

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

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: YES/NO.

(2) OF INTEREST TO OTHER JUDGES: YES/NO.

(3) REVISED. ✓

17/10/2017

DATE:

SIGNATURE:

**CASE NO: 23897/2017**

In the matter between:

**STEPHEN PATRICK "SAM" SOLE**

First Applicant

**FERIAL FAIZA HAFFAJEE**

Second Applicant

**SOUTH AFRICAN NATIONAL EDITORS FORUM**

Third Applicant

and

**BLACK FIRST LAND FIRST**

First Respondent

**ANDILE MNGXITAMA**

Second Respondent

**PETER BRUCE**

Third Respondent

**ADRIAAN JURGENS BASSON**

Fourth Respondent

**STEPHEN MEIERT GROOTES**

Fifth Respondent

**MAX DU PREEZ**

Sixth Respondent

**BARRY JOHN BATEMAN**

Seventh Respondent

**KARIMA BROWN**

Eighth Respondent

**EUSEBIUS MCKAISER**

Ninth Respondent

**KATERINA KATOPODIS**

Tenth Respondent

**SIMON TIMOTHY COHEN**

Eleventh Respondent

In re:

**SOUTH AFRICAN EDITORS FORUM**

First Applicant

**And 11 Others**

Second to Twelfth Applicants

and

**BLACK FIRST LAND FIRST**

First Respondent

**ANDILE MNGXITAMA**

Second Respondent

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## JUDGMENT

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**WEINER J:**

### INTRODUCTION

[1] The applicants seek an order holding the first and second respondents in contempt of the court order handed down by Acting Justice Van Der Westhuizen on 7 July 2017 ("the court order"). The court order was granted pursuant to an application brought by

some of the applicants herein for an interdict against the first and second respondents ("the interdict application"). The first and second respondents ("BLF and Mngxitama") will be referred to as 'the respondents' herein, as the other respondents are cited for their interest in the matter, and support the relief sought by the applicants.

[2] The court order provided as follows:

*'(1) The first and second respondent are interdicted from engaging in any of the following acts directed towards the applicants:*

*Intimidation, Harassment, Assaults, Threats, Coming to their homes; or acting in any manner that would constitute an infringement of their personal liberty;*

*(2) The first and second respondent are interdicted from making any threatening or intimidating gestures on social media, including on the website of Black First Land First, and their individual twitter pages that references any violence, harm and threats;*

*(3) The first and second respondent are to issue a public statement to all of the members of the first respondent that they do not condone any of the above acts directed at any journalist.'*

[3] The applicants contend that within a few hours of the order being granted, it was breached by the first and second respondents.

application as well as other journalists present at the event.

- [7] The applicants also seek, in the present proceedings, to extend the court order to cover all journalists.

### **POSTPONEMENT APPLICATION**

- [8] At the commencement of today's hearing, the respondents' counsel requested a postponement on the basis that the respondents required time to deal with the allegations in the affidavits. It is common cause that the respondents received a copy of the application on the evening of 1 August 2017. They were granted until 3 August 2017 at 16:00 to file answering affidavits; they failed to do so. In correspondence, they undertook to file their affidavits by Sunday, 6 August 2017; again, they failed to do so.

- [9] Respondents' counsel submitted that he had not received full instructions and it had been impossible to consult with Mngxitama and as the latter was away in Cape Town. There is no explanation why, from 1 August 2017 until today, no attempt was made by Mngxitama to consult with his attorneys and place an affidavit before this court. Even if he was in Cape Town, there are ways and means of electronic and telephonic correspondence.

- [10] Respondents' counsel contends that this is a very serious matter,

insofar as the Mngxitama is concerned, as it affects his liberty. This is quite correct. One would therefore have thought that Mngxitama would have done everything in his power to answer the allegations so that he could protect his liberty, but he did not bother to do so.

[11] Not only did the respondents fail to file their answering affidavit, but no application or affidavit was filed for the postponement application. This shows disdain and a complete lack of respect in dealing with the court.

[12] The respondents contend that the request for the postponement is also based upon the fact that they wish to file an expert report dealing with the video footage upon which the applicants rely in this application. They contend that such report will show that certain of the footage has been tampered with. This and the inability to consult appears to be the basis for the application for a postponement.

