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 HIGH COURT OF SOUTH AFRICA
WESTERN CAPE DIVISION, CAPE TOWN

Case Number: 1054/2019
Case number: 23267/2018
Case number: 23369/2018
Case number: 21511/2018

REPORTABLE

In the consolidated matter between:

LOUIS THEUNIS JANSE VAN VUREN First Plaintiff

NICHOLAS JAMES YEOWART N.O Second Plaintiff
in his capacity as the executor in the estate of the late
Terence Thomas Matzdorff estate number: 016[…]

PIETER ANDREAS VENTER Third Plaintiff

JONATHAN ANDREW WILLAMS Fourth Plaintiff

and

FREDERICK LODEWICKUS VAN DER MERWE Defendant

Last date of hearing: 3 March 2023

Judgment delivered: 29 August 2023

JUDGMENT

GROBBELAAR, AJ

INTRODUCTION

1. The first to fourth plaintiffs are claiming damages due to alleged widely published defamatory statements made by defendant regarding them. The four actions were consolidated for hearing before this Court.

2. The plaintiffs were represented by counsel and the defendant insisted on representing himself. He practices as a neurosurgeon and is obviously an intelligent person but is untrained in law.

3. The defendant's plea contains several complaints about the case against him and is not a model of clarity but appear to plead that the statements made by defendant regarding the plaintiffs are true (and presumably for the public benefit).

4. The defendant brought several counterclaims against the plaintiffs ranging from prayers to have them incarcerated, struck from the roll of attorneys or advocates to claiming damages caused by defamation.

5. The defendant's plea incorporated several applications, they were argued before any evidence was lead. The applications were opposed, the Court dismissed them and provided ex tempore reasons for the orders made. At this stage the Court do not propose to provide further reasons.

6. The fourth plaintiff brought an application to amend his particulars of claim to include further alleged defamatory statements made about him by defendant after summons was served on him. The Court granted the application and provided ex tempore reasons for the order made. At this stage the Court do not propose to provide further reasons.

7. The fourth plaintiff's amended particulars of claim were delivered and despite the *dies* expiring the defendant did not adjust his plea.

8. Mr Matzdorff, initially the second plaintiff, passed away after *litis constetatio* but before the matter was heard. He is now represented by the executor of his deceased estate. For the sake of convenience, the Court will refer to him as "the second plaintiff".

9. The second plaintiff brought an application to allow hearsay evidence of the second plaintiff's daughter, Michelle Matzdorff and the third and fourth plaintiffs because the second plaintiff had passed away before he could testify. The defendant opposed the application but did not appear in court to argue the application despite being informed of the date that the application will be argued.

10. The Court has heard the hearsay evidence but have not made a finding on its admissibility. The Court will deal with it later in the judgment.

11. The defendant argued his abovementioned applications in court but except for filing notices and papers opposing the applications by the second and fourth plaintiffs he did not further attend or participate in the trial itself.

12. He was fully apprised of the further progression of the case by the plaintiff's attorney and repeatedly invited to return and participate in the proceedings. He declined to return to the court, instead he wrote several e-mails with annexures to the plaintiff's attorneys and the Court but did not bring any further applications before the Court. These e-mails contained further highly unflattering statements regarding the plaintiffs and their legal representatives.

13. The first, third and fourth plaintiffs testified as well as Michelle Matzdorff and Mr Viljoen, the attorney for the first to fourth plaintiffs.

14. The defendant presented no evidence to the Court.

15. On behalf of the plaintiffs, it was argued that evidence presented on their behalf exposed the allegations made against them by defendant as being:

15.1. defamatory.

15.2. entirely bereft of substance or foundation;

15.3. reckless in the extreme; and

15.4. malicious.

HEARSAY EVIDENCE

16. As mentioned above an application in terms of Section 3 of the Law of Evidence Amendment Act, 45 of 1988 (“the Hearsay Act”) was brought on behalf of second plaintiff to have the hearsay evidence of Michelle Matzdorff and the third and fourth plaintiffs allowed as evidence in the trial.

17. Section 3(1)(a) of the Hearsay Act provides that hearsay evidence is inadmissible.

18. Section 3(1)(c) of the Hearsay Act provides that hearsay evidence will be admissible if the court having regard to the seven factors set out in that Section is of the opinion that the evidence should be admitted in the interests of justice.

19. The Court will refer to each factor individually and then consider their cumulative effect.

The nature of the proceedings

20. The use of hearsay evidence in a civil trial are more readily allowed than evidence in a criminal trial.

The nature of the evidence

21. This factor concerns the reliability of the evidence. The evidence given concern the conduct of the second plaintiff in his dealings with the third plaintiff when the second plaintiff was instructed by the defendant and his conduct when the second plaintiff later instructed the third plaintiff as well as his reputation and integrity. It was given under oath and there is no indication that the evidence is unreliable.

The purpose for which the evidence is tendered

22. The evidence is tendered to establish the truth of its content.

The probative value of the evidence

23. The probative value means not only what the hearsay evidence will prove if admitted but also if it will do so reliably[1].

24. As mentioned above there is no indication that the evidence is unreliable.

The reason why the evidence is not given by the person upon whose credibility the probative value of the evidence depends

25. The evidence could not be given by the second plaintiff because he passed away before he could testify, this is a justified ground.

Any prejudice to a party which the admission of the evidence might entail

26. There is no apparent prejudice to the defendant if the evidence is admitted and he has raised no such prejudice.

Any other relevant factor

27. No other relevant factor has been brought to the attention of the Court.

28. If the Court take all of the above factors into consideration the Court finds that it is in the interest of justice that the evidence of the third and fourth plaintiffs

[1] S v Ndhlovu & Others 2002 (2) SACR 35 (SCA) para 45D

and Michelle Matzdorff be admissible in the action against the defendant, and it is ruled that the evidence is admissible.

HISTORY OF EVENTS

29. It is appropriate to at this stage provide a short history of the events leading to the plaintiffs instituting the defamation actions against the defendant.

30. The genesis of these defamation actions is the passing of the defendant's parents and the administration of their estates.

31. A trust company, Finlac Trust Limited ("Finlac Trust"), was appointed in the wills of defendant's parents to administer the estates of his parents. Finlac Trust acted as executor, and one Louise Danielz as Finlac Trust's nominee.

32. After the death of the defendant's father, and in the administration of his estate, a family farm was sold at auction to the defendant's brother, Dr Ian van der Merwe.

33. The defendant, considering that the sale of the farm was unlawful, instituted application proceedings in the Kimberley High court seeking to have the sale on auction set aside (the "Kimberley matter").

34. In those proceedings:

34.1. the fourth plaintiff acted as attorney of record for Finlac Trust and Ms Danielz;

34.2. an attorney, Mr Frankel Engelbrecht, was cited in his capacity as trustee in a trust created in relation to the deceased estates of the defendant's parents; and

34.3. the third plaintiff was mentioned as having drawn a draft deed of sale, which had been presented to the defendant's father before his death, but which was never signed.

35. It is the defendant's contention that Finlac Trust is disqualified from administering estates, more particularly the deceased estates of his parents by virtue of the provisions of a certain Regulation 910. According to him this is the "original sin", which in the defendant's narrative appears to found the contention that Finlac Trust has acted fraudulently in the administration of the said deceased estates.

36. The defendant's application was dismissed, primarily due to a finding, on a point raised by the presiding judge, that the defendant did not have standing in this application because the testamentary trust was the beneficiary of the wills.

37. It is apposite to point out that, at that early stage, the Court in its judgement said the following:

> "*[100] Die magdom van ernstige en selfs lasterlike beweringe van die applikant teen die eerste en derde respondente* [Finlac Trust and Danielz] *het hulle, veral toe hulle aanvanklik bereid was om buite-om hierdie hofproses daarmee te handel maar gekonfronteer is daarmee dat 'n kostebevel versoek sou word, eintlik geen ander keuse gelaat as om daarop te antwoord.*
>
> *…*
>
> *[114] Wat die vierde respondent* [Engelbrecht] *betref, en selfs al sou die applikant suksesvol gewees het, sou daar geen rede gewees het waarom hy in sy hodanigheid as trustee enige koste moet dra nie. Hy het ook nooit opponeer nie, dalk gelukkig vir die applikant. Ek sê dat dit dalk gelukkig vir die applikant is, want veral nadat die vierde respondent op uitnodiging van die hof 'n eedsverklaring geliasseer het, en die inhoud daarvan duidelik nie was wat die applikant wou hoor nie, het die vierde respondent ook nie die applikant se skerp tong ook nie gespaar gebly nie.* [In the orginal judgement, footnote 38 records as follows: "Die applikant se verklarings en korrespondensie is oor die algemeen gekenmerk deur venyn, beledigings en ernstige beskuldigings."] *Ek vind die applikant se beledigende opmerking tot die effek dat die vierde respondent nie geskik is om te dien as "trustee van trust met begunstigdes wat oor akademiese kwalifikasies beskik nie" as verwaand en beledigend.*"

38. It thus appears that even at this early stage of the saga, the defendant:

    38.1. had commenced a campaign of defamation against those persons who opposed him or did not concur with his view of the matter; and

    38.2. had already been admonished by the Court for doing so.

39. On the evidence, the farm was thereafter sold, again to defendant's brother, at a second auction, which the defendant deliberately eschewed.

40. The defendant nevertheless persisted in his complaints as to Finlac Trust's administration of his late father's and subsequently his late mother's estates, by way of correspondence, which is marked by extra-ordinary levels of insulting language and allegations of fraud in the administration of the estates.

41. In the course of this correspondence, the defendant trained his sights on Mr. Nico Van Gijsen ("Van Gijsen"), a director of Finlac Risk and Legal Management (Pty) Ltd ("Finlac Risk"), and the individual who prepared his late father's will and asked the third plaintiff to prepare the unsigned deed of sale.

42. The defendant accused:

    42.1. Van Gijsen of dishonesty and fraud;

    42.2. Finlac Trust and attorneys at VGV Attorneys, the third plaintiff's firm of conniving between them to conceal the fraud he alleged; and

    42.3. Finlac Trust and his own brother, of plundering his father's estate.

43. In 2013 Van Gijsen then instituted a defamation action against the defendant in the Western Cape High Court.

44. The third plaintiff acted as attorney of record for Van Gijsen in that action and the second plaintiff initially represented the defendant in that action.

45. The pending Van Gijsen action notwithstanding, the defendant persisted in publishing defamatory material relating to Van Gijsen, which culminated in the grant of an interdict against defendant prohibiting the defendant from defaming Van Gijsen, *pendente lite* ("the Van Gijsen interdict).

46. Van Gijsen was eventually successful in his defamation action against the defendant and was awarded R 500 000.00 in compensation, plus costs.

47. In a chastising judgment Riley AJ dismissed defendant's defence, and presciently stated the following regarding the defendant's actions:

> "*Gedurende die verhoor en in sy kruisondervraging van die eiser en in sy eie getuienis, het die verweerder nie gehuiwer om die waarheid te verdraai en om die hof te probeer mislei nie. Aanduidings van sy roekelose optrede en ongegronde stellings wat verweerder maak word uitgebeeld gedurende die verhoor toe hy verskeie ander persone, behalwe die eiser, insluitende die regslui (oa die eiser se prokureur en advokaat) belaster".*
>
> *"[…] verweerder absoluut geen berou toon vir sy onregmatige optrede nie. Die verweerder was vasberade om voort te gaan met sy onwettige gedrag en was dit duidelik dat hy geen respek het vir die grondwetlike regte van die eiser en andere nie*".

48. In disregard of the Van Gijsen interdict, the defendant persisted in his defamation of Van Gijsen and in consequence, Van Gijsen launched proceedings to have the defendant held in contempt and Sher AJ (as he then was) duly held him in contempt.

49. In the contempt proceedings, Van Gijsen was again represented by the third plaintiff, the defendant was unrepresented.

50. As a result of the Van Gijsen interdict and subsequent conviction for contempt, the defendant was apparently stymied in his defamatory campaign against Van Gijsen and his focus shifted to other persons more tangentially related to the Van Gijsen action and his parent's estates being:

    50.1. Engelbrecht, the appointed trustee in the testamentary trust;

    50.2. the first plaintiff, as co-director with Van Gijsen in Finlac Trust and Finlac Risk;

    50.3. the second plaintiff, as his erstwhile attorney of record;

    50.4. the third plaintiff, as attorney for Van Gijsen and draftsman of the unsigned deed of sale for the farm;

    50.5. the fourth plaintiff, initially as erstwhile attorney of record for Finlac Trust and later representing Nedbank.

51. Attorney Engelbrecht instituted a defamation action against defendant out of the High Court in Kimberley for defamatory statements of similar nature to those made of and concerning the plaintiffs in the present matter. Engelbrecht succeeded in his action and damages of R 800 000.00 were ordered against the defendant.

52. From that judgement, it appears that the defendant persisted with his campaign, to the extent that Engelbrecht was compelled to procure an order in terms of the Protection from Harassment Act, 17 of 2011.

53. The evidence and the documents filed of record shows that the defendant's alleged defamatory campaign against the plaintiffs has continued. This led to the consolidated actions being instituted. The first to third respondents also obtained an interdict restraining the defendant from defaming them.

THE MERITS

LEGAL PRINCIPLES

54. Both at common law and in the Constitution of the Republic of South Africa, 108 of 1996, an individual's right to dignity is protected.

55. In order to sustain a cause of defamation, a plaintiff must prove:

55.1. Wrongfulness;

55.2. Publication;[2]

55.3. Of defamatory material concerning the plaintiff;[3] and

[2] *Le Roux v Dey* 2011 (3) SA 274 (CC) para 86 and 104.

[3] *SA Associated Newspapers Ltd v Estate Pelser* 1975 (4) SA 797 (A) at 811.

