



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

**CASE NO: 2023-022235**

(1) REPORTABLE: NO  
(2) OF INTEREST TO OTHER JUDGES: NO  
(3) REVISED: NO  
(4)

**SIGNATURE    DATE 02/05/2023**

In the matter between:

**THE INDUSTRIAL DEVELOPMENT CORPORATION**

First Applicant

**THUTHUKA NGUBANE**

Second Applicant

and

**ZIMTHANDE MBALA**

First Respondent

**JOBURGER (PROPRIETARY) LIMITED**

Second Respondent

**INDEPENDENT MEDIA GROUP LIMITED**

Third Respondent

**INDEPENDENT NEWS PAPERS (PROPRIETARY) LIMITED**

Fourth Respondent

**INDEPENDENT ONLINE SA (PROPRIETARY) LIMITED**

Fifth Respondent

**Neutral Citation:** *The Industrial Development Corporation and Another v Zimthande Mbala and Others* (Case No: 2023-022235) [2023] ZAGPJHC 404 (02 May 2023)

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## JUDGMENT

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**PULLINGER, AJ**

### INTRODUCTION

[1] On 28 February 2023 an article was published in the Saturday Times. This article, entitled "*Smart toilet paper inventor takes on the IDC*" remains on the website maintained by an affiliate of the Saturday Times publisher.

[2] The article, written by one Norman Cloete, states:

"Johannesburg – When Zimthande Mbala invented the world's first smart toilet paper, and with a R3 million Loan approved by the industrial Development Corporation of SA (IDC), he thought his future looked bright. But that was not to be.

Fast forward to 2023, Mbala now finds himself in the legal battle of his life with the IDC. In July 2018 Mbala received written communication from the IDC that it was approving funding of R3 million for Phase 1 of his iWipe project.

R500 000 was spent on a feasibility study and the product passed as viable, On Oct 24, 2018, production started on the product (toilet paper that can be wet and is 100%

biodegradable). R1.2 million was paid from the IDC to the manufacturers for the first part of the production phase.

The agreement between the IDC and Mbala stated that the first payment/instalment to the IDC, was due on March 1, 2019. But Mbala's year started on the worst note ever when he received communication from the IDC that his account was overdue. Mbala said the IDC admitted that there was an error with the payment date.

An IDC post-investment person, Thuthuka Ngubane was appointed to resolve the "error" and Mbala was told that it would take 10 days to be resolved. To date, that "error" has not been resolved, as it is now before the Gauteng South High Court, in Johannesburg.

When Mbala's legal woes started in 2019, production of his smart toilet paper was well under way, despite him receiving word from the IDC that it was cancelling the deal and expects payment for monies paid out R1.6 million (including interest) is being demanded from Mbata.

"It is my understanding that Mr Ngubane presented a report to the IDC Exco that my business was not viable and this was why the deal was cancelled. The product is already available in shops and I have managed to keep my business afloat and employ staff, despite the IDC's decision to pull the plug on the deal. They are also trying to recover a bakkie worth R150K. It is my understanding that R500K has been spent in legal fees to recover said bakkie," said Mbala.

IDC spokesperson, Tshepo Ramodibe said the IDC reserves its right to respond to Mbala's account of the chain of events at the appropriate time and platform. The IDC said the matter was sub judice and would not be drawn into what the reasons were for terminating what today is a thriving business. Mbala employs 50 people in his Wipe stores.

*"The parties can agree to terminate, or the IDC may elect to terminate if the client is in breach of the contract. Such a decision will be made in accordance with IDC processes and policies. The IDC's position and reasoning in this regard will be ventilated in court proceedings,"* he said.

The IDC also denied claims by Mbala that his deal was terminated because of "a concocted/fraudulent report".

*"The IDC strongly rejects this allegation. The IDC would typically demand payment when there is a breach of the contract. The exact details in this matter are before the courts for determination,"* said Ramodibe.

Even when pressed by the Saturday Star for the reason behind the termination, Ramodibe said he was not in a position to comment on the question.