[13] The respondents are not ready to proceed, simply because they ignored the dates in the notice of motion and the procedures of this court. The respondents have not provided any facts which would elucidate for the court why an opposing affidavit was not filed.

[14] In addition, in order to obtain a postponement, the respondents would have to demonstrate that they have a *bona fide* defence to

the application. Mngxitama and several members of the BLF were present in court. In order for the court to deal with the merits of the application, respondents' counsel was requested whether he could inform the court whether his clients disputed the events detailed in the affidavits and in the video footage, and if so, which portions they disputed. Mngxitama was also given the opportunity to give oral evidence, if he so desired, in order to explain the basis of the respondents' defence. This was declined. The respondents persisted with their submission that the footage had been tampered with. As to the affidavits of the applicants and other affected persons, which described and corroborated certain of the events captured in the video footage, they offered no comment.

## **AMABHUNGANE**

[15] The applicants state that amaBhungane has established itself at the forefront of investigative journalism in South Africa.

[16] Their journalists, along with others, are uncovering and reporting on allegations of state capture and corruption by the Gupta family. Their work includes reporting on the so-called 'Gupta leaks', a cache of many thousands of e-mails and documents that purport to expose President Jacob Zuma, the Gupta family, and many other cabinet ministers and private corporations' involvement in corruption at the highest level of government and industry.

[17] The applicants are reporting on these because their stance is one of being stridently anti-corruption. The event on 27 July 2017, detailed below, was organised by them.

[18] The applicants, in presenting their case, dealt with the consequences that these alleged corrupt activities have on the country as a whole. They referred to *Glenister v The President of the Republic of South Africa and Others*,<sup>2</sup> where the Constitutional Court described the impact of corruption as having; '*a deleterious impact*' on a number of rights in the Bill of Rights. It held:

*'Corruption has become a scourge in our country and it poses a real danger to our developing democracy, it undermines the ability of the government to meet its commitment to fight poverty and to deliver on other social and economic rights guaranteed in our Bill of Rights.'*<sup>3</sup>

[19] It is difficult to understand the respondents' stance in this regard. When instances of corruption are presented to the public, there appears to be more interest in how the evidence was obtained than the actual content of the evidence. Some of the evidence has not been denied by certain of the parties involved therein.

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<sup>2</sup> 2011 (3) SA 347 (CC).

<sup>3</sup> Para 57.

[20] Be that as it may, the respondents have views and despite what is stated above, the respondents are entitled to their views and are entitled to express same. They are, however, not entitled to harass, intimidate or threaten persons who express views contrary to their own. The Bill of Rights entrenches freedom of expression; likewise, it entrenches freedom of the press.

[21] The applicants contend that the respondents' conduct is insidious, because it impedes the public's ability to make informed decisions about elected officials by suppressing the dissemination of information that implicates government officials and widespread corruption. The effect of this conduct is a weakened society as the state is ill-equipped to confront and deal with what is described by amaBhungane as a 'national nightmare'. If any of this evidence proves true, then dishonest and corrupt leadership, corruption and gross looting of state entities and the obliteration of independent institutions, could see the demise of our Constitutional democracy and the Constitution itself.

#### **THE EVENTS OF 27 JULY 2017**

[22] It is common cause that the event was organised to discuss the 'Gupta leaks'. There was to be a panel discussion comprising four investigative journalists and it was to be moderated by Bongani Bingwa ("Bingwa"). The court has read the affidavits of the



applicants and its supporting affidavits. The court also viewed the video footage relating to such event. Brown, Sam Sole, the first applicant herein, Ferial Haffajee, Bongani Bingwa, Stephens Brummer, Tembisa Cochrane, Mahlatse Gallens, Nico Reddy and Pieter Louis Myburgh, who were all present at this event, detail their personal experience as well as the general atmosphere at the gathering.

[23] Each witness provides a different perspective of the event and certain of these perspectives are confirmed in the video footage.

[24] It appears from the footage, and from the affidavits of the deponents, that the respondents and others, including some persons purporting to be members of the MVKA, ("the ANC Military Veterans Association") arrived at the venue shortly after the event started and began disrupting proceedings with loud singing, dancing, or chanting. The applicants submit that this was deliberate and designed to make it impossible for the event to continue. It is also alleged that Mngxitama physically assaulted Brummer after Brummer tried to prevail upon Mngxitama and his supporters to participate constructively in the event.

