognised defence is established.

7.3 What final remedy is competent and appropriate in motion proceedings, and whether the Court should grant a compelled apology and retraction and a declarator of damages liability.

The publications

[8] The interim order identifies the two impugned publications by title and date and required their removal from all platforms under respondents' control. It also required deletion of the fourth respondent's tweets relating to the articles. The first article published on 30 November 2021 ascribed to the fourth respondent includes allegations, inter alia, of an 'unsavoury' relationship with persons at the FSCA, that the applicants leaked information, diverted funds which were supported by phone records and emails. Where the allegations were published on Mr Makwakwa's social media account a conversation ensued online which included the statement *'Go argue with those pensioners you defrauded.'* The publication of statements is common cause.

Procedural objection

[9] The respondents contend that the relief is defective in several respects in that it overlaps, the relief is non-existent in law, that the relief is incomprehensible, and that there are contradictions between the interdict and damages as relief. It is possible to pursue relief in defamation matters where the appropriate relief is sought and the requisites are met. The procedural critique does not stand. It is, however, relevant to whether all forms of relief sought are competent and appropriate on these papers.

Defamatory meaning

[10] The Constitutional Court said in *Le Roux v Dey*[1]:

> "[T]he plaintiff does not have to establish every one of these elements in order to succeed. All the plaintiff has to prove at the outset is the publication of defamatory matter concerning himself or herself. Once the plaintiff has accomplished this, it is presumed that the statement was both wrongful and intentional. A defendant wishing to avoid liability for defamation must then raise a defence which excludes either wrongfulness or intent. Until recently there was doubt as to the exact nature of the onus. But it is now settled that the onus on the defendant to rebut one or the other presumption is not only a duty to adduce evidence, but a full onus, that is, it must be discharged on a preponderance of probabilities."

[11] The applicants are retirement fund administrators and allege that their reputation and trustworthiness lie at the core of their business. Any allegations published implying corruption, dishonesty, regulatory impropriety and fraud are prima facie defamatory. The articles and tweets complained of, read holistically, can bear such meanings. The publications plainly refer to the applicants. The respondents' case is not that the statements are innocuous; rather, it is that the statements are justified or defensible in law.

[12] Both parties relied on the analysis in *National Media Ltd and Others v Bogoshi*[2], the applicant to support the view that the publication of the statements was defamatory and the respondent relied on the same decision to support their defence that it was reasonable and for public benefit. The first applicant as a juristic person has an interest in their dignity and reputation akin to its natural counterpart which deserves legal protection.[3] In view of the publication being common cause, the publications and tweets are defamatory of the applicants.

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[1] *Le Roux v Dey* [2011] ZACC 4; 2011 (3) SA 274 (CC); 2011 (6) BCLR 577 (CC) at para 85.
[2] *National Media Ltd v Bogoshi* [1998] ZASCA 94; 1998 (4) SA 1196 (SCA).
[3] *Media 24 Ltd v SA Taxi Securitisation (Pty) Ltd* 2011 (5) SA 329 (SCA).

Wrongfulness and onus

[13] The applicants have proved publication and wrongfulness is presumed. In the face of this publication, the respondents have a duty to adduce evidence to be discharged on a preponderance of probabilities that the publication was not wrongful and with intent.[4]

Defences

Reasonable publication

[14] The respondents rely on reasonable publication, contending that the matter concerned issues of public interest and that the reporting was reasonable in the circumstances. This is evaluated in relation to the applicants' case is that the respondents failed to take proper steps prior to publication and failed to verify allegations. The replying affidavit similarly disputes that a fair or reasonable opportunity to respond was provided and contends the publication was rushed. Even where the subject matter may be of public interest, reasonable publication requires care commensurate with the gravity of the allegations. Allegations of corruption and fraud demand demonstrable verification steps and a meaningful opportunity to comment.

[15] On these papers, the respondents have not established sufficient objective facts showing that the steps taken to verify the allegations and to obtain comment were reasonable, given the seriousness of the imputations and the way they were conveyed (including references to supposed records/emails). The fourth respondent called whilst the second applicant was in a meeting. Despite the response that the second applicant would revert, the fourth respondent proceeded with haste to ensure publication of the statements found to be defamatory. The defence is therefore not proved.

