Reportable

IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)

Case No: 116/2017

In the matter between:

LRB	First Applicant
GG	Second Applicant
I (PTY) LTD	Third Applicant

vs

OWEN BENJAMIN LEATHERBY	Respondent

Coram: DE WET AJ

Judgment delivered: **7** MARCH 2018

JUDGMENT

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[1] This opposed application came before me on the return day of an interim interdict together with ancillary relief that was granted by Steyn J on 10 January 2017, and later extended by Dlodlo J on 13 February 2017, who also granted further relief.

[2] In terms of paragraph 21 of the Dlodlo order, the Judge President of this division, on request of Applicants made an order on 15 June 2017 setting the application down for hearing on 11 September 2017.

[3] On 28 August 2017 Applicants filed a document called "Notice of Additional Relief to be claimed at the hearing on 11 September 2017".

[4] The aforesaid Notice firstly called upon Respondent to show cause on 11 September 2017 why he should not be held in contempt and be committed for a period of imprisonment, suspended on such terms as the Court may deem appropriate, and secondly advised Respondent that he should, *inter alia*, "present oral evidence and/or be present to be cross-examined at the hearing scheduled for 11 September 2017 in substantiation of his defence". The Notice was not accompanied by a supporting affidavit, nor was the correspondence relied upon by Applicants for alleging that Respondent was in contempt of the interim order dated 10 January 2017 attached to the Notice. Respondent's representative however consented to the correspondence being handed up and that the contempt application be heard by way of oral evidence.

[5] The Notice further requested that Respondent be ordered to pay damages in the total sum of R3 000 000 (R1 million for each of the Applicants) <u>alternatively</u> such sum as the Court may determine. These damages were said to be suffered by each of the Applicants as a result of the defamatory statements identified in paragraphs 2.1.1.1 – 2.1.1.30 and 2.1.2.1 – 2.1.2.11 and 2.1.3 of the Court Order of 10 January 2017 <u>alternatively</u>, as a result of those comments which the Court determines to be defamatory and that Applicants be allowed to present oral evidence in support of

their aforesaid damages claims. Applicants further requested that Respondent be ordered to pay all the costs of the application including all costs which stood over for later determination, the costs of the hearing of evidence/cross-examination, the qualifying and other costs of Adrie Stander, the appointed forensic investigator, on the scale as between attorney and client, which costs were to include the costs of senior counsel.

[6] Save for the prayer that Respondent be held in contempt, the Notice was in essence an application that this Court hear oral evidence in terms of Rule 6(5)(g) and an amendment of the relief claimed in paragraph 2.5 of the Notice of Motion dated 6 January 2017.

[7] Respondent in his answering affidavit consented to being bound by the interim interdict pending the further determination of the issues in dispute by way of an action to be instituted by Applicants in due course, but at the hearing of the matter Respondent requested that the issues pertaining to his defences, the damages claimed and costs, be referred to trial in terms of a proposed order with the interim order remaining in place.

[8] The Court therefore had to determine the following issues:

8.1 Whether Applicants are entitled to a final interdict on the papers, and if not, whether the ambit of the provisional order should be limited;

8.2 Whether, should the Court not be able to determine the dispute pertaining to the interdict aspect of the application on the papers, the dispute should be referred to oral evidence alternatively trial;

8.3 Whether Applicants should be granted leave to have the issue of damages referred to oral evidence, alternatively trial, in light of the fact that Applicants have requested this Court to grant damages for defamation on motion;

8.4 Whether all outstanding issues should be referred to trial with the interim interdict extended until finalisation of the trial;

8.5 Whether Respondent was in contempt of the orders of this Court dated 10 January 2017, as extended on 13 February 2017, and if so, what the appropriate sanction should be;

8.6 Whether costs and the specific orders requested by Applicants in terms of the Notice referred to above, should be granted against Respondent.

Background

[9] Respondent, together with First and Second Applicants, were previously employed at Third Applicant. Respondent was employed as the Financial Director and later also took responsibility for the information technology at Third Applicant. First and Second Applicants are still employees and directors of Third Respondent.

[10] During March/April 2015 it came to light that Respondent was still involved in a relationship with another employee of Third Applicant, who had threatened to lay criminal charges of sexual harassment against Respondent.

