

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, PRETORIA

**.7/4/2016**

Case No.: 29512/2015

|                   |                                     |
|-------------------|-------------------------------------|
| (1)               | REPORTABLE: YES / NO                |
| (2)               | OF INTEREST TO OTHER JUDGES: YES/NO |
| (3)               | REVISED.                            |
| <b>2016-04-07</b> |                                     |
| DATE              | SIGNATURE                           |

In the matter between:

BARCLAYS AFRICA GROUP LIMITED

1<sup>st</sup> APPLICANT

ABSA BANK LIMITED

2<sup>nd</sup> APPLICANT

JANSE VAN RENSBURG, MARTHINUS CHRISTOFFEL

3<sup>rd</sup> APPLICANT

BEGGS, COLIN

4<sup>th</sup> APPLICANT

CUBA, YOLANDA

5<sup>th</sup> APPLICANT

DINGAAN, THEMBISA

6<sup>th</sup> APPLICANT

FAKIE, SHAUKET

7<sup>th</sup> APPLICANT

HODNETT, DAVID

8<sup>th</sup> APPLICANT

HUSAIN, MOHAMED

9<sup>th</sup> APPLICANT

LUCAS-BALL WENDY

10<sup>th</sup> APPLICANT

MOKGOSI-MWANTEMBE, THOKO

11<sup>th</sup> APPLICANT

MUNDAY, TREVOR

12<sup>th</sup> APPLICANT

RAMOS, MARIA

13<sup>th</sup> APPLICANT

PALMER, STEVEN

14<sup>th</sup> APPLICANT

|                         |                            |
|-------------------------|----------------------------|
| DRUTMAN, NADINE         | 15 <sup>th</sup> APPLICANT |
| NAIDOO, SABASHNEE       | 16 <sup>th</sup> APPLICANT |
| HAMMOND POLE MAJOLA INC | 17 <sup>th</sup> APPLICANT |
| WILLIAMS, THEA          | 18 <sup>th</sup> APPLICANT |
| ERASMUS, CHANTAL,       | 19 <sup>th</sup> APPLICANT |
| THEUNISSEN, CHANTAL     | 20 <sup>th</sup> APPLICANT |
| WEST, LUANNE            | 21 <sup>st</sup> APPLICANT |
| SCHARNECK, SALLY        | 22 <sup>nd</sup> APPLICANT |
| MAKWAKWA, LEBOHANG      | 23 <sup>rd</sup> APPLICANT |
| HARTMAN, ALAN           | 24 <sup>th</sup> APPLICANT |
| CLEARY, CHRISTOPHER     | 25 <sup>th</sup> APPLICANT |
| GERHARD, ANDREW         | 26 <sup>th</sup> APPLICANT |
| LABUSCHAGNE, SALOME     | 27 <sup>th</sup> APPLICANT |
| MICHIE, BRENDEN         | 28 <sup>th</sup> APPLICANT |
| RICHARDS, KYLE          | 29 <sup>th</sup> APPLICANT |

and

|   |                            |
|---|----------------------------|
| KEYTER, BARRY CHARLES   | 1 <sup>st</sup> RESPONDENT |
| KEYTER, BARRY CHARLES N.O. IN HIS<br>CAPACITY AS TRUSTEE FOR THE KEYTER<br>TRUST (REGISTRATION NUMBER 935/1990) | 2 <sup>nd</sup> RESPONDENT |
| KEYTER, ANTHONY PETER   | 3 <sup>rd</sup> RESPONDENT |

---

## J U D G M E N T

---

HIEMSTRA AJ

### INTRODUCTION

[1] This is an application for a final interdict, and other relief as set out later, against the respondents. Hughes J issued an interim interdict on 15 May 2015 and extended

it to 22 May 2015. On 15 December 2015 the 3<sup>rd</sup> respondent was joined at the instance of the applicants and the interim interdict was made applicable to him. The order was further extended to 4 and 5 February 2016. The application concerns alleged defamation of the applicants by the respondents.

[2] The issues in this case arose from a misunderstanding that occurred between the 17<sup>th</sup> respondent, attorneys Hammond Pole Majola Inc (Hammond Pole), acting on behalf of ABSA Bank Limited, and the first respondent, Mr Barry Charles Keyter (Mr Barry Keyter), over the question whether the Keyter Trust (the 2nd respondent) had to pay a certain amount of costs incurred by ABSA Bank Limited (ABSA) to Hammond Pole or directly to ABSA. These costs amounted to the sum of R4 350. The costs were incurred in litigation between the Keyter Trust and ABSA over the trust's failure to pay its bond instalments punctually.

[3] It is not necessary to relate the details of the disagreement or misunderstanding between Mr Barry Keyter and Hammond Pole and/or ABSA. The issue in this matter is Mr Barry Keyter's alleged defamation of the applicants. I refer to Mr Keyter as Mr Barry Keyter in order to differentiate between him and his twin brother, Mr Anthony Peter Keyter, the 3<sup>rd</sup> respondent.

[4] The first applicant is Barclays Africa Group Limited (Barclays), formerly known as ABSA Group Limited. The second applicant is ABSA Bank Limited. The third to 14th applicants are executive, non-executive and independent directors of ABSA and/or Barclays. The 13<sup>th</sup> applicant, Ms Maria Ramos, is also a director of Barclays Pie. She is a former Director-General of the National Treasury. The 19<sup>th</sup> applicant is the firm of

attorneys, Hammond Pole. The 20<sup>th</sup> to 29<sup>th</sup> applicants are directors and employees of Hammond Pole.

[5] The first respondent is Mr Barry Keyter. The 2nd respondent is Mr Barry Keyter N.O. in his capacity as trustee for the Keyter Trust, registration number 935/1990. The trust is clearly Mr Barry Keyter's alter ego and it is not necessary to differentiate further between Mr Barry Keyter and his trust.