[25] This sequence of events has apparently been denied by Mngxitama, who alleges that Brummer assaulted him first. What appears from the video footage is that Brummer bent down to talk

to Mngxitama, then there seems to be an altercation. It is not possible from the footage to ascertain precisely what occurred as many people were standing around Brummer and Mngxitama and thus obstructed the view. This court cannot decide on this dispute.

[26] The applicants contend, and this is borne out by the footage, that the event descended into chaos, that the respondents, and others who accompanied them, were brandishing chairs, one person was stated to be carrying a knife, Bingwa was insulted by being called, amongst other things, a 'house Negro' an 'Uncle Tom' and someone who 'had sold out'. The respondents appear to be generally harassing, threatening and intimidating the journalists and others who were present.

[27] Sole and Haffajee state that they received threats and insults which were intended to cause them harm. Zanele Lwane ("Lwane") a member of the first respondent, is seen to be making threatening gestures, verbally abusing and attempting to intimidate the attendees. As Lwane was present in court at the hearing, the respondents' counsel was requested to ascertain from her, whether she wished to dispute this portion of the video footage. She declined to comment.

[28] Applicants referred in this regard to Section 1 of the Protection from Harassment Act 17 of 2011 which contains a useful definition of the

term 'harassment'.

It means:

*'directly or indirectly engaging in conduct that the respondent knows or ought to know –*

*(a) causes harm or inspires the reasonable belief that harm may be caused to the complainant or a related person by unreasonably –*

*(i) following, watching, pursuing or accosting the complainant or a related person, or loitering outside of or near the building or place where the complainant ... happens to be;*

*(ii) engaging in verbal, electronic or any other communication aimed at the complainant or a related person, by any means, whether or not conversation ensues ...'*

## **OTHER INSTANCES OF CONTEMPT**

[29] Despite the court order, the respondent had continued with other forms of intimidation. On the website of the BLF, inter alia, the following is stated:

1. On the 3 August 2017, in detailing its attendance at the Daily Maverick "The Gathering" event at the Cape Town International Convention Center, BLF posted that they will attend to *'expose firstly that AmaBhungane is founded and funded by white monopoly capital; secondly that AmaBhungane and Daily Maverick are manufactures of fake news, thirdly that they will expose the lies they write about BLF, fourthly they will expose the fact that AmaBhungane and Daily Maverick are anti-democratic and anti-media freedom'*.

2. BLF called for a public debate with amaBhungane, Daily Maverick and

News24 so as to “*speak on a public platform about our issues instead of running to the courts. They must stop holding gatherings where they all agree on views, and shut out dissenting views.*”

3. Lastly it stated: “*BLF will go anywhere it pleases, and engage with everybody accordingly, land or death*”.

[30] This third posting is in direct contempt of the court order, which prohibits BLF, *inter alia*, from going to certain journalists' homes.

[31] It bears noting that, at the event on 27 July 2017, several of the journalists asked Mngxitama and members of the BLF whether they would like to be part of the debate; the respondents did not accept this invitation, but carried on with their unlawful conduct. This is contrary to what the respondents contend on their website. From these offers, it appears that the applicants are willing to call for a public debate at which Mngxitama and others may attend, on condition that the members of the BLF behave appropriately and participate in the debate as opposed to disrupting it.

[32] The applicants accordingly submit that, based upon the affidavits and contents of the video footage, which has not been disputed, there is no substantive opposition to this application and therefore the respondents cannot discharge the evidentiary burden resting on them to show that there is a reasonable doubt that the compliance was willful or *mala fide*.

[33] Although respondents' counsel referred to an allegation relating to the tampering with the video footage, there is no evidence of this, but, in any event, this becomes irrelevant. Even if the footage has been tampered with, there are portions thereof which the respondents, when called upon to dispute, declined to comment. From the postings on their website, it seems clear that the respondents do not deny the events, but, in fact the conduct described is part of their agenda.