[11] On 17 April 2015 Respondent was suspended by Third Applicant pending further investigation. Pursuant to the investigation Respondent was served with the details of a disciplinary enquiry and the various charges that would be levelled against him, including but not limited to the

distribution of pornographic and obscene communication through work servers, misuse and/or abuse of company networks, failure to act in good faith, disruption of the workplace, harassment and insubordination.

[12] A disciplinary hearing was scheduled to be held in May 2015 and First Applicant represented Third Applicant in this process.

[13] Prior to the disciplinary hearing a written Mutual Separation Agreement, as well as a Sale of Shares Agreement and a Confidentiality and Restraint Agreement, was concluded between Third Applicant and Respondent on 27 May 2015 in terms whereof Respondent's employment and shareholding in Third Applicant was terminated.

[14] It appears from the papers that during October 2015 Respondent commenced with a campaign against First Applicant by firstly creating a Facebook profile under the name of "Balding Intasure" and thereafter continued to post derogatory remarks regarding First Applicant under what purported to be First Applicant's Facebook profile.

[15] The aforesaid Facebook profile was deleted by the Facebook administrator after First Applicant had lodged a formal complaint that he had not created the page.

[16] Also during October 2015 Respondent created and sent an email to the server of Third Applicant and distributed it to at least 23 of Third Applicant's employees which purported to have been sent by First Applicant from an address given as baldingintrasure@yahoo.com to which was attached a derogatory joke sent by First Applicant to Second Applicant during 2013.

[17] After investigations by Applicants and on 24 December 2015, a letter was addressed to Respondent's attorney of record, advising that it had been established that Respondent had used and send the aforesaid email from the IP address of his previous employer, STB Brokers and that Applicants regarded Respondent's actions as designed to damage their reputations and dignity.

Respondent's attorney of record answered on 14 January 2016 by simply denying any breach of confidentiality and did not respond further to the aforesaid statements.

[18] Towards the end of 2016 Third Applicant's claims department made an error in respect of a claim lodged by Respondent's father-in-law which sparked a fresh attack by Respondent on Applicants and Respondent reported Third Applicant to the Financial Services Board.

[19] On or about 13 December 2016 Respondent created a Facebook page which appeared to have been created by First Applicant under the profile "COMING SOON FROM THE EMAIL OF THE FABULOUS, THE MAGNIFICENT, THE GENIUS, LEE BLASPHEMOS BALDING". A subsequent post made under the profile made reference to politically sensitive issues and was also shut down by the Facebook administrator. Respondent, in these proceedings, admitted to creating the Facebook page but denied that he posted the material reflected in annexure "LB17" which appeared on pages 128 to 130 of the record.

[20] Respondent further created an email account with the name blashemyblading@gmail.com from which he sent mails to about 40 staff members and at least 15 clients of which Applicants were aware, with a graphic pornographic attachment, which attachment was sent to him by First Applicant in 2010. These mails further, in no uncertain terms, stated that First Applicant is Second Applicant's bidet (with an explicit explanation as to what a bidet is). First Applicant admitted in reply that the offensive "private mail" with the attachment was sent to him in circumstances he considered as private communications, and explained that it was sent in January 2010 to Respondent for him to delete the material. He acknowledged that the contents were inappropriate. Respondent boasts in the email wherein he re-published the offending mail that, prior to it being removed by the Facebook administrator, it reached 1665 friends.

[21] On 1 and 2 January 2017 First Applicant received further emails from a new email address being bidetblading@gmail.com, created by Respondent, wherein he used vulgar and inappropriate

language with reference to First Applicant. Merely as an example of the posts, one mail reads as follows:

"From: Bidet Balding bidetblading@gmail.com

Subject: HAPPY NEW YEAR

Date: 1 Jan 2017, 12:24:20 PM

To: Lee Balding Lee@intasure.co.za

HEY BIDET

We wish you a very horrid 2017, may it be a year when some more but not all of your cock ups, laziness and contradictions are exposed and that you are seen for the absolute self serving useless prick that you are. May you have many successful scrotum and anal cleaning sessions.

Have a really kak 2017

Love from THE TEAM"

[22] On 4 January 2017, this time from his own email address, Respondent informed Second Applicant that he was not to blame for the "balding emails" and stated that:

> "Genricks, I told u not to blame me for the balding emails. You did not listen as I have received 3 calls from your staff advising me that you are doing just that and are going to set your digital detectives onto me.
>
> Let me be quite clear Genricks, if they come near me, my staff or office I will have them arrested.
>
> You and your idiot batman already have a defamation action regarding the Simpson issue pending which I will now not stand down from and if any of the 3 will provide an affidavit then I will hit you with another defamation action.
>
> Don't take me lightly Genricks, I will see u and the idiot fall."