55.4. *Animus iniuriandi*, being intent without knowledge of wrongfulness.[4]

55.5. Material is defamatory if it has a tendency or is calculated to undermine the status, good name or reputation of the plaintiff.[5]

56. The determination of whether publication of a statement is defamatory *per se*, involves a two-stage enquiry:[6]

56.1. Firstly, a court must determine the ordinary meaning of the statement; and

56.2. Secondly, a court must determine whether that meaning is defamatory.

57. The test is objective and is done with reference to the ordinary meaning of the publication and how an ordinary person of ordinary intelligence would have understood it.

58. In undertaking the first stage of the enquiry, the court considers not only what the express message conveyed is but moreover, takes cognisance of what is insinuated by the message.

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4 *Le Roux v Dey* 2010 (4) SA 210 (SCA).

5 *Le Roux v Dey* 2010 (SCA) para 8.

6 *Le Roux (CC)*, para 89, per Brand AJ.

59. Where publication of a defamatory statement is proven or admitted, two presumptions arise, that the publication was wrongful and that the defendant acted *animo iniuriandi*. The onus is then upon the defendant to establish either some lawful justification or the absence of *animus iniuriandi*.[7]

60. Both the Supreme Court of Appeal[8] and the Constitutional Court[9] have confirmed that a defendant bears a full onus to prove its defences, on a balance of probabilities.

STATEMENTS REGARDING THE PLAINTIFFS

61. The alleged defamatory statements of which the plaintiffs complain are reproduced in the pleadings and the documents and communications whereby they were published are annexed to the plaintiffs' particulars of claim.

62. The alleged defamatory statements on which the plaintiffs rely are addressed below with reference to each of the plaintiffs.

STATEMENTS REGARDING THE FIRST PLAINTIFF

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7 *Khumalo v Holomisa* 2002 (8) BCLR 771 (CC); 2002 (5) SA 401 (CC)

8 *National Media Ltd v Bogoshi* [1998] 4 All SA 347 (SCA); 1999 1 BCLR 1 (SCA); 1998 (4) SA 1196

9 *Khumalo v Holomisa (supra)*

63. At the outset is must be stated that the defendant has repeatedly and persistently accused the first plaintiff of misrepresenting his identity, going so far as to allege that he is guilty of contraventions of the Prohibition of Disguises Act, 16 of 1969.

64. When considering the full range of the statements that defendant has made regarding first plaintiff, it must be borne in mind that the first plaintiff is a non-practising advocate who has a long history of employment in the trust company field not only being appointed as Chief Executive Officer of the Fiduciary Institute of South Africa ("FISA") but also being a founder member who wrote FISA's constitution and its ethical and disciplinary code.

65. FISA has its roots in the Association of Trust Companies which was formed as early as 1932 and is a voluntary body of practitioners in the fiduciary industry in South Africa who is bound by a code of ethics to the benefit of the public and practitioners. The first plaintiff is also a member of the disciplinary committee of FISA.

66. On 28 February 2018, the defendant delivered a document ("the criminal complaint") to various officers and managers in the offices of the Provincial Commissioner of the South African Police Service ("SAPS"), the Provincial Commander of the Crime Investigation, Western Cape, the National Director

of Public Prosecutions ("NDPP") and the office of the Director-General for the Department of Justice and Constitutional Development, in which he stated of and concerning first plaintiff:

> "*TO: SOUTH AFRICAN POLICE SERVICES COMMERCIAL CRIME DIVISION.*
> *DIRECTORATE OF PRIORITY CRIME INVESTIGATION (DPCI), and already referred to NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS (NDPP) under CASE: 9/2/4/7-140-16*
>
> *[…]*
>
> *"(1) "FRAUD, MONEY LAUNDERING, EXTORTION of MONIES and CORRUPTION"*
>
> *(2) MALFEASANCE and COLLUSION by COURT OFFICIALS in PERVERTING AND OBSTRUCTING the COURSE in DEFEATING the ENDS of JUSTICE"*
>
> *(3) TAX EVASION and other OFFENCES with the […]*
>
> *[…]*
>
> *AGAINST THE FOLLOWING […] ATTORNEYS*
>
> […]
>
> *ADV. LT Jansen Van Vuuren AKA Adv LT Janse Van Vuren aka Mr Louis Van Vuren"*

67. As appears below the other plaintiffs named in this publication also rely thereon.

68. On 18 September 2018 the defendant sent an email to all speakers at the annual FISA conference, including a Dr Minnaar-van Veijeren, a founding

member of PROETHICS, in which he stated of and concerning first plaintiff, as follows:

> *"The reason I write this E mail is that the good name of PROETHICS has come under spotlight, as it was pointed out that you are a speaker at the upcoming FISA CONGRESS where a person by the name of Louis van Vuren (CEO of FISA) will be present. I have to point out that this person is facing CRIMINAL CHARGES (awaiting NDPP) and COMPLAINT with the GCBSA (Outcome overdue) and has been listed with CIPC as director of several companies since 2006(with outstanding CIPC INVESTIGATION REPORT).*
> *I have attached a short "INTRODUCTION" to this person, who (instrumental in the Van der Merwe-Estates), has caused tremendous irreparable harm to my family, for your perusal. If Louis van Vuren can provide the readers and myself with authentic and duly signed SAPS certified copies of his real identity, it would be appreciated.*

69. On 25 October 2018 the defendant followed this up in e-mail correspondence published to various senior attorneys, speakers, and invitees at the FISA conference, and members of the media including Waldimar Pelser (the editor of the Rapport newspaper). In this communication, the defendant stated of and concerning first plaintiff that:

> "*Soos waargeneem kan word is U bewus van die vele probleme en klagtes in hierdie boedelstryd- "CAPTURING of the ESTATES of the NATION".*
> *Dit is verder skokkend om te meld dat daar 'n SAPS KRIMINELE KLAGTE- "WHITE COLLAR COMMERCIAL CRIME" in gevordede stadium is waarby die CEO van FISA direk betrokke is. Vir bekendstelling heg ek die volgende dokument aan. U is welkom om behoorlike SAPS gesertifiseerde afskrifte van die CEO se IDENTITEITS- en PASPOORT-DOKUMENTE te verkry en te verskaf aan die SAPS en myself*"

70. Published with this e-mail, by way of attachment, was the so-called "CRIME REPORT" dated 11 September 2018 in which an array of further defamatory allegations are published of and concerning the first plaintiff, in which defendant accuses him of being "**THE MOST WANTED (and the BEST PROTECTED '<u>DIRECTOR OF COMPANIES</u>, <u>CEO</u>, <u>ADVOCATE</u> AND TRUSTEE- for WHITE COLLAR CRIMES (ECONOMIC- AND COMMERCIAL CRIMES).**" and that he is guilty of serious criminal conduct including:

"**FRAUD, CORRUPTION, MONEY LAUNDERING, TAX OFFENSES, EXTORTION and THEFT of MONIES, RACKETEERING and OBSTRUCTING and/or DEFEATING the COURSE/ENDS OF JUSTICE**.",

pursuant to which the allegations of misrepresenting his identity, identity fraud are repeatedly made throughout the document, which includes the following statements of and concerning the first plaintiff:

> *"THE MOST WANTED (and the BEST PROTECTED) 'DIRECTOR of COMPANIES, CEO, ADVOCATE and TRUSTEE' - for WHITE COLLAR CRIMES (ECONOMIC- and COMMERCIAL CRIMES).*
> *CRIMINAL SAPS CASE 126/07/2015 (PART 1 – 4) awaiting decision by NDPP.*
> *THE NATION's ESTATES have been CAPTURED for 50 YEARS (Enactment of REGULATION 910-1968)*
>
> *FRAUD, CORRUPTION, MONEY LAUNDERING, TAX OFFENCES, EXTORTION and THEFT of MONIES, RACKETEERING and OBSTRUCTING and/or DEFEATING the COURSE / ENDS OF JUSTICE*
>
> *[…]*

WHY the MISTAKEN IDENTITIES and/or IDENTITY FRAUD? And does this 'person' suffer from a 'identity crises' or having a 'split personality' or, and more likely to act in a coldblooded, deliberate, intentional and morally/ethically unacceptable complicit 'collegial' manner for pure financial gain, directly and indirectly, in fraud-of-law.

WHY is it that the LEGAL- PROFESSION/TRADE and the JUDICIARY (in my experience) are protecting this PERSON-at all costs and to the detriment of the nation as a whole.

[…]

THE DEFINITION and ELEMENTS of a CRIMINAL ACT:

CRIMINAL INTENT: to DECEIVE and to DEFRAUD: "SHOULD-have-KNOWNS",

CONDUCT: MISREPRESENTATIONS, CONFLICT-of-INTEREST, OMISSIONS and

PREJUDICE and CASUALITY: "SLAPP SUIT" and NO TAX CLEARANCE for ESTATES.

UNLAWFULNESS and in-FRAUD-of-LAW

[…]

For reference refer to contraventions of (NOT all listed):

(a) REGULATION 910 encompasse LICENCE ACT NO 44 of 1962 (NAME CHANGE -2006),

(b) Section 83(OFFENCES) of ATTORNEYS ACT NO 53 of 1979(as it was during 2006) and,

(c) Section 43B of the FIC ACT, No 38 of 2001, as amended(TRUST COMPANIES had to be registered by 01 Match 2011 – NO REGISTRATION of these 'PUBLIC TRUST COMPANIES'),

(d) CHIEF MASTERS DIRECTIVE , CIRCULAR NO 56 of 2015 dated 03 AUGUST 2015 (before Judgement was handed down in KIMBERLEY HIGH COURT CASE 1637/2014). NEDBANK, FINLAC TRUST and DIRECTOR's legal representative denied relevance/existence and/or

even attempted to repeal REGULATION 910 with computer manipulation(CAF),

(e) Trust Property Control Act and other,

[…]

I want to refer to the article published online : MONEYWEB 29 July 2014 with topic "When collegiality equals complicity". My opinion is as follow: we need more social justice than 'legal' justice or put in simple terms: we need more toilets and less lawyers.

[…]

See below: Another 'bona fide' mistake in spelling the name as "mnr Louis van Vuuren".

[…]

The answer to this futile attemps are: To deceive, hide and to obfuscate the matter to avoid accountability and the LAW and TAX enforcement.

[…]

The widely respected Advocate(late) A Danzfuss SC, who acted in this Kimberley Court case: 1637/2014, where "Finlac Trust Limted" was a respondent, summarised this matter as follows in his Heads-of-Argument and I quote: "Die EKSEKUTEURS is dus nie net deelnemers nie maar die ARGITEKTE van die BEDROG". The Executors, as named in both parents Wills, are of course "FINLAC TRUST" and their NEDGROUP TRUST nominated person – who co-incidentally only became a Finlac Trust Limited – company secretary during 2013(J190 signed only during 2016).

[…]

May I request that the real natural person please stand up or be collected by SAPS, to explain and provide us with the full detailed proof of Identity – the Van der Merwes, the South African Police Services and the nation of South Africa deserve it. The time for collegiality, complicity, corruption and 'capturing' are over. The STATUTORY BODIES, will have to come forward with DULY SIGNED

AFFIDAVITS, by the duly authorised with jurisdiction, and proper certified documents.

[…]

CRIMINAL SAPS CASE: 126/07/2015 with DPP Ref Number: 9/2/4/7-140/2016, including MISSING DOCKET CASE:255/04/2018(opened by DoJ) . NO duly signed and dated FINAL DESCISION with reasons, by the competent NDPP, on an official NPA LETTERHEAD, with correct details(Case number, adresses, names etc.) is forthcoming confirming that all SAPS Complaints were investigated and considered in an open, transparent and accountable manner."

71. On 29 and 30 October 2018, the defendant published correspondence to the SAPS, the Sheriff of the High Court, a journalist at the Eye Witness News channel , the editor of the Rapport newspaper and the fourth plaintiff, again alleging criminal conduct and again publishing the so-called "CRIME REPORT", as set out above, by attachment thereto.

72. The above statements conveyed, were intended to convey and were understood by those to whom they were published to mean that the first plaintiff:

72.1. is dishonest, unethical, immoral and corrupt;

72.2. had committed the crimes of fraud, corruption, money laundering, tax evasion, extortion, theft, racketeering and obstructing and/or

defeating the course / ends of justice in his dealings with the estates of the defendant's parents;

72.3. was under investigation by the SAPS and the NDPP as a result of legitimate criminal charges pending against him in respect of the aforesaid criminal conduct;

72.4. was carrying on business as a financial planner and fiduciary services practitioner under a false identity, in order to defraud the estates in respect of which he was appointed as executor, for his own financial gain; and

72.5. was involved in a fraud perpetrated against the deceased estates of the defendant's parents.

STATEMENTS REGARDING THE SECOND PLAINTIFF

73. The second plaintiff was a senior practising attorney who was a director of and shareholder in Knowles Husain Lindsay Incorporated for twelve years before he passed away. He was head of their Cape Town office.

