



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

Case Number: 5043/2021

In the matter between:

Melvin Booysen

Applicant

And

June Dolly Major

Respondent

Women's Legal Centre Trust

Amicus Curiae

JUDGMENT ELECTRONICALLY DELIVERED ON

30 AUGUST 2021

Baartman, J

[1] On 25 March 2021, Hockey AJ issued a *rule nisi*¹ restraining the respondent from 'directly or indirectly posting any information

¹ Order: '1. That the Application be treated as a matter of urgency, and dispensing insofar as is necessary in terms of Rule 6(12) with the usual forms and service provided for in the Uniform Rules of Court;

whatsoever regarding the applicant on any and all social media platforms' among others. This is the return date of that *rule nisi*.

- [2] The respondent has alleged that the applicant raped her in 2002. She went public with her allegations in 2016. The allegations have been in the public domain since that time. In March 2021, the respondent posted another post that gained considerable traction and prompted the applicant to launch the urgent application.
- [3] The applicant's version is that he has been a priest in the employ of the Anglican Church (**the Church**) since 1998. In 2001, the respondent was a student at the Transfiguration College in Makhanda, training to become a priest in the Church. The applicant accompanied the respondent to the college to assist with settling in. Mark Andrews, a mutual friend, also went along. The respondent subsequently qualified as a priest and was appointed in Cape Town. They remained friends. In 2016, the applicant heard from a journalist that the respondent had laid rape charges against him. He was shocked. On 19 April 2016, the prosecution declined to prosecute. On 11 August 2020, the applicant learnt that the respondent had laid charges against him with a division of the Church charged with investigating all forms of abuse in the Church. The applicant understood that both parties to the complaint had to keep all relevant information secret until certain

-
2. That the Respondent is restrained and interdicted from directly or indirectly posting any information whatsoever regarding the Applicant on any and all social media platforms;
3. That the Respondent is ordered to change the Page Moderation setting on her personal Facebook account as well as her page named Justice for Rev. June Dolley Major and for All Victims/Survivors of abuse to block posts or comments containing the words "Melvin Booysen", and to similarly block the words "Melvin Booysen", from any other social media account used by the Respondent in her own name or under a pseudonym;
4. Costs of this Application to stand over;
5. A *rule nisi* be issued calling upon Respondent...to show...why the abovementioned Interim Order should not be made final.'

factual findings had been made in the enquiry. On 12 March 2021, the applicant learnt from 'various acquaintances that there was a video on Facebook in which the Respondent "named me"'. Despite a request to remove the post, the respondent posted a second video in which she repeated the allegations.

- [4] It is against that background that the applicant alleged that he has established a clear right as follows:

'29. As a Priest I am in a position of trust to both the Anglican Church of South Africa, as well as my parishioners. I am required to provide moral leadership and guidance and my standing in the community is directly linked to the position that I hold. This trust is reliant on my good name. ...

32 The Respondent has been very vocal in her claims that she has been wronged by the Church and by "a Priest" for approximately two years. This included a protest outside the residence of the archbishop in 2020. I believe that her decision to now publish my name, before a decision has been made to convene a tribunal is malicious and intended to destroy my good name, reputation and possibly my livelihood.

33. I am required, in my position as a Priest, to provide pastoral care to parishioners who have been the victims of abuse. If my parishioners come to believe that I am in fact a rapist, I will be unable to perform this function.

25. I specifically deny that I ever raped or attempted to rape the Respondent. Her claims are untruthful and clearly intended to harm my reputation.

...

37. I submit that the Respondent is bound by canonical law and by agreement not to post anything which breaches the confidentiality of the process that has been initiated by the Anglican Church.'

- [5] In his founding papers, the applicant further alleged that the posts have 'and is causing me irreparable harm' in that:

'42.1 The spreading of false and defamatory allegations about me ...it is damaging my reputation, good name and standing in the community; and

42.2 The Respondent's incitement of others to re-publish the defamatory statement is further damaging my reputation, good name and standing in

the community and is humiliating me, while I remain bound by the rules governing the process initiated by the respondent through the Anglican Church to maintain confidentiality until the bishop gives permission otherwise.