[23] On the same day another mail from bidetblading@gmail.com was received in which Respondent under his pseudo-name promised another porn email, but this time a video, which would be sent in due course. Another threatening mail was sent on 5 January 2017 from the same email address.

[24] These threats were the proverbial last straw and Applicants launched an urgent application on 6 January 2017 to interdict Respondent from continuing with his conduct. The papers were served on both Respondent and his attorney, Mr Ferguson.

[25] Respondent did not oppose the application for interim relief on 10 January 2017. A Rule *nisi* was issued calling upon Respondent to show cause on 13 February 2017 why the order should not be made final.

[26] On 13 February 2017 the application came before Dlodlo J, who extended the Rule *nisi* and granted further orders enabling Applicants to obtain access to Respondent's computers and other communication devices in order to confirm that Respondent was the author of posts and mails referred to in the founding papers as it was disputed by Respondent that he was the creator of the mails and Facebook pages as set out above.

[27] Mr Stander, Applicants' appointed expert, compiled a forensic report and filed an affidavit wherein he concluded that Respondent was involved in the creation of the messages with reference to those created on his Vodafone mobile device which forms the bulk of the defamatory material which the interim order was aimed at preventing.

[28] After the aforesaid report was filed, Respondent filed his answering affidavit on 28 May 2017. He admitted that he had created the Facebook pages / profiles and that he had been the author

or had sent the emails referred to in the founding and supplementary affidavits, but denied posting the racist comments on the Facebook page depicted in "LB17" as stated above.

[29] Respondent, whilst making the aforesaid admissions, denied that the statements contained in the aforesaid material were defamatory. He stated that his comments were either meaningless abuse or were provoked and further stated that the more serious publications were justified as it amounted to fair or protected comment and/or truth and in the public interest.

Request for a final interdict:

[30] The law in regard to the grant of a final interdict is settled. The requirements for a final interdict have been stated as (a) a clear right; (b) an injury actually committed or reasonably apprehended; and (c) the lack of an adequate alternative remedy. Applicants therefore have to show that: (a) the material created and distributed/published by Respondent was defamatory; (b) that Respondent had unlawfully infringed or threatened to infringe Applicants' right not to be defamed; and (c) that there was no adequate alternative remedy.[1]

[31] In the matter of Hotz v UCT[2], Wallis JA held that: *"Once the Applicant has established the three requisite elements for the grant of an interdict, the scope, if any, for refusing relief is limited. There is no general discretion to refuse relief. That is a logical corollary of the court holding that the applicant has suffered an injury or has a reasonable apprehension of injury and that there is no similar protection against that injury by way of another ordinary remedy. In those circumstances, were the court to withhold an interdict, that would deny the injured party a remedy for their injury, a result inconsistent with the constitutionally protected right of access to courts for the resolution of*

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[1] Setlogelo v Setlogelo 1914 AD 221 at 227. These requisites have been restated countless times by Courts, see for example in Van Deventer v Ivory Sun Trading 77 (Pty) Ltd 2015 (3) SA 532 (SCA) ([2014] ZASCA 169) para 26, and Red Dunes of Africa v Masingita Property Investment Holdings [2015] ZASCA 99 para 19 and Pilane and Another v Pilane and Another 2013 (4) BCLR 431 (CC) ([2013] ZACC 3) (Pilane) para 39.

[2] 2017 (2) SA 485 (SCA) at 496H – 497B

disputes, and potentially infringe the rights of security of the person enjoyed by students, staff and other persons on campus”.

[32] As aforesaid, Respondent has admitted to being the author and having published most of the material in question and I reject his denial regarding the contents of annexure “LB17”, which leaves only the question whether such material is defamatory.

[33] In determining whether the material before Court is defamatory the Court simply has to give the words or phrases used by Respondent in the posts and mails their ordinary meaning to come to the conclusion that the material is reasonably capable of conveying to the reasonable reader a meaning which defames Applicants.