74. On 19 October 2015 the defendant sent correspondence to several senior attorneys and amongst others Louise Danielz, Dr Lente Van Der Merwe;

fourth plaintiff, third plaintiff, Ms Elmey Gobregts (who is third plaintiff's secretary), Dr Ian Van Der Merwe; and Ms. Sherri Owen-Davies (second plaintiff's secretary). In that communication, the defendant stated of and concerning the second defendant, as follows:

> *"1.Ek stel U, as betrokke partye, hiermee graag in kennis dat Mr Matzdorff, van Knowles Husain Lindsay INC – Prokureurs, himself ontrek het as my prokureur nadat Mr Matzdorff sedert aanstelling oa gefaal het om sy klient, dr Fred, se opdragte en herhaalde versoeke, om skrywes te rig ter verkryging van dokumente uit te voer asook die voorkoms van enkele ander "bona fide-foutjies". […]*
>
> *4 Ek versoek U dus om asb enige skrywes wat namens my gedoen is, te ignoreer, asook enige verdere skrywes en dokumente direk aan my te voorsien in hierdie AGT JAAR ON-AFGEHANDELDE BOEDELS, wat gekenmerk word deur WANVOORSTELLINGS, "bona fide-foutjies", beweerde BEDROG, geen of tydige Belastingregistrasies, Geen VAT/BTW-belastingbetalings, GEEN Zerorating van NIE-LOPEND-WAT-LOPENDE-SAAK word met sg "Misgetasde Veiling" asook soos in die Agbare Regter Olivier dit noem "MISTASTINGS" en "DISPUTE" wat "wemel" in die Hofstukke. […] "*

75. On 30 September 2016 the defendant published a document, styled "PLEITREDE vir HOFREKORD" in the context of litigation against second plaintiff's firm of attorneys in the Cape Town Magistrates' Court. That litigation concerned the claiming of unpaid legal fees due to the second plaintiff's firm of attorneys incurred be defendant during the Van Gijsen action.

76. Therein, the defendant stated of and concerning the second plaintiff as follows:

“1.[…] Hierdie vorm plus die uitvloeisel tot “No 5 REQUEST FOR DEFAULT JUDGMENT” met “No. RM 32 WARRANT of EXECUTION AGAINST PROPERTY” is dus hoogs onreelmatig, onwettig asook ‘deliberate and intentional’ en noodsaak amptelike klagte by die REGTER PRESIDENT asook Suid Afrikaanse Polisie.

[…]

7.Die eiser in hierdie saak weier dan om soos Eiser dit self stel “professional suicide” en/of “Professional negligence” te pleeg deur die bewyse van kwalifikasie van “Finlac Trust Limited” as ’n beweerde trust maatskappy onder genoemde Regulasie 910 met inbegrip die Licence Act no 44 of 1962”, soos ook beskryf word in huidige wetgewing, asook die Belastinginligting van oorlede ouers se Boedels wat lopende Besigheid insluit, aan te vra vanaf opposisie Prokureur, Mnr PA Venter, wat dan hierdie Finlac Trust Limited – stigters en konstante direkteur verteenwoordig. Terloops, hierdie Finlac trust is eksekuteur van beide my ouers se boedels en is daar alreeds ’n Kriminele SAPS-saak in gevorderde stadium. “Collegiality equals Complicity” het betrekking asook is daar alreeds ’n klagte by “The Cape Law Society” teen hierdie Eiser prokureur, mnr Terence Matzdorff, in hierdie saak ge-open.

[…]

12.[…] VERWEERDER ontken dat hierdie ‘n “typo” kan wees soos genome deur die klerk van die Hof tensy hier ernstige voorbeeld van “defeating the ends of Justice” teenwoordig met dokument manipulasie.[…].

13.[…] dit is verder duidelik dat hierdie Eiser, ’n voorheen gerespekteerde prokureur van Knowles Husain Lindsay Inc, wel dan besig is met duistere werkingswyses aangesien EISER deeglik bewus moes wees dat die gewaande bedrae wat ge-eis word, NIE in jurisduksiewaarde van die Hooggeregshof val NIE asook dat “werksdae” gebruik word asook in besit is van “No 2B-Combined Summons. Hierdie is dan verdere bewys van slegs moontlik Regsverydeling, Nalatige werkingswyses, Misbruik van Hofprosesse en/of intimidasie en viktimisasie van die Verweerder, asook doelbewuste misleiding.

[…]

19.[…] Maw hier is nog 'n voorbeeld van die talle "bona fide" foutjies, "typo's en wat mag neerkom op misbruik van die Hofprosesse vir finansiele gewin wat mag neerkom op "extortion of money" met "defeating the ends of justice". [..]

22.[…] Rekeningstaat gemerk "COPY OF TAX INVOICE" van KNOWLES HUSAIN LINDSAY INC, soos ingedien deur Mnr Matzdorff, nie slegs in rekenaar gemanipuleerde table ("POC3") soos aan die einde aangeheg.

23.[…] Dit kom voor asof verdure nalatige en/of doelbewuste foute on oorverhalings NIE uitgesluit kan word NIE. […]

24.Nog verdure voorbeeld van growwe nalatigheid en/of doelbewuste intimidasie en/of "legally challenged" is deur hierdie groep […] Dit is in die Openbare belong dat die publiek teen hierdie regspraktyke beskerm moet word. […] "

77. This document was published to the attorneys Knowles Husain Lindsey and the Clerk of the Civil Magistrate's Court.

78. On 11 November 2016 defendant published a document purporting to be an affidavit opposing taxation of a cost award in the Van Gijsen action. Therein the defendant stated of and concerning the second plaintiff, as follows:

"In die Taksasie van Verweerder se laaste prokureur (Mr Terence Matzdorff van KHL) word daar nou ernstige vrae gestel oor Taksasies, die formele procedure en moontlike ampsoortredings.[…]

10. Ook verder 'n nuwe relevant "material fact" dat die laaste prokureur (Mr Terence Matzdorff) van die Verweerder op 'n bedrieglike manier 'n "DEFAULT JUDGMENT" in samewerking met die "klerk van die Hof" opkook wat nie eers 'n "authentic" voorkoms het nie. […] Hierop volg vele "typo's", "bona fide" asook ernstige en ten minste professionele nalatigheid asook "mala fide", "intentional", ook professionele foute.

> *11. Hierdie is een van vele bewyse dat die Verweerder se Regsgeleerdes by uitsondering definitief NIE in hul klient se belang opgetree het NIE, soos 'n mens sou verwag van 'n "fit en proper"-prokureur Nie. Dit is duidelik dat die HOFPROSESSE misbruik word ten koste van die klient en ter werksverskaffing en selfverryking. […]."*

79. On 28 February 2018 defendant published the criminal complaint document to senior officers and managers in the offices of the Provincial Commissioner of the SAPS, Provincial Commander of the Crime Investigation, Western Cape, the National Director of Public Prosecutions, the National Prosecuting Authority and the office of the Director-General for the Department of Justice and Constitutional Development by hand delivering copies of such correspondence to them. Therein, the defendant stated of and concerning the second plaintiff, who is identified therein by name, at para 19 therein, as one of the persons against who these allegations is made, as follows:

> *"TO: SOUTH AFRICAN POLICE SERVICES COMMERCIAL CRIME DIVISION.*
> *DIRECTORATE OF PRIORITY CRIME INVESTIGATION (DPCI), and already referred to NATIONAL DIRECTOR OF PUIBLIC PROSECUTIONS(NDPP) under CASE: 9/2/4/7-140-16*
>
> *[…]*
>
> *"(1) "FRAUD, MONEY LAUNDERING, EXTORTION of MONIES and CORRUPTION"*
>
> *(2) MALFEASANCE and COLLUSION by COURT OFFICIALS in PERVERTING AND OBSTRUCTING the COURSE in DEFEATING the ENDS of JUSTICE"*
>
> *(3) TAX EVASION and other OFFENCES with the […]*

[…]
AGAINST THE FOLLOWING […] ATTORNEYS

[…]

19. Mr Terence Matzdorff" "KNOWLES HUSAIN LINDSAY INC" – CAPE TOWN"

80. On 23 May 2018 the defendant sent an email to the Sheriff Cape Town West, the Sheriff Goodwood, a police officer at the Table Bay SAPS and Mr Waldimar Pelser, the then editor of the Rapport. Therein, the defendant stated of and concerning the second plaintiff, as follows:

"Please note that serious CRIMINAL CASE: SAPS CAS 126/07/2015 is under investigation and we are awaiting a proper decision by the National Director of Prosecutions (NDPP) of the NPA to investigate and prosecute this FRAUD, CORRUPTION, MONEY LAUNDERING, TAX OFFENCES and LEGAL RACKETEERING plus OBSTRUCTION of COURSE of JUSTICE. You are welcome to obtain the duly signed confirmation from the NAP-NDPP-Adv SK Abrahams reference SAPS PART 1,2 and 3).
Please see attached confirmation of the third SAPS CRIMINAL COMPLAINT (against also the lawyers and Court Officer involved in this LEGAL RACKET).
Please escalate this criminal case to the authorities. Please note that I have copy the SAPS Investigating officer and the Editor in with this letter."

81. The abovementioned criminal complaint was published to these persons by way of attachment to that e-mail, as confirmed in the body of the mail, as above.

82. On or about 02 November 2018 the defendant sent an e-mail to several e-mail addresses, being, inter alia, the Sheriff Cape Town West, the Sheriff Goodwood, a police officer at SAPS and Mr Waldimar Pelser, the editor of the Rapport newspaper. The relevant portion of that e-mail reads:

> *"2. I also want to place on record that neither **Mr PA VENTER (VGV)**, nor **Mr T MATZDORFF(KHL)**, nor **Mr J WILLIAMS(CAF)** could produce a valid, detailed and duly signed by Director of the CAPE LAW SOCIETY, " CERTTIFICATE-of-GOOD-STANDING" following my complaints to the mentioned "CAPE LAW SOCIETY"- another fact overlooked by Courts*
>
> *3. I also want to place on record that the above named attorneys are face a **CRIMINAL COMPLAINT- SAPS PART 2 and 3 (SAPS CAS 126/07/2015)**, that is awaiting a DECISION from a COMPETENT NATIONAL DIRECTOR of PUBLIC PROSECUTIONS (DPP Ref : 9/2/4/7-14-/16). See attached stamped proof of receipt.*
>
> *4 I also place on record that the RESCISSION of the fraudulent DEFAULT JUDGEMENT(25 Oct 2016-CASE 9742) was obtained, but resurfaced after condonation of KNOWLES HUSAIN LINDSAY-MATZDORFF "**NON-COMPLIANCE with the RULES of COURT with regard to time periods and service of its REPLICATION is CONDONED**" on the 13 Nov 2017 etc with yet another JUDGEMENT and WARRANT of EXECUTION handed down on the 17 April 2018 where my original PLEA and RESCISSION are dismissed. Strangely as it may sound, the 'my', EX-attorney Mr Terence Matzdorff is now represented by Mr PA VENTER for work done NOT in my interest."*

83. Read in context, the foregoing messages conveyed, and were intended to convey, and would have been understood to mean that the second plaintiff:

    83.1. in his fulfilment of his mandate as the defendant's attorney of record was, dishonest, negligent, did not act according to his required ethical and professional standards, and failed to act in the best interest of defendant

and made deliberate mistakes which amounted to misrepresentation and fraud;

83.2. in his fulfilment of his mandate as the defendant's attorney of record was, dishonest, negligent and did not act according to his required ethical and professional standards;

83.3. acted in collusion with third parties, in a fraudulent, deliberate and unethical manner to mislead the defendant and the Court so as to conceal Finlac Trust's disqualification to act as executor of deceased estates generally, and the deceased estates particularly;

83.4. committed various criminal offences, *inter alia,* defeating the ends of justice, fraud, extortion and intimidation; and

83.5. was not an attorney in good standing, and not fit and proper person to be an attorney.

STATEMENTS REGARDING THE THIRD PLAINTIFF

84. The third plaintiff is also a senior practising attorney and has been a director of VGV Attorneys for more than thirty years.

85. On or about 16 March 2015 defendant published email-correspondence to, amongst others, Adriaan Huben, an attorney then with the firm Edward Nathan Sonnenbergs, Cape Town and his then attorney of record, Alice Da Silva, Huben's secretary, and Dr Lente Van der Merwe In that communication, the defendant stated of and concerning the third plaintiff, as follows:

> *"Hierdie prokureur, Mnr Pieter Venter, asook sy klient en klient se seun was ook betrokke by sg hoogs twyfelagtige verkoopkontrak voor en ná vader se afsterwe.''*

86. On 27 April 2015 the defendant sent emails to amongst others Mr Wilmans (his then attorney of record in Kimberley), the Chief Master, Mr J Jacobs (a member of FISA's board, and attorney at CDH), Dr Lente Van der Merwe, SARS and Ms Wendy Serfontein (an employee of the FSB). Therein, the defendant stated of and concerning the third plaintiff, as follows:

> *"In die lig van hierdie doelbewuste, beplante misleidende skrywes van mnr Venter, is ek geforsseer om hierop te antwoord en dus ook om die betrokke instansies en owerhede bewus te maak van die korrekte feite […]*
> *"Ek ONTKEN dus meneer Venter se stelling […] en verneem ek graag of hier geval is, van Kort geheue en/of Oneerlikheid […] meneer Pieter (P A) Venter se naam kom ook telkens voor bv. in die gevaalde misleidende Verkoopskontrakte (2007) …, Gefaalalde Huurkontrakte […]*
>
> *[…]*

Duidelik probeer Mnr Venter die indruk skep […] hierdie is die gebruiklike poging in vele Hofsake om op 'n regspunt saak te probeer uitgooi om bedrieglike werkingswyses, ook teenoor SARS, te versteek […]

[…] vind ek mnr Venter se sg "Teistering" en dreigemente van gepaste Hofbevele […] belaglik en vermoed ek dus verder dat meneer P A Venter ook moontlik mag deel wees […] van hierdie bedrieglike skema om die SARS, boedel en myself, as Erfgenaam te benadeel […]."