[6] As mentioned, Mr Anthony Peter Keyter (Mr Anthony Keyter) was joined as a third respondent at the instance of the applicants. As previously mentioned, Mr Anthony Keyter is the twin brother of Mr Barry Keyter.

[7] Apart from this application, the applicants brought two other applications under the above case number. These are an application to hold Mr Barry Keyter in contempt of court and an application to join Mr Barry Keyter's twin brother, Mr Anthony Keyter, as the third respondent. These applications form part of the history of this matter and are relevant in deciding this case. In relating the facts, I have regard to the affidavits filed in all the applications.

[8] Mr Barry Keyter was incensed about the manner in which he had been treated by Hammond Pole and by ABSA. He embarked on an extensive and intemperate attack on the applicants in which he alleged that they and numerous others had engaged in serious criminal activity.

## **ALLEGED DEFAMATION**

[9] It is impossible to deal with all the correspondence containing the alleged defamatory statements made by the brothers Keyter. The deponent to the applicants' affidavits, the 3<sup>rd</sup> applicant, Mr M.C. Janse van Ransburg, has comprehensively dealt with all the correspondence and events. His affidavits are contained in three related applications, i.e. the main application, the joinder application and the contempt application. They comprise hundreds of pages.

[10] Mr Barry Keyter, in the course of the dispute over the trust's liability for costs, referred to above, wrote a number of impertinent e-mails to employees and directors of Hammond Pole and had confrontational discussions with them.

[11] On 18 February 2015 Mr Barry Keyter addressed certain e-mails to directors and employees of Hammond Pole. The first e-mail to directors and employees of Hammond Pole was for the attention of Mr Alan Hartman, the 24th applicant. Mr Barry Keyter accused Hammond Pole of *"irregular, unethical and illegal conduct"*. On the same date he addressed an e-mail to the 21st applicant, Ms Luanne West, an employee of Hammond Pole, wherein he said that Hammond Pole had conducted itself in an *"erratic, confusing and unethical manner."*

[12] In another e-mail to Hammond Pole on 22 February 2015 Mr Barry Keyter said that Mr Kyle Richards, the 29<sup>th</sup> applicant, had *"without lawful reason made a threat against me with intent to induce me to comply with the company's demand for extortion money. Mr Richards, speaking on behalf of the company, stated to me in a telephone call that, quote: **"we will get you one way or another"**. I further assert that those words were meant as a threat to kill, assault, injure or cause me damage.*

*His*

*words, spoken on behalf of the law firm and others in the firm working in concert with him (using the word 'we), had the effect of me fearing for my safety and the safety of my lawful property. The malevolent act violates Section (1)(1) of the Intimidation Act 72 of 1982 and should be reported to the police."*

[13] In the e-mail, Mr Barry Keyter continues to assert that Hammond Pole, through its employees and directors, had also committed attempted extortion, fraud, attempted theft and conspiracy to commit a crime. He demanded that Hammond Pole report these crimes to the South African Police Service (SAPS) and to advise him by 12:30 on Monday 23 February 2015 that they had done so. He reminded them that failure to do so renders them and director Richards guilty as accessories after the fact to criminal offences.

[14] Mr Hartman, on 23 February 2015, addressed an e-mail to Mr Barry Keyter in an endeavour to rectify the misunderstanding. He explained that Hammond Pole had met all Mr Barry Keyter's demands and confessed that he and the staff of Hammond Pole had misunderstood Mr Barry Keyter's position. They had understood that Mr Barry Keyter had objected to paying the legal costs. He now realised that Mr Barry Keyter's complaint related to whether he should pay the costs to Hammond Pole or to ABSA directly. Mr Barry Keyter responded per even-dated e-mail, saying: *"Yes, I too refer to your obscenely ill-mannered, interrupting, overbearing, one-way discussion, which clearly had other motives than to resolve the issues, should I judge from your deceitful email below."* He continued to address each point made by Mr Hartman sarcastically.

[15] On 24 February 2015 Mr Barry Keyter addressed an e-mail to Ms Sabashnee Naidoo (16th respondent), senior legal counsel for Barclays, wherein he asserted that Hammond Pole had committed the following crimes: intimidation, attempted extortion, fraud, attempted theft, conspiracy to commit a crime, violation of the Consumer Protection Act, and violation of the Prevention and Combating of Corrupt Activities Act (PRECCA). In paragraph 8 of the letter, he wrote:

*"In committing these crimes, this Hammond Pole hid behind their principal, ABSA Bank, stating that ABSA Bank insisted on their conduct. For instance, the managing partner, Allan Hartman states that ABSA requires of them, Hammond Pole, and I paraphrase "to illegally embezzle funds from the Keyter Trust funds without permission and by deceitful means" and without there being any amount legally due to Hammond Pole by the Keyter Trust. From my discussion earlier with Thea Williams (17<sup>th</sup> respondent) of ABSA, it appears that the allegations by the managing partner of Hammond Pole are false, but I nevertheless request ABSA to investigate its own culpability."*

[16] On 2 March 2015, Ms Naidoo advised Mr Barry Keyter that the matter would be handed to ABSA's forensics department for investigation.

[17] In an e-mail to Ms Naidoo, dated 5 March 2015, Mr Barry Keyter asserted, and I paraphrase, that -

1. ABSA's internal forensic investigation did not satisfy the dictates of the law, and that the crimes had to be reported in accordance with the provisions of PRECCA, and that ABSA's failure to do so was preventing justice from being done;

2. He had received two accounts from Hammond Pole, despite there being no contractual relationship between himself and Hammond Pole;
3. Hammond Pole, together with its staff members, had committed various crimes. He said that having been instructed to attend to the cancellation of the bond, Hammond Pole requested him to provide it with the trust's banking details. He concluded that this was in order to access the Keyter Trust funds, and not to reimburse the Keyter Trust for monies that had been overpaid in relation to the bond cancellation; and
4. Hammond Pole was to be precluded from handling the bond cancellation.

