IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

Case No.: 16783/2022

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

29 June 2022
DATE SIGNATURE

COMMISSIONER SHADRACK MONGO SIBIYA Applicant

And

THAPELO AMAD First Respondent

AL JAMA-AH Second Respondent

JUDGEMENT

MATSEMELA AJ

INTRODUCTION

1 This is an urgent application launched by the applicant, the head of the City's corruption-busting Department, Group Forensic Investigation Services ("GFIS") to afford the applicant protection against the respondents' ongoing and anticipated unlawful and defamatory statements and publications (some of which were issued on the eve of this urgent application).

2. In order to vindicate his rights to *inter alia* dignity and his reputation, the applicant seeks certain declaratory orders and final interdictory relief mentioned in the notice of motion:[1]

3. The respondents are opposing these proceedings.[2]

FACTUAL BACKGROUND

4. It is common cause that the applicant was appointed as the executive head of GFIS.[3] Before his employment, he worked in the investigative field for over 33 years, of which 30 he had played a management role in the South African Police Service. He had, amongst others, worked as the Head of the General Desk of Internationally Missing and Wanted Persons at Interpol in the National Central Bureau (Pretoria), Chief Special Investigator of the Scorpions in Free State and Gauteng and the Provincial Head of the Hawks in Gauteng.[4]

5 GFIS is a *sui generis* entity, established by the City in 2017, in terms of the provisions of the Local Government: Municipal Systems Act, 32 of 2000 as a forensic and investigative Department to combat fraud and corruption in the City. The Municipal Council-approved structure of GFIS was established precisely to ensure that GFIS is institutionally *independent*, in a manner that allows it to investigate and combat fraud and corruption in all offices of the City, without interference or undue influence.[5]

6. In essence, the mandate of GFIS is to facilitate the prevention, detection and investigation of economic crimes, more particularly corruption and is solely responsible for all aspects of security and resilience of the City regardless of the kind of threat.[6] To this end, GFIS is responsible for conducting investigations in all 16 municipal departments and 13 municipal entities. Since its inception, and to date, more than 7 000 cases have been reported and investigated, to the value of over R40 billion. This is as per last report submitted to the Municipal Public Accounts Committee.[7]

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[1] Notice of Motion, p 001-1 – 001-4.
[2] Answering Affidavit, p 009-10, para 21 - 27.
[3] Founding Affidavit, p 001-16, para 12 – 13.
[4] Ibid
[5] Founding Affidavit, p 001-13, para 10 – p 001-16, para 12.
[6] Founding Affidavit, p 001-15, para 11.3.
[7] 17 Founding Affidavit, p 001-18, para 17 – 20.

7. As set out in the founding affidavit, and for the purposes of carrying out its mandate, GFIS lawfully procured anti-surveillance equipment.[8] It is common cause that the applicant has the requisite security clearance certificate and that GFIS' employees were trained by the SSA to utilise the anti-surveillance equipment, all of which is above board, council mandated and approved.[9]

THE PUBLIC PROTECTOR'S REPORT

8. It is common cause that shortly after the applicant's appointment and the establishment of GFIS, an anonymous complaint was made to the Public Protector, Busiswe Mkhwebane in relation to the applicant's employment, as the head of GFIS, and its establishment. Subsequent to investigating the complaint, the Public Protector promulgated Report No: 21 of 202/21 titled "Report on an investigation into allegations of maladministration relating to irregular appointments, irregular salary increased, financial mismanagement, procurement irregularities and conflicts of interests in the City of Johannesburg." [10] The Public Protector's report exonerated the applicant and found that:[11]

(a) The allegation that the establishment of Group Forensic and Investigation Services (GFIS) and the subsequent appointment of General Shadrack Sibiya as its Executive Head by the CoJ were improper and irregular, is not substantiated.

(b) "My finding, having examined the relevant legal framework, including the applicable policies of CoJ and its concomitant Group Human Capital Management processes, is that the appointment of General Shadrack Sibiya and his subsequent salary regrading was in compliance with all COJ's applicable legal framework".

(c) "On the strength of the evidence currently available at my disposal, I could not find justifiable reason, both in law and on facts to fault the process followed by CoJ to appoint and subsequently upgrade General Sibiya's salary".

(d) "Accordingly, the conduct of the CoJ in the circumstances, did not constitute improper conduct as envisaged in section 182(1)(a) of the Constitution and maladministration as envisaged in section 6(4)(a)(i) of the Public Protector Act."

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[8]18 Founding Affidavit, p 001-17, para 15 – p 001-18, para 20; p 001-34, para 51 – p 001-36, para 57.