87. On or about 27 April 2015 the defendant addressed e-mail correspondence to, amongst others, Mr L Basson, Ms Atsma (an official at SARS) and Dr Lente Van der Merwe, Mr Wilmans, Mr Jacobs, SARS and Ms Serfontein. Therein the defendant wrote of and concerning third plaintiff, as follows:

"***In die lig van hierdie doelbewuste, beplante misleidende skrywes van mnr Venter, is ek geforsseer om hierop te antwoord en dus ook om die betrokke instansies en owerhede bewus te maak van die korrekte feite*** […] (Bold typeface retained from the original)

[…]

"*Ek* ***ONTKEN*** *dus meneer Venter se stelling* […] *en verneem ek graag of hier geval is, van Kort geheue en/of Oneerlikheid* [*…*] *meneer Pieter (P A) Venter se naam kom ook telkens voor bv. in die gevaalde misleidende Verkoopskontrakte (2007) …, Gefaalalde Huurkontrakte* […]

[…]

Duidelik probeer Mnr Venter die indruk skep […] *hierdie is die gebruiklike poging*
in vele Hofsake om op 'n regspunt saak te probeer uitgooi om bedrieglike werkingswyses, ook teenoor SARS, te versteek […]
[…] *vind ek mnr Venter se sg "Teistering" en dreigemente van gepaste Hofbevele* […] *belaglik en vermoed ek dus verder dat meneer P A Venter ook moontlik mag deel wees* […] *van hierdie bedrieglike skema om die SARS, boedel en myself, as Erfgenaam te benadeel* […]"

88. On 22 July 2015 the defendant addressed email correspondence to various persons, including SARS, the Chief Master and Mr. John Gibson of Nedbank. Therein the defendant wrote of and concerning third plaintiff, as follows:

> "[…] sal Uself ook net verder betrek as deelnemers van hierdie "BEDROG […]"

89. On 15 August 2016 the defendant deposed to an affidavit in case number 1637/2014 in the Kimberley High Court, published to *inter alia* the South African Police Services. Therein the defendant wrote of and concerning third plaintiff, as follows:

> *"Sekere optredes blyk dan duidelik nie die van 'n FIT en proper regsgeleerdes te wees nie en is daar alreeds formele klagtes teen betrokke Prokureurs ingedien […]"*

90. On or about 21 August 2015 the defendant addressed an email to the second and third plaintiffs, copying Dr Lente Van der Merwe. Therein the defendant stated the following of and concerning the third plaintiff, as follows:

> "*Plaintiff's misleidende brief, namens sy klient, meneer Nico van Gijsen, aan SAIT spreek boekdele. Maw duidelike bewys dat ook Meneer Venter aktief betrokke is by hierdie Bedrieglike werkingswyses in sy hoedanigheid as prokureur.*
>
> *Verder soos elegant deur Adv Danzfuss SC in Betoogshoofde gestel:*

"DIE EKSEKUTEURS IS DUS NIE NET DEELNEMERS NIE, MAAR DIE ARGITEKTE VAN DIE BEDROG" Dit is duidelik dat hier vele deelnemers/rolspelers/medepligtiges is in hierdie saak."

91. On 4 September 2016 the defendant deposed to an affidavit published by service upon the South African Police Services and by e-mail to third plaintiff's secretary (ostensibly in case number CAS126/07/2015). Therein the defendant wrote of and concerning third plaintiff, as follows:

"[…]

KLAGTES TEEN:
Meneer Pieter Venter, VGV-Prokureur van Rekord van Meneer Nico van Gijsen
Klagtes: INTIMIDASIE, VICTIMISASIE en "DEFEATING the ENDS of JUSTICE" – REGSVEREIDELING […]

[…]

Klagte teen VGV-Prokureur, Mnr Pieter Venter

Die "Respondent" in hierdie Sake (14860/13 asook 17249/14), Dr Fred Vd Merwe, se ingediende Hofverklarings onder die korrekte Saaknommers word daar nie beskikbaar gestel aan regter, nie aangesien daar "tampering" met Saaknommers(verander na 14860/15) plaasgevind het …

[…] Ek heg dan ook die Be-edigde ingediende Hofverklaring – "Stamped 22 Maart 2016", onder korrekte saaknommer, aan nadat al hierdie "document doctoring and tampering" op lappe kom aan.

[…]

Dit is opmerklik dat hierdie prokureur van Rekord, Mnr Pieter Venter, ná uitwysing rakende die spesiale Almarie-Trust (wat ook nooit gestig is) se bywoning in Hofsaak aansienlik afneem en dit is ook gedokumenteer.

[…]

Dit is dan verder duidelik dat hierdie nalatige, onaanvaarbare, "Nie-bona fide-tipe foutjies is nie, maar beplande onderduimse taktieke is m.a.w mala fide. Hierdie is dus nie die optrede van 'n ""Fit and proper"-prokureur nie.

[…]

Hierdie intimiderende optrede van die Sheriff, op aandrang van mnr Pieter Venter, volg ook op die besoeke van Sheriff by my Huis op die 27 Julie 2016 […]

[…] Mnr Pieter Venter […] is betrokke by hierdie boedel saak […] met die volgende bewys van regsverydeling"

92. On 15 August 2016 the defendant deposed to an affidavit with reference to the third plaintiff in the Kimberley High Court. Therein the defendant wrote of and concerning the third plaintiff, as follows:

"4… Sekere optredes blyk dan duidelik nie die van 'n "Fit and Proper" regsgeleerdes te wees nie en is daar alreeds formele klagtes teen die betrokke prokureurs ingedien by die "Cape Law Society"

93. This affidavit was again published by service upon the South African Police Services and the Registrar of that Court on 22 and 23 August 2016, respectively.

94. On 1 November 2016 the defendant deposed to an affidavit, which was delivered to the Judge President of this Honourable Court, the Registrar of

this Honourable Court and the Taxing Master of this Honourable Court, the unit commander: Investigations of SAPS, Western Cape, and the office of third plaintiff. Therein the defendant wrote of and concerning third plaintiff, as follows:

> *"4 […] Dit is by voorbeeld 'n verdere voldwonge dat die ingediende en Betekende Verklarings van die Verweerder (defendant) op n klandistiene wyses 1 "verlore" geraak het en Nie onder die Waarnemende Agbare Regter Riley se aandag gekom het NIE.*
>
> *[…]*
>
> *[…] Hierdie kan NIE toevallig wees en/of ""bona fide"" foutjies wees nie, maar 'n patroon bestaan en word dus duideliker.*
>
> *[…] Hier is georganiseerde misdaad in werking. Sien ook aangehegde ingediende be-edigde Polisie verklaring wat dan ook aangesluit word by oorspronklike Polisie klagte. Ook 'n verdere nuwe "material fact"met bewys van modus operandi van die Eiser en opdraggewende Prokureur.*
>
> *[…]*
>
> *Eiser se prokureur, Mnr P A Venter, van VGV-Prokureurs se skrywe bevestig dus dat meneer Venter dus ook direk betrokke was […]*
>
> *[…]*
>
> *[…] Die bedreiglike wyse rondon saaknommers en Taksasies is kommerwekkend. Hierdie kom dan neer op Totale Dwarsboming van die gereg*
> *en regsverydeling deur ook die "accessories before and after the Fact"*
>
> *[…]*
>
> *Daar is dan ook duidelik uitgewys dat daar "conspiring and disposing of evidence" plaasgevind het met die uitsluitlike doel, "intending to provert course of justice".*
>
> *[…]*

Verder is ook voorbeelde van "maleficence in Office" is gedemostreer"

[…]

95. On 10 October 2016 Defendant addressed e-mail correspondence to the third plaintiff, Ms Elmey Gobregts and Van Gijsen. Therein the defendant wrote, of and concerning third plaintiff, as follows:

> *"3 […] Hierdie modus operandi is onaanvaarbaar aangesien dit mag neerkom op "Extortion" en geldwassery en behou ek reg in hierdie verband. U onderstaande intimiderende dreigement weereens met Balju en Lasbrief van Eksekusie word betreur."*

96. On 27 January 2017 the defendant deposed to an affidavit (in case number: 22362/16 in this court) in case numbers 14860/13 and 17249/14, which was delivered to the Director of Public Prosecutions and the Registrar of this division. Therein the defendant wrote of and concerning the third plaintiff, as follows:

> "2 […] *Die Eiser* (Van Gijsen) *en sy Regsspan se bona fides is onder ernstige verdenking soos blyk uit die modus operandi wat hierdie span ten toonstel, Verklarings wat wegraak, Saaknommer-debakel (verkeerde en/of geen saaknommers op amptelike rol by Hofingang), Hofsaak wat Nie op Rol op 30ste November 2016, geplaas is nie.*
>
> […]

4 […] *Dit kom voor asof Eiser en Regsspan ook hierdie Verklarings verduister het.*

[…] *Hierdie regsspan se optrede is die ergste graag van* ***"Bold scandalous"****,* ***"Vexacious"*** *and completely* ***"irrelevant".*** *Hierdie regsspan soos aangedui in Verklarings teen geen respek aan die Hof of Waarnemende Regters met NIE uitvoer van Regter se opdragte, soos oplees van weet wat steeds van krag is, luide disrespekvolle stemtoon teenoor die Agbare Regter in response, asook versuim om die nodige "practice notices" in te dien*.

[…] *Daar is dus op klandistiene wyse 'n dokument verkry met die Agbare Regter Samuels se handtekening, deur regsgeleerdes in 'n mala fide wyse. … "Complicity" en "Conflict of interest" het betrekking ("G1-2"). Hierdie bevel is uitgetik in advokaat se kamers Voor daar skynbaar op mala bide wyse die handtekening van Regter verkry is*.

[…]

5 […] *Hierdie verklaring word dan ingesien met geskiedenis dat dit verbysterend is dat Verklaring soos beteken verdwyn, versteek of soos Mnr Venter sal kan bevestig in sy swart aktetas op die 30 November 2016 geplaas word(ooggetuie)*.

[…]

6 […] *Dit is skokkend dat adv J C Marais en Prokureur P A Venter namens mnr Nico van Gijsen sg Hofsake wil hou wanneer daar amptelike skriftelike bevestiging van die Hof ontvang is dat* ***GEEN*** *sodanige saak op die rol geplaas is NIE(verwys na Hof-debakel onder Saak nr:22362/16 op die 30ste November 2016). Hierdie veroorsaak benewens psigiese trauma(poging to intimidasie en victimisasie)ook ernstige finansiele implikasies* […] *is hierdie skreiende "scandalous"-skandalige optredes met aantasting van Verweerder se menswaardigheid(fama indignity) en konstitusionele regte deur "unscrupulous" regsgeleerdes en die Eiser, 'n skandvlek op die regsprofessie en goeie name van die uitsonderlike regsgeleerdes.*

[…]

Dit is duidelik dat hierdie EISER en sy REGSSPAN alle stawende bewysstukke met "material facts", Verklaring en Dokumente wil laat verdwyn […]"

97. The third plaintiff explained that the references to the "*eiser en sy regspan*" and other references to that effect were a clear and unambiguous reference to him as he served as the plaintiff's (Mr. van Gijsen's) attorney and legal representative throughout.

98. He explained also how the further references to the lawyers and/or "prokureurs" and participants in the fraud which defendant persists in alleging, were references to *inter alia* himself as Van Gijsen's attorney who was alleged to be complicit in the fraud and the "*argitekte van die bedrog*", the second plaintiff, and the fourth plaintiff.

99. On or about 30 January 2017 the defendant addressed an email to multiple recipients, as explained in evidence. Therein, the defendant wrote of and concerning the third plaintiff, as follows:

> *"[…] This case has been floored (sic) and manipulated in a "Malfeasance" by way of maleficence, unscrupulous lawyers right from the beginning."*

100. On or about 28 February and 1 March 2018, the defendant published the criminal complaint, a document styled "ADDITIONAL COMPLAINT IN SAPS CASE (TABLE BAY SAPS 126/07/2015)", to senior officers and managers in the offices of the Provincial Commissioner of the SAPS, Provincial Commander of the Crime Investigation, Western Cape, the National Director of Public Prosecutions, the National Prosecuting Authority and the office of

the Director-General for the Department of Justice and Constitutional Development by hand delivering copies of such correspondence to them. Therein, the defendant stated of and concerning third plaintiff, who is identified therein by name, at para 15 therein, as one of the persons against who these allegations is made, as follows:

> *"TO: SOUTH AFRICAN POLICE SERVICES COMMERCIAL CRIME DIVISION.*
> *DIRECTORATE OF PRIORITY CRIME INVESTIGATION (DPCI), and already referred to NATIONAL DIRECTOR OF PUIBLIC PROSECUTIONS(NDPP) under CASE: 9/2/4/7-140-16*
>
> *[…]*
>
> *"(1) "FRAUD, MONEY LAUNDERING, EXTORTION of MONIES and CORRUPTION"*
>
> *(2) MALFEASANCE and COLLUSION by COURT OFFICIALS in PERVERTING AND OBSTRUCTING the COURSE in DEFEATING the ENDS of JUSTICE"*
>
> *(3) TAX EVASION and other OFFENCES with the […]*

[…]
AGAINST THE FOLLOWING […] ATTORNEYS3

[…]

15. Mr PA venter "VGV Inc" – Bellville…

101. On 23 May 2018 the defendant sent an email to the Sheriff Cape Town West, the Sheriff Goodwood, a police officer at the Table Bay SAPS and Mr

Waldimar Pelser, the editor of the Rapport. Therein, the defendant wrote as follows:

> *"Please note that serious CRIMINAL CASE: SAPS CAS 126/07/2015 is under investigation and we are awaiting a proper decision by the National Director of Prosecutions (NDPP) of the NPA to investigate and prosecute this FRAUD, CORRUPTION, MONEY LAUNDERING, TAX OFFENCES and LEGAL RACKETEERING plus OBSTRUCTION of COURSE of JUSTICE. You are welcome to obtain the duly signed confirmation from the NAP-NDPP-Adv SK Abrahams reference SAPS PART 1,2 and 3).*
> *Please see attached confirmation of the third SAPS CRIMINAL COMPLAINT (against also the lawyers and Court Officer involved in this LEGAL RACKET).*
> *Please escalate this criminal case to the authorities. Please note that I have copy the SAPS Investigating officer and the Editor in with this letter."*

102. In his evidence, the third plaintiff confirmed that the criminal complaint referred to in that email was the "additional complaint set out above".