...

42.3 The two videos posted by the Respondent on social media have been viewed by over 18 000 people, spreading very quickly in my community and gaining media attention...'

- [6] The applicant further alleged that he had no 'other remedy' and that the matter was urgent because it 'is unlawful and is causing a genuine disruption to my life, activities, ability to earn an income, and the activities of my family'.
- [7] At the hearing, the respondent was unrepresented. She obtained legal representation after the hearing and filed her answering affidavit on 24 June 2021. The respondent's version is that the applicant raped her in Makhanda in 2002 when they were there to find an alternative school for her son. She wanted to report the matter to the police but a bishop in the Church persuaded her not to in order to protect the Church. After her ordination, she again wanted to report the matter; however, this time a bishop at Table View prevented her by calling for obedience to the 'oath of canonical obedience'. The respondent considered herself bound by that oath – apparently, an oath taken at the time of becoming a priest. In 2016, the respondent went on a hunger strike and disclosed that the applicant had raped her. The relationship between the respondent and the Church became strained. Initially, she planned to relocate to Australia, but the Church reneged on an agreement to assist in that process. She resigned and ended up in a shelter.
- [8] Annexed to the respondent's affidavit is a post, dated 7 April 2017, from the which the following appears:

'Justice for Rev. June Dolley Major and for All Victims/Survivors of abuse

The Anglican Church of Southern Africa have for many years covered up the abuse of women and boys at the hands of its clergy.

...

Today, I take a stand for myself and for all other victims. I take a stand for that young lady, who is an Anglican herself, who is a beauty therapist. A young life ruined because a clergy person took advantage of her while she was giving him a massage. A young life ruined. He knows who he is, so do I.

Today, I speak out for all Rev. Melvin Booysen's victims. There are many women out there whom he took advantage of, not just me, but they are too afraid to speak out. I ask each one of them to come forward, do not be afraid. RAPE is RAPE, even when the rapist is a priest. For too long male clergy are using the church to find their next victim.

...

After my hunger strike, Archbishop Thabo silenced the whole Anglican community in Cape Town, also with a letter. A letter that was read out in every church, stating that they are not to engage with me.

...

When I laid criminal charges against Rev. Melvin Booysen, the docket disappeared. Took a long while for the statement to be taken again, then there was a problem because somethings were missing. I remember phoning Grahamstown SAPS and being told that I must remember archbishop Thabo is well loved there.

When the detective came to see me, he told me that when he arrived at rev. Melvin's church to take his statement, bishop Garth and his legal team was talking to Rev. Melvin.

...

The detective told me that he worked on many rape cases and he knows that Rev. Melvin is guilty and if it was up to him, he would put him at the back of the van and drive him to prison in Grahamstown.

But it was not up to the detective. I phoned SAPS and was told that the file came back from the courts and they decided not to proceed.

How are rape victims and victims of domestic violence protected. ...'

- [9] The respondent annexed 2 further posts to her affidavit, dated 28 June 2016, from which it is apparent that she alleged that the applicant is the cause of her pain and suffering while he continues to be a priest. A response post, dated 22 May 2016, reads as follows:

‘Got to church today and a letter from the archbishop [was] read about the situation...After the letter, Fr Joshua announced Melvin Booysen as the accused.’

- [10] The respondent said that she had received approximately 200 messages of support and annexed a few. One of those provides as follows:

‘Good evening ...there are many of us who are silently supporting you and your fight ...My parents belong to the church and years ago Melvin Booysen was the acting priest. He left their parish ...and was transferred ...after he had an adulterous relationship with the married secretary of the parish’.