[34] Once the publication of defamatory statements is admitted, two presumptions arise, namely that the publication was wrongful and that Respondent acted *animo iniuriandi*. Respondent bears the onus to establish either some lawful justification or excuse or the absence of *animus iniuriandi*. [3]

[35] It is trite that in the absence of justification the unlawful and intentional publication of defamatory material infringes a person’s right to reputation or differently said, a person’s constitutional right to dignity and that freedom of expression prevails only if defamatory allegations are a true reflection of someone’s character and were made in the public interest.[4]

[36] I am satisfied that on the material placed before me it has been established by Applicants that a factual disturbance of their respective rights to dignity and privacy had occurred and Respondent therefore has to rebut the presumptions that (a) the disturbance was wrongful and (b) intentional. [5]

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[3] Khumalo v Holomisa 2002 (5) SA 40 (CC) at 421

[4] Council for Medical Schemes v Selfmed 2011 ZASCA 207 (52)

[5] SA Uitsaaikorporasie v O’Malley 1977 (3) SA 394 (A) 401 – 403; Van der Berg v Coopers & Lybrand Trust (Pty) Ltd 2001 (2) SA 242 SCA and Khumalo v Holomisa (supra)

[37] Respondent has set out no basis nor placed any evidence before the Court in his opposing papers to support his defences of fair comment and/or truth and public interest and/or to justify his defences being referred to trial. [6] Respondent's attack on Applicants results from the termination of his employment at Third Applicant and evidences a personal vendetta.

[38] In the matter of H v W [7] the Court stated that it would not condone the abuse of social media platforms in the pursuit of personal agendas and revenge for what is perceived to have been personal slights in the past. I am, given the content of the publications, unable to find that the statements were published for the public benefit or in the public interest and/or amounted to fair comment. That Respondent mostly distributed the offensive material under a pseudonym or in disguise is, in my view, irreconcilable with innocent intent. The material obviously does not constitute fair comment and cannot be said to have been published in the public interest.

[39] I find that the material posted and published by Respondent is defamatory; that an injury had been committed and can reasonably still be apprehended to occur in future and that there is no other satisfactory remedy. A damages award would not deter Respondent from publishing such material in future, particularly given Respondent's belief that he was justified in posting his opinions regarding Applicants.

[40] I do not accept that a disgruntled previous employee and shareholder under a pseudonym is at liberty to publish inappropriate correspondence dating back to 2010 and 2013 or to use foul and inappropriate language as contained in various posts and emails on the basis that the publication of such material is fair comment and/or in the public interest.

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[6] Fikre v Minister of Home Affairs 2012 (4) SA 345 (GSJ) at paras 21 to 25 and Ripoll-Dause v Middleton NO and Others 2005(3) SA 141 (C) at 151 to 153. Also see Buthelezi v Poorter & Others 1974 (4) SA 831

[7] (2013) 2 All SA 218 (GSJ) at para 27

The damages claim:

[41] It trite that it is not usually permissible to claim damages by way of motion proceedings.[8]

[42] In the matter of Levenson v Fluxmans Inc, [9] the aforesaid principle was restated by Windell J, and he confirmed that motion proceedings are primarily intended for the resolution of legal issues whilst factual disputes should be addressed in action proceedings.

[43] In the matter of Cadac v Weber-Stephen Products [10] it was however held that once a determination on the merits had been made, the issue of quantum could be determined by way of a referral to trial. The Court at paragraphs 13 and 14 held that: "*I cannot see any objection why, as a matter of principle and in a particular case, a plaintiff who wishes to have the issue of liability decided before embarking on quantification, may not claim a declaratory order to the effect that the defendant is liable, and pray for an order that the quantification stand over for later adjudication. It works in intellectual property cases, albeit because of specific legislation, but in the light of a court's inherent jurisdiction to regulate its own process in the interests of justice – a power derived from common law and now entrenched in the Constitution (s173) – I can see no justification for refusing to extend the practice to other cases. The plaintiff may run a risk if it decides to follow this route because of the court's discretion in relation to interest orders. It might find that interest is only to run from the date when the debtor was able to assess the quantum of the claim. Another risk is that a court may conclude that the issues of liability and quantum are so interlinked that it is unable to decide the one without the other.*

[8] Room Hire Co (Pty) Ltd v Jeppe Street Mansions Ltd 1949 (3) SA 1155 (T) at page 1161, Murray AJP stated: "… There are certain types of proceedings (e.g., in connection with insolvency) in which by Statute motion proceedings are specially authorised or directed … There are on the other hand certain classes of case (the instances given … are matrimonial causes and illiquid claims for damages) in which motion proceedings are not permissible at all. But between these two extremes there is an area in which … according to recognised practice a choice between motion proceedings and trial action is given according to whether there is or is not an absence of a real dispute between the parties on any material question of fact."

