



**THE SUPREME COURT OF APPEAL OF SOUTH AFRICA
JUDGMENT**

Not reportable

Case no: 285/2024

In the matter between:

FRANCOIS JURIE NICOLAAS (COIS) HARMAN

APPELLANT

and

PIETER HENDRIK STRYDOM

RESPONDENT

Neutral Citation: *Francois Jurie Nicolaas Harman v Pieter Hendrik Strydom*
(285/2024) [2025] ZASCA 108 (18 July 2025)

Coram: MOTHLE, WEINER and SMITH JJA and VALLY and NORMAN
AJJA

Heard: 14 May 2025

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email, publication on the Supreme Court of Appeal website and released to SAFLII. The date and time for hand-down of the judgment is deemed to be 11h00 on 18 July 2025.

Summary: Constitutional law – section 34 of the Constitution of the Republic of South Africa, 1996 – *audi altarem partem* – whether the court a quo ignored the principle of *audi altarem partem* by granting an order of a final nature in an *ex parte* application – whether the appellant's rights in terms of the provisions of s 34 of the Constitution were violated – whether the final order is moot – whether the interim orders were overbroad.

ORDER

On appeal from: North West Division of the High Court, Mahikeng (Djaje DJP, sitting as court of first instance):

The appeal is dismissed with costs, including costs of two counsel.

JUDGMENT

Mothle JA (Weiner and Smith JJA and Vally and Norman AJJA concurring)

Introduction

[1] The Constitutional Court in *Botha v Smuts and Another*¹, dealing with a dispute that arose from messages posted on a Facebook account, expressed the following view: ‘This case centres on the intersection between the right to privacy, including where information is already in the public domain, and the right to freedom of expression. These issues play out within the larger context of social media’s ascendancy and the digitalisation of information.’ This view resonates with the issues raised in the appeal before this Court.

[2] On 1 July 2022, Mr Pieter Hendrik Strydom (Mr Strydom), the respondent in this appeal, lodged an urgent *ex parte* application in the North West Division of the High Court, Mahikeng (high court). The relief sought was for an interdict against the appellant, Mr Francois Jurie Nicolaas (Cois) Harman (Mr Harman), an estate agent and farmer in Zeerust, North West. Mr Harman holds an account on a social media platform known as ‘Facebook’.

[3] The high court, per Petersen J, found that Mr Harman and his friends and followers of his Facebook account, posted and published offensive, and life-threatening defamatory statements of and concerning Mr Strydom. Some of the

¹ *Botha v Smuts and Another* [2024] ZACC 22; 2024 (12) BCLR 1477 (CC); 2025 (1) SA 581 (CC) para 2.

postings were found by the high court to amount to a smear campaign. The high court in paragraph 2 ordered Mr Harman to remove the published material from his Facebook account, which referred to Mr Strydom, his employees and business associates. Mr Harman was further ordered, in terms of paragraphs 3 and 4 to submit, under oath, a list of the particulars of the persons who made the postings.

[4] Paragraphs 3 and 4 were interim orders, stated as such in the form of a *rule nisi* in paragraph 5, with a return date of 4 August 2022. On 2 August 2022, two days before the return date, Mr Harman delivered his answering affidavit. Consequently, Peterson J extended the return date to 13 March 2023. On that date, the learned Deputy Judge President (DJP) Djaje, after hearing argument by the parties, confirmed the interim orders. This appeal is against the DJP's confirmation of the *rule nisi*.

Background facts

[5] The background facts, briefly stated, are as follows. Mr Strydom is an attorney and insolvency practitioner, practicing as such under the name and style of Strydom and Bredenkamp Attorneys in Pretoria. Their clients include the Land and Agricultural Development Bank of South Africa (Land Bank), and its financial agent, Unigro Financial Services (Pty) Ltd (Unigro). The Land Bank and Unigro advance loans to farmers, subject to agreed terms and conditions, which includes mortgaging their farms as collateral. The loan agreements provide for annual instalment payments of the amount loaned, due to seasonal harvest of the agricultural crops. Whenever a farmer falls in default of payment, the Land Bank instructs its attorneys, in this case, Mr Strydom's law firm, to institute legal proceedings to recover the debt. Included among the farmers was Mr Harman and his company, Redlex 321 (Pty) Ltd (Redlex), on behalf of which he stood surety for its loans from the Land Bank.

[6] Mr Harman had personally secured a loan from the Land Bank but fell into arrears in the annual instalment payments. The Land Bank sued him and Redlex for an amount of R4 336 730.63, being the outstanding balance of the loan. Redlex was unable to pay its debt and was finally liquidated on 11 July 2019. On 15 May 2020, the Land Bank, represented by Mr Strydom, obtained judgment against Mr Harman for an amount of R3 038 624.46 plus interest. Mr Harman took to his Facebook account,

charging that Mr Strydom and some officials in the Land Bank were the cause of his problems, in that they were acting unethically and impartially. This posting was followed by others who, in support of Mr Harman, directed vitriolic statements at Mr Strydom.

