

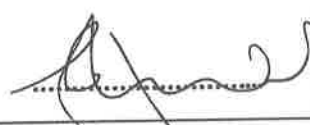
IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG



CASE NO.: 23897/17

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

7/9/17



In the matter between:

SOUTH AFRICAN NATIONAL EDITORS FORUM
PETER BRUCE
STEPHEN PATRICK "SAM" SOLE
ADRIAAN JURGENS BASSON
STEPHEN MEIERT GROOTES
MAX DU PREEZ
BARRY JOHN BATEMAN
KAREMA BROWN
EUSEBIUS MCKAISER
FERIAL FAIZA HAFFAJEE
KATERINA KATOPODIS
SIMON TIMOTHY COHEN

First Applicant
Second Applicant
Third Applicant
Fourth Applicant
Fifth Applicant
Sixth Applicant
Seventh Applicant
Eighth Applicant
Ninth Applicant
Tenth Applicant
Eleventh Applicant
Twelfth Applicant

and

BLACK FIRST LAND FIRST
ANDILE MNGXITAMA

First Respondent
Second Respondent

JUDGMENT

VAN DER WESTHUIZEN, A J

- [1] The life of a journalist is not easy. The profession of a journalist, and in particular that of an investigative journalist, is seldom appreciated. More than often it is criticised. The public often frowns upon the reporting of a journalist. His or her actions are continuously subjected to criticism of alleged biasness or sensation. Seldom a word of gratitude is expressed.
- [2] The foregoing is at the forefront in this application.
- [3] A number of journalists are the applicants. There are 11 in number. All are seasoned journalists. The first applicant is an entity established to protect its members. The second to twelfth applicants have authorised the president of the first applicant to represent them in these proceedings. In addition, the second to twelfth applicants act in their personal capacity.
- [4] The first respondent is the Black First Land First organisation. The second respondent is the founder and president of the first respondent.
- [5] The applicants have approached this court by way of urgency seeking interdictory relief, whether final or interim, against the respondents.
- [6] The respondents have filed an answering affidavit, deposed to by the second respondent. The respondents raise a number of points *in limine*. These relate *inter alia* to the issue of urgency, the *locus standi* of the first applicant, and the requirements of interdictory relief, in particular that of a reasonable apprehension of harm and the availability of an alternative remedy.

- [7] I ruled that the matter is urgent. In the context of the application, the relief sought and having regard to all the facts as contained in the founding papers and in the answering affidavit, the matter is clearly urgent. I dismissed the point *in limine* relating to the authority of the first applicant. I indicated that I shall deal with the reasons for dismissing the issue of alleged non-authority of the first applicant in my judgment on the issues that are to be decided. My reasons follow.
- [8] The respondents contend that the first applicant has no authority to represent the second to twelfth applicants. That contention is premised upon the provisions contained in the applicant's constitution that is attached to the founding affidavit. The founding affidavit is deposed to by Ms Mahlatse Gallens, the chair of the first applicant. The respondents contend that nowhere is it stated, nor supported by documentation, that the members of the first applicant, SANEF, had resolved that this application be brought. Furthermore, the respondents contend that none of the second to twelfth applicants claim to be members of SANEF. Hence, it is submitted, that this application is unauthorised and stands to be dismissed on that ground.
- [9] On the contrary, each of the second to twelfth applicants emphatically states that each of them has authorised Ms Gallens to represent them and to bring this application. Whether Ms Gallens has been authorised in her personal capacity, or in her capacity as chair of SANEF, matters not. Furthermore, it is of no consequence whether any of the second to twelfth applicants are members of SANEF or not. Each of the second to twelfth applicants confirm that this application was authorised by each of them and that it was to be brought on their behalf. Each, as recorded above, and in their personal capacity seeks the relief sought in the notice of motion.
- [10] In my view, SANEF and its deponent, Ms Gallens, have been duly authorised to represent the second to twelfth applicants. There is

consequently no merit in the point *in limine* relating to the alleged lack of authority of SANEF.