- [11] I refer to one more response from which the following appears:

‘Hi June

I’m still perplexed why parishioners who have personal experience of Melvin Booysen’s behaviour still prefer to talk about it hushed tones. Just from listening to my immediate family it is clear that this guy is a serial abuser and was not above letting his predatory behaviour affect even his so-called pastoral duties. I now hear stories of him during a visit to a sick, elderly relative displaying complete disrespect to the ailing relative but openly flirting with her teenage female neighbour. On another occasion loses complete interest in a patient he was meant to come pray for as he pursues an “attractive” young woman with complete disregard [for] the grieving family who invited him to the house...

The things I hear about this guy is ghastly and in any other context would have led to an immediate investigation at least.’

- [12] On 24 September 2016, the respondent wrote an open letter to Archbishop Thabo Makgoba, Bishop Garth Counsell and all clergy in the Church. The following appears from that letter:

'It is 01h54 now and I cannot sleep. Today is the anniversary of my ordination, twelve years as a deacon and eleven years as a priest. ... Twelve years later, instead of being happy at my anniversary of my ordination, I am sad instead.

I trusted Bishop Garth that day when we sat in his office and talked for hours. The one day, I thought that for once he actually heard me and understood my pain.

...

Now, I'm sitting in another province with complete strangers. Forced to leave my home town in search of work. Forced to live in a shelter because I cannot afford a place of my own. ...

The detective tells me that when he went to Rev. Melvin Booysen, that Bishop Garth was there with a legal team. Also when he went to the witness the next day, Bishop Garth was there with the legal team again.

...

I didn't understand why everyone is quiet, why they protect Rev. Melvin, even though he has a reputation...

I forgive Rev. Melvin Booysen for trying to rape me. I forgive everyone who knew I was suffering and did nothing to help me. ...'

[13] On 8 March 2019, the respondent uploaded another post in which she lamented the fact that 'the priest who raped me, continues to minister.' She states that she 'mentions the Applicant by stating #RevMelvinBooyesen'.

[14] On 22 October 2019, the respondent uploaded another post in which the applicant is referred to as #RevMelvinBooyesen; in addition, his photograph was annexed to the post. A photograph depicting a man, but with the face blurred, forms part of that annexure to the respondent's affidavit. The following appears from that post:

'South Africa has a very high rate of Rape...

Our communities make it that we do not report rape. ...

People say she looked for it, see how she's dressed, she was drunk, she provoked him, what was she doing in a bar or night club or walking around that time of night...

My rapist, whose picture is attached, continues to minister. Communities and the hierarchy of the Anglican Church of Southern Africa, empowers him.

...

I was asked by the detective what pantie I was wearing. I was in bed, behind a closed door, I did NOT give him the right to rape me, my panties has NOTHING to do with it. I was told that it is ATTEMPTED RAPE as he did NOT EJACULATE inside of me, for years, I believed it. I No longer believe it, as he PENETRATED me without my consent. ...'

- [15] The applicant, in response to the posts put up in support of the respondent's allegation that the posts had been around since 2016, and therefore that he had no basis to approach the court on an urgent basis, said the following:

'3.1 The Respondent lists all the occasions prior to me launching this application where she posted my name on social media, alleging either that I raped her or attempted to rape her, as well as various other defamatory allegations.

3.2 The mere fact that allegations of a defamatory nature have been posted in the public domain does not change the nature of the posts or the allegations.

...

9. I submit that I have made out a case for urgency. The publications by the Respondent were viewed and shared and every day that the Respondent is not interdicted to publish defamatory statements about me, the impact of these statements multiply exponentially. ...I became aware of allegations against me in 2016 when I was approached by the SAPS to make a statement, which I did. I deny that there are "facts" to be aware of as I am not guilty of any conduct alleged by the Respondent. I have not been active on social media and have seen some newspaper articles in 2017 containing the allegations against me, however none of these newspapers printed my name. I had heard there were some social media posts where the Respondent had used my name, but at the time I was not aware that it

was possible for me to interdict her from doing this. When the Respondent published her video on 12 March 2021, this attracted more attention in social media, and impacted on me as described in my founding affidavit. This is the reason why I sought legal advice and launched this application.’ (own emphasis)