[34] In order to find that the events did not take place as described, this court would have to find that all of those who deposed to affidavits on behalf of the applicants have committed perjury and have fabricated the events. It is clear from the affidavits and certain portions of the video footage, as well as from the BLF's own website, that the respondents are in contempt of the court order.

[35] Contempt proceedings are inherently urgent, and more so, in cases where parties are being threatened or where the consequence of the disobedience to the court order may cause harm to people. The respondents clearly have not taken this application or the court order seriously.

[36] Having dealt with both the procedural failures surrounding the respondents' request for a postponement and the merits of the application as set out above, I find that the respondent has not

satisfied the court on the requisites for a postponement.<sup>4</sup> Accordingly the application for postponement is refused. In addition, no legitimate defence has been raised to the merits of the application and the applicants are accordingly, entitled to relief.

## **RELIEF SOUGHT**

[37] The applicants seek relief in the form of imprisonment (to be suspended) as well as a financial penalty. However, I do not intend to impose the financial penalty at this point. Such penalty will form part of the order for committal, both of which will be suspended. One lives in hope that the respondents will engage in more meaningful debate without harassing journalists, who are acting in accordance with their rights, enshrined in the Constitution.

[38] The applicants seek an extension of the relief obtained in the court order to extend same to all journalists. It is apparent that the applicants and some of the respondents are not the only journalists who are being subjected to the unlawful conduct of the first and second respondents. Such journalists are entitled to be protected where their rights are being abused.

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<sup>4</sup> *Myburgh Transport v Botha t/a SA Truck Bodies* 1991 (3) SA 318 (NM); *Madhitsky v Rosenberg* 1949 (2) SA 392 (A) at 398-399; *R v Zackey* 1945 AD 505.

**COSTS**

[39] The applicants seek punitive costs. The respondents' conduct is scandalous. Breach of a court order is destructive of the Rule of Law and leads to anarchy. In addition, it is clear that the respondents display contempt towards the rules of this court and the procedures which enhance the administration of justice. Not only have they trampled on the rights of the applicants with their conduct, they have treated this court with complete disdain. This case is a prime example of when a punitive costs order should be granted.

Accordingly, the following order is made:

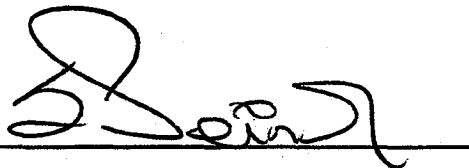
1. The first respondent, Black First Land First, and the second respondent, Andile Mnxgitama are held to be in contempt of the court order handed down in this court by his Lordship Mr Acting Justice Van Der Westhuizen on the 7 July 2017.
2. Mngxitama is sentenced to imprisonment for a period of three months. Such order for arrest and imprisonment will be suspended indefinitely, on condition that neither the BLF nor Mngxitama breach the order granted by Van Der Westhuizen, AJ and or the order granted herein.
3. If the court order granted by Van Der Westhuizen AJ and/ or the order granted herein is breached, the first and second respondents

are ordered to pay a fine to the Department of Justice of R100 000  
(one hundred thousand rand)

4. The relief granted by his Lordship Mr Acting Justice Van Der Westhuizen on the 7 July 2017 is extended as follows:

The first and second respondents are interdicted and restrained from:

- (a) engaging in any of the following acts directed towards any journalist: intimidation, harassment, assaults, threats, coming to their homes and acting in any manner that would constitute an infringement of their personal liberty.
  - (b) making any threatening or intimidating gestures or comments, towards any journalist, on social media and/or on the website of the BLF and/or on their Twitter pages.
5. The costs of this application are to be paid by the first and second respondents, jointly and severally, on the attorney and own client scale, including the costs of two counsel.



**S.E. WEINER**  
**JUDGE OF THE HIGH COURT**  
**GAUTENG LOCAL DIVISION, JOHANNESBURG**



<b>Attorney for applicants:</b>	<b>Webber Wentzel</b>
<b>Counsel for applicants:</b>	<b>Advocate Seape</b>
<b>Attorney for respondents:</b>	<b>MB Tshabangu Inc.</b>
<b>Counsel for respondents:</b>	<b>Mr Mawela</b>
<b>Date matter heard:</b>	<b>8 August 2017</b>
<b>Judgment date:</b>	<b>8 August 2017</b>