[18] Mr Barry Keyter attached a report, titled "*Criminal Complaint*". The report reiterates and elaborates on the crimes allegedly committed by Hammond Pole.

[19] On 10 March 2015 Mr Barry Keyter addressed an e-mail to Mr Beggs (4<sup>th</sup> applicant), Ms Cuba (5<sup>th</sup> applicant), Ms Dingaen (6<sup>th</sup> applicant), Mr Fakie (7<sup>th</sup> applicant), Mr Hodnett (8<sup>th</sup> applicant), Mr Hussain (9<sup>th</sup> applicant), Ms Lucas-Ball (10<sup>th</sup> applicant) Ms Mokgosi-Mwantembe (11<sup>th</sup> applicant), Mr Munday (12<sup>th</sup> applicant) and Ms Ramos (13<sup>th</sup> applicant). These applicants are all members of the boards of directors of Barclays and/or ABSA and Barclays Pie. In this e-mail he repeated that several directors and employees of Hammond Pole had committed crimes, and now included two further employees of ABSA, Ms Drutman (15<sup>th</sup> applicant) and Ms Naidoo (16<sup>th</sup> applicant). He said that the latter two persons had "*wilfully neglected to perform their peremptory moral and statutory duties*" and were therefore "*liable under section 20 and*



*21 of the Prevention and Combating Corrupt Activities Act as accessories after the fact."*

He demanded that ABSA report the crimes, which he contended involved an amount in excess of R100 000, to the SAPS.

[20] Mr Barry Keyter attached to this e-mail a further document titled "*Criminal Complaint Filed*", dated 9 March 2015, which records that he was filing a criminal complaint against Ms Makwakwa (23<sup>rd</sup> applicant), Ms Theunissen (20<sup>th</sup> applicant), Ms West (21<sup>st</sup> applicant), Ms Scharneck (22<sup>nd</sup> applicant), Mr Richards (29<sup>th</sup> applicant), Mr Hartman (24<sup>th</sup> applicant), Mr Cleary (25<sup>th</sup> applicant), Mr Gerhard (26<sup>th</sup> applicant), Ms Labuschagne (27<sup>th</sup> applicant), Mr Michie (28<sup>th</sup> applicant), Ms Drutman and Ms Naidoo (referred to above).

[21] On 8 April 2015, Mr Barry Keyter addressed an e-mail to the board of directors of Barclays Bank Pie in which he claimed that Mr Beggs (4<sup>th</sup> applicant), Ms Cuba, Ms Dingaan, Mr Fakie, Mr Hodnett, Mr Hussain, Ms Lucas-Ball, Ms Mokgosi-Mwantembe, Mr Munday, Ms Ramos, and Mr M.J. Janse van Ransburg (3<sup>rd</sup> respondent) and Mr Steven Palmer (14<sup>th</sup> applicant) were all under investigation by the SAPS for the crimes already mentioned as well as attempted murder, aiding and abetting criminals to escape justice, incitement, obstruction of justice, violating the Johannesburg Stock Exchange Regulations and violating the provisions of the Companies Act. (As already mentioned, Mr Janse van Ransburg is the deponent to the founding affidavit. He holds the position of General Counsel: Enterprise Functions & Legal Shared Services at ABSA.)

[22] The alleged attempted murder, which now surfaced, flows from two attempted burglaries at the residence of Mr Barry Keyter. He insists these were not in fact attempted burglaries, but attempts to murder him in order to make good on the alleged threat uttered by Mr Richards to "get [him] *one way or another*". He says that fortunately he had been able to foil both attempts. In later communications the number of attempts on his life increased to four.

[23] On 16 April 2015 he repeated the allegations in an e-mail to the CEO and Executive Committee members of the Johannesburg Stock Exchange. On 19 April 2015 he gave permission to the JSE to use his name in discussing the matter with Barclays Africa Group.

[24] On 20 April 2015 Mr Barry Keyter wrote to the directors of Barclays Pie, the directors of Barclays Africa Group and certain officials in response to an invitation extended to him by Mr Charles Wheeler, Group Counsel, Barclays Africa, to discuss an amicable resolution. This was met with an irascible response from Mr Barry Keyter. He said:

*"The last time I spoke to Absa Bank or its agent, you threatened me with physical violence. Not many days after several threats, four armed men came to murder me. When they failed on the first attempt, they did not give up. A mere fourteen hours later they tried again. Not to belabour the point, but there is one dead assailant and two armed men in detention to take into consideration.*

*Now I receive an invitation from you to talk amicable resolution? I question, are you to be trusted, with one would-be assassin still on the loose? However, people do occasionally come to more righteous insight - although not often in my experience, and*

*then only through great trauma. Nevertheless, if you and Absa Bank have genuinely had a change of heart and of mind, then I will grant you that noble insight with courtesy. That would be commendable.*

*However, you will have to demonstrate that change of heart to me. Once you have demonstrated good faith, I will enter discussions with CEO Maria Ramos and Charles Wheeler in person. And I am of the opinion that despite the lateness of the hour, such a discussion, conducted with better human relations than in the past, will most certainly be of mutual benefit to me, to BAGL [Barclays Africa Group Limited] and to Barclays Limited UK [presumably Barclays Bank Pie], at this precipitous juncture the banks find themselves at. And of course it will be of benefit to you too.*

*You can show good faith by:*

- 1. Advising me what steps you have taken to secure my personal safety which Absa and its agent have so callously disregarded.*
- 2. Placing R6m into my bank account as an after tax figure (any tax liabilities to be borne by the bank). This payment will represent a "show of faith only", and not be considered part of any 'resolution' agreement which may be reached during our personal meeting thereafter. My bank account is held at Absa Cresta."*

[25] On 20 May 2015, Mr Barry Keyter produced a so-called "*Dossier of Crimes*", comprising 112 pages in which he alleged that the applicants and others were part of an international crime network. The original crimes named above, were now expanded to 240 crimes, all listed in the dossier. The following persons are included in the alleged network:

26 ABSA directors and staff;

166 directors and staff of attorneys Webber Wentzel;  
 10 directors and staff of Hammond Pole;  
 10 directors of attorneys Friedland, Hart, Solomon & Nicolson;  
 2 directors of Barclays Africa Group;  
 15 directors of Barclays Group Limited;  
 17 officials of the Civil Aviation Authority;  
 7 officials of the Department of Transport;  
 67 judges and personnel of the Pretoria High Court;  
 11 judges of the Constitutional Court;  
 192 members of the ANC Caucus in Parliament;  
 36 members of the Office of the President and the Cabinet.