- [16] In his founding affidavit, the applicant alleged that he had learnt about the complaint against him when a journalist contacted him. However, in reply, he said that he had become aware of the allegations when members of the South African Police Services (**SAPS**) contacted him. In his replying affidavit, contrary to his founding affidavit, the applicant admitted that he was aware of the social media posts naming him as the respondent’s rapist back in 2017. At that stage, he had seen newspaper articles referring to the allegations but without naming him. However, he ‘had heard of the social media posts’ and conveniently was vague about when this was. I infer from the paragraph that it was also in 2017. He did not disclose this to the court seized with the urgent application. Instead, he based his need for urgent relief on the more recent posts, thereby creating the impression that he had approached court shortly after he became aware of the posts. This is a serious act of misleading the urgent court.

- [17] Similarly, the applicant misled the court by alleging the following:

‘32 The Respondent has been very vocal in her claims that she has been wronged by the Church and by “a Priest” for approximately two years. This included a protest outside the residence of the Archbishop in 2020. I believe that her decision to now publish my name, before a decision has even been made to convene a tribunal is malicious and intended to destroy my good name, reputation and possibly my livelihood.’ (my emphasis)

- [18] The applicant knew that the respondent had been ‘vocal’ for many years, not two as he suggests in the passage quoted above. The applicant has been economical with the truth. Ms Myburg, the applicant’s counsel, submitted that the respondent should in her posts state that she alleges that the applicant raped her instead of that he raped her. It is an astounding proposition that the alleged rapist should

have editorial rights over his alleged victim's narrative. As indicated above, the respondent alleged that the applicant had raped her in 2002. Since then, she had named him, laid charges with the SAPS and made many requests to the Church to intervene; she went on hunger strikes and has become a champion for survivors of rape. As indicated above, her social media audience has grown from 200 to 18 000 since she first named her alleged rapist in 2016. The Church established a unit to deal with sexual complaints from its employees and members in 2019. The respondent lodged her complaint with that unit in 2020, which complaint is under investigation. That process will be completed on 14 September 2021 when the tribunal is expected to deliver its finding. It has been a long and tortuous road to the hearing for the respondent. That context is important² and also that the applicant knew about the posts since 2017. The Women's Legal Centre Trust was admitted as *amicus curiae* in this matter and made written and oral submissions from which the following appears:

'20. One in three women in South Africa is raped. Violence against women remains one of the greatest barriers to women's civil, political, social, economic, and cultural rights. These human rights violations prevent women from participating in society as full and equal beings.

21. Given the serious threat to the physical safety, bodily integrity, dignity and equality of women, it is unquestionably in the public interest that women are able to speak about their experiences, create community and keep themselves safe from men who may be dangerous.

22. Because of the taboo around rape, coupled with the systemic disbelief of survivor's account of rape, women often remain in isolation and silence when dealing with rape. The impact of silence and isolation on survivors is dire and has continued long-term impact on a person's physical, mental and sexual health.

...

² *Le Roux and others v Dey (Freedom of Expression Institute and Restorative Justice Centre as Amici Curiae)* 2011 (3) SA 274 (CC).

28. Current statistics indicate that almost 90% of cases which are reported to police are not prosecuted. Only 8% of those cases which do end up being prosecuted, result in a conviction.

...

33. The context of mass rape in South Africa, the structural impunity, the culture of silencing, and the isolation in which victims suffer, renders the online publications of acts of gender-based violence and the identification of their perpetrators reasonable. A claim of defamation therefore is unsustainable in such circumstances.

...

41. Through online communities, however, survivors of sexual violence have found safe spaces to tell their truth, connect with other survivors and receive support. Women speak about regaining strength through these portals. Speakers note a sense of release, lifting a burden, and healing.

42. Women explain the importance of creating a community of support for other women who are trying to find the courage to speak about what has happened to them. Such community fortifies women's ability to navigate their own pain and at times, the legal system.