[9] 2015 (3) SA 361 (GJ) 364 E

[10] 2011 (3) SA 570 (SCA)

Once the principle is accepted for trial actions there is no reason why it cannot apply to application proceeding(s) …"

[44] Whilst Applicants did not claim any declaratory relief pertaining to damages and in my view should not have claimed damages by way of motion proceedings, the decision whether to dismiss the relief in respect of damages or send the remaining dispute(s) to trial is to be determined in the exercise of the Court's discretion. [11] In these proceedings, where I have found that the interim interdict should be made final, which amounts to a finding that Respondent has defamed Applicants, the only issues still to be determined are (a) whether Applicants have suffered any damages and if so, (b) the quantum thereof. It would, in my opinion, be more convenient and cost effective (most of the costs have already been incurred and expert reports filed) to refer the damages as claimed for in terms of paragraph 2.5 of the Notice of Motion read with the Amended Notice 28 August 2017, to trial.

Contempt application:

[45] Applicants filed an application on 28 August 2017 requesting that the Court holds Respondent in contempt of the interim order dated 10 January 2017, and extended on 13 February 2017, based on an email dated 23 August 2017, which was sent by Respondent to Mrs Kolby wherein he had referred to First Applicant as *"Hey T BONE (VERY BIG CHOP) BALDING this is a legit request from a client, best you let it through."* contrary to paragraph 2.1 (more particularly paragraph 2.1.1.7) of the orders in terms whereof Respondent was interdicted from referring to First Applicant as a "tjop". A chop is the English translation of the Afrikaans word "tjop".

[46] Respondent's representative indicated at the hearing of the matter that Respondent wished to deal with the contempt application and was present at Court to testify.

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[11] Standard Bank of SA Ltd v Neugardten and Others 1987 (3) SA (W) at 699 A -B and Brodie NO v Maposa and Others (1990/2017) [2018] ZAWCHC 18 (19 February 2018)

[47] During his evidence in chief, Respondent, *inter alia*, admitted that he was aware of the order made by this Court, that he was the author of the email in question and that he had sent the email from his email address.

[48] According to Respondent he sent the email to Ms Kolby in order to get First Applicant's attention as he was aware of the fact that all his mails to Applicants were diverted to First Applicant. It appears to be common cause that all mails were blocked and diverted until a certain point in time. Respondent further stated that it was a "play on words" and that he saw it as adding a bit of humour to an already tense situation.

[49] Respondent apologised to First Applicant in Court and stated that he did not intend for the word "chop" to have the same meaning as the word "tjop" and that he saw the words" chop" and "tjop" as being very different. He also stated that he did not intend anyone other than First Applicant to read the mail and that he therefore did not breach paragraph 2.1 of the interim order as he did not think it was defamatory and he did not intend to publish the statement in breach of the order.

[50] On 24 August 2017 Respondent's attorney of record sent a letter apologising for the email.

[51] During cross-examination Respondent was correctly referred to paragraphs 2.2.2 and 2.2.4 of the interim orders wherein he was prohibited from making and sending out any "defamatory" remarks similar to those listed in paragraphs 2.1 of the interim order about First Applicant. The dispute as to whether First Applicant's nickname was allegedly "porkchop" or "chunky", takes the matter no further.

[52] The principles as to what constitutes civil contempt were summarised by Cameron JA in the matter of Fakie NO v CC IT Systems (Pty) Ltd [12] as follows:

[12] 2006 (4) SA 326 at 344 H – 345 B (SCA)

"(a) The civil contempt procedure is a valuable and important mechanism for securing compliance with court orders, and survives constitutional scrutiny in the form of a motion court application adapted to constitutional requirements.

(b) the respondent in such proceedings is not an "accused person", but is entitled to analogous protections as are appropriate to motion proceedings.

(c) In particular, the applicant must prove the requisites of contempt (the order; service or notice, non-compliance and wilfulness and mala fides) beyond reasonable doubt.

(d) But, once the applicant has proved the order, service or notice, and non-compliance, the respondent bears an evidential burden in relation to wilfulness and mala fides: Should the respondent fail to advance evidence that establishes a reasonable doubt as to whether the non-compliance was wilful and mala fide, contempt will have been established beyond a reasonable doubt.