*"The IDC normally approves funding that is disbursed in tranches informed by performance milestones. Each of the tranches have different draw-down conditions. The details of this case are before the court for determination. All decisions taken by the IDC follow standard internal processes and escalation through relevant committees. The IDC always strives to resolve all disputes with our clients amicably, failing which, the Corporation resorts to the legal process agreed with the client,"* he said.

Mbala also levelled allegations of fraud against the IDC and particularly blamed the IDC's CEO for allowing the "fraud" to continue under his watch.

*"All allegations of fraud or misconduct are referred to the IDC's internal audit department for investigation. The IDC CEO does not act on allegations that have not been investigated by the internal audit department and approved by IDC structures for appropriate action. For the record, the IDC has zero tolerance for fraud,"* Ramodibe said.

The IDC is overseen by the Department of Trade and Industry (DTI) but neither organisation could provide clarity on exactly what that oversight entails.

DTI spokesperson, Bongani Lukhele said: *"Whenever we have response, we provide it. But I think we also cannot comment. Unfortunately, as I indicated last week, please continue without our response,"* Lukhele concluded.

In 2022, Independent Newspapers ran a story about the closure of Market Stores in Gauteng and the Western Cape. The Spaza Express Stores was an initiative between Pick n Pay, the Gauteng Department of Economic Development, the IDC and black entrepreneurs who did not have capital to start or own a formal retail store. Independent Newspapers spoke with six store owners, who all ended up in court with the IDC."

- [3] The applicants consider the statements attributed to the first respondent in the article to be defamatory of them.

- [4] The article is but one of numerous publications caused by the first respondent and the same, or similar allegations, appear in emails and other electronic messages sent by him to officials of the first applicant and others. As will become clear, there is no dispute that the statements were made by the first respondent, nor is there any dispute about what the statements mean or were intended to mean.
- [5] It is the applicants' case that the ordinary reader of the article would understand the statements therein attributed to the first respondent to mean that the first applicant acted in a fraudulent and corrupt manner when terminating the contracts between it and the second respondent, that the second applicant acted in a fraudulent and corrupt manner when he drafted and presented a report to the first applicant about the second respondent's business, and further, that he is engaged in acts of corruption.
- [6] In addition, the applicants contend that the article and the other statements made by the first and second respondents mean and are understood by an ordinary reader to understand that it was as a result of the second applicant's "*fraudulent report*" that the first applicant cancelled the aforesaid contracts.
- [7] Accordingly, they approached this Court by way of urgency for an order in terms of Part A of their notice of motion. The order that the applicants seek is:
- "2. Pending the finalisation of the relief sought in Part B of this notice of motion, interdicting and restraining the First Respondent from:

- 2.1 contacting the First Applicant and/or any of its employees relating to the legal dispute between the First Applicant and the First Respondent and/or his company (Second Respondent) pending the finalisation of the pending litigation before this Honourable Court and the First Applicant's internal investigation;
  - 2.2 repeating any allegations against the Applicants and/or any of its employees and/or from defaming or injuring them in their dignity, in any further publications or broadcast of any form, including but not limited to internet posts, articles, letters, media interviews or emails, which negatively reflect upon the Applicants and/or its employees arising from or based on any of [sic] legal action between the First Applicant and the First and Second Respondents; and
  - 2.3 to apologise and retract his statements, which were published on 18 February 2023 in the Saturday Star Newspaper and on online website.
3. Pending the finalisation of the relief in Part B of the notice of motion, ordering the Third Respondent to take down from its website the article which it published on 18 February 2023 about and concerning the Applicants and their dealings with the First Respondent under the "*Smart toilet paper inventor takes on the IDC*".

- [8] The relief claimed in paragraph 2.3 was not persisted with before me.
- [9] The fourth and fifth respondents sought leave to intervene in this application on the basis of a direct and substantial interest in the relief claimed in paragraph 3 of Part A, and paragraph 2 of Part B of the notice of motion.
- [10] The fourth respondent is the Independent Media Group Limited, owned by Independent Media (Pty) Limited the real publisher of the Star Newspaper (which includes the Saturday Star), and the fifth respondent is the online publisher who maintains the article on its online platform.