[9] Ibid

[10] Founding Affidavit, p 001-19, para 21 – p 001-20, para 20.

[11] Ibid

9. She emphasized the uniqueness and importance of the independence of GFIS:[12]
"5.4.6 Due to the sui generis nature of GFIS office or unit, the delegation of the Executive Mayor was not used to approve the special character of this GFIS but it was presented to Council for approval and elevation to being an independent office to ensure the CoJ commitment of ensuring clean governance and promotion of ethics.
5.4.24. […] Further that the GFIS is required inter alia to carry out investigations into administrative non-compliance and this may result in investigations into the conduct of the City Manager. Therefore, it would make little sense for such position to report directly to the very office GFIS may be investigating."

10. It is also common cause that this portion of the Public Protector's report has not
been challenged, reviewed, or set aside. The time frame for such a review would, in any event, have lapsed seeing that it was issued in excess of 180 days ago[13]. This report and its findings, are administrative of nature as envisioned in section 1 of the Promotion of Administration of Justice Act 3 of 2000 ("PAJA"), is therefore final and is not susceptible to amendment as held in the matters of *President of the Republic of South Africa v Office of the Public Protector and another (Economic Freedom Fighters and others as Intervening Parties)*[14] of *Member of the Executive Council for Health, Province of the Eastern Cape NO and another v Kirland Investments (Pty) Limited t/a Eye Laser Institute*[15]
"In general, the functus officio doctrine applies only to final decisions, so that a decision is revocable once it becomes final. Finality is the point arrived at when the decision is published, announced or otherwise conveyed to those affected by it."

11. In the seminal case of *Oudekraal Estates (Pty) Ltd v City of Cape Town and others,*[16] the court reasoned that this principle is premised on *inter alia* the principle of legal certainty. It was held that until such a time as the report, as well as the consequences of the report, is set aside by a "*court in proceedings for a judicial*

[12] Founding Affidavit, p 001-19, para 21 – p 001-20, para 20.
[13] Founding Affidavit, p 001-20, para 23.
[14] [2018] 1 All SA 576 (GP), para 43 – 44.
[15] 25 2014 (3) SA 219 (SCA), para 15. See also para 103
[16] *26* 2004 (6) SA 222 (SCA).

review it exists in fact and it has legal consequences that cannot simply be overlooked."[17] A transgression of this principle would otherwise result in intolerable uncertainty if the Public Protector's reports could be reversed at any moment or if she could express doubts in relation to her own findings.

THE INVESTIGATION INTO AMAD

12. GFIS received information from a whistleblower on 21 April 2022 where allegations were made against Amad as the MMC for Development Planning, namely that on 04 October 2021 and at or near Johannesburg the MOU was improperly concluded between the JDA, purportedly represented by Amad, and the SCC, represented by Mr Lucky Ketlele in his capacity as chairperson of the SCC.[18] The applicant believes that the veracity of the assault on him by the respondents is a result of this ongoing investigation.

13. It is worth noting that the respondents have not responded to this allegation, save to say that it is irrelevant.[19]

WHETHER THE STATEMENTS AND PUBLICATIONS ARE UNLAWFUL AND THEREFORE DEFAMATORY

14. Our Courts have developed the traditional common law elements which constitute defamation. These elements are:

(i) the wrongful and

(ii) intentional

(iii) publication of

(iii) a defamatory statement

(iv) concerning the applicant.[20]

The determination of whether the publication is defamatory, and therefore *prima facie* wrongful, involves a two-stage enquiry. In *Le Roux and Others v Dey*,[21] the Constitutional Court confirmed the two stages as follows:

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[17] *Ibid*, para 26.

[18] Founding Affidavit, p 001-37, para 61 – p 001-38, para 62.

[19] Answering Affidavit, p 009-36, para 127 – 128.

[20] *Khumalo v Holomisa 2002 (5) SA 401 (CC),* at para 18.

[21] 2011 (3) SA 274 (CC) at para 85.

14.1. The first, is to determine the meaning of the publication as a matter of interpretation; and

14.2. The second, is whether that meaning is defamatory.[22]

15. The applicant alleges that the statements are unlawful and publications are *per se* and *defacto* defamatory and the respondents have failed to discharge the rebuttable presumption that their conduct is unlawful and intentional. As a result, the applicant has a clear *prima facie* right to dignity and has made out a case for the relief sought.[23] Once the applicant establishes that the respondents have published a defamatory statement concerning the applicant himself, it is presumed that the publication was both wrongful and intentional.[24] It is then for the respondents, who bears the burden, to rebut that presumption.

INTERPRETATION

16. The issue here is whether the respondents have made severe inroads into the good name, reputation, standing and dignity of the applicant as espoused in section 10 of the Constitution, having a material and deleterious affect on his ability to continue the work of GFIS.