43. Online discussions about rape and real stories of people's experiences challenge rape culture. It mitigates the normalisation of rape, exposing the extent of abuse. Gender-based violence destroys women's lives. They must live forever with the violation that was wrought upon them. Online communities create space, at least, to escape the isolation in which so many victims find themselves. ...'

[19] Through her online speak out, the respondent has gone from victim to survivor and now uses the platform to educate and support others. The growth in her support base is an indication of the effect of the South African rape culture and the destruction it wreaks in the lives of women, as well as the need for safe spaces to talk without being judged. The respondent said the following about the purpose of her online posts:

'23. I have also during the period 2016 to date, been actively involved in movements and programmes to educate and protect women and children against abuse and expose the extent of abuse within the clergy. ...I created

the Facebook account, Justice for Rev. June Dolley and All Victims/ Survivors of Abuse, to create a safe platform and a community of people to be informed about what is going on and to offer them protection when they feel like they have no hope and are afraid to come forward and expose their perpetrators. I wanted a space for women, men and children which showed them that there is no shame in being assaulted and that they are safe and protected. My experience has taught me that, within the Church there are many victims and survivors of sexual abuse who keep quiet, because they do not feel protected by the law and they are filled with shame and humiliation... I also host regular education sessions, such as Thursdays in Black, to educate others. The reason why I have received so much traction and why people follow me is because I have told my story and they can relate to me.'

- [20] Counsel for the applicant accepted the statistics referred to above and agreed that rape is endemic in South Africa. Nevertheless, she persisted with the submission that the respondent should rephrase her reference to the applicant. The reasonable reader would arrive at the same conclusion whether the respondent posts that the applicant is her rapist or whether she writes that she alleges that he raped her. As indicated above, it would be preposterous to give the alleged abuser editorial rights over the victim's narrative.

Discussion

- [21] The applicant approached the court on an urgent basis while withholding relevant information. He knew about the posts in which he was named as the rapist in 2017. I further find it astounding that since 2002, no member of the Church's leadership has informed the applicant of the respondent's persistent claims. He had to learn from a journalist or the SAPS about the allegations. The applicant's version suggests gross negligence on the part of senior clergy. However, he does not deal with the response post, dated 22 May 2016, referred to above which suggest that a letter in which the applicant was named 'as the accused' was read out in church. That post belies the allegation

that members of the Church would only now view the applicant in a bad light.

[22] The applicant was aware that the posts had tarnished his reputation. He says he did not know that he could interdict the respondent in 2017 and does not say whether he investigated the possibility. Given the importance he places on his reputation, I find his version improbable. It appears as if the earlier posts had no effect on his reputation and his ability to do his work. The applicant also did not inform the court that he had been suspended in December 2020 because of the respondent's allegations against him. Instead, he claimed that the recent post 'has already compromised my position as a priest'. The applicant's position as a priest was compromised by his suspension and the enquiry that was instituted. Apparently, prior to establishing the unit referred to above, the Church had no intention of dealing with the applicant.

[23] A litigant is obliged to disclose relevant information to the court. It is correct that a litigant may approach the court at any stage while his or her rights are being violated. However, the litigant must explain the delay in approaching the court in the founding papers as it is relevant to urgency. In the circumstances of this matter, the applicant has withheld information relevant to urgency and the application stands to be dismissed on this basis alone.

[24] I accept that the applicant has a right to have his dignity and good name protected. However, it is apparent that the applicant has known for years that his reputation and good name were being tarnished through online posting. He is concerned that in future, the posts will continue to cause harm. It is a legitimate concern. However, in the circumstances of this matter, the posts have moved from the initial identifying of the applicant as a rapist to reporting on the progress of an 18-year process, among others. The irreparable harm that the applicant fears, in the circumstances of this matter, is non-existent as

his congregation has been discussing the issue for many years with apparently no effect on his reputation. The outcome of the pending enquiry will elicit further discussion, irrespective of the posts.