103. The criminal complaint was thus published to these persons by way of attachment to that e-mail, as confirmed in the body of the mail, as above.

104. Read in context, the foregoing messages conveyed, and were intended to convey, and would have been understood to mean that the third plaintiff:

104.1. had committed the crimes of fraud, intimidation, corruption, money laundering, tax evasion, extortion, theft, racketeering and obstructing

and/or defeating the course / ends of justice in performing his work as an attorney;

104.2. acted dishonestly, negligently, scandalously, vexatiously and unscrupulously in performing his work as attorney;

104.3. was under investigation by the SAPS and the NDPP as a result of legitimate criminal charges pending against him in respect of the aforesaid criminal conduct;

104.4. acted in collusion with third parties, in a fraudulent, deliberate and unethical manner to mislead the defendant and the court so as to conceal Finlac Trust's disqualification to act as executor of deceased estates generally, and the deceased estates particularly;

104.5. was not an attorney in good standing, and not fit and proper person to be an attorney.

STATEMENTS REGARDING THE FOURTH PLAINTIFF

105. The fourth plaintiff is a senior practising attorney and has been director of C&A Friedlander Attorneys for more than twenty years.

106. On 18 May 2016 and 19 May 2016 the defendant addressed email correspondence to, inter alia, the fourth plaintiff, the fourth plaintiff's secretary Judy Samuels and to the defendant's sister, Dr Lente Van der Merwe. Therein, the defendant stated the following of and concerning the fourth plaintiff:

> *"3. Dit is opmerklik dat die vele prokureurs so kollegiaal saamgestaan ("complicity") het om hierdie gebrek aan kwalifikasie, uit te wys aan die Agbare Regter Olivier, maw die Agbare Regter Olivier en die HOF is doelbewus, op 'n planmatige wyse mislei. Ook opvallend dat hierdie Direktief enkele dae voor Kimbereley saak wel bevestig soos ook Meyerowitz (2010 uitgawe A64-66) asook alreeds die Attorneys Act dat "Licence Act" wel van krag is tsv ook U "Computer manipulasies" soos aan my gestuur waarin U die teendeel prober bewys.*
>
> *4. […]*
>
> *5. […]*
>
> *6. Ek sal dan graag van die geleentheid gebruik wil maak om voor einde van hierdie week volledge "inspection" van die gelysde dokumente wil doen waarna ek my besware sal formuleer. Ek neem kennis van U skrywe gedateer 16 Mei 2016, wat soos alreeds aan U uitgewys gewoonlik spel misleidende en inkorrekte feite bevat. U integriteit en eerbaarheid kom onder toenemende druk."*

107. On 02 June 2016 the defendant addressed an email to the fourth plaintiff, his secretary, Dr. Lente van der Merwe and to the South African Revenue Services via the e-mail address "contact.central@sars.gov.za". Therein, the defendant stated the following of and concerning the fourth plaintiff:

"Bevestig ook asb dat u steeds NEDBANK, FINLAC TRUST LIMITED, NEDGROUP TRUST National Head, Ms Louise Danielz se Prokereur van record is. Ek besef dat U kliënte U in 'n onhoubare situasie plaas met die gebrek aan kwalifisering aan Regulasise 910 met inbegrip van die nou bekende "Licence Act No 44 of 1962" soos duidelik beskryf ook in 2010 Meyerowitz A64 – 66. Ten minste is daar geen verdere rekenaar manipulasies aagedui NIE. Ek verwys ook na U eie "Attorneys Act Section 83 "OFFENCES"

…

Terloops, ek merk op in die voorgenome "Taksasie-lys" onder punt 215 – "Drafting e-mail to dr I van der Merwe detailing instructions". Ek moet dus aanneem dat die gerespekteerde Adv Danzfuss SC korrek was in sy betoogshoofde met bekende "Die Eksekuteurs is dus nie net Deelnemers NIE maar die Argitekte van die bedrog". U neem u Opdragte van kliente en adviseer U Kliente, nie waar NIE."

108. On 26 October 2016 the defendant sent e-mail correspondence to the fourth plaintiff, his secretary and Dr. Lente Van Der Merwe. Therein, the defendant stated the following of and concerning the fourth plaintiff:

"Ek bevestig dat die wettige REGULASIE 910 met inbegrip van die "Licence ACT no 44 of 1962" wel geldig is soos met vader se afsterwe (2007) asook moeder se afsterwe (2010) asook met veillings (2014,2015) tsv U manipulasies soos verskaf. Enige verdure pogings tot ontkenning word ernstig "defeating the ends of justice" gesien."

109. On or about 1 November 2017 the defendant sent an email to Dr. Lente van der Merwe and to various senior officials in the Department of Justice, Master's Office and the South African Police Services, including The Minister

of Justice, therein the defendant states the following relating of and concerning the fourth plaintiff:

> *"2. […] Clearly, the "executor's" legal representative/attorney's attempt to computer manipulate, was to create a false impression that REGULATION 910 encompasses the Licence Act, has been repealed which was a further despicable act and/or attempt to misrepresent the true facts of the matter […]".*

110. On 2 February 2018 the defendant sent an e-mail to, inter alia, Mr Mike Brown, the Chief Executive Officer of Nedbank Limited and his assistant Mr Dion Brown. Therein, the defendant stated the following of and concerning the fourth plaintiff:

> *"3 […] It seems common occurrence for Directors and secretaries to hide behind "lawyers" (these unscrupulous lawyers could NOT provide requested documentation and/or even "Certificates-of-Good Standing" from respective "Law Societies), therefor it must be assumed that they are acting in bad faith and/or on instruction of Nedbank.*
>
> *4. […]*
>
> *5. I also don't need to remind you that a criminal fraud, corruption and money laundering SAPS case has been opened and has been referred."*

111. On 10 February 2018 the defendant sent correspondence to both Mike Brown and Dion Brown. Therein the defendant stated the following of and concerning the fourth plaintiff:

*"You are of course also aware of the hardship of many other families where NEDBANK have been exposed to have operated in a particular way, where the modus operandi is clearly in bad faith, in concert with the legal profession. The **"Bastard relationship"** between BANKS and LAWYERS has been well described in academic literature and is to the detriment of the nation at large- I propose the terms "**CAPTURE of the NATIONs' ESTATES**" by Banks in concert with mostly unscrupulous lawyers hiding under different veils and names it seems.*

[…] these are code words confirming that we are dealing with a serious problem as neither the Founding Director/s, nor the Nominated Executor, nor Mr J Williams of C&A Friedlander INC want to respond.

6. REGULATION 910 and QUALIFICATION ito ADMINISTRATION of ESTATES ACT 66 of 1965

[…]

[…] *It is now common knowledge that REGULATION 910 is in force despite attempts by NEDBANK, FINLAC TRUST and NEDGROUP TRUST lawyer- Mr J Williams of CAF INC, to misrepresent the true facts of matter and even by "computer manipulations" tried to convince us that legislation has been repealed or is not relevant. Fortunately the South African Police Services has already requested an "affidavit" from the Chief Master as far back as 2015 (still outstanding), as well as me personally before his untimely retirement* […]

It can further be seen that NEDBANK/subsidiaries use questionable lawyers in cohorts that might be "fit-and-proper" BUT certainly DO NOT act with integrity and honesty- compare also story in the current NOSEWEEK (February 2018) where yet another family experienced the full force of NEDBANK-NEDGROUP TRUST (JERSEY) LTD aligned lawyers in concert. Same group of people and legal firms involved."

112. On 28 February 2018 the defendant published the criminal complaint to senior officers and managers in the offices of the Provincial Commissioner of the South African Police Service, Provincial Commander of the Crime Investigation Unit, Western Cape, the National Director of Public Prosecutions, the National Prosecuting Authority and the office of the Director-General for the Department of Justice and Constitutional Development by hand delivery. Therein, the defendant stated the following of and concerning the fourth plaintiff:

"ADDITIONAL COMPLAINT in SAPS CASE (TABLE BAY SAPS 126/07/2015) of.
(1) "FRAUD, MONEY LAUNDERING, EXTORTION of MONIES and CORRUPTION",
(2) "MALFEASANCE and COLLUSION by COURT OFFICIALS in PERVERTING AND OBSTRUCTING the COURSE in DEFEATING the ENDS of JUSTICE",

(3) "TAX EVASION" and other OFFENCES with the:
TO: SOUTH AFRICAN POLICE SERVICES COMMERCIAL CRIME DIVISION.
DIRECTORATE OF PRIORITY CRIME INVESTIGATION (DPCI), and already referred to
NATIONAL DIRECTOR OF PUIBLIC PROSECUTIONS(NDPP) under CASE: 9/2/4/7-140-16

1: AGAINST the FOLLOWING NATURAL PERSONS and/or LEGAL BODIES and/or ENTITIES:

[…]

ATTORNEYS:

14) Mr Jonathan Williams: "C&A FRIEDLANDER ATTORNEYS" – CAPE TOWN: for NEDBANK, FINLAC TRUST LIMITED, Ms Louise Danielz (Louw)"

113. On 23 May 2018 the defendant sent e-mail correspondence to, inter alia, the Sheriff Cape Town West, the Sheriff Goodwood, members of the SAPS and Mr Waldimar Pelser.

114. Therein, the defendant stated the following of and concerning the fourth plaintiff:

"[*Subject:] SHERIFFS CAPE TOWN CRIMINAL SAPS CASE (TABLE BAY) 126/07/2015 and COURT CASE KIMBERLEY 1637/2014 and CAF ATTORNEYS (Mr J Williams and Manning)*

Please note that serious CRIMINAL CASE: SAPS CAS 126/07/2015 is under investigation and we are awaiting a proper decision by the National Director of Prosecutions (NDPP) of the NPA to investigate and prosecute this FRAUD, CORRUPTION, MONEY LAUNDERING, TAX OFFENCES and LEGAL RACKETEERING plus OBSTRUCTION of COURSE of JUSTICE.. You welcome to obtain the duly signed confirmation from the NPA-NDPP-Adv SK Abrahams reference SAPS PART 1,2 and 3).

Please see attached confirmation of the third SAPS CRIMINAL COMPLAINT (aginst also the lawyers and Court Officers in volved in this LEGAL RACKET).
Please escalate this criminal case to the authorities. Please note that I have copy the SAPS Investigating officer and the Editor in with this letter."

115. As is the case with the third plaintiff, the “criminal complaint” was attached to and circulated by way of those e-mails. That document was also served directly on and thus published to the Department of Justice and Constitutional development, The National Prosecuting Authority, and the South African police services.

116. On 2 November 2018 the defendant sent e-mail correspondence to, inter alia, the National Commissioner of Police, the third plaintiff, the third plaintiff’s articled clerk Carla, whose further particulars are not known to Plaintiff, the Sheriff Goodwood, members of the SAPS, and Mr Waldimar Pelser. Therein, the defendant stated the following of and concerning the fourth plaintiff:

“ALL RIGHTS ARE RESERVED: CRIMINAL SAPS CASE AWAITING DECISION: OUTCOME OF INVESTIGATIONS by STATUTORY BODIES, BAR COUNCIL, CIPC etc: WARRANTS of EXECUTION

1. *I have removed the previously attached “LTJVV FINAL WANTED” due to size ONLY – that contained the prima facie evidence and proof of FRAUD-in-LAW where involved white collar criminals(NOT all Lawyers) are concerned. It also confirmed (a) the long overdue outcome to my complaint to the General Council of Bar SA regarding the Adv JC Marais, who Mr PA Venter instructed, in the “MONIES OWING-turned DEFAMATION HIGH COURT CASE”, (b) as well as the outstanding confirmation that involved COMPANIES were registered with FIC CENTRE and (c), and further comply with Companies ACT and the overdue CIPC INVESTIGATION REPORT.*

2. *I also want to place on record that neither Mr PA VENTER(VGV), nor Mr T MATZDORFF(KHL), nor Mr J WILLIAMS(CAF) could produce a valid, detailed and duly signed by Director of the CAPE LAW SOCIETY, “*

CERTTIFICATE-of-GOOD-STANDING" following my complaints to the mentioned "CAPE LAW SOCIETY"- another fact overlooked by Courts.

3. *I also want to place on record that the above named attorneys are face a CRIMINAL COMPLAINT- SAPS PART 2 and 3 (SAPS CAS 126/07/2015), that is awaiting a DECISION from a COMPETENT NATIONAL DIRECTOR of PUBLIC PROSECUTIONS (DPP Ref : 9/2/4/7-14-/16). See attached stamped proof of receipt.*

4. *I also place on record that the RESCISSION of the fraudulent DEFAULT JUDGEMENT(25 Oct 2016-CASE 9742) was obtained, but resurfaced after condonation of KNOWLES HUSAIN LINDSAY- MATZDORFF "NON-COMPLIANCE with the RULES of COURT with regard to time periods and service of its REPLICATION is CONDONED" on the 13 Nov 2017 etc with yet another JUDGEMENT and WARRANT of EXECUTION handed down on the 17 April 2018 where my original PLEA and RESCISSION are dismissed. Strangely as it may sound, the 'my', EX-attorney Mr Terence Matzdorff is now represented by Mr PA VENTER for work done NOT in my interest.*

5. *I also want to place the ordeal of execution of the FINLAC/Louise Danielz(CAF INC- J Williams) Warrant of Execution on record, where firstly about R103 000.00 was withdrawed(without any consent nor communication) from my Bank Account and then secondly I had to pay immediately to avoid removal of movable goods(significant damages occured), by EFT R210 000.00. It is therefor clear that the orchestrated "LEGAL" attack has intensified with the recycled Court Case 9742/2016 with more than R70 000.00. This is NB as NO valid SARS TAX CLEARANCE- and SARS TRANSFER DUTY CERTIFICATES could be produced by executors and/or Finlac Director- and/or Finlac's Legal representatives/attorneys(see above).*

6. *As I still believe in JUSTICE FOR THE NEW SOUTH AFRICA, I request that this WARRANT-of-EXECUTION be investigated and place my financial hardship on record, and cannot guarantee any payments to fund further FRAUD, CORRUPTION and MONEY LAUNDERING. I therefor appeal to parties to make OUTCOME of CIPC-INVESTIGATIONS, COMPLAINTS to CAPE LAW SOCIETY and GENERAL BAR of SA known, DECISION be taken by NDPP without any further delay as the CONSTITUTION is the SUPREME LAW of the country.*

   IMPORTANT: Please note I will send this to ATTORNEYS involved, SHERIFF and the SAPS and others. Please acknowledge receipt and

obtain NPA- NDPP DECISION to PROSECUTE before venturing out again."