- [11] The interest of the fourth and fifth respondents in the outcome of this litigation is clear. They were entitled to participate in the application<sup>1</sup> and they were joined without opposition.
- [12] The result of the foregoing was voluminous papers and argument that lasted a day in the urgent court. Complex legal issues were debated and I would be remiss if I did not express my thanks to counsel for their assistance in this matter with their thorough heads of argument and the provision of an authorities bundle.
- [13] The first and second respondents resist the application on grounds that are not immediately clear. The answering affidavits are rambling, difficult to follow and seek to place facts before the Court that, on the first and second respondents' version, justify the statements quoted in the article.
- [14] The gravamen of the opposition appears to be a contention that the first applicant is fully aware of the circumstances surrounding the publication and should have come out publicly and expressly in support of the second applicant.
- [15] The interdict sought, so it is asserted, infringes upon their rights to freedom of expression.

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<sup>1</sup> **South African Riding for the Disabled Association v Regional Land Claims Commissioner** 2017 (5) SA 1 (CC) at [9] to [11]

[16] In the course of the first respondent's address, it became apparent that the offensive article and his other emails and text messages were occasioned by his feeling of having been wronged by the applicants who, notwithstanding numerous correspondence, telephone calls and text messages, ignored him.

[17] He thus set about to use the media as a tool to grab the first applicant's attention and coerce it into dealing with his complaints. I have reservations about whether this is a legitimate exercise of freedom of expression in the circumstances.

[18] The fourth and fifth respondents resist the application on two narrow grounds. First, they deny that the first applicant enjoys *locus standi* to bring an application of this sort because it is an organ of State. Second, it is asserted that the right to claim the removal of the article, even on a temporary basis, from the website maintained by the fifth respondent, can only be determined as part and parcel of "compensation" under Part B of the notice of motion.

[19] The fourth and fifth respondents, correctly, do not take issue with the interdict against harassment that is sought by the applicants.

### ***LOCUS STANDI***

[20] As a general proposition, the law of defamation exists to provide a remedy to those whose rights to dignity and reputation have been violated by another.



Thus, to be defamed, one must be the bearer of the right to dignity and/or reputation.

- [21] It is so that since the 1940's that no action that lies at the behest of the State or one of its organs for defamation has been permitted in South Africa.<sup>2</sup> The principal underlying this position is that:

“... it will be contrary to public policy or public interest for organs of government, whether central or local, to have the right to sue for defamation, as it would impact on a citizen's right to freedom of speech. As pointed out by Lord Keith of Kinkel in the *Derbyshire Country Council* case at 1017j:

'It is of the highest public importance that a democratically elected governmental body, or indeed any governmental body, should be open to uninhibited public criticism.'"<sup>3</sup>

- [22] This principle has been applied in the context of municipalities<sup>4</sup> and the South African Receiver of Revenue.<sup>5</sup> In the context of a juristic person which is a trading entity and part of the State's machinery, it has similarly been held that:

“(T)he Crown's main function is that of Government and its reputation or good name is not a frail thing connected with or attached to the actions of the individuals who temporarily direct or manage some particular one of the many activities in which the Government engages, such as the railways or the Post Office; **it is not something which can suffer injury by reason of the publication in the Union of defamatory statements as to the manner in which one of its activities is carried on. Its reputation is a far more robust and universal thing which seems to me to be invulnerable to attacks of this nature. No one who reads the alleged defamatory statements would regard the reputation or good name of the Crown (regarded as a perennially existing legal *persona* whose function is that of carrying on all the multifarious activities of Government in the Union) as having been lowered or injured by these publications.** He knows that, though the railways are vested in the Crown, the Crown is only a legal conception and takes no part in the management of the

<sup>2</sup> **Die Spoorbond & another v South African Railways; van Heerden & others v South African Railways** 1946 AD 999 at 1012 - 1013