(e) A declaratory and other appropriate remedies remain available to a civil applicant on proof on a balance of probabilities."

[53] In the matter of Laubscher v Laubscher [13] the importance of contempt proceedings to ensure the proper functioning of our Courts was emphasised as follows:

"[25] It is also said that, where the Judiciary cannot function properly, the rule of law must die. To protect this, special safeguards have been in existence for many centuries, one of these being civil contempt of Court. As I have already stated, one of the purposes of

[13] 2004 (4) SA 350 (T)

civil contempt of Court is not only to protect the function of the Court but also to assist applicants who are trying to enforce a Court order."

[54] The undisputed evidence is that Respondent was interdicted from making comments or statements similar to those contained in the interim orders to Applicants and/or anyone else, he was aware of the orders and he had breached the orders. Given his stated opinions regarding Applicants, I find that Respondent has not established a reasonable doubt that non-compliance of the order was not wilful and *mala fide*.

[55] Respondent is accordingly found to be in contempt of the order granted on 10 January 2017 and extended on 13 February 2017.

[56] Whilst the Court takes disobedience of its orders very seriously as it impinges on the proper functioning of our judicial system and shows disrespect, the specific circumstances of this matter, in my view, do not warrant a suspended sentence but that a stern warning would suffice.

[57] Respondent is warned that, should he breach any Court orders in future, and more particularly, the terms of the final interdict set out below, a future Court would probably take this finding of contempt into consideration and not hesitate to impose a harsher sanction given the lenience shown to Respondent herein.

Costs:

[58] Applicants requested that a special cost order be granted against Respondent. Respondent did not oppose the initial granting of the order on 10 January 2017 and again did not oppose the extension of the order on 13 February 2017. Respondent also did not oppose the relief claimed on 15 March 2017 before Saldanha J and further admitted in the opposing papers to being the author of and having published most of the material before Court. Respondent in the papers further agreed to

the extension of the interim order pending the determination of the defences raised by him and Applicants' claim for damages at a trial.

[59] Save in respect of the contempt proceedings, I am not convinced in the circumstances that a special order is warranted.

[60] I therefore make the following Order:

1. A final interdict is granted in the terms of paragraphs 2.1 to.2.3(inclusive) and paragraphs 2.6 to 2.8 (inclusive) (excluding paragraphs 2.4 and 2.5 thereof) of the Rule *nisi* granted on 10 January 2017;

2. Respondent is found to have defamed Applicants;

3. Applicants' amended claim for damages arising out of the defamation is referred to trial and it is directed that:

   3.1 Paragraph 2.5 of the Notice of Motion read with paragraph D of Applicants' Amended Notice shall stand as the simple summons and Respondent's Notice of Opposition shall stand as Respondent's Notice of Intention to Defend;

   3.2 Applicants shall, as Plaintiffs in the action, within 30 days of the date of this order deliver a Declaration setting out the grounds for the damages claim;

   3.3 Respondent shall as Defendant in the damages claim file a plea and any counter claim he may have within 20 days of receipt of the Declaration;

3.4 All affidavits and reports filed by experts shall be deemed to have been filed in terms of Rule 36 of the Uniform Rules of Court;

3.5 The further exchange of pleadings and pre-hearing procedures including discovery and the request for and provision of trial particulars, shall be regulated by the Uniform Rules of Court in respect of action proceedings and the judicial case management practice of this Court;

3.6 In the event of Applicants failing to deliver a Declaration as directed in terms of paragraph 3.2 above within the period stipulated, the application shall thereupon be deemed to have been dismissed with costs in respect of the damages claim only.

4. Respondent is ordered to pay the costs of the application, including the costs which stood over for later determination, the qualifying and other costs of Adrie Stander, on the scale as between party and party, excluding any costs pertaining to Applicants' original and amended damages claim.

5. Respondent is found to be in contempt of the order of this Court dated 10 January 2017, cautioned to not disregard the orders of this Court again and ordered to pay Applicants' costs on the scale as between attorney and client in regard to the contempt application.

A DE WET
Acting Judge of the High Court

On behalf of Applicants:
Advocate R G L Stelzner (SC) instructed by
Abrahams & Gross Inc

Per: B R De Sousa

On behalf of Respondent:

T M Ferguson