This is a total of 592 persons. This number later increased to 600.

[26] The applicants applied for an interdict against Mr Barry Keyter. The matter came before Hughes J on 12 May 2015. She granted an interdict on 15 May 2015, which was extended to 22 May 2015. I shall deal more fully with her order in due course. Mr Barry Keyter appeared in person and on behalf of the 2nd respondent, the trust.

[27] On 4 May 2015, before the hearing of the application, Mr Barry Keyter brought two applications which also came before Hughes J. They were styled "*Motion for Application of Laws*" and "*Urgent Motion for Arrest of Applicants*". As will be seen from the order granted by Hughes J, these applications were dismissed with costs on a scale as between attorney and client, inclusive of the costs of two counsel.

[28] At the hearing, Mr Barry Keyter applied for the recusal of Hughes J and for an order transferring the matter to the Gauteng Local Division, Johannesburg. These applications were similarly dismissed.

[29] The deponent to the founding affidavit, Mr Janse van Ransburg, filed a supplementary affidavit. He related the following incident that occurred during the proceedings before Hughes J on 12 May 2015. Hughes J had stood the matter down to allow the applicants' counsel and Mr Barry Keyter to discuss the enrolment of the matter on the special motion court with Mr Justice Ledwaba DJP. As Mr Janse van Ransburg and Mr Palmer, (the 14m applicant) left the courtroom, Mr Barry Keyter confronted them and said he was "*arresting [them] under section 42 of the Criminal Procedure Act*". He insisted that they follow him to a court security guard. Ms Erin Worthington of the applicants' attorneys spoke to Mr Barry Keyter and insisted that he speak to her as the applicants' legal representative. She told him that she differed from his interpretation of section 42 of the Criminal Procedure Act and advised Messrs Janse van Ransburg and Parker not to follow Mr Barry Keyter. Mr Barry Keyter then left and said he would fetch a security guard. Messrs Janse van Ransburg and Palmer moved to a quieter part of the building to discuss the situation. Applicants' counsel, Mr Whitcutt SC and Ms de Witt, proceeded to find Ledwaba DJP to discuss the enrolment of the matter in the special motion court. Mr Barry Keyter refused to accompany them. On their way they saw Mr Barry Keyter talking to a security guard. They approached Mr Barry Keyter. Mr Barry Keyter asked Mr Whitcutt whether the "*escapees*" (presumably Messrs Janse van Ransburg and Palmer) had left the building. Mr Whitcutt said to him that they had not left the building, but did not tell him where they were. Thereafter security guards approached Mr Whitcutt and Ms

de Witt and asked them for an explanation. They said that Mr Barry Keyter had told them that there were two *"escaped criminals in the building"*. Later in the day Ms Worthington addressed an e-mail to Mr Barry Keyter and at 19:45 that evening, she received the following reply:

*"I correct you when you state in your e-mail below that I attempted to arrest Messrs Van Rensburg and Palmer. They were arrested. At this time they have escaped custody - if they wish to co-operate with the law, they can present themselves to me and I will take them to Police, or they can hand themselves over to the Fair/ands Police Station."*

[30] The order granted by Hughes J is the following:

- "1. *The applications for recusal and transfer to the Local Division of Gauteng are dismissed.*

*The matter is referred to the Deputy Judge President to obtain preferential dates on the special motion court roll.*

*The parties are directed to attend at the offices of the Deputy Judge President on Monday 25 May at 09:00*

2. *The 1st and 2<sup>nd</sup> respondents are hereby interdicted and restrained pending the outcome of the applicants' main application from:*

*(a) Publishing any defamatory allegations against any of the applicants;*

*(b) Stating, imputing or implying that any or all of the applicants-*

*(i) Have attempted to commit murder;*

*(ii) Contravened any of the provisions of the Prevention and Combating of Corrupt Activities Act 12 of 2004;*

*(iii) Committed the crime of aiding and abetting criminals to escape justice;*

- (iv) *Are accessories after the fact;*
  - (v) *Have committed the crime of incitement;*
  - (vi) *Have obstructed justice in any way whatsoever;*
  - (vii) *Have contravened the Johannesburg Stock Exchange regulations;*
  - (viii) *Have contravened the provisions of the Companies Act 71 of 2008;*
  - (ix) *Are under investigation by the SAPS or any other organ of the State for having allegedly committed a crime(s) and/or stand to be imminently arrested in relation to any of the aforementioned crime(s).*
- It is recorded that the respondents are not precluded from assisting the NPA and/or SAPS in relation to existing criminal investigations or reporting crime allegedly committed against the respondents during this period;*

3. *Contacting any of the applicants whether in person or by telephone, electronic mail or by any other means save in relation to ordinary existing banking transactions unrelated to the content of these applications and to include the parties in respect of directorship of Webber Wentzel attorneys or attempting to effect a citizen's arrest or otherwise procuring the arrest of any of the applicants and arresting any of the applicants.*

The learned judge recorded the following, which forms part of the order:

4. *Pending the outcome of the applicants' main application without making any concessions or admissions of liability or admission of the correctness of the allegations made by the parties in the main application each of the applicants un-*

*dertakes, and the respondents undertake, not to infringe any of the parties' constitutional rights.*

5. *The applications, which were brought by the applicants (the respondents in the main application), party are dismissed with costs. These costs are inclusive of [the costs of] 15 May 2015, such costs to be on a scale as between attorney and client, inclusive of the costs of two counsel.*

[31] Despite this order, Mr Barry Keyter continued his crusade. On 27 June 2015 he addressed an e-mail to the board and directors of Barclays Bank Pie in which he referred to his correspondence of 8 April 2015 and 14 May 2015 *"regarding the violent criminal conspiracy within Barclays and its South African subsidiary, ABSA Bank."* He also wrote to the applicants' attorneys, Webber Wentzel in which he accused them of being co-members of the criminal network. In addition he wrote to Judge President Mlambo and Deputy Judge President Ledwaba and made scandalous allegations against them and other judges of the Pretoria High Court. This prompted the applicants to bring a contempt of court application. This application has not yet been adjudicated and is now before me.

[32] The matter came before Keightley AJ (as she then was) on 28 July 2015 for final determination. During the proceedings Mr Barry Keyter applied for her recusal on the grounds that she allegedly had personal relationships with either or both counsel for the applicants, Mr Whitcutt and Ms de Witt. That application was dismissed with costs. Argument was advanced in the main application on behalf of the applicants, but before Mr Barry Keyter could answer, he absented himself, alleging chest pains.



The matter was eventually postponed to a date to be determined by the Deputy Judge President on the special motion court.

[33] After the interim order was obtained, Mr Barry Keyter's identical twin brother, Mr Anthony Peter Keyter, entered the fray. On 31 July 2015 the applicants wrote to Ledwaba DJP as ordered by Keightley AJ on 31 July 2015 to arrange for the matter to be set down on the special motion court. Ledwaba DJP directed the applicants and Mr Barry Keyter to meet with him on 20 November 2015. Mr Barry Keyter did not attend the meeting, but Mr Anthony Keyter presented himself, and claimed to represent Mr Barry Keyter.

[34] Mr Janse van Rensburg (3rd applicant) conducted Internet research and made an astounding discovery. Mr Anthony Keyter had conducted an almost identical campaign in the United States of America. Mr Janse van Rensburg came across articles, blogs, posts and law reports concerning what he calls "*the spiralling process of litigation proceedings instituted by Mr Anthony Keyter in the USA.*" His claims were even more outlandish than those of Mr Barry Keyter. It appears that the trigger to that campaign was an adverse order against Mr Anthony Keyter in his divorce proceedings. Mr Anthony Keyter repeatedly instituted action against persons and institutions in the USA alleging, amongst other things, large-scale governmental and corporate corruption including a conspiracy to kidnap and murder him.

[35] Mr Janse van Rensburg referred to three a cases, apparently heard together, *Anthony P. Keyter v Air India*, Case No. C09-897RAJ; *Anthony P. Keyter v Ford Motor Company*, Case No. C09-897RAJ; *Anthony P. Keyter v Boeing Company* Case

No C09-962RAJ (*Air India Case*), a United States District Court judge, the Honourable Richard A. Jones said at page 2 of his judgment:

*" Mr. Keyter was dissatisfied with the result of his divorce, and blamed the presiding judge, his former wife, and her attorney for the outcome. He then embarked on a campaign of communicating with government officials in an effort to correct what he believed to be a miscarriage of justice. When his efforts were unsuccessful, he named each of the officials with whom he communicated as a co-conspirator. Numerous iterations of this process have led to Mr Keyter's current allegations, contained in a three-volume "Dossier of Crimes" which he has filed in each of these cases. The Dossier of Crimes alleges that more than 14 000 officials at all levels of state and federal government are "known insurgents" guilty of various "crimes." Among the "known insurgents" are members of the United States armed forces, the entire United States Cabinet, thousands of state and federal judges, entire Congresses of the United States, state executive officials, state legislatures, prosecuting attorneys and a few Washington city officials for good measure."*

As part of his campaign, he instituted criminal charges against President Obama, President George W. Bush, Senators and Representatives of the 111th Congress of the USA and the Justices of the US Supreme Court. There are attached to the papers copies of judgments in the USA in *Keyter v 230 Government Officials; A.P. Keyter v John McCain et al; Keyter v George W. Bush, Chief Justice John G. Roberts; Attorney-Genera/ Alberto Gonzales and FBI Director Robert Mueller.*

[36] On 10 November 2015 Mr Anthony Keyter sent an e-mail to the board of Barclays. He referred to the e-mails which Mr Barry Keyter had sent them and attached

them. He expanded on the allegations of Mr Barry Keyter, claiming that ABSA, its directors and legal representatives had, amongst other things, and I paraphrase:

1. failed to report the criminal conduct alleged in accordance with their statutory and fiduciary duties;
- 2\_ perpetrated fraud, including claiming fees from Mr Barry Keyter *"for a non-existent motion"*;
3. threatened Mr Barry Keyter with violence and attempted to *"silence his testi- mony"*;
4. made four attempts on Mr Barry Keyter's life;
5. have obtained an illegal court order to *"muzzle"* Mr Barry Keyter;
6. attempted to imprison Mr Barry Keyter falsely;
7. *"conspired with corrupt judges, corrupt attorneys and corrupt counsel to facilitate their illegal objectives"*;
- 8\_ acted in concert with an organised crime network, which includes 22 members of the SAPS and the South African *"police chief"* ;
9. gathered 593 people under their corrupt influence, acting in contravention of the Prevention of Organised Crime Act; and
10. committed the crime of kidnapping. He further -
  1. insinuated that Ms Ramos is corrupt and has used the political influence of her husband to solicit corrupt government officials to *"facilitate [ABSA's] law- less campaign"*;
  - 2\_ claimed that he had alerted the *"authorities"*, including *" Interpol, UK Police and the British Government; and in South Africa: the South African Police Services, the National Prosecuting Authority, the Public Protector, the Chief*

*Justice, Judges of the Constitutional Court and High Court, the President of South Africa and his Cabinet and the South African Parliament'* to the alleged criminal conduct of ABSA, its legal representatives and agents;

3. claimed that the authorities had been provided with a 300-page *"Dossier of Crimes"*;
4. insisted that the directors of Barclays have *"a fiduciary and statutory duty to terminate the ongoing crimes being committed by Barclays through its subsidiary, Absa Bank"* and to alert the investing public, relevant authorities, including the London Stock Exchange and the UK Police of the situation.