[25] The applicant reserved his rights to institute a defamation action. The facts in this matter are distinguishable from those dealt with in the *Economic Freedom Fighters* matter.³ This is not a case where an institution or the applicant would continue to suffer reputational harm. As indicated above the Church's attitude to the allegations was to try to silence the respondent. There is no allegation that the Church is undermined in the circumstances. Nor has the applicant, since 2016, suffered reputational harm, therefore he ignored the publications. The respondent, as indicated above, has moved beyond the original posts. Therefore, an award for damages in due course is an appropriate remedy. It is in that action that a court will determine whether the posts were defamatory. In this application, the respondent has shown that she has a defence against a claim for defamation.⁴ The applicant sought the following relief in the Notice of Motion:

'1. Declaring the application to be a matter of urgency ...

2. That the Respondent is ordered to immediately remove all posts by herself from all social media platforms, whether in her own name or on any other person's name, or making use of secondary accounts, whether in her own name or any other name, which refer to or mentions the name of the Applicant.

3. That the Respondent is restrained and interdicted from directly or indirectly posting any information whatsoever regarding the Applicant on any and all social media platforms, until such time as the process initiated by the Respondent and conducted under the auspices of the Anglican Church of South Africa is concluded.

³ *Economic Freedom Fighters and others v Manuel* 2021 (3) SA 425 (SCA) at para 89.

⁴ *Tau v Mashaba* 2020 (5) SA 135 (SCA).

4. Alternatively, that the Sheriff ...remove such posting from Facebook and/or any social media site.

5. Costs on an attorney and client scale.'

[26] As indicated above, the relief he obtained in paragraph 3 of the order makes no reference to the conclusion of the Church's process. It is convenient to repeat the relevant sections of the order:

'2. That the Respondent is restrained and interdicted from directly or indirectly posting any information whatsoever regarding the Applicant on any and all social media platforms;

3. That the Respondent is ordered to change the Page Moderation settings on her personal Facebook account as well as her page named Justice for Rev. June Dolley Major and All Victims/Survivors of Abuse to block posts or comments containing the words "Melvin Booysen", and to similarly block the words "Melvin Booysen" from any and every other social media account used by Respondent in her own name or under a pseudonym

4. Costs to stand over...'

[27] The order is final in effect. The applicant made no case to restrain any mention of his name in the respondent's posts. As indicated above, he merely sought to edit the use of his name. In reply, the applicant's counsel submitted that I should confirm the *rule nisi* in the terms set out in the Notice of Motion. The applicant did not satisfy the requirements for the relief claimed in the Notice of Motion.

[28] The proceeding pending in the Church does not prevent the respondent from posting information about the process. The balance of convenience also does not favour the applicant. The posts have moved far beyond naming him as the respondent's rapist. More harm will be caused to the respondent and the 8,000 who have either shared their experiences or have been encouraged to speak out and seek help in respect of their own abuse. Considering the rape culture in South Africa and in the circumstances of this matter, where the applicant had already been identified in 2016 as the respondent's rapist, the order sought is untenable.

[29] In summary, the applicant has a satisfactory alternative remedy, the balance of convenience does not favour him and he has not shown a well-grounded apprehension of irreparable harm. Since 2016 no harm has befallen him and the posts have moved far beyond him. The applicant is merely seeking to exert dominance over the respondent in light of the progress in the complaint against him. The pending enquiry, irrespective of the outcome, is a victory for the respondent and those who have supported her for 18 years.

Costs

[30] The applicant disclosed the minimum information when he approached the court on an urgent basis. He was economical with the truth and unrepentant. In reply, he said that the previous posts were irrelevant. That behaviour warrants a show of this court's displeasure.

Conclusion

[31] I, for the reasons stated above, make the following order:

- (a) The *rule nisi* is discharged.
- (b) The application is dismissed with costs on an attorney and client scale.
- (c) Costs to include the costs that stood over on 25 March 2021.

BAARTMAN, J