<sup>3</sup> **Bitou Municipality and another v Booyen and Another** 2011 (5) SA 31 (WCC) at [13]

<sup>4</sup> *ibid*

<sup>5</sup> **Moyane and Another v Lackay** [2017] ZAGPHHC 1262 at [14] and [15]

railways. He might regard the noxious words as reflecting upon the individuals or group of individuals temporarily responsible for the direction or management of the railways on behalf of the Crown but he would not regard them as reflecting upon the good name of the Crown itself.”<sup>6</sup> (emphasis added)

[23] Mr Nulane SC, who appeared with Ms Sisilana, on behalf of the applicants, submitted that under Part B of this application the Court will have opportunity to consider extending the common law to exclude the first applicant given the nature of its business. It is not for me, so it was argued, sitting in urgent court, to have regard to such considerations.

[24] Mr Nulane's submission is not a moonshot.

[25] In November 2022, the Constitutional Court handed down its judgment in **Reddell**.<sup>7</sup>

[26] **Reddell** qualified the Supreme Court of Appeal's judgment in **SA Taxi**,<sup>8</sup> which was authority for the general proposition that a trading entity may sue for general damages for defamation.<sup>9</sup>

[27] The Constitutional Court found that a juristic person, which is a trading corporation, has a legitimate interest in the protection of its reputation<sup>10</sup>, that a trading corporation can suffer non-patrimonial harm in an infringement of its

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<sup>6</sup> **Die Spoorbond** at 1009

<sup>7</sup> **Reddell v Mineral Sands Resources (Pty) Ltd and Others** 2023 (2) SA 404 (CC)

<sup>8</sup> **Media 24 Ltd and Others v SA Taxi Securitisation (Pty) Ltd (Avusa Media Ltd and Others as amicus curiae)** 2011 (5) SA 329 (SCA)

<sup>9</sup> At [5]

<sup>10</sup> At [93]

rights to reputation, meaning that it may be entitled to sue for general damages as a result of that harm<sup>11</sup> and concluded that:

“... an unqualified award of general damages to a trading corporation in respect of harm to its reputation limits the right to freedom of speech. A trading corporation has no hurt 'human' feelings to assuage, to provide solace by way of an amount for general damages. In this regard, it does not have a right to dignity and cannot lay claim to the rights in s 10 of the Constitution. **Instead, it has a common-law right to its good name and reputation, protected by the Constitution's equality provisions, and can enforce that right by a claim for general damages under the qualification outlined, namely, excluding, in a court's discretion, in cases of public discourse in public-interest debates. The underlying rationale for this is that it bears recognition that a trading corporation has a personality right to protect its reputation and good name. This extends beyond mere goodwill.** Subject to this qualification, general damages are a competent remedy for the unlawful defamation of a trading corporation. Absent this qualification, a claim for general damages for defamation poses an unjustifiable limitation on freedom of expression.”<sup>12</sup> (emphasis added)

[28] As Mr Nulane submitted, given the unique position occupied by the first applicant as a trading entity, that it is different from a municipality or SARS. In **Post & Telecommunications Corporation**,<sup>13</sup> the Zimbabwe Supreme Court suggested there may be differences between litigants who are organs of state that may have standing to sue for defamation and those who may not. The distinction, so the court held, may lie in “...*whether it is a part of the governance of the country. Or, to put it another way, whether it is a body such that the reasoning in the leading cases applies to it, so as to warrant the denial of the right to sue for defamation.*”<sup>14</sup>

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<sup>11</sup> At [96]

<sup>12</sup> At [150]

<sup>13</sup> **Post & Telecommunications Corporation v Modus Publications (Pvt) Ltd** 1998 (3) SA 1114 (ZS)