17. It is common cause that the unlawful publications and statements were published on 28 March 2022 and on the eve of the hearing of this urgent application on 30 May 2022. Amad authored the statements and conducted interviews with the Star newspaper and the news broadcaster, ENCA and that his comments relate, unquestionably, to the applicant. The statements are defamatory, if it is apparent from their content, they intend to cause a particular harm. These statements mean the following on an objective interpretation:

17.1. **That the applicant's appointment is irregular and that he is unfit for office.**

To this end, the statement clearly states that:

(a) The applicant's appointment was illegitimate and that he should be "fired" and that his "his appointment was indeed irregular, invalid and illegal for various reasons, including the failure to follow due process";

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[22] *Le Roux CC* at para 85 (majority) and at para 38 (minority).

[23] Founding Affidavit, p 001-40, para 67 – p 001-43, para 79.

[24] Ibid

(b) There are "individuals in GFIS who are questionable" and that the applicant does not have "a clearance certificate from State Security";

(c) He is "not fit for the position he occupied" and that his appointment was "political", which was an "insult to ratepayer of Johannesburg" and "in fact an illegal conversion";

(d) He was the former mayor's "Golden Project" and that he "misled both council and the residents."

17.2. **The applicant's role and that of GFIS are redundant**

To this end the statement states**:**

(a) That "GFIS is useless" and that "there was no need for GFIS to exist".

(b)That "GFIS should close down because it's now in a space of politics."

(c) That the applicant is politically compromised and that his independence, impartiality, and credibility have been impeded as a result thereof

17.3. **That the applicant is politically compromised and that his independence, impartiality and credibility have been impeded as a result thereof.**

To this end the statements states that:

(a) The applicant is compromised "to do the DA's bidding"; is "suckling white privileges";

(b) "target the ANC and some politicians";

(c) "It was no secret that some who survived losing their jobs in the city has up close and personal relationships with the mayor";

(d) The DA is protecting the "contract of the city's director of Group Forensic Investigation Services ("GFIS")."

(e) The applicant has unlawfully procured spying equipment, which he utilising to spy on councillors that are not affiliated with the DA and in so doing, that he has committed various crimes.

17.4.**That the applicant has unlawfully procured spying equipment , which he utilises to spy on councillors that are not affiliated to the DA and in so doing, that he has committed various crimes.**

To this end the statement states that GFIS had procured "surveillance equipment from Israel to spy on some ANC politicians and target individuals", which equipment was targeted to "listen to phone calls in close proximity, and capture data which is being sent through Bluetooth and email".

17.5. **The "machine was there to expose the dirty laundry of one politician and other senior officials in the City"**;

To this end the statement states that the use of purported surveillance equipment "was wrong" and numerous people have been "affected".

17.6 **GFIS had purportedly procured equipment illegally.**

To this end the statement states that "there was no clearance certificate for that machine"; "[…] an intelligence machine, where one, hypothetically if I were to walk past that machine it will grab whatever that is in my cellphone and then they can use that information against, against, me. It emanated from conspiracies. However, by virtue of the machine being there, it means that there is an element of spying;"

17.7. That applicant "was suspended after controversies about him not being in possession of a clearance certificate from State Security to occupy his position and that due process was ignored during his appointment".

17.8. That the applicant was heading a "rogue unit', "designed for … the opposition" is "gathering intelligence by illegal means" and that "information is sourced illegally, phones are tapped and "foreign" stripping devices are used against councillors and staff who don't agree with the DA";

17.9. That applicant controlled a machine/device that "can listen to phone calls in close proximity and capture data which was sent through Bluetooth or via emai.

17.10. That the applicant conducts investigations "and intercepts communication from phones, laptops, servers and CCTV equipment."

17.11 **GFIS is redundant**

The respondents concede that the statement served to confirm their view that "*GFIS does not serve a function*" and that it is redundant. They do not provide any evidence hereof.

17.12 **The applicant is politically compromised.**

To this the respondents' response is that it is not a statement but a question as to why he is being "mothered" by the DA.[25] Again, this does not detract from the defamatory nature of the statement, rather it served to confirm that the statement was made with the intent of maligning the applicant as politically compromised, that the applicant is "suckling white privileges", which is sexually suggestive as well

[25] Answering Affidavit, p 009-25, para 77.

as exploitative and is *prima facie* derogatory. Again, there is absolutely no truth to this allegation.