[37] On 24 November 2015 Mr Anthony Keyter sent further e-mails to Friedland Hart Solomon & Nicolson, the directors of Hammond Pole, the applicants' counsel and the partners, directors and management of Webber Wentzel wherein he continued with his harangue about ABSA and its agents and legal representatives and claimed they were guilty of a *"seditious conspiracy"* against the State and the people of the RSA and insurrection against the laws of South Africa. Friedland Hart Solomon & Nicolson acted as correspondent attorneys for Webber Wentzel and did nothing more than to file papers with the High Court.

[38] The above discourse relates to only part of the defamatory statements made by the Keyter brothers against a large and ever-expanding group of people. The affidavits of Mr Janse van Ransburg, as deponent to applicants set of affidavits, comprise hundreds of pages that are impossible to summarise here in a judgment.

[39] On 15 December 2015 Fourie J duly joined Mr Anthony Keyter as a respondent and extended the order to 4 and 5 February 2016 on the special motion court.

## **VEXATIOUS PROCEEDINGS**

[40] Counsel for the applicants argued that I should declare Mr Barry Keyter and Mr Anthony Keyter vexatious litigants.

[41] Section 2(1)(b) of the Vexatious Proceedings Act, 3 of 1956 provides the following:

*(b) If, on an application made by any person against whom legal proceedings have been instituted by any other person or who has reason to believe that the institution of legal proceedings against him is contemplated by any other person, the court is satisfied that the said person has persistently and without any reasonable ground instituted legal proceedings in any court or in any inferior court, whether against the same person or against different persons, the court may, after hearing that person or giving him an opportunity of being heard, order that no legal proceedings shall be instituted by him against any person in any court or any inferior court without the leave of the court, or any judge thereof, or that inferior court, as the case may be, and such leave shall not be granted unless the court or judge or the inferior court, as the case may be, is satisfied that the proceedings are not an abuse of the process of the court and that there is prima facie ground for the proceedings.*

[42] The Act requires an application and that the respondent should be given an opportunity to be heard. On the facts before me I would have made such an order. However, there is no application before me and the Keyter brothers have not been

given the opportunity to be heard. The request for such an order was made in the applicants' heads of argument and oral argument. It seems to be an afterthought. This request can therefore not be granted.

### **COUNTER APPLICATION ("*APPLICATION IN RECONVENTION*")**

[43] On 2 February 2016, two days before the hearing of this application, Mr Barry Keyter and Mr Anthony Keyter filed a "*Claim in Reconvention*" in which they cited 227 respondents.

They are:

1. The 29 applicants;
2. 19 directors of Barclays Pie;
3. ABSA's legal agents:
  - 3 advocates: Whitcutt, Christopher; De Witt, Claire; Steenekamp, A;
  - 166 directors and employees of attorneys Webber Wentzel;
  - 10 directors and employees of Friedland Hart Solomon & Nicolson.

[44] The only indication of service on the newly added respondents is an e-mail sent to *SMiniki@iustice.gov.za*, and copied to Erin Warmington and *Jisa.lines@barclays.com*. The founding affidavit in my file is signed by Mr Barry Keyter, but not attested.

[45] They seek the following relief:

### **AWARDING**

- " 1. *Awarding The Keyters damages for mental anguish, pain and suffering and loss of income in an amount to be disclosed during the court hearing.*

2. *Awarding The Keyters punitive damages from each of The Bank conspirators, as appropriate, for the mental and emotional suffering caused by the lawless actions of The Bank; in an amount to be disclosed during the court hearing.*
3. *Awarding The Keyters additional Punitive Damages from each Bank conspirator who holds/held a position of trust in society, commensurate with:*
  - 3.1 *1 The status and influence of that Bank conspirator's position in society;*
  - 3.2 *The severity of their breach of the laws and their breach of the public's trust;*
  - 3.3 *The denigration they brought upon this court, upon the legal system, and upon the State, by their insurrection against the laws and their seditious conspiracy against the authority of the Republic of South Africa.*
4. *Awarding The Keyters interest on the above amounts from the date of the or- der to the date of payment thereof*
5. *Awarding the Keyters, and assess against The Bank conspirators, their litigation cost as costs of their time spent over nine months at professional rates.*
6. *Awarding The Keyters such other and further relief as is just.*

### **COMPELLING**

1. *Compelling The Bank conspirators to comply with and execute his/her particular statutory duties, and particularly duties pursuant to the PRECCA Act, with respect to the particular parcel of allegations of corrupt activities and multiple crimes presented to him/her by The Keyters.*
2. *Compelling The Bank conspirators to comply with and execute his/her particular statutory duties with respect to Stock Exchanges and Securities Exchange*

*Commission Regulations, concerning the particular parcel of allegations of corrupt activities and multiple crimes presented to him/her by The Keyters.*

### **ADMINISTRATION OF THE LAW**

*The Court is compelled by law to administer the laws and to terminate the criminal conspiracy by The Bank conspirators, as reported and detailed in the '**Dossier of Crimes**' filed herewith."*[sic]

[46] The "affidavif" supporting the Notice of Motion is a repetition of the allegations that gave rise to this litigation and inclusion of the "*Dossier of Crimes*".