<sup>14</sup> At 1121 F/G

- [29] It may well be that the qualification in **Redell** results in another court finding, in due course, that the decision in **Die Spoorbond** must be revisited and results in a finding that the first applicant is the holder of the right to reputation that is capable of being infringed and thus enjoys *locus standi* to claim an interdict against any such infringement.
- [30] The first applicant's *locus standi* is an issue that I need not decide for it is sufficient if one or other, or both, of the applicants have a substantive right, recognised in law, that is the subject of an unlawful infringement, which infringement can only be brought to an end by an order of this Court, due regard having been had to each party's prejudice in the interim, to found an interdict of the nature claimed herein.
- [31] There can be little doubt that, at least, the second applicant is the bearer of the constitutionally entrenched right to dignity, even as an employee of an organ of State.<sup>15</sup> Defamatory allegations made of and concerning him, his standing as a professional accountant and ongoing registration with SAICA are all, further, infringed upon by statements that are injurious.

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<sup>15</sup> **Mthembi-Mahanyele v Mail & Gaurdian Ltd and Another** 2004 (6) SA 329 (SCA) at [33] to [42]

**INFRINGEMENT OF THE APPLICANTS' RIGHTS?**

[32] The main focus of this portion of the judgment and Part A of this application is the article published by the fourth respondent and maintained on the fifth respondent's website.

[33] Before the article can be said to be injurious or defamatory, even on a *prima facie* basis, the two-fold inquiry contemplated in **Le Roux** must be undertaken.<sup>16</sup>

[34] The proper application of this test has recently been restated and explained in **EFF**<sup>17</sup>, where the Court held:

"Determining whether a statement was defamatory involves a twofold enquiry. First, one establishes the meaning of the words used. Second, one asks whether that meaning was defamatory in that it was likely to injure the good esteem in which the plaintiff was held by the reasonable or average person to whom the statement was published. Where the injured party selects certain meanings in order to point the sting of the statement, they are bound by the selected meanings. The meaning of the statement is determined objectively by the legal construct of the reasonable reader and is not a matter on which evidence may be led."

[35] In the founding affidavit, the applicants identify various grounds upon which the article is defamatory, and in particular that "*the statements about the IDC were intended and understood to mean that the IDC acted in a fraudulent and corrupt fashion in terminating its contracts with Joburger [a reference to the second respondent]*". Further, and in relation to the statements about the

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<sup>16</sup> **Le Roux v Dey (Freedom of Expression Institute and Restorative Justice Centre as amicus curiae)** 2011 (3) SA 274 (CC) at [89]

<sup>17</sup> **Economic Freedom Fighters and Others v Manuel** 2021 (3) SA 425 (SCA) at [30]

second applicant, that they "... *were intended and understood to mean the second applicant drafted and presented a fraudulent and corrupt report to the IDC about Joburger, and further that he was engaged in acts of corruption, and that the allegedly fraudulent report caused the IDC to cancel the loan agreements itself and Joburger.*"

[36] I think that these complaints are sustained on an objective reading of the article. There is no other way to interpret words such as "*fraudulent*" and "*concocted*" other than as being injurious. No alternative interpretation of the words or statements was tendered by any of the respondents.

[37] Indeed, and it was conceded by the first respondent during argument before me, it was his express intention in engaging what the applicants call a "*smear campaign*" and approaching media to obtain and secure the attention of the first applicant. The first respondent was aggrieved because he conceived that his complaints were not being taken seriously and were being ignored.

[38] It is by now axiomatic that any person exercising a right may only exercise it lawfully and in such a manner that it does not affect the rights of others. The first respondent has missed this very important rider. Whilst he is entitled to express such views as he may have, the law does not permit him to make scandalous allegations which impugn the integrity and dignity of other people to advance his commercial interests.

[39] Accordingly, and for purposes of establishing an interim interdict, I find that the applicants have established, either on the undisputed facts or on a balance of probabilities, that the first respondent's statements are injurious of one or other, or both, of their rights to reputation and, in the case of the second applicant, dignity.

#### **ABSENCE OF AN ALTERNATIVE REMEDY AND PREJUDICE**

[40] Prior to the launch of this application, the applicants' attorneys wrote to the first respondent. In a comprehensive letter detailing the offensive conduct of which the applicants have complained herein, the first respondent was asked to give an undertaking to cease with such conduct.