117. On 21 October 2022, the defendant sent e-mail correspondence to, inter alia, Registrars of this Honourable Court, members of the SAPS, NPA and DPCI (the "Hawks"), wherein the defendant stated the following of and concerning the fourth plaintiff:

> *"..and furthermore, another PLAINTIFF: WILLIAMS's (acting for NEDBANK, NEDBANK-subsidiaries and 'executrixes) grossly and fraudulently misrepresented that REGULATION 910 has been repealed and therefor that the NEDBANK-purported 'public trust-companies' (NEDBANK subsidiaries) did NOT have to comply with REGULATION 910"*
>
> *……….*
>
> *"It is the same Mr Williams (obo FINLAC TRUST LIMITED and Executrix) that orchestrated the withdrawal of more than Hundred Thousand Rands from my Business Account."*

118. On 06 December 2022, the defendant sent email correspondence to, inter alia, other legal practitioners, Registrars of this Honourable Court, the Chief Executive Officer of Nedbank Group Limited, Mr Michael Brown, and a member of the SAPS, wherein the defendant stated the following of and concerning the fourth plaintiff:

"Mr Viljoen and/or Mr Williams and others fail negligently and in a 'mala fide' way to provide COURT STAMPED "ATTORNEY_of-RECORD"-appointment-withdrawal-substitution, from onset. This amounts to further abuse of due Court processes."

"Kindly take notice that my E mail must NOT be construed as an AGREEMENT TO/ACCEPTANCE OF any of the attempts and/or correctness of the PLAINTIFF: Williams document and DEFENDANT reserves the right to respond to the averments and fraudulent misrepresentations contained in the 'defective' and 'mala fide' COURT STAMPED "Filing Sheet: STATEMENT in response to subpoena deuces tecum" (Sic) at later stage, should it be deemed necessary."

119. On 12 December 2022, the defendant sent email correspondence to, inter alia, Registrars of this Honourable Court, members of the Department of Justice, Board members of Nedbank Group Limited and other Legal Practitioners, wherein the defendant stated the following of and concerning the fourth plaintiff:

"Kindly confirm the 'mala fides' and FRAUDULENT MISREPRESENTATIONS by your client PLAINTIFF:ATTORNEY FOR NEDBANK:WILLIAMS, in concert, by filing COURT DOCUMENT on the 1st of DECEMBER 2022 (signed on the 25Nov 2022) BUT only and purportedly attempt to serve a partially/incomplete set of documents, by E MAIL of 5th DECEMBER 2022 on the DEFENDANT. This serious breach of conduct, obstruction, and delays in due COURT PROCESSES by PLAINTIFFS and/or NEDBANK, are against COURT RULES, 'boni mores' and unlawful and have caused enough PREJUDICE, HARM and DAMAGES to DEFENDANT and/or FAMILY, and furthermore will be reported, penalised and to be the detriment of PRESCRIBING OFFICERS, INSTRUCTING ATTORNEYS etc. I place my utmost rejection

to incomplete and late serving of selected documents, and 'modus operandi' on record and object to same and will ask COURT to severely punish and penalised NEDBANK-PLANTIFFS and Officers and ATTORNEYS."

120. On or about 13 December 2022 the defendant filed a "Filing Notice" in which was contained a "Sworn Affidavit to Compel Compliance". This "Affidavit" was addressed to the Judge President and the Deputy Judge President of this court, Mr Francois Van Gijsen, Ms Louise Ellen Danielz, Adv. Ronel Annali Williams, Mr Frankel Engelbrecht, The State Attorneys Mr/Ms M Sisilana and Tanya Lombard.

121. In this "Affidavit" the defendant the defendant stated the following of and concerning the fourth plaintiff:

"despite the 'hearsay' and/or 'opinions' by some crooked lawyers including the Office of the Chief LAW ADVISORS, to manipulations by PLAINTIFF:ATTORNEY:WILLIAMS and ATTORNEY:MANNING at will have to face the music in consequence of the actions.
*"This REGULATION 910 contravention lies at the heart of the *Illegal Legal Racketeering* and for start settled the fraudulent misrepresentation [computer manipulation] by PLAINTIFF:ATTORNEY:WILLIAMS"*

"PLAINTIFF: WILLIAMS and ATTORNEY: MANNINGs' fraudulent misrepresentation was by design wilfully dishonest, false, and untrue and done with 'mala fides' to the extent that this PLAINTIFF/ATTORNEYS should be properly CONSOLIDATED in this matter (disguise/concealment of NEDBANK) struck, reported and currently charged and sentenced."
"FRAUD UNRAVELS EVERYTHING…"

122. Read in context, the foregoing messages conveyed, and were intended to convey, and would have been understood to mean that the fourth plaintiff:

122.1. had committed the crimes of fraud, intimidation, corruption, money laundering, tax evasion, extortion, theft, racketeering and obstructing and/or defeating the course / ends of justice in performing his work as an attorney;

122.2. acted dishonestly, despicably, in bad faith, without integrity, mala fide, negligently, scandalously, vexatiously and unscrupulously in performing his work as attorney;

122.3. was under investigation by the SAPS and the NDPP as a result of legitimate criminal charges pending against him in respect of the aforesaid criminal conduct;

122.4. had deliberately manipulated documents on his computer to mislead the defendant and the court and acted in collusion with third parties, in a fraudulent, deliberate and unethical manner to mislead the defendant and the court so as to conceal Finlac Trust's disqualification to act as executor of deceased estates generally, and the deceased estates of defendant's parents particularly;

122.5. was not an attorney in good standing, and not fit and proper person to be an attorney.

DEFAMATION

123. The defendant accuses the first plaintiff of misrepresenting his identity ostensibly to engage in nefarious activities in relation to the administration of this parent's estates.

124. There is no substance in these allegations and first plaintiff explained in his evidence that his surname has on occasion been incorrectly spelt in official records such as those of the CIPC and that the Department of Home Affairs in seeking to confirm his identity on one occasion incorrectly reflected his identity number.

125. Despite this and, despite confirmation of the identity of the first plaintiff by the Director General of the Department of Home Affairs, the defendant persists defaming the first plaintiff with these specious allegations, referring to first plaintiff repeatedly as "*advocate mistaken identity*" and accusing him of utilising aliases and otherwise misrepresenting his identity.

126. These are serious allegations against someone who holds such a respected position in the field of fiduciary and financial services, where honesty and integrity are indispensable.

127. Central to defendant's conduct is the contention in his various communications that Finlac Trust is disqualified from administering estates by virtue of the provisions of a Regulation 910. This is the "original sin", which in the defendant's narrative appears to find the contention that Finlac Trust has acted fraudulently in the administration of the estates of his parents. All other malfeasance by the various plaintiffs in the litigation is, defendant appears to contend, done in service to the perpetuation and concealment of this founding fraud.

128. The effect of the foregoing, so the defendant's contention goes, is that the entire administration of the deceased estates of his parents is a fraud which unravels everything and thus must be undone "from the outset" and, premised on this allegation, the defendant accuses the plaintiffs on the basis that:

128.1. The first plaintiff is not only complicit but the "kingpin" of an organised criminal conspiracy which has perpetrated various serious crimes such as money laundering and corruption in this unlawful and criminal scheme as director of Finlac, and by adopting "false identities".

128.2. The second plaintiff was complicit in the scheme in that while acting as defendant's attorney and thereafter, he acted to the defendant's detriment by

conspiring with the other attorneys and legal representatives involved to advance and conceal this scheme;

128.3. The third plaintiff in representing Van Gijsen was complicit in this scheme, again by conspiring with his colleagues in the profession to conceal and cover it up, *inter alia* by removing an unspecified document from the court file.

128.4. The fourth plaintiff was similarly complicit in this criminal conspiracy in that, in order to conceal the fact that Finlac Trust was disqualified from the administration of deceased estates and the estates of defendant's parents, he misrepresented to defendant and mislead the court, in particular by way of computer manipulated documents, to the effect that Regulation 910 had been repealed.

129. It is therefore necessary to have regard to the said regulation and the evidence in that regard.

130. Regulation 910 was promulgated on 22 May 1968 in terms of the Attorneys, Notaries and Conveyancers Admission Act, 23 of 1934 ("Regulation 910").

131. Paragraph 2 of Regulation 910 provide that subject to paragraphs 3 and 4 thereof only attorneys, conveyancers, or notaries shall liquidate or distribute the estate of a deceased person.

132. Paragraph 3 thereof states that a trust company shall be permanently exempt from the provision of paragraph 2. Paragraph 1 of Regulation 910 define a “trust company” as a trust company which was on 27 October 1967 licenced as a trust company in terms of the Licences Act, 44 of 1962 (“the Licences Act”) and carrying on a business of which a substantial part consisted of the liquidation or distribution of the estates of deceased persons but does not include a trust company in which a banking institution acquired or acquires after 27 October 1967, a financial interest otherwise than in exchange or substitution for any such interest held by such banking institution on that date.

133. The Licences Act provided for the issuing of licences and the payment of licence duties in respect of the carrying on of certain trades and occupations including that of trust companies. The provisions of the Licences Act were subsequently delegated to the various provinces who repealed it in phases during 1970.

134. The first plaintiff testified that Mr Van Gijsen was a director of and shareholder in Finlac Risk. During about 2005 or 2006 Finlac Risk entered

into a joint venture with the Nedbank group to use a trust company as a vehicle to perform the duties of executors of deceased estates. For this purpose, a Nedbank group trust company named National Board Durban ("National Board"), changed its name to Finlac Trust in 2006. In terms of the joint venture agreement BOE Trust Limited ("BOE Trust"), a member of the Nedbank group, would hold all the shares in Finlac Trust. Finlac Risk would draft wills for its clients or refer them to BOE Trust to draft wills for them. When the client passed away BOE Trust would administrate the client's estate in the name of Finlac Trust.

135. Both Mr Van Gijsen and first plaintiff were involved in putting together the joint venture.

136. This then was the situation when the defendant's father passed away in 2007 and his mother in 2010 and Finlac Trust acted as executor of their estates.

137. At a later stage the first plaintiff also became a director of Finlac Risk.

138. The provisions of Regulation 910 were addressed in evidence, in particular by the first plaintiff, who explained that Finlac Trust is a trust company as defined in paragraph 1 of Regulation 910 and thus competent to

administrate estates by virtue of the permanent exemption in paragraph 3 thereof.

139. According to first plaintiff's knowledge the trust company, National Board, was first formed and registered in 1961 and was a licenced trust company on 27 October 1967 as required by Regulation 910 and qualified for permanent exemption from the provision of paragraph 2 of the Regulation when its name was changed to Finlac Trust in 1960.

140. According to his evidence Nedbank Limited, which is a banking institution, has never held a financial interest in the trust company now named Finlac Trust.

141. There is no evidence to gainsay first plaintiff's evidence in the above regard.

142. Moreover, the Master's office has confirmed, by way of a reports from the Chief Master read with reports from the Assistant Masters of the Western Cape High Court and Kimberley High Court that Finlac Trust was appropriately appointed to administrate the estates of the defendant's parents and qualified to do so.

143. These reports were lodged consequent to an order by the Honourable judge Goliath (as she then was) on request of the defendant during the pre-

trial procedures managed by her. The defendant bluntly refuses to accept these reports.

144. Even if Finlac Trust is disqualified from administrating deceased estates, this could not justify the repeated defamation of the plaintiffs by way of allegations of unlawful, unethical and dishonest conduct and fraud and criminality on their part.

145. This is particularly so where the unchallenged evidence is that the plaintiffs have played no direct or active role in the administration of the estates of the defendant's late parents.

146. Fourth plaintiff testified that he never contended that Regulation 910 had been repealed. He provided the defendant with a computer printout that the Licences Act had been repealed, he denied that the computer printout regarding the Licences Act had been manipulated.

147. The allegations by the defendant were devoid of merit, indeed specious. There is not a shred of evidence before the Court to support them and they were roundly refuted by the plaintiffs.

148. The evidence for the plaintiffs, again unchallenged, is that they have at all times acted with honesty and integrity in the litigation and that there is absolutely no substance in the defendant's defamatory allegations.

149. The statements made by the defendant, in their ordinary meaning, convey or imply that the plaintiffs acted deliberately, separately and in concert, to subvert the law and the course of justice, are dishonest, have conducted themselves in an unlawful and criminal manner and indeed, have perpetrated and/or been complicit in the most serious crimes including fraud, money laundering, extortion, tax evasion, collusion with court officials in perverting and obstructing the course in defeating the ends of justice.