### **THE ISSUES TO BE DECIDED**

[47] The issues that fall to be determined are the following:

1. Whether the interim interdict granted by Hughes J (as extended by Fourie J) should be made final against the brothers Keyter;
2. Mr Barry Keyter's application for the arrest of the applicants and for the application of laws; and
3. The contempt of court application against Mr Barry Keyter.
4. The "Application in Reconvention".

[48] The applicants also seek to have the relief extended so as to include two additional grounds for restraint against the brothers Keyter so as to interdict and restrain them from laying any new criminal charges with the South African Police Service (SAPS) and/or from reporting any new complaints to any authoritative body or organ-



isation against any person, including, but not limited to the applicants, in relation to the factual circumstances pertaining to this matter without the leave of this court.

## **DEFENCE**

[49] Mr Anthony Keyter did not file an answering affidavit. Mr Barry Keyter raised the defence, or justification, of qualified or relative privilege to rebut the inference of wrongfulness. It seems that he raised this defence on his own and on Mr Anthony Keyter's behalf. Relative, or qualified privilege, exists where someone has a right, duty or interest to make a defamatory assertion and the person or persons to whom the assertion is made, have a corresponding right, duty or interest to learn of such assertions.<sup>1</sup> The Keyters' case is that they are victims of numerous crimes committed by the applicants and that they therefore have an interest and duty to communicate that to persons who have an interest and a duty to learn of them.

[50] This is a typical case where a justification of relative privilege might apply. However, the victim of the crimes must act within the scope or limits of the privilege. To do so, they must establish that the assertions are reasonably connected with the discharge of the duty or furtherance of the interest. That is not the case here. The statements of the Keyter brothers are outrageous and far-fetched figments of their imagination. They have been published to a wide range of influential and authoritative persons and institutions, both national and international. I find therefore that qualified privilege does not avail the Keyters. They have exceeded the limits of the privilege.

---

<sup>1</sup> See in general *Neethling, Potgieter and Visser, Neethling's Law of Personality* 145

## **RELATED APPLICATIONS**

### Contempt of Court

[51] Mr Barry Keyter not only continued his campaign against the applicants after the interim order was granted by Hughes J, but he intensified it. He is clearly in contempt thereof.

### Arrest and Application of Laws

[52] Mr Barry Keyter has made no case whatsoever for the arrest of the applicants and this application stands to be dismissed. The *Application for Application of Laws* is simply misconceived and has no merit.

## **CONCLUSION ON DEFAMATION**

[53] In order to establish defamation, the applicants must prove the following elements: (i) That the averments have been made, (ii) that they concerned the applicants, (iii) that they have the effect of injuring the good name and reputation of the applicants, (iv) that they have been made and published intentionally, and (v) that the utterance and publication had been wrongful. The respondents have not disputed that they had made the assertions. Mr Barry Keyter merely repeated them and insisted that they were true, in the public interest and that he made them in circumstances of privilege. I have already dealt with the submission of privilege.

[54] That the allegations and assertions made by the brothers Keyter are defamatory is axiomatic. The applicants are clearly entitled to a final interdict.

[55] Counsel for the applicants applied in terms of Rule 28 of the Rules of this court for amendment of the Notice of Motion. I have granted the amendment and I incorporate the amended Notice of Motions in my order insofar as appropriate.

In the result I make the following order:

1. The interim order granted by Hughes J on 15 May 2015, as extended from time to time, is confirmed. For the sake of ease of reading, the order is repeated here.
2. The 1st and 2nd respondents are hereby interdicted and restrained from:
  - (a) Publishing any defamatory allegations against any of the applicants;
  - (b) Stating, imputing or implying that any or all of the applicants-
    - (i) Have attempted to commit murder;
    - (ii) Contravened any of the provisions of the Prevention and Combating of Corrupt Activities Act 12 of 2004;
    - (iii) Committed the crime of aiding and abetting criminals to escape justice;
    - (iv) Are accessories after the fact;
    - (v) Have committed the crime of incitement;
    - (vi) Have obstructed justice in any way whatsoever;
    - (vii) Have contravened the Johannesburg Stock Exchange regulations;
    - (viii) Have contravened the provisions of the Companies Act 71 of 2008;

- (ix) Are under investigation by the SAPS or any other organ of the State for having allegedly committed a crime(s) and/or stand to be imminently arrested in relation to any of the aforementioned crime(s). It is recorded that the respondents are not precluded from assisting the NPA and/or SAPS in relation to existing criminal investigations or reporting crimes allegedly committed against the respondents during this period;

3. Contacting any of the applicants whether in person or by telephone, electronic mail or by any other means save in relation to ordinary existing banking transactions unrelated to the content of these applications and to include the parties in respect of directorship of Webber Wentzel attorneys or attempting to effect a citizen's arrest or otherwise procuring the arrest of any of the applicants and arresting any of the applicants.

4. The following additional orders are made:

4.1 The first, second and third respondents are restrained and interdicted

from:

4. 1.1 attempting to effect a citizen's arrest or procuring the arrest of any of the applicants, or their agents (including their legal representatives) and from harassing any of the applicants or their agents (including their legal representatives); or

4. 1.2 attempting, by disclosing to any person the allegations referred to in the interim order granted by Hughes J on 15 May 2015 as extended from time to time, thereby to impose upon such person

a

duty to report any of the allegations referred to in the said interim order and/or stating, imputing or implying that such person is an accessory to such activity solely by reason of their failure to report the allegations referred to in the interim order;

4.1.3 laying any new criminal charges with the SAPS against any person, including but not limited to the applicants, in relation to or arising from the factual circumstances of the alleged fraudulent attempt by the first, second and seventeenth applicants (and their employees and associates) to extort monies from Mr Barry Keyter and/or the Keyter Family Trust, without first having obtained leave of this court or any judge thereof to do so.