17.13. **That the applicant has unlawfully procured spying equipment is spying on councillors and has committed various crimes, the respondents provide no factual evidence supporting this view.**

To this end they rely on inadmissible hearsay evidence.[26] There are no supposed "further official records of the City" which apparently show that the applicant "procured and deployed intelligence gathering equipment." This is evident from the respondents' response to the applicant's Uniform Rule 35(12) notice, where the respondents state that the "*respondents are not in possession of the official city records*."[27] The deduction which can is that there is no such evidence, and the allegation is *de facto* defamatory and is recklessly made with little or no regard for the truth, they are false, as explained in the applicant's founding affidavit.

17.14**. The applicant's appointment is irregular and that he is unfit for office.**

The respondents contended that the statements are "allegations". It is my view that this statement is false and does not detract from it's defamatory nature.[28]Contrary hereto, the respondents fall on their own sword by later contending that "his appointment was indeed irregular, invalid and illegal for various reasons, including the failure to follow due process."[29]

18. On any interpretation, these statements can only be understood to mean that

18.1 as applicant does not have the requisite clearance certificate, he is unfit for office and

18.2 instead of upholding the law he is flouting the law, in concert with GFIS, by spying on councillors, intercepting phones calls, capturing data to extort City councillors**.**

Without any evidence these allegations, they are therefore unlawful and publications thereof is meant to be harmful and particularly egregious to the applicant.

19. The applicant's dignity, integrity and impartiality forms the cornerstone of his work with GFIS and his longstanding employment history in the forensic and

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[26]Replying Affidavit, p 010-22, para 32 – p 010-23, para 33.2.

[27]The first and second respondent's reply to the applicant's notice in terms of Uniform Court Rule 35(12), p 028-6.

[28] Supra

[29]55 Answering Affidavit, p 009-31, para 101.1.

investigative field in excess of 30 years.[30] This is immediately apparent from the content of these unlawful publications and statements. In *Hanekom v Zuma*,[31] the foregone conclusion is then that:

"*To imply that someone is an apartheid spy or dishonest is automatically defamatory. To call persons who hold high office spies imputes to them that they lack "the qualities that are required to be entrusted with the confidence of "high office." This "would indeed tend to lower in the estimation of people straddling all sectors of our society". This is defamatory.*"

20. Having said that I am satisfied that the statements are intended and continue to defame the applicant. These publications and statements were made without any evidence. They are therefore are defamatory as they are diminishing the good name or reputation of the person concerned in the estimation of the readers.[32]

DEFENCES

Truth, public comment and Freedom of expression

21. In answering the various categories of defamatory statements, the respondents levelled the following response:

21.2. The respondents submit that the statements made by Amad are true and justified as they made as a result of the Zebediela report.[33] The respondents started by publishing their statement on 28 March 2022. They now allege that these statements were made pursuant to the contents of the Zebediela report. This cannot be. On their own version, they "*have not to date received a copy of the report from e Speaker and yet the Applicant was provided with a copy of same before I …had sight of it."*[34] They did not and could not rely on Zebediela's report, which is dated 07 April 2022, because they were not in possession thereof.

21.3. Thereafter and based on the false and defamatory statements stated therein, Brink unlawfully commissioned Zebediela to conduct his report, without having

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[30] Supra

[31] [2019] 4 All SA 425, para 9.

[32] *The Citizen 1978 (Pty) Ltd and Others v McBride* at para 19. In this case, before the Constitutional Court, the publishers abandoned their defence that the statements were not defamatory. The majority of the Constitutional Court, per Cameron J held that the defence was rightly abandoned as it was beyond dispute that the publications did lower Mr McBride's reputation in the estimation of readers.

[33] Answering Affidavit, p 009-6, para 14 – p 009-11, para 27; Replying Affidavit, p 010-15, para 27 – p 010-17, para 28.

[34] Answering Affidavit, p 009-9, para 18.8.

engaged with the applicant or his office in any respect. The instigation of the report was premised on the unlawful publications and statements. The applicant has canvassed, at length, why the report commissioned by Brink is unlawful and why the "findings" reached therein are patently wrong. In any event, the findings cannot overrule the conclusion reached in the PP report. The City has addressed this issue with Brink as appears from a letter from the City to Brink in this regard dated 15
April.[35]

21.4. Lastly, other than the respondents' say-so, absolutely no factual evidence is provided by either Zebediela or the respondents other than to allege that it is true.