[7] On 29 June 2022, Mr Strydom obtained a protection order from the Magistrates Court for the District of Tshwane Central, Pretoria, in terms of s 3(2) of the *Protection from Harassment Act* 17 of 2011 (the protection order). The protection order was in the form of an interdict against Mr Harman, prohibiting him from committing verbal abuse through electronic communication of and concerning Mr Strydom; refraining from contacting Mr Strydom directly and indirectly; as well as refraining from committing psychological harassment or abusing him. The return date for this order was 1 August 2022.

[8] The following day, a messenger from Mr Strydom's office, accompanied by two police officers, arrived at Mr Harman's house to serve him with the protection order. Mr Harman denied them entry into his house and instead photographed them. After they left, he again took to his Facebook account on the same date, with a posting, together with photographs of the police officers and the messenger. An excerpt from Mr Harman's second long message, posted in Afrikaans, started with the following words translated into English and submitted to this Court:

'Cois Harman

54 minutes ago

"This morning I was visited by two heavily armed policemen and a frightened official from Henk Strydom's office in Pretoria to serve me with a Harassment order. It seems the truth hurts. After all, he enjoys chasing the farmers from their farms with his mafia so that they can live like squatters with children or friends. I will never forget when I made a payment to Unigro in March 2018 and I phoned Ernst Janse van Rensburg of Unigro/Afgri to tell him about my payment. He was on his way to the Cape for the long weekend and he said, talk quickly to Henk. It was Henk Strydom. He greeted me and said, "*We are en route to the Cape to visit farmers to knock them about*". It was a strange reaction and I must say it did not impress me at all. Little did I know that it was a team to be reckoned with in destroying the lives of farmers in SA. I met many farmers in my capacity as property agent that wished to sell farms to get rid of his threats and tactics. Many times farmers phoned me late at night, full of fear, anxious to

sell their farms as soon as possible. I talked to many of them for hours on end so that they did not lose courage. Many were at the point of suicide. I am thankful for each person that we could help to get through the drift...".²

[9] On the same day, Mr Harman's Facebook post was followed by a slew of other vitriolic postings from different persons (colloquially referred to on social media as 'doxxing') and directed at and concerning Mr Strydom. Some of the postings contained expletives and racist comments, insults and threats on Mr Strydom's life. Mr Harman occasionally added some comments in-between. There were numerous postings, almost all in Afrikaans. Some of these postings with pictures, translated into English for the Court, read as follows:

'Koos Theron - Thank you for exposing these criminals

Wessel Kok – *F... him up* ![expletive]

Elsa Krüger - How absolutely offensive and despicable. I hope the bully's whining will come to an abrupt halt.

Bobbie Scott - Uncle Cois, step on them

Suzette Schoeman van Rooyen - Oh, where are we going that you'd rather step on others. Trying to steal from whites and get them off their farms. It is a shame

Stephen H Sutherland - This is how hundreds lost their homes to sit with enormous debt... our own white bastards sit behind this... ask me... my property development was sold for R10 000 by a white sheriff... yes, you read it right

Dodds Pringle - Does Afriforum or Solidariteit know about this and what is their reaction

Faan Pansegrouw - Dodds Pringle, now what should the sheriff do? He is only doing his job and must execute the court order.

Len Coetzer - The legal system is run and manipulated by a lot of lawyer thieves... it is only the legal profession that can represent people and then they drag out the case as long as possible at extremely high prices... if you win your case, you just have...

Leon A Van Zyl - *Where can I get hold of the little Strydom man?*

Cois Harman - *Leon, his office is in Pretoria. Strydom and Bredenkamp Attorneys. He was also the Krion lawyer.*

Stephan le Roux - Leon A Van Zyl, agree. Have only found one good lawyer in my life. The rest, well, no comment

Judd Sullivan – *F... c...* [expletives]

² Emphasis in the original.

George Swanie Swanepoel - Waste

Fred Rowe-Rowe - Good luck Cois, the wheels shall turn

Heini Lourens - *Bad white pus lick!*

Mike Kruger - *These white bastards that lick arse with the black power. MAY he drop dead as soon as he colludes with them. That is why this country is in such a mess, because of this type of white men traitors and the love for a person of another colour... You are being used dirt bag... Give him gas.*

...

Matthys Johannes Gouws Matthys - *Eliminate him he is a Honda traitor*

Piet Maherry - *Let's make Henk equal*

Adriaan Venter - *Put his photo on Facebook then everybody knows him too*

Tom Moodie - Every dog has his day!

Johan Smalberger - *Place a photo of him so that everyone can see him please, there are thousands that do not like his way of doing*

Adriaan Venter - *Place his photo. My 4 000 friends and followers want to see what he looks like.*

Gerald Swanepoel - *Needs a bullet between the eyes.'* (Emphasis added.)

[10] As mentioned, Mr Strydom, offended by the threats on his life and the smear campaign against him, approached the high court on an application for urgent relief. On 1 July 2022, presiding judge, Petersen J, made an order containing six paragraphs, of which paragraphs 2, 3, 4 and 5 are central to this appeal. Paragraphs 1 and 2 read as follows:

'1. THAT this application be heard in *camera*, on extremely urgent basis, and that the applicant's failure to comply with ordinary rules related to time periods and service of the application, as well as the applicant's failure to comply with practice directives that govern the ordinary enrolment of urgent applications be condoned in terms of Rule 6(12).

2. THAT the respondent be ordered, forthwith, and within one hour of service of a Court Order on the respondent by sheriff and/or email and/or personally messenger of the applicant or his representative, to remove any and all media ("the media"), in any format whatsoever on any platform, whether electronic, virtual or otherwise, which has been authored, disseminated and/or made publicly available by the respondent or on the respondent's behalf or on the respondent's instruction, of and concerning the applicant, his firm, his employees or any other

party who engages with, associates with or conducts business with the applicant, from public domains, irrespective of the nature of the public domain(i.e. in print or virtual)....’

[11] On 13 March 2023, the high court, per Djaje DJP, initially made an *ex tempore* order and thereafter delivered its written reasons for the order on 8 June 2023. This order in part, repeated paragraphs 3 and 4 of the similar order granted in the urgent application on 1 July 2022. Mr Harman unsuccessfully lodged an application for leave to appeal in the high court. It is with leave of this Court, granted on 28 February 2024 on petition against the judgment and order of Djaje DJP, that the appeal is before us.

Issues to be decided

[12] The issues to be decided in this appeal are two-fold. First, whether in granting the relief sought in the *ex parte* application, the urgent court denied Mr Harman his right to be heard, (the *audi alteram partem* attack). Second, whether paragraphs 3 and 4 of the order (ostensibly *interim orders*) granted by the urgent court and confirmed by Djaje DJP as final, were overbroad and incapable of compliance.

[13] Before dealing with those issues, it is necessary to put this appeal in context. In the petition for leave to appeal submitted to this Court, the subsequent notice of appeal and the appellant’s heads of argument, it is stated explicitly that the appeal is against ‘*the whole of the judgment and order handed down on 13 March 2023 by the Honourable Justice Djaje DJP...*’. However, these documents are replete with grounds of attack, directed at the judgment and order of Petersen J, for which no leave to appeal has been sought nor granted. With this context in mind, I turn to deal with the *audi alteram partem* attack.

The audi alteram partem attack

[14] Mr Harman contends, based on s 34 of the Constitution, that Petersen J in considering and granting Mr Strydom’s *ex parte* application on 1 July 2022, breached his constitutional right to be heard. He argues that paragraphs 2, 3, 4 and 5 of the order are final interdicts in effect. His argument in this regard is not correct. A plain reading of paragraph 5 of Petersen J’s order, properly understood, indicates that paragraphs 3 and 4 were interim interdicts, returnable on 4 August 2022. When Mr Harman delivered his answering affidavit on 2 August 2022, it was in response to

the *rule nisi* in paragraph 5. This implies that he was aware that the hearing on the return date, was not an appeal, but for confirmation or discharge of the *rule nisi*.

[15] It is correct that paragraph 2 of Petersen J's order was granted on an *ex parte* basis and was final in effect. Further, it is also correct, that paragraphs 3 and 4, read with paragraph 5, were *interim orders*. That being said, in my view, and for the reasons that follow, Petersen J's order does not remotely breach Mr Harman's s 34 constitutional right to be heard.³ Mr Harman's contention is contrived and misplaced, as his rights were, at all material times, adequately protected in the following manner:

(a) First, if one accepts, as Mr Harman contends, that the orders were final in effect, it was open to him to appeal against them. All he had to do was deliver an application for leave to appeal in terms of s 17 of the Superior Courts Act 10 of 2013. To date, Mr Harman has not done so. This is evident from the notice of appeal filed in this Court, stating explicitly that he sought and obtained leave to appeal against *the order of Djaje DJP dated 13 March 2023*.⁴ As it will appear below, paragraph 2 of Petersen J's order, remains extant. Consequently, he had adequate protection of his right to be heard, which he never exercised.

(b) Second, there is no law or authority which excludes the jurisdiction of a high court, seized with an urgent *ex parte* application, to adjudicate issues raised in such application. Where an urgent court considers and grants relief in an *ex parte* application, any person whose rights are affected by such an order may apply for its reconsideration. This would entail the delivery of a notice of set down in the same urgent court that granted the order, for an expedited hearing to reconsider the order. This unique protection, provided for in Rule 6(12)(c), serves to cure any possible breach of the s 34 constitutional right to be heard. The Rule provides: '*A