[41] Regrettably, he did not.

[42] Rather, he wrote to the applicants' attorneys on the same day of the letter of demand, repeating the offensive allegations and stating:

"Please by all means, do what you have to do (don't wait for 48 hours, 5 hours is enough), you are paid anyway, more income for you of tax payers' money because its not coming from their pockets, its easy for them and please do! We will also do what we have to do."

[43] During the course of argument, the first respondent made a half concession that this letter was written with a hot pen, and not an example of the best exercise of his judgment.

[44] However, when pressed to give an undertaking to the Court, which undertaking could be made an order of court, he equivocated, feigned an inability to understand the nature and extent of the order sought by the applicants in paragraphs 2.1 and 2.2 of the notice of motion and, in the end, did not give such an undertaking.

[45] It follows that the applicants' apprehension of further or on-going harm is well founded.

[46] The first and second respondents were unable to point to any prejudice to them in the interim. The publication of the article served the purpose intended by the first respondent; it has occasioned internal investigations at the first applicant and at SAICA. While the veracity of the allegations is being ascertained, the only prejudice that is on-going is that to the dignity and reputation of the second respondent.

[47] If, in due course, the second applicant is found to have misconducted himself, an appropriate sanction will follow at the hand of his employer or professional body. Thereafter, the first and second respondents will be entitled to exercise such rights as they may have in law against the first and/or second applicants.

[48] So, while our law vigorously supports the right to freedom of speech, it cannot be exercised in such a way that diminishes a person's dignity, reputation and standing in the eyes of the community. The first and second respondents, if



there was a *bona fide* dispute about the cancellation of the contracts, ought to have exercised the contractual remedies afforded them in law, and not resorted to a tactic of slander in the media, and harassment of the first applicant's employees and officers to whom the allegations were repeated.

[49] It is uncontroversial that, for ongoing breaches of subjective rights, the only appropriate remedy is an interdict.

[50] An interdict must be granted against the first and second respondents in these circumstances.

[51] Although the applicants have been successful in this part of their application, and I have taken the view that the first respondent is not entitled to act in the manner he has, I do not make an award of costs at this time. The court hearing Part B of this application will be better placed to evaluate the conduct in light of the facts arising from the investigations to which I referred above. As such, the question of costs and the scale of costs will stand over for determination in Part B of this application.

#### **THE CASE AGAINST THE FOURTH AND FIFTH RESPONDENTS**

[52] Different considerations apply in respect of the relief that is sought against the fourth and fifth respondents.

[53] The fourth and fifth respondents' resistance to the relief sought against them was predicated upon the contention that the interim removal of the article from the fourth respondent's website constitutes a retraction thereof, and this is only competent relief once a Court has made an appropriate finding. For this proposition, the fourth and fifth respondents' counsel, Ms Long, relied upon the Supreme Court of Appeal's judgment in **EFF**.

[54] I do not read **EFF** in the same way as the third and fourth respondents. In **EFF** the court said:

"There is, of course, no problem with persons seeking an interdict, interim or final, against the publication of defamatory statements proceeding by way of motion proceedings, on an urgent basis, if necessary. If they satisfy the threshold requirements for that kind of order, they would obtain instant, though not necessarily complete, relief. There is precedent for this in the well-known case of *Buthelezi v Poorter*, where an interdict was granted urgently in relation to an egregious piece of character assassination. Notably, however, the question of damages was dealt with separately. In appropriate circumstances persons following this route might, as pointed out earlier, be required to overcome the barriers to prior restraints and have to deal with the availability of alternative measures, as a potential bar, to achieving redress. However, seeking damages, instantly, on application, is problematic for the reasons provided above. Counsel for the amicus, like counsel for Mr Manuel, did not provide a proper basis for departing from the established position of requiring evidence and did not propose how damages might otherwise, especially in opposed matters, be determined. In argument he indicated that if we held that a claim for damages could not be pursued on paper, we should nevertheless reiterate that an interdict, retraction and apology could be ordered."<sup>18</sup>

[55] There is no reason that the applicants are precluded from seeking relief by way of application proceedings and urgently. The question is, rather, whether

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<sup>18</sup> **EFF** *supra* at [111]

the offensive article should remain published on the fourth respondent's website pending the outcome of Part B of this application.