- [11] The premise of this application relates to the actions and conduct on the part of the respondents as against the second to twelfth applicants. It is alleged that the said actions and conduct of the respondents, as set out in the affidavits in support of the application, constitute harassment, intimidation and threats towards the second to twelfth applicants in respect of their bodily and physical integrity, to their safety, liberty and the right to eke out a living as a journalist, as entrenched in the Constitution of the Republic of South Africa and in particular in s 10 and s 16 thereof.
- [12] The applicants allege that the respondents' actions, as evidenced by the incident of 29 June 2017 at the home of the second applicant, and the subsequent tweets and statements in the media relating to the second to twelfth applicants and their alleged racial and biased reporting. The applicants do not contend that their reporting is above criticism, criticism is welcomed, provided that such criticism does not constitute harassment, intimidation or threats.
- [13] The respondents profess in their answering affidavit that they have the right to peaceful protest and that they intend to continue therewith against any journalist that is perceived to be racist and biased in their reporting. The applicants do not contend that the respondents are not entitled to hold peaceful protests to air their views. The objection is to protest that constitutes harassment, intimidation and is a threat to the journalist so targeted.
- [14] The incident on 29 June 2017 at the home of the second applicant clearly demonstrates that the respondents do not intend to follow peaceful protest. A gathering where participants are armed with sticks and golf clubs, defacing private property, invading the property and turning off the water supply, assault on the person of fellow journalists

who show support for their colleague targeted, hardly constitutes a peaceful protest. Such gathering clearly has the attributes of a protest with the intention to harass, intimidate and threaten. In particular where it takes place within the sanctity of a private home.

- [15] The respondents furthermore confirm an intention to follow the journalists even to their places of worship. Such intention cannot indicate peaceful protest. On the contrary, it is indicative of an intention to harass, intimidate and threaten. The journalist is clearly not entitled to worship in peace. He or she is constantly aware of the presence of the protestors. It is a clear invasion of the privacy and liberty of the targeted journalist.
- [16] The respondents claim that their conduct and actions are directed at the racist and biased reporting of the journalists. If that is true, the protest should be directed at the profession of the journalist and the place where that profession is followed, not at the private home or place of worship of the journalist. The profession is not followed there. Such hounding impedes upon the liberty of the journalist. The private home or place of worship is the sanctity of the journalist.
- [17] The tweets and media releases that are recoded in the annexures to the founding papers and contained in annexures MG 4 to MG 8 are denied to have originated from the respondents. In this regard the following is stated in paragraph 60 of the respondents answering affidavit and constituting the response to the relevant paragraphs in the founding affidavit dealing with those annexures:

“60.1 The contents of these paragraphs are denied.

60.2 I deny that all the tweets attributed to BLF are in fact from BLF. Most of these tweets are from unknown twitter handlers.

60.3 ...”

- [18] Counsel appearing for the respondents was hard pressed to indicate which of the tweets referred to originate from the respondents. He submitted faintly that the respondents' accounts might have been hacked. No such claim or explanation is to be found in the answering affidavit. There is no merit in such submission.
- [19] The logic in the claim that all tweets referred to in annexures MG4 to MG8 did not originate from the respondent, yet most were from sources unknown to the respondents, is hard to follow. Either all tweets originated from the respondents or all tweets originated from unknown sources. The qualified "most" is not determinable, nor explained.
- [20] The contents of each of the tweets appearing on annexures MG4 to MG 8 have a common denominator. The intention is clearly to harass, intimidate and to threaten. None of the tweets are innocuous. Nor could that be inferred there from. The statements to the same effect in the admitted media releases do not support an inference of innocuous content.
- [21] The respondents have not distanced themselves from the tweets by alleged unknown sources. The contrary appears to be true, namely an association therewith. The respondents' undertaking to only advance and hold peaceful protests rings hollow. The admitted intention to protest at the homes and places of worship of the journalists gainsays a peaceful protest.
- [22] The use of language such as "askari" and "settler" in the particular context speaks of an intention to cause harm, whether directly or indirectly. It is emotive. The claim on the part of the respondents that an innocent understanding of such language is to be ascribed thereto

is irrational, illogical and without merit. Such language is clearly a reference to the historical context thereof.¹