4.1.4 reporting any new complaints to any authoritative body or organization against any person, including but not limited to the applicants, in relation to or arising from the factual circumstances of the alleged fraudulent attempt by the first, second and seventeenth applicants (and their employees and associates) to extort monies from Mr Barry Keyter and/or the Keyter Family Trust, without first having obtained the leave of this court, or the relevant judge, or any judge to do so.

5. Mr Barry Keyter and the Keyter Trust are declared to be in contempt of the Court's order in case number 29512/2015 made on 15 May 2015 as extended from time to time (the Court Order).

6. Mr Barry Keyter is sentenced to imprisonment for a period of 60 days, which sentence is subject to paragraphs 7 to 10, below.
7. In order to give effect to the sentence imposed in terms of paragraph 5 above, the Registrar of this Court is directed to issue a warrant of arrest in respect of Mr Barry Keyter, which warrant shall be effective from 30 days of the date of this order;
8. The sentence in paragraph 5 is suspended for a period of 30 days from the date of this order;
9. Mr Barry Keyter is directed to purge his contempt within 30 days from the date of this order, by -
  - 9.1 writing to each and every person to whom any of the statements forming the subject matter of this application have been published, communicated and/ or disseminated and explaining that his conduct was in contempt of the Court Order, withdrawing the statements and issuing an apology to the applicants in the wording shown in the apology set out hereunder, and marked "Annexure A"; and
  - 9.2 copying the applicants' appointed legal representative (using e-mail address [erin.warmington@webberwentzel.com](mailto:erin.warmington@webberwentzel.com)) in each and every such notification to the recipients.
10. Should Mr Barry Keyter fail to comply with paragraph 9 of this order within the period of 30 days stipulated in paragraph 8 above, the sentence in paragraph 6 hereof will come into effect immediately.
11. Should Mr Barry Keyter, in any event, fail to comply in any respect with this order, the sentence in paragraph 6 will come into effect immediately.

12. Mr Barry Keyter is ordered to pay the costs of the application to hold him in contempt of court on a scale as between an attorney and client, which costs shall include the costs of two counsel.
13. Subject to the provisions of the order set out in paragraph 14 below, Mr Barry Keyter and the Keyter Trust are ordered to pay the costs of this application on the scale as between an attorney and client, which costs shall include the costs of two counsel.
14. Mr Anthony Keyter is ordered to pay the costs of all proceedings in this matter as from 15 December 2015 jointly and severally with Mr Barry Keyter and the Keyter Trust.

---

J. HIEMSTRA  
ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA

|                              |  |
|------------------------------|--|
| Date of judgment:            | 2016-04-07   |
| Date heard:                  | 2016-02-05   |
| Counsel for the Applicant:   | Adv. Christopher Witcutt sc<br>Adv. Claire de Witt   |
| Attorneys for the Applicant: | Webber Wentzel<br>10 Fricker Road<br>Illovo Boulevard<br>Johannesburg<br>Tel.: 011 530 5352/5312<br>Fax: 011 530 6352<br>E-mail: trevor.versfeld@webberwentzel.com<br>Ref.: Mr T. Versfeld / Mr M. Straeuli<br>3000156<br>c/o Friedland Hart Solomon & Nicolson<br>4-301 Monument Office Park<br>79 Steenbok Avenue<br>Monument Park<br>Pretoria |

Tel.: 012 326 3331/0200  
Fax: 012 424 0207/0266  
E-mail:  
painter@fhsn.co.za Ref.:  
Mr G. Painter

Counsel for the  
applicants:

Mr Mr Barry Keyter in person  
66 [...]  
Randburg  
Email: [...]



**APOLOGY**

I was, in terms of an order delivered by the Honourable Justice Hughes of the High Court of South Africa, Gauteng Division, Pretoria on 22 May 2015, interdicted and restrained, pending the outcome of proceedings under case number 29512/2015, from contacting and/or defaming Barclays Africa Group Limited, ABSA Bank Limited, Marthinus Christoffel Janse van Ransburg, Colin Beggs, Yolanda Cuba, Thembisa Dinga, Shauket Fakie, David Hodnett, Mohamed Husain, Wendy Lucas-Bull, Thoko Mokgosi-Mwantembe, Trevor Munday, Maria Ramos, Steven Palmer, Nadine Drutman, Sabshnee Naidoo, Hammond Pole Majola Inc, Thea Williams, Chantal Erasmus, Chantal Theunissen, Luanne West, Sally Scharneck, Lebohang Makwakwa, Alan Hartman, Christopher Cleary, Andrew Gerhard, Salome Labuschagne, Brenden Michie, Kyle Richards and their legal representatives by publishing statements to the effect and/or stating imputing or implying that they, or any of them –

1. have attempted to commit murder;
2. contravened any of the provisions of the Prevention and Combating of Corrupt Activities Act 12 of 2014,
3. committed the crime of aiding and abetting criminals to escape justice;
4. are accessories after the fact,
5. have committed the crime of incitement",
6. have obstructed justice in any way whatsoever;
7. have contravened the Johannesburg Stock Exchange regulations;

- 
8. have contravened the provisions of the Companies Act 71 of 2008;
  9. Are under investigation by the SAPS or any other organ of state for having allegedly committed a crime(s) and/or stand to be immediately arrested in relation to any of the abovementioned crime(s) except insofar as such statements were made to members of the SAPS and/or NPA and would be relevant to the investigation and/or the potential prosecution of the charges by members of the SAPS and/or NPA, and my co-operation in this regard was sought by members of the SAPS and/or the NPA.

Recent statements communicated, published and/or disseminated by me to you were communicated, published and/or disseminated in contempt of the Court's order.

I hereby unconditionally retract all statements made to such effect and apologise unreservedly to the abovementioned persons for having made such statements.