

SAFLII Note: Certain personal/private details of parties or witnesses have been redacted from this document in compliance with the law and [SAFLII Policy](#)

In the matter between:

H, W S

APPLICANT

and

W, N

RESPONDENT

SUMMARY

WILLS J:

Interdict- The applicant seeks an order against the respondent in the following terms:

1. interdicting and restraining the respondent from posting any information pertaining to the applicant on Facebook or any other social media;
2. in the event that the respondent fails to comply to the abovementioned order, that the respondent then be placed under arrest for non-compliance for a period of 30 days or a period as determined by the Court;
3. Removing the postings so posted by the respondent from Facebook or any other social site it might have been placed;
4. If and in the event that the respondent fails, alternatively neglects, alternatively refuses to remove such postings from Facebook or any other social media site upon which it might have been posted that the Sheriff of Randburg be ordered and authorised to remove the postings so listed by the respondent;

5. Costs of the application.

The applicant is an insurance broker who is separated from his wife. The respondent had been a close friend of the applicant. This friendship extends back from the time before the applicant married his wife. The applicant and his estranged wife are engaged in a divorce action. The applicant's estranged wife is presently residing with the respondent. They are three minor children born of the marriage between the applicant and his estrange wife. These minor children have been residing with the applicant for the last few months.

The respondent is the author of the posting on Facebook which has given rise to this litigation. It was posted on 27 February 2012. Its rubric reads: 'Letter to W H- for public consumption'. W H is the applicant in this matter. Included in the posting is the following:

I wonder too what happened to the person who I counted as a best friend for 15 years, and how this behaviour is justified. Remember I see the broken hearted faces of your girls every day. Should we blame the alcohol, the drugs, the church, or are they more reasons to not have to take responsibility for the consequences of your own behaviour? But mostly I wonder whether, when you look in the mirror in your drunken testosterone haze, do you still see a man?

The Applicant complains that posting in question publishes information which portrays him as:

1. A father who does not provide financially for his family;
2. A father who would rather go out drinking than caring for his family;
3. A person who has a problem with drugs and alcohol.

Despite several requests by the applicant to the respondent to remove the posting, the respondent has refused to do so.

The respondent claims that she posted the posting not to defame the applicant but in order for

the applicant to reflect on his life and on the road he had chosen.

The court *held* that, in our law, it is not good enough, as a defence to or a ground of justification for defamation, that the published words may be true: it must also be to the public benefit or in the public interest that they be published. The court said further that a distinction must always be kept between what is interesting to the public as opposed to what it is in the public interest to make known.

It was found that, the words in respect of which the applicant complains were not in the public interest to be published, even if it is accepted that they are true.

The court found further that, the respondent had been unable to justify her posting.

Furthermore, malice or improper motive by the perpetrator of the comment also acts to defeat the defence of fair comment. The background to the posting, together with the words themselves, indicates that the respondent acted out of malice when she posted the offending comments. The posting by the respondent was found to be unlawful and that the applicant had indeed been defamed.

The court considered that it was necessary to develop the common law in order to determine whether the applicant should succeed in obtaining an interdict rather than proceed by way of a defamation action.

The applicant was granted the interdict. The respondent was ordered to remove all postings which she has posted on Facebook or any other site in the social media which refer to the applicant and again to pay the applicant's costs in this application.

The court decided further that, it would not go so far as interdicting and restraining the respondent from posting any information pertaining to the applicant on Facebook or any other social media because the court had no way of knowing for whether their might be

circumstances in the future that would justify publication about the applicant.

As regards the relief sought which relates to placing the respondent under arrest, should she fail to comply with court's order, no order was made. The court took into account the facts that it had no way of knowing whether or not the respondent may become incapable of complying with the court's order.

The court expressed uncertainty as regards the competence of the Sheriff of Randburg to remove the postings should the respondent fail to do so. The court did not made an order in this regard also, instead, it stated that the applicant was welcome to approach it again on this issue should it become necessary.

The court ordered the respondent to pay the applicant's costs in the application.