- [23] The assaults on the eighth and twelfth applicants are not disputed. The respondents' claim that the assault on the eighth applicant was provoked, is opportunistic and illogical. To be called a "fool" hardly warrants an attack of any kind.
- [24] The applicants have a clear right to the protection of their bodily and physical integrity and to dignity. Those rights are clearly entrenched in the Constitution. The right to follow a profession is equally entrenched in the Constitution.
- [25] From all the foregoing, the applicants have shown a reasonable apprehension of harm that is clearly to continue.
- [26] The requisite of the unavailability of an alternative remedy requires consideration. It is trite that the alternative remedy is to be an adequate one in the context of an interdict.
- [27] The respondents submit that the applicants have an alternative remedy in the form of the laying of criminal charges. In that regard, the respondents claim that neither the second, or the eighth, or the twelfth applicant has laid any criminal charges following on the incident on 29 June 2017. It is further submitted on behalf of the respondents that the grant of an interdict would fly in the face of the Constitution, which clearly authorises the South African Police Services to uphold the law in respect of any criminal activity. The logic of that submission is hard to follow. No reference to any authority is cited in support of that contention. Numerous case law indicate the contrary, namely that the grant of a civil injunction is appropriate relief to be granted in respect of restraining any criminal activity committed or to be committed. There is

¹ *Mokhoanatshe Edward Mahlomola v Maphatsoe Ramantoana Emmanuel et al* unreported judgment, Case No. 03042/2016, per Satchwell, J. delivered 23/08/2016 at par [34]

no merit in the submission that the application stands to be dismissed due to the availability of an alternative remedy. The alleged alternative remedy is clearly not an adequate remedy in the context of the grant of an injunction.

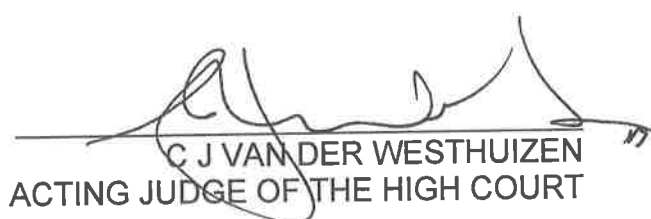
[28] The applicants further seek relief in the form that the respondents be directed to issue a public statement to all of the members of the first respondent that they do not condone any of the acts directed at any journalist complained of. In the context of the stated undertaking on the part of the respondents to only hold peaceful protests, and the denial that they propagated any of the tweets complained of, and the submission in argument that the respondents distance themselves of any harassment, intimidation and threat, the aforesaid relief is appropriate. The respondents have not publically distanced themselves from the content of the aforementioned tweets allegedly not originating from either of the respondents.

[29] It follows that the applicants have shown compliance with the requisites for a final interdict. Consequently, the applicants are entitled to the relief sought.

I grant the following order.

- (a) The first and second respondent are interdicted from engaging in any of the following acts directed towards the applicants: Intimidation; Harassment; Assaults; Threats; Coming to their homes; or acting in any manner that would constitute an infringement of their personal liberty;
- (b) The first and second respondent are interdicted from making any threatening or intimidating gestures on social media, including on the website of Black First Land First and their individual twitter pages that references any violence, harm and threats;

- (c) The first and second respondent are to issue a public statement to all of the members of the first respondent that they do not condone any of the above acts directed at any journalist;
- (d) The statement referred to in paragraph (c) shall be issued within 12 hours of the grant of this order;
- (e) The respondents are ordered jointly and severally the one paying the other to be absolved, to pay the costs of this application.



C J VAN DER WESTHUIZEN
ACTING JUDGE OF THE HIGH COURT

On behalf of Applicants: T Nglukaitobi
Ms R Tulk
Instructed by: Webber Wentzel

On behalf of Respondent: M B Tshabangu
Instructed by: Tshabangu Inc.

Date of hearing: 6 July 2017
Date of Judgment: 7 July 2017