150. In relation to the second to fourth plaintiffs the statements, according to their ordinary meaning are to the effect that they are dishonest persons generally, have and are prepared to act unlawfully and/or unprofessionally, have no integrity, have acted in disregard of the law and fraudulently manipulated court proceedings, have deliberately misled the court and are unfit to practice as attorneys.

151. The statements are clearly defamatory and likely to injure the good esteem in which the plaintiffs were held by the reasonable and average persons to whom they were published.

152. None of the complaints to the police and prosecuting authorities and various legal practitioners' bodies have led to any action being taken against the plaintiffs.

153. The statements regarding the plaintiffs constituted, to quote from the judgement in *Katz v Welz*[10]:

"*…a deliberate and unfounded attempt to destroy*" the plaintiffs' reputations.

154. The plaintiffs have proven that the defendant's campaign of defamation against them is not limited to that reflected on the pleadings, although fourth plaintiff amended to plead the more recent instances of defamation against him, but has been ongoing even during the course of the litigation, further aggravating the defamation.

PUBLICATION

155. The publication of the alleged defamatory material concerning the plaintiffs is not disputed on the pleadings. Rather, the defendant's plea serves largely to reiterate the defamation which entailed a pattern of:

155.1. repetitive publication; and

155.2. broadening of the audience;

[10] 2021 JDR 0798 (WCC), para 219

with the purpose of gaining a wide audience which so as to perpetrate the maximum infringement of the plaintiffs' *dignitas* and *fama*.

156. As aforesaid, the defendant brazenly continues the publication thereof, most recently in the "Urgent submissions" sent by e-mail on Friday 10 March 2023 to the Court and plaintiff's attorneys, only days before argument of the matter.

157. The plaintiffs have moreover identified and confirmed in evidence the persons to whom and the addresses to which the statements were published and in many instances receipt of the e-mails was confirmed by their co-plaintiffs and their attorney, who were addressees, while in other instances it is evidenced by e-mail correspondence in reply or communications with recipients, to which the plaintiffs testified.

158. This evidence stands unchallenged and establishes that the defendant published these statements to, *inter alia*:

158.1. Colleagues of each of the plaintiffs;

158.2. Government ministers and officials;

158.3. Speakers and guests at the annual FISA conference and other prominent persons in the fiduciary and financial services field;

158.4. The first plaintiff ‘s colleagues and associates in FISA, an organisation of which he is the CEO;

158.5. The CEO of Nedbank and other senior employees within that organisation, fourth plaintiff’s valued client;

158.6. Senior members of the South African Police Services;

158.7. Senior prosecutors in the NPA;

158.8. Registrars of the High Court;

158.9. Masters and Assistant Masters;

158.10. The South African Revenue Service;

158.11. The General Council of the Bar; and

158.12. Members of the Media, including the editor of the Rapport newspaper.

WRONGFULNESS AND ANIMUS INIURANDI

159. Because the statements are defamatory and published wrongfulness and *animus iniuriandi* are presumed.

160. The defendant has presented no evidence that the making and publication of the statements was not wrongful or that he lacked animus iniurandi when he made and published them.

THE DEFENDANT'S DEFENCE

161. The defendant presented no evidence that the defamatory statements are true and the evidence of the plaintiffs that it is indeed untrue must be accepted.

162. Insofar as certain of the defamatory statements are published by way of documents purportedly delivered in legal proceedings, the defendant has not advanced a plea of qualified privilege. Had he done so, he would bear the onus to prove that the statements made were pertinent and germane to the issues.[11]

163. Again, the defendant has failed to present any evidence to satisfy this onus.

164. Even if the defendant met this preliminary onus, the plaintiffs have overwhelmingly established that the statements made had no basis and were not germane but on the contrary, were without foundation and made

[11] Joubert v Venter 1985 (1) SA 654 (A) and Herselman NO v Botha 1994 (1) SA 28 (A) at p. 35

recklessly and with malice. The plaintiffs' evidence to this effect stands unchallenged.[12]

165. Rather, the defendant, having elected to excuse himself from the trial of the matter, has presented no evidence in his defence and, as a result, he has not satisfied the onus of justifying the defamatory statements complained of or any other defence.

166. In consequence the plaintiffs' defamation claims must succeed.

THE QUANTUM

THE LEGAL PRINCIPLES

167. When quantifying an award for defamation, the Court will have regard to, *inter alia*, the following aggravating factors:

167.1. Malice on the part of the defendant;

167.2. The crudeness and insulting content of the defamatory material;

167.3. The extent of publication;

167.4. The status of the plaintiff; and

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[12] May v Udwin 1981 (1) SA 1 (A) and Tuch and Others NNO v Myerson and Others 2010 (2) SA 462 (SCA)

167.5. The repetition of the allegations.[13]

168. The continued publication of defamatory material during the conduct of the trial is an aggravating circumstance.

169. In *Katz v Welz (supra)*, a newspaper editor accused a Cape Town attorney of dishonestly and fraudulently abusing liquidation proceedings. At paragraph 219 of the judgement, the Court writes as follows:

> "*The fact that the defendant embarked on a deliberate and unfounded attempt to destroy the plaintiff's reputation will be an aggravating factor. The conduct of the defendant from the date of publication of the statements to the date of the judgement is relevant*."

170. The plaintiff in a defamation trial claims an award of general damages as a solatium to compensate him for the infringement of his *dignitas* and *fama*. The Court has a wide discretion which must be exercised with reference to the particular case and the prevailing attitudes of the community.[14]

<u>QUANTIFICATION OF THE CLAIMS</u>

<u>MALICE</u>

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[13]Neethling Visser & Potgieter, Deliktereg. Sixth Edition, p 265 and the authorities listed therein.

[14] *Katz v Welsh* (supra) at para 204.

171. Malice, being subjective in nature can be inferred from intrinsic or extrinsic facts[15].

172. That the defendant acted with malice can be inferred from the following facts:

172.1. Firstly, the defendant must as a matter of overwhelming probability have been aware of the unlawfulness of his conduct and the untruthfulness of his allegations;

172.2. Secondly, the defendant in publishing the defamatory material, carefully selected recipients to cause the maximum potential prejudice to the relevant plaintiff; and

172.3. Thirdly, the defendant had been warned about, admonished for the impropriety of and ordered to desist from, his persistent defamation by multiple courts yet persisted therein, and in fact escalated his assault, even after having excused himself from the trial.

173. Both the deceased estates of the defendant's parents have been substantially finalised.

174. From the Master's reports directed by Goliath DJP during the second round of pre-trial proceedings and at the instance of the defendant it is apparent that:

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[15] Touch and Others NNO v Meyerson and Others (supra) at p 467 fnt.4

174.1. In the defendant's father's estate, the estate has been finalised and the only outstanding matter is the defendant's acceptance of his inheritance, a sum exceeding R 1 million, which has now been paid to the guardian's fund;

174.2. In the defendant's mother's estate, the administration of the estate has been frustrated by the objections, to the identity of the trustees in a trust created therein, by the defendant's sister, Lente, who accompanied him to Court and assisted him at the trial herein; and

174.3. Finlac Trust is within its rights to act as executor of deceased estates.

175. Faced with these reports, the defendant simply disregards them as they are not "court stamped, authentic, verifiable and reproducible", whatever that may mean. Whenever a fact emerges with which is at odds with defendant's narrative, he conveniently chooses merely to discount it as fraudulent, generally in malicious and defamatory terms.

176. In this regard, paragraph 97 of Riley AJ's judgement is instructive. Therein, the court records as follows:

> "Ek meld in die verband dat die Meesterskantoor in elk geval lank reeds die verweerder in kennis gestel het dat Finlac Trust inderdaad boedels kan beredder. Indien die verweerder inderdaad so 'n groot problem gehad het met die feit dat Finlac Trust teenstrydig met die Licences Act optree, is daar niks wat verhoed het dat hy die hof kon nader vir 'n verklarende bevel in die verband nie."

177. That being so, the defendant must have been aware, well before the consolidated actions was commenced, that his allegations of fraud on the part of Finlac Trust were false and unfounded, yet he persists in his defamatory allegations against the plaintiffs.

178. If there is no underlying fraud, there can be no conspiracy to cover up such any fraud. Consequently, and to the defendant's knowledge, his entire case was false from the outset.

179. He has simply gratuitously, recklessly and maliciously defamed prominent legal professionals, apparently out of pique. By abandoning the trial, the defendant deliberately discarded the opportunity of explaining himself. The inference that he has no explanation or justification, is inescapable.

180. Throughout, the defendant has selected the recipients of his accusations with a view to causing maximum embarrassment and reputational damage.

181. Before dealing with the individual plaintiffs, it must be emphasised that the defendant included the media in various of his publications, a transparent attempt at broadening his audience and thus the impact of his defamatory statements.

182. Moreover, the defendant was fully aware that the plaintiffs' professional integrity was vital to their ability to do their work.

183. As relates to the first plaintiff:

183.1. The defendant persistently copied into his communications the master's office, fully aware that the first plaintiff's reputation for honesty and integrity at the Master's office is a *sine qua* non for his ability to perform his work.

183.2. The defendant sought to embarrass the first plaintiff by publishing to Dr Minnaar-van Vijeren of PROETHICS and invitees at an impending FISA congress, to various stakeholders in FISA, and to the editor of the Rapport Newspaper, material defamatory of first plaintiff including the so-called crime report.

183.3. This was plainly calculated to embarrass the first plaintiff, *qua* CEO of FISA. On first plaintiffs' evidence, this was extremely humiliating, in accordance with the defendant's design.

183.4. Moreover, the first plaintiff has been subjected to spurious criminal complaints and consequently, has had to excuse himself from FISA meetings where colleagues would discuss his "conduct". On the first plaintiff's evidence, this humiliation, not least his colleagues reaction thereto, was one of the catalysts for the launch of his action.

183.5. It bears emphasis that the first plaintiff was not only the CEO of FISA, but the draftsman of its ethical and disciplinary codes.

184. In relation to the second to fourth plaintiffs – each of whom are or were senior attorneys in their respective practices, and in Cape Town generally:

184.1. The defendant accused each of them of dishonesty and unethical conduct, which is anathema to the attorneys' profession;

184.2. The defendant accused them each of being complicit in serious crimes involving dishonesty and fraud, including misleading the court and defeating and/or perverting the ends of justice; and

184.3. The defendant published these allegations to the various Master's offices, to court registrars and to their professional colleagues.

185. On the evidence of his daughter, the second plaintiff, whose career spoke volumes of his honesty and dedication to others, was most distressed by the wholly unjustified attack on his personal integrity, which he valued highly.

186. The defendant gives no reason, plausible or otherwise, why the second plaintiff would not have done his utmost for him as his client. On the evidence of the third plaintiff, these allegations are false, and are clearly designed to injure and humiliate.

187. The extent of the stress placed on the second plaintiff is illustrated by:

187.1. The fact that the Van der Merwe matter was regularly discussed at his dinner table; and

187.2. The second plaintiff's insistence, when being treated for terminal brain cancer at the hospital at which the defendant' practices, to be treated under a pseudonym in order to avoid being the targeted by the defendant.

188. The third plaintiff testified that not only was it humiliating that these allegations were published to work colleagues, but it was humiliating to be interviewed by Col Lourens on the defendant's wholly unfounded complaints. Moreover, as the designated partner of VGV who deals with SARS, the defendant's persistent publication of defamatory allegations to SARS was particularly distressing and damaging.

189. As relates the fourth plaintiff, the publication of the allegations to Nedbank's CEO, Mr Brown, his assistant and other employees within that organisation with whom fourth plaintiff had regular dealings as their preferred attorney for work in the Cape area, illustrates beyond doubt that the defendant carefully selected the recipients of his defamatory publications to cause maximum reputational damage to the plaintiffs. He selected an important client of the fourth plaintiff to receive information which had no possible relevance to it.

190. The fruit of his labour is that the fourth plaintiff, the erstwhile attorney of preference to Nedbank in estate related matters in the Cape area, no longer receives work of substance from Nedbank and has, in effect, lost Nedbank, one of the country's major banks as a client. The loss of this client in this way clearly constitutes a very serious injury to his standing and reputation both within his firm and in the wider legal community.

191. At paragraph 208 of *Katz (supra)* Mayosi AJ writes as follows:

> "*The statements published by the defendants regarding Mr Katz are highly defamatory. Accusing any person, let alone an attorney, of corruption and/or fraud is about as serious and damaging an allegation as can be made*."

192. In the instant matter, the defendant has not satisfied himself with allegations of corruption and fraud but has gone further and made allegations of extremely serious criminal conduct including money laundering, tax evasion and extortion.

193. This selection of allegations and the recipients thereof was aimed at making the second to fourth plaintiffs' continued practice as attorneys either unbearable, or as difficult as possible. This intent is confirmed in the defendant's prayers that they all be struck as attorneys.

194. The defendant's apparent ill will towards each of the plaintiffs is frankly concerning and inexplicable given the tangential link between them and the

administration of the deceased estates of his parents, the defendant's primary concern.

195. The defendant has been interdicted in his malicious campaign on three occasions by:

195.1. the Western Cape High Court Van Gijsen's instance;

195.2. the Kimberley magistrate's court, at the instance of Engelbrecht; and

195.3. the Western Cape High Court at the instance of the first, second, and third plaintiffs.

196. In the Judgements by Olivier J, and Riley AJ, the defendant was admonished for his unrestrained attacks on the integrity of those who he considered his opponents.

197. Sher AJ (as he then was) in convicting the defendant of contempt for his persistent defamation admonished him to stop his defamation as Mr. Viljoen highlighted in his evidence.

198. The defamation actions by Van Gijsen and Engelbrecht culminated in defamation awards of R 500 000.00 and R 800 000.00 respectively.