[56] Temporary removal thereof is not a retraction as contended for by Ms Long in her very able argument.

[57] On my reading of the decisions to which I was referred, there is a fundamental distinction between a retraction, which entails a publication retracting, formally the offensive article, and an order directing it be removed (temporarily), from a website to ameliorate the ongoing harm to (at very least) the second applicant's reputation and dignity.

[58] None of the authorities to which I was referred are supportive of a proposition that relief of this nature cannot be obtained in the urgent court or as an interim measure.

[59] The reason would seem obvious, the article continues to be published on the fifth respondent's website, and results in the harm of which the applicants complain to be ongoing and injurious.

[60] If I were to refuse the order sought by the applicants, the applicants (and the Court) would be emasculated; the applicants would be required to grin and bear an ongoing infringement of their constitutional rights, and this Court would be powerless to grant appropriate relief as contemplated in section 38 of the Constitution to vindicate those rights that have been infringed.

[61] Again, the order sought by the applicants does not close the door on the fourth and fifth respondents to, under Part B of the application, the opportunity to raise those defences peculiar to the media, and for them to assert that they were responsibly made in the interest of truth and public interest. It is, for this reason, that no costs order is made against the fourth and fifth respondents.

[62] But, until the truth of the allegations is ascertained, and the interest of the public determined, the ongoing harm to the reputation and dignity of, at least, the second applicant must be halted.

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

1. Independent Newspapers (Pty) Ltd and Independent Online SA (Pty) Ltd are joined as the fourth and fifth respondents.
2. Pending the finalisation of the relief sought in Part B of this notice of motion, the First Respondent is interdicted and restrained from:
  - 2.1. contacting the first applicant and/or any of its employees relating to the legal dispute between the first applicant and the first respondent and/or his company (second respondent) pending the finalisation of the pending litigation before this Court and the first applicant's internal investigation; and

- 2.2. repeating any allegations against the applicants and/or any of its employees and/or from defaming or injuring their dignity and reputation, in any further publications or broadcasts of any form, including but not limited to internet posts, articles, letters, media interviews or emails, which negatively reflect upon the first applicant and/or its employees arising from, or based on any of legal action between the first applicant and the first and second respondents.
2. Pending the finalisation of the relief in Part B of the notice of motion, the fourth and fifth respondents are ordered and directed to forthwith take down the article which it published on 18 February 2023 about and concerning the applicants and their dealings with the first respondent under the "*Smart toilet paper inventor takes on the IDC*" from the fifth respondent's website.
3. The costs of the urgent application are to be costs in the cause of Part B.

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**A W PULLINGER**  
ACTING JUDGE OF THE HIGH COURT  
GAUTENG DIVISION, JOHANNESBURG

*This judgment was handed down electronically by circulation to the parties' and/or parties' representatives by email and by being uploaded to CaseLines. The date and time for hand-down is deemed to be 12h00 on 28 April 2023.*

**DATE OF HEARING: 20 March 2023**

**DATE OF JUDGMENT: 02 May 2023**

**APPEARANCES:**

**COUNSEL FOR THE APPLICANTS: Adv F J Nulane SC**

**Adv Z Sisilana (Ms)**

**ATTORNEY FOR THE APPLICANTS: Seanego Attorneys**

**COUNSEL FOR THE FIRST AND SECOND RESPONDENTS: In person**

**ATTORNEY FOR THE DEFENDANT: n/a**

**COUNSEL FOR THE FOURTH AND FIFTH RESPONDENTS: Adv P R Long (Ms)**

**Adv T Ramahlaha**

**ATTORNEY FOR THE FOURTH AND FIFTH RESPONDENTS: Hanekom  
Attorneys**