[16] The steps taken to verify the information did not afford the applicants an opportunity to respond. There was no urgency. The fourth respondent sought merely to get the information published first. In the absence of affording an opportunity to respond it is not clear how the fourth applicant concluded that its

[4] *Le Roux v Dey* above n 1 at para 85.

source was reliable. Whilst allegations of impropriety should be communicated to the public, the balancing of interests does not show that the fourth respondent took reasonable steps to determine the truth and to permit an opportunity of responding. The respondents concede they cannot prove truth of underlying misconduct.

[17] If respondents cannot prove substantial truth of allegations, their defence fails.

[18] In determining whether the publication was reasonable, the respondents reliance on an urgency to meet a publication deadline is considered where the defamatory statements, implying guilt of the applicants and suggesting they acted fraudulently are balanced with the applicant's right to a good name and integrity does not lead to a conclusion that the journalists acted responsible and reasonably. The existence of allegations does not establish the substantial truth of the sting of corruption, fraud or other criminality. On this record, substantial truth of those allegations has not been established on a balance of probabilities. The defence fails.

[19] Whilst the articles have been retracted there is the possibility that the respondents may republish the information. The urgency is no longer present. Is there ongoing risk of repetition?

Remedies

Declarator and interdict

[20] Having found the publications defamatory and the defences unproven, the applicants have shown a basis for a final interdict, directed at preventing repetition of the specific defamatory allegations embodied in the identified articles and tweets. The interim removal was expressly without admission and did not resolve final rights. A final interdict is appropriate to prevent repetition of the defamatory allegations. Although interim removal has occurred, the applicants' apprehension of repetition is not illusory given the nature of media publication and social media dissemination.

Apology/retraction and damages-liability declarator

[21] The notice of motion connects an apology or retraction relief with a declarators of damages liability to be quantified in later action proceedings. On these papers, having found the statements are defamatory and unreasonable a compelled apology or retraction is appropriate. Considering the facts stated by the applicant, together with the facts admitted by the respondent, and the respondent's version of disputed facts, an order for final relief is appropriate. The publication is not disputed. Allegations of fraud are harmful to the applicants. The respondents' conduct was not reasonable and is unlawful. The offending articles and the impugned tweets contain statements and allegations of misleading nature, which are defamatory of and injurious to the applicants.

[22] Where the applicant intends to pursue delictual damages and seeks declarators of damages liability and simultaneously asks for an apology and retraction, the court is required to assess the appropriate combination and adequacy of remedies on a fuller evidential platform. Usually, the court has evidence on the defamation including evidence on reputational harm and redress. I am satisfied that there is reputational harm the extent of which is not evident. Thus, the appropriateness of a bare declarator of liability for damages where the respondents contest that such relief is not competent in these motion proceedings. The dispute relates to harm occasioned. In formulating the relief the court would consider the extent of damage to reputation and factors flowing there from. The publication is not disputed and the finding I have made is that the publication was unlawful, the applicants are entitled to part of the relief they seek.

Costs

[23] The applicants succeed on the principal issues of defamation and final interdictory relief. They fail on compelled apology/retraction and damages-liability declarators. Having succeeded substantially the applicants are entitled to their costs which shall include the costs of two counsel. Costs should follow the result.

Order

[24] The following order is made:

1. It is declared that two publications identified in paragraphs 1.1 and 1.2 of the interim order and the related tweets identified in paragraph 1.3 of that order are defamatory of the applicants and unlawful.
2. The respondents are interdicted and restrained from publishing, disseminating or repeating the defamatory allegations embodied in those publications and tweets.
3. The respondents are directed within 48 hours of this order, to remove or cause the removal from the platforms, the offending articles or other similar defamatory statements made, published or disseminated by them in relation to the applicants.
4. The offending articles and the impugned tweets contain, disseminate and/or publicise statements and allegations of a false and/or misleading nature, which are defamatory of and/or injurious to the applicants.
5. The respondents are ordered jointly and severally with the other opposing parties, the one paying the others to be absolved, to pay the applicants' costs which shall include the costs of two counsel.

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JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

Appearances:

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Date of hearing	: 17 April 2025
Date of judgment	: 9 March 2026