199. These judicial pronouncements would have made it clear to any reasonable person, certainly to a neurosurgeon, that the fiction constructed around Finlac Trust by the defendant was utterly devoid of factual basis and that there was no reasonable or justifiable basis to persist in his defamation of the plaintiffs, yet he elected showed only contempt and continued.

THE CRUDENESS AND INSULTING CONTENT OF THE ALLEGATIONS

200. The Court has already dealt with content of the allegations, it is plainly crude and highly insulting to the plaintiffs.

THE EXTENT OF THE PUBLICATION

201. The defendant's allegations against the plaintiffs have been published to a wide variety of recipients, in fact the defendant sought to reach an even wider audience by communication the allegations to the Rapport newspaper, obviously in the hope that it would be published in the newspaper.

THE STATUS OF THE PLAINTIFFS

202. Without having to repeat what was said regarding the status of the plaintiffs earlier on in this judgment it is clear that the Plaintiffs are or were all successful

professional practitioners in their chosen areas of expertise and has, or had, a high standing in society.

THE REPETITION OF THE ALLEGATIONS

203. The defendant has repeatedly published the allegations. Even during the course of the litigation by and against him, the defendant has continued and escalated his unrestrained defamatory assault on the plaintiffs, going so far as to accuse them of “TREACHERY and TREASON”.

THE AMOUNT OF DAMAGES

204. The Court has a broad discretion to determine the amount of damages awarded. Each case turns on its own facts, awards in other cases might provide a measure of guidance in a generalised form and serves a limited purpose[16].

205. The Supreme Court of Appeal cautioned in 2021 that the amount of R500 000.00 awarded as damages by the court *a guo* superficially appears to be extraordinarily high and that a cursory scrutiny of awards from 2017 onwards will reveal that recent awards in serious defamation cases, with the defamatory

[16]Economic Freedom Fighters and Others v Manuel 2021 (3) SA 425 (SCA), para 124

statements being widely published, were in amounts that were a fraction of R500 000,00[17].

206. The following judgements however address similar allegations of dishonesty and unlawful, unprofessional and criminal conduct, two of which judgements, as explained above, concern the very same defendant, and thus provide guidance as to the quantification of damages:

206.1. The Van Gijsen Judgement;

206.2. The Engelbrecht Judgement;

206.3. *Katz v Welz (supra); and*

206.4. Engelbrecht and another v Independent Media (Pty) Ltd and another[18].

207. The damages awards in those cases were as follows:

207.1. in Van Gijsen - R 500 000.00 (R250 000 each) in respect of only two defamatory emails;

207.2. in Engelbrecht - R 800 000 in respect of some seven defamatory e-mails;

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[17] 2021(3) SA 425 (SCA)

[18] [2019] LNQD 41 (GSJ)

207.3. in Katz - R 330 000.00 in respect of one magazine publication and a partial republication thereof; and

207.4. In *Engelbrecht and another v Independent Media (Pty) Ltd and another,* R300 000 in respect of two defamatory publications.

208. These cases show the recent general trend to award substantial damaged in cases where legal practitioners and persons engaged in the fiduciary industry are defamed.

209. In Van Gijsen, the defendant attacked the person who prepared the will which offended him and in Engelbrecht, the defendant attacked the trustee of the trust created in the will.

210. Those plaintiffs had some notional relationship to defendant's fundamental complaint as to the administration of his parents' estates.

211. The current plaintiffs played no role in the administration of the estates and the defendant's campaign against them is completely gratuitous and malicious.

212. In Van Gijsen the claim was in respect of only two defamatory e-mails sent over a short period of approximately a month in June and July 2013.

213. In the Engelbrecht case the claim was initially in respect of two defamatory e-mails of 13 August and 22 August 2018 subsequently amended to include a further five e-mails over a period of some four to five months.

214. The *Katz* case entailed digital representation of and caption relating to the plaintiff together with an editorial article and a further article, both with the aforesaid image, published in one edition of a monthly magazine in July 2014, with a republication, of the digital image and the accompanying caption only, a month later in the August 2014 edition.

215. In *Engelbrecht and another v Independent Media (Pty) Ltd and another (*supra), the case concerned allegations published on the 8th and 15th of April 2019 in a certain newspaper and internet sites, widely distributed to the Council of the Bar, the Judiciary and the side bar, stating that the plaintiffs who were insolvency practitioners, were corrupt, fraudulent and intimidated opponents.

216. While these were serious allegations of a similar nature, the defamation was of a less egregious nature than that *in casu* as there were only two publications over a short period on the 8th and 15th of April 2019, the publication was not as wide and did not entail the allegations of serious criminality published of and concerning the plaintiffs.

217. Similarly, In Engelbrecht and Van Gijsen, the defamation pleaded was over a relatively limited period and the publication was not as extensive, particularly in Van Gijsen's case.

218. Importantly, none of the above cases pleaded a campaign of defamation over such an extended period and entailing the allegations of serious criminality that the defendant has published of and concerning the plaintiffs in the case before the Court.

219. The fact that a defendant has embarked on a deliberate and unfounded attempt to damage a plaintiff's reputation will be an aggravating factor.[19]

220. Similarly, persistence in a defence of truth and public benefit, apparently the essence of the defendant's approach defence, which fails may increase the award, as may recklessness and irresponsibility on the part of the defendants, both of which are present the case before the Court[20].

221. The judgement by Riley AJ five years ago alerted the defendant to that fact that his allegations of fraud by Finlac Trust in winding up the estates of his parents is entirely unfounded.

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19 *Katz v Welz (supra), at [219].*

20 LAWSA *Defamation* Vol 14(2) - Third Edition, para 137

222. The defendant cannot have any honest belief in the defamatory allegations he has published of and concerning the plaintiffs and they are, as aforesaid, recklessly and maliciously made.

223. The defendant is a neurosurgeon, thus by any metric an intelligent man. It is inconceivable that the aforesaid conclusion has not dawned on him.

224. Accordingly, his obstinate persistence in driving a woefully unfounded narrative is not only reckless and actively malicious but fundamentally dishonest .

225. The plaintiffs have had to bear repeated, persistent, and entirely baseless attacks on their personal and professional integrity in embarrassingly public fora, orchestrated by the defendant.

226. The defendant not only refused to apologise for his conduct but perversely, demanded that the first plaintiff apologise to him.

227. Unlike in the Economic Freedom Fighters and Others v Manuel (supra) the plaintiffs adduced extensive relevant evidence regarding the damages suffered in the case before the Court.

228. The evidence testified as to the embarrassment at having the allegations published:

228.1. To their colleagues including staff and junior associates at firms at which third and fourth plaintiffs practice (holding senior positions);

228.2. to judges' registrars, the Chief registrar of this division, various Masters and officials at the Masters office, the Bar Council and the Law Society/Legal practice Council, being persons and institutions with which the plaintiffs are required to deal in their business and professional dealings and where their reputations are at risk; and

228.3. to third parties in the wider community, extending as they explained beyond the legal community, including, the fourth respondent explained, to personal friends who had come to hear of the matter.

229. The plaintiffs have, as they were obliged to do, claimed damages in a specified amount in respect of each instance of defamation, as follows:

229.1. The first plaintiff at R 250 000 for each of the four pleaded instances of defamation, amounting to a total of R1 000 000.00;

229.2. The second plaintiff at R 150 000 for each of the six pleaded instances of defamation, amounting to a total of R900 000.00;

229.3. The third plaintiff at R 100 000 for each of the fourteen pleaded instances of defamation, amounting to a total of R1 400 000.00;

229.4. The fourth plaintiff at R 200 000 for each of the thirteen pleaded instances of defamation, as per his amended particulars, amounting to a total of R2 6000 000.00.

230. As aforesaid, the cases referred above do not have the elements of the sustained and prolonged defamatory campaigns that the plaintiffs in case have had to endure, the allegations of serious criminality which leading to the humiliation of being subjected to enquiries from the police, the fact that the applicant has persisted therein in the face of previous defamatory actions, interdicts and proceedings and admonitions from other judges and in particular, in the face of previous proceedings and an order for contempt.

231. In *Van Gijsen* the court found that the defendant had perpetrated "*…'n erge graad van laster end dat hy dit met uiterste vernyn en kwaadwilligheid gepleeg het.*", also over an extended period.

232. On that basis the Court ordered damages in an amount of R 250 000 per defamatory incident.

233. The defamatory allegations in Van Gijsen were also of a serious nature but the allegations of criminal conduct have been amplified *in casu* to include more serious crimes such as money laundering, extortion, collusion with court officials in

perverting and obstructing/ defeating the ends of justice and tax evasion, more egregious than those in *Van Gijsen* and was more widely published.

234. The defendant shows only contempt for the Court and its orders. The previous judgements, interdicts and the finding of contempt have apparently done nothing to chasten or discourage him.

235. Considering the relevant factors set out above this is a case which merits a significant award in damages.

236. On behalf of the plaintiffs, it was argued that that in view of the circumstances of the current case there would be no reason for the Court to exercise its discretion to award damages at a lesser scale than in the *Van Gijsen* matter the Court should grant judgement in the amounts as claimed.

237. In the Court's opinion the Court should not award an amount of damages for each defamatory statement and then simply add them up to arrive at the total amount of damages awarded. The Court must also consider whether the total amount of damages awarded to each plaintiff is justified taking into account all the relevant factors regarding the quantum of damages as referred to above.

238. The Court finds that the following amounts of damages is just and fair in al the circumstances of the case:

First plaintiff R700 000.00

Second plaintiff	R600 000.00
Third plaintiff	R1 000 000.00
Fourth plaintiff	R1 000 000.00

<u>THE DEFENDANT'S COUNTERCLAIM</u>

239. The defendant has presented no evidence to the Court supporting his counterclaims or any damages he may have suffered.

240. His counterclaims are accordingly dismissed.

<u>COSTS</u>

241. If the following is considered:

241.1. The serious nature of this matter given the identity of the plaintiffs and their standing in society and the business and legal communities, the patent importance of the matter to the plaintiffs, their careers, life's work and professional reputations being threatened, the ambit of the publication thereof and the level of person and office to which such publication has been made;

241.2. The amount of damages claimed;

241.3. The two-year case management process;

241.4. The array of interlocutory matters that had to be addressed; and

241.5. The voluminous documentation involved and the consequently enormous burden for reading of papers in preparation,

The costs of two counsel, a junior and a senior counsel, are justified, where so employed.

242. In the Van Gijsen case the Honourable Riley AJ remarked as follows:

"*Alhoewel 'n bestrawwende koste bevel nie onvanpas sou wees in die saak nie, het ek nietemin besluit om my diskresie in die verweerder se guns uit te oefen en het ek daarteen besluit*"

243. Sher AJ also showed the defendant leniency regarding a punitive cost order.

244. On behalf of the plaintiffs, it was argued that the time has come when a punitive cost order should be made against the defendant.

245. They refer the Court to:

245.1. The malice evidenced and the campaign of defamation, which is ongoing in the face of interdict and contempt proceedings, as aforesaid;

245.2. The fact that the proceedings have been so extraordinarily yet unnecessarily protracted, delayed and complicated by defendant's intransigence,

246. The defendant has demonstrated nothing but contempt for the leneincy and solicitude shown towards him by judges Sher and Riley and it would not be appropriate that his contempt and intransigence be countenanced, much less rewarded with further leniency or indulgence.

247. The defendant has throughout the litigation before this Court persisted with making unacceptable statements regarding the legal representatives of the plaintiffs with aspersions also cast at sitting Judges in this division. He has in fact acted recklessly, maliciously, unreasonable and vexatiously in conducting the litigation before this Court.

248. The Court finds that the time has indeed come where the Court should censure conduct of such nature with a punitive cost order and that costs on the attorney and client scale are warranted, indeed called for.[21]

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[21] See: *In re Alluvial Creek, Ltd* 1929 CPD 532 at 535 and N *S v J N* (506/2021) [2022] ZASCA 122 (19 September 2022) at paragraph 21.

249. In the result the following orders are made:

In case number 1054/2019

a) The defendant is ordered to pay the first plaintiff the amount of R700 000.00;

b) The defendant is ordered to pay interest on the amount of R700 000.00 at the prescribed legal rate from date of service of the summons to date of payment ;

c) The defendant's counterclaims are dismissed;

d) The defendant is ordered to pay the costs of the claim and counterclaims on the attorney and client scale, including the costs of two counsel when so employed.

In case number 23267/2018

a) The application to admit the hearsay evidence of third and fourth plaintiffs and Michelle Matzdorff is granted with costs on the party and party scale;

b) The defendant is ordered to pay the second plaintiff the amount of R600 000.00;

c) The defendant is ordered to pay interest on the amount of R600 000.00 at the prescribed legal rate from date of service of the summons to date of payment ;

d) The defendant's counterclaims are dismissed;

e) The defendant is ordered to pay the costs of the claim and counterclaims on the attorney and client scale, including the costs of two counsel when so employed.

In case number 23369/2018

a) The defendant is ordered to pay the third plaintiff the amount of R1 000 000.00;

b) The defendant is ordered to pay interest on the amount of R1 000 000.00 at the prescribed legal rate from date of service of the summons to date of payment ;

c) The defendant's counterclaims are dismissed;

d) The defendant is ordered to pay the costs of the claim and counterclaims on the attorney and client scale, including the costs of two counsel when so employed.

In case number 21511/2018

a) The defendant is ordered to pay the fourth plaintiff the amount of R1 000 000.00;

b) The defendant is ordered to pay interest on the amount of R1 000 000.00 at the prescribed legal rate from date of service of the summons to date of payment ;

c) The defendant's counterclaims are dismissed;

d) The defendant is ordered to pay the costs of the claim and counterclaims on the attorney and client scale, including the costs of two counsel when so employed.

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GROBBELAAR, AJ