21.5. It is patently evident that the falsehoods emanated from the unlawful statements and publications issued by the respondent. As set out in the applicant's founding affidavit he was the alleged "whistle-blower" who somehow persuaded Brink, without any authority from the City or the Mayoral Exco to commission the Zebediela report. It is surprising that the respondents can allege that the Zebediela report has not been challenged, while on the other hand as set out in the founding affidavit that there is a pending application to have the report set aside.[36]

THE LAW

22. It is trite that the defamatory statements are not per se unlawful. The respondents allege that they have right to freedom of expression, as espoused in section 16 of the Constitution and that this right should guard against the imposition of the interdictory relief sought by the applicant. The right to exercise freedom of expression is not isolated. Due regard must be had to the constitutional right of all parties involved. To this end and in *Manuel v Economic Freedom Fighters*[37] the court held as follows:

"An individual's reputation is central to his or her sense of self-worth and dignity. The importance of freedom of expression cannot, however, be overstated."

If there is no truth to the unlawful statements and publications, the issue of public interest does not arise.[38] As set out herein, and as evidenced in the applicant's founding and replying affidavit, there is simply no justification for their

[35]Answering Affidavit, Annexure "AA8", p 009-65 – 009-76.
[36] Answering Affidavit, p 009-22, para 69.6.
[37]*Supra*, p 45.
[38]Founding Affidavit, p 001-27, para 37.

unlawful and defamatory statements and publication, in light of the severe inroads they have made to the applicant's dignity and reputation.

23. In so far as the respondents allege that the unlawful publications and statements are fair comment, they must prove that the statement in question was

(i) A comment or opinion and not an allegation of fact;

(ii) That it was fair;

(iii) That the allegations of fact commented upon were true and accurately stated; and,

(iv) That the comment was about a matter of public interest.

24. This defence requires the respondents to establish not only that the per se defamatory statement was true but also that their publication was in the public interest.[39]It is, therefore, a composite defence in that the respondents must show both the truth of the impugned statements and publication in the public interest. Together herewith, the respondents must demonstrate that the *"sting of the statements is true"*.[40] In the *Manuel v Economic Freedom Fighter* [41]case, the court held:

"The EFF's claim that it published the words with an honest belief in the truth thereof, based on the reliable information provided by an anonymous source, does not absolve it from liability. Under the Repetition Rule, the person who repeats a defamatory allegation made by another is treated as if he had made the allegation himself, even if he attempts to distance himself from the allegation."

25. In *Delta Motor Corporation (Pty) Ltd v Van der Merwe*.[42] It was held

'For the defence of fair comment to succeed, the respondent must prove that the statement in question was;

25.1 a comment or opinion and not an allegation of fact;

25.2 that the allegation of fact commented upon were true and accurately stated and

25.3 that the comment was about a matter of public interest"

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[39]*Ramos v Independent Media (Pty) Ltd* 2021 JDR 1082 (GJ) at para 72.

[40] *Ramos v Independent Media*, para 74.

[41][2019] 3 All SA 584 PARA 60

[42] 2004 (6) SA 185 (SCA) at para 13.

26. The Court further stated that the comment must be a genuine expression of opinion, it must be relevant, and it may not be expressed maliciously.[43] To this end, the respondents *in casu* state, several times in their answering affidavits that the statements were based on "facts" and "documents", albeit that is not the case, as I have explained above. It is my view that on the statements mentioned above made by the respondents, are based on "facts" and are, furthermore, entirely malicious and derogatory

27. These statements are not only *de facto* defamatory but are patently false. These are not benevolent statements made for the public's benefit or the sake of their interests but are inappropriate, as well as exploitative and purely derogatory in nature**.** . It is further my view that the applicant has provided ample factual evidence that shows these statements are patently false.**[44]**

28. The High Court, in the *Manuel*[45] case, also held that the respondents' conduct, both before and after publication, showed that they acted with malice. The facts demonstrate that the respondents published the statements with "reckless
indifference."

29. In *Economic Freedom Fighter v Manuel (Media Monitoring Africa Trust as amicus curiae)*[46] the SCA held that if the statement is made maliciously, as opposed to being an expression of an honestly held opinion on a matter of public interest, it is wrongful and the defence cannot succeed.

30. Accordingly the respondents have failed to establish any of the defences as pleaded as this is not a case of fair comment.

RIGOROUS POLITICAL DEBATE

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[43] *Marais v Richard en 'n Ander* 1981 (1) SA 1157 (A) fn 6, at 1167C - 1168C, cited with approval in *Delta Motor Corporation* above at para 13.
[44] Supra
[45] Manuel para 66
[46] [2021] 1 All SA 623 (SCA).

31. As to the issue of rigorous political debate, this defence does not and cannot find application here as the applicant is not affiliated to any political party and, as stated in the founding affidavit, hold office as the Executive Head of GFIS, which is independent of political influence or sway, he is not a political role-player but the gatekeeper of an a-political Department that serves to upend corruption in the City. This defence, therefore, has no credence as held in *Manuel v Economic Freedom Fighters and others,* this Court held:[47]

"*There is nothing in the papers to suggest that Mr Manuel is the respondent's political rival. The appointment process, as will appear below, was designed to be apolitical, and members of the selection panel were chosen because they were people of impeccable reputation and probity, and not because of their political affiliation."*

This *dicta*, similarly, find application here. It is my view that the respondents have failed to discharge their onus accordingly.

URGENCY

32. The applicant alleges in his founding affidavit, that there are simply no bases for these statements. As a result, on 14 April 2022, a letter of demand was addressed to Amad. He did not abide by the demand, instead, he continued publishing the alleged defamatory statements about the applicant, in a concerted campaign to malign him.[48] The applicant again, and as a matter of last resort addressed yet another letter to Amad requesting that he desist from his "unlawful" conduct on 03 May 2022.[49]

33. The respondents concede that they received the demands, however they failed to respond or to provide the necessary undertaking. In their answering affidavit, they state that they are entitled to disseminate these statements.[50] These statements have rung true, as evidenced from the recent media statement, released on the eve of the hearing of this urgent application on 30 May 2022, which contains further defamatory statements.[51]

34. The respondents contend that there is no urgency on the basis that the unlawful

[47] *Supra*, para 18.
[48] Founding Affidavit, p 001-22, para 29 – p 001-24, para 30; Annexures "GS16", p 001-191.
[49] Founding Affidavit, p 001-26, para 37 – p 001-28, para 38; Annexure "GS19", p 001-201.
[50] Answering Affidavit, p 009-32, para 142.
[51] *Supra*.

publications and statements were published on 28 March 2022 and April 2022.[52] The applicant alleges that, this is not so, as set out above and one of the statements was published on the eve of the hearing of this urgent application. The respondents published a media statement, again "defaming" the applicant.[53] The application is urgent for the following reasons:

34.1 The respondents conceding as they do, having received both the first demand of retraction and the final letter of demand, they this notwithstanding fail to take this Court into their confidence by omitting to reveal that they either refused and/or failed to respond to these letters or to provide the requisite undertaking, despite being cautioned about this very urgent application.[54]The respondents contend, that they are entitled to publish the statements about the applicant based on *inter alia* their right to freedom of expression.[55]

34.2 The respondents' argument showcases an unrepentant attitude that clearly evidences that they do not intend to put an end to their, as showcased by the recent media release.

34.3 I am of the view that the respondent's ongoing agenda is a direct and concerted campaign aimed at maligning the applicant and in so doing causing him severe prejudice by making inroads into his right to dignity, his reputation as well as his good name and standing, as enshrined in section 10 of the Constitution.

34.4 After service of the application the defamatory statements were removed from the second respondent's website, but this notwithstanding the respondents remain unrepentant.

35. The applicant brought this application which is in line with the *sui generis* approach followed in this division in the recent case of *Manuel v Economic Freedom Fighters and others*[56], which held that the *"manner in which dignity is engaged in this matter renders the matter urgent" as "false allegations can so quickly destroy a good reputation."*[57]

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[52] Supra

[53] Replying Affidavit, p 010-9, para 14.4; Annexure "RA2A", p 010-60.

[54] Replying Affidavit, p 010-8, para 14.

[55] Answering Affidavit, p 009-39, para 142 – 143.

[56] [2019] 3 All SA 584 (GJ), para 1; 19 – 20. See also: *Safcor Forwarding (Johannesburg) (Pty) Ltd v National Transport Commission* 1982 (2) PH F48 (AD), at p 106, where the court held:
"…Naturally, it is for this Court to decide whether the matter is one of urgency and whether the circumstances warrant a departure from the normal procedures. To hold otherwise would,in my view, make the Court the captive of the Rules. I prefer the view that the Rules exist for the Court, rather than the Court for the rules."

[57] *Supra*, para 67.

36. That being sad I am of the view that the applicant will suffer irreparable harm if the relief sought by the applicant is not granted on urgency**.** In line with the notice issued by my brother Sutherland on 04 October 2021,[58] I agree that applications relating to defamation are indeed matters that require this Court's urgent intervention as also held in the judgment by my sister Crutchfield in her judgment dated 15 March 2022 in the *Oosthuizen and Others v Konar*.[59] Accordingly, my ruling is that this matter is urgent.

FINAL INTERDICT

37. It is trite that parties may approach the urgent court for final interdictory relief as held in the often-quoted *dicta* of *Heilborn v Blignaut*:[60]

"*If an injury which would give rise to a claim in law is apprehended, then I think it is clear law that the person against whom the injury is about to be committed is not compelled to wait for damages and sue afterwards for compensation, but can move the Court to prevent any damage being done to him. As he approached Court on motion, his facts must be clear; and if there is a dispute as to whether what is about to be done is actionable […].*"

38. I am of the view that there is no justiciable dispute of fact and the applicant has made out a clear case for the relief sought, namely that he has a clear right to dignity and his reputation as espoused in section 10 of the Constitution. There is an injury actually committed or reasonably apprehended in that there is a real threat to the applicants' good name, standing, reputation, independence, and his continued work of GFIS. His concomitant rights will continue **to** be infringed and irreparably damaged in the absence of similar protection by any other ordinary remedy.[61]

39. The facts herein clearly indicate that Amad's ill-conceived publications and statements are concerted and deliberate actions,for the purposes:

(a) of attacking the independent, investigatory functions of GFIS;

(b) defaming the applicant;

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[58]"*Notice to Legal Practitioners about the urgent motion court, Johannesburg*."

[59]6 (21/58019) [2022] ZAGPJHC 143 (15 March 2022).

[60]1931 WLD 167.

[61] Founding Affidavit, p 001-40, para 67 – p 001-43, para 79.

(c) irreparably damaging his good name and standing and
(d) severely impeding his dignity.

In *Manuel v Economic Freedom Fighters and others,*[62] the court held as follows:

"*Mr Manuel has met the requirements of an interdict, contrary to the argument of the respondents. He has a clear right to protect his dignity and reputation, which he alleges the respondents have infringed. Secondly, he has suffered and continues to suffer harm to his reputation, both in his personal and professional capacity, through the widespread dissemination of the impugned statement. He has no alternative remedy to the persisting injury, as the respondents have refused to apologise or to take down the defamatory statement from their social media platforms. There is also ongoing harm to the well-being of the country as the public labours under the misapprehension that SARS is led by a person who was appointed for nepotistic and corrupt reasons*."

40. This *dicta*, again, find equal application in this matter. In the circumstances, I am of the view that respondents ought to be interdicted from their severely prejudicial and ongoing unlawful conduct.

POINTS IN LIMINE

DISPUTE OF FACT

41. The respondents allege that there is a dispute of fact and that motion proceedings are not competent and that this dispute of fact was evident prior to launching the proceedings.[63]

42. First, despite having conceded that they received the applicants demands, the respondents did not in any way engage the contents of the letters, nor did they deny the contentions thereof. It was only after the institution of this urgent application that they contend that there are disputes. There is no basis for this contention as there is no dispute of fact, which necessitates the use of discovery, cross-examination, and subpoena as the respondents have either failed to show cause why the statements are true or have provided bare denials.[64] As held by the SCA in *Wightman t/a JW*

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[62] *Supra*, para 21.
[63] Founding Affidavit, p 009-11, para 28 - 29.
[64] Replying Affidavit, p 010-13, para 21.

Construction v Headfour (Pty) Ltd,[65] a bare denial does not give rise to a *bona fide*, genuine dispute of fact:

"A real genuine and bona fide dispute of fact can exist only where the Court is satisfied that the party who purports to raise the dispute has in his affidavit seriously and unambiguously addressed the fact said to be disputed. There will of course be instances where a bare denial meets the requirement because there is no other way open to the disputing party and nothing more can therefore be expected of him. But even that may not be sufficient if the fact averred lies purely within the knowledge of the averring party and no basis is laid for disputing the veracity or accuracy of the averment. When the facts averred are such that the disputing party must necessarily possess knowledge of them and be able to provide an answer (or countervailing evidence) if they be not true or accurate but, instead of doing so, rests his case on a bare or ambiguous denial the Court will generally have difficulty in finding that the test is satisfied."

43. Secondly, in both the cases of *Manuel v Economic Freedom Fighters and others*[66] and *Hanekom v Zuma*,[67] the relief final interdictory relief sought, which is similar to the applicants', was granted on an urgent basis. In *Manuel v Economic Freedom Fighters and others,* this Court held:[68]

"Mr Manuel is accused of grave allegations of corruption and nepotism. Allegations of dishonestly and immoral or dishonourable conduct are defamatory. There is no reason why Mr Manuel ought to submit himself to further indignities and assaults on his dignity before the matter can be determined. Dignity is not only a value fundamental to the Constitution, but it is also a justiciable and enforceable right that must be protected and respected."

44. This was confirmed in the SCA, in *Economic Freedom Fighters and others v Manuel (Media Monitoring Africa Trust as amicus curiae):*[69]

"In circumstances where the applicants were obdurate, and where the integrity of an institution of state was being undermined on the bases of Mr Manuel's alleged corrupt and nepotistic conduct, an award for damages, in due course, could hardly

[65]Wightman t/a JW Construction v Headfour (Pty) Ltd 2008 3 SA 371 (SCA) at para 13.
[66]Supra, para 17.
[67][2019] 4 All SA 425, para 82 - 85
[68]Supra, para 17.
[69]Supra, para 89.

be said to be viable and compelling alternatives to an interdict prohibiting further publication."

NON-JOINDER

45. The respondents contend that there is a material non-joinder in that "*both the City of Johannesburg and the media house which published the three articles which were not published by the respondents have direct and material interest in this application."* They say that this is evidenced by a "*cursory reading of the founding affidavit."*[70]

46. The respondents have, conflated the term "publishing" as a definitional element of defamation to that of "publishing" in the context of the news and media industry. Amad does not dispute that the respondents published (as a definitional element of defamation), the various *de facto* defamatory statements[71]. As held in *S v Kiley*,[72] publication may be particular, to one or more named or known specific persons, or general, to the public at large or a class or number of unknown and undesignated persons. To that end, they concomitantly published unlawful and defamatory publications. This cannot be interpreted in their favour.

47. In addition, as set out in the founding affidavit, and confirmed in the replying affidavit, the applicant demanded that the articles be retracted and that an apology be issued (Letters addressed to the media house**,** Independent Media (Pty) Ltd) .[73] The Independent Media are yet to retract the statement or to issue an apology, which they say is for "all intents and purposes, at the date of publication of the article, the contents thereof were a true reflection of the comments made by Mr Thapelo Amad, Al Jama-Ah councillor."[74] The applicant is in the process of submitting a complaint to the publication internal Ombud process, which process is ongoing.[75] In addition, there is no factual or legal basis to aver that the City ought to be joined. The respondents have failed to *in toto* expand on the nature of their interest, in their answering affidavit.

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[70] Answering Affidavit, p 009-6, para 12.

[71]Founding Affidavit, Annexures "GS1" – "GS4", p 001-45 – 001-74.

[72]1962 3 All SA 191 (T).

[73] Founding Affidavit, p 001-28, para 39 – p 001-29, para 42.

[74]82 Founding Affidavit, Annexure "GS21A", p 001-214 – 001-215.

[75]83 Replying Affidavit, p 010-13, para 22 – p 010-15, para 26.

48 .In the circumstances, neither is Independent Media nor is the City interested parties on either a "cursory reading" of the founding affidavit or on a more comprehensive understanding of the nature of the application and the extent of the relief sought. Accordingly my ruling is that there has been no material non-joinder.

COSTS

49. Counsel for the applicant argued for punitive costs for the reasons set out above and referred this Court to the matter of *Manuel v Economic Freedom Fighters and others Supra at* , paragraph 71 where it was held,

"*The motive and conduct of the respondents are relevant. They stubbornly refuse to retract, apologise or remove the statement from their social media platforms, when it is evident that they should do so. These factors, collectively establish the existence of actual malice and desire to hurt Mr Manuel in his personal, and professionally, through the widespread dissemination of the defamatory statements. Such conduct warrants a punitive cost order."*

50. It is my view that respondents' *mala fide* conduct necessitates the granting of a punitive cost order.

Having said that I therefore make the following order

ORDER

1. The requirements of the time limits, forms and service and permitting this
application to be heard as one of urgency as contemplated in terms of Rule 6(12)
of the Uniform Rules of Court are dispensed with.
2. The respondents, their officials, and any other person(s) acting on their behalf
are interdicted from publishing any statement that says or implies that:
2.1. The third applicant's appointment was irregular and that he is unfit for office;
2.2. GFIS improperly procured sophisticated surveillance technology for the
purposes of spying on councillors;

2.3. GFIS is engaging in improper and unlawful conduct by *inter alia* spying on
councillors and gathering information by illegal means including intercepting councillor's communications and "tapping phones";
2.4. The applicant has not obtained the requisite security clearance from the
State Security Agency ("**SSA**");
2.5. GFIS is a "rogue unit" that lacks credibility, integrity and impartiality; and
2.6. That the applicants are politically-motivated or politically compromised, insofar as such statements relate to *inter alia* the entirety of the subject matter set out in the founding affidavit under case number 2022/16783.
3. Both respondents are jointly and severally liable to pay the costs on attorney and client scale.

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MOLEFE MATSEMELA

Heard on	2 JUNE 2022
Delivered on	29 JUNE 2022
For the applicant	RA SOLOMON SC
With him	DE GOOSEN
Instructed by	IAN LEVITT ATTORNEYS
For the respondents	C SHAHIM
Instructed by	KERN,ARMSTRONG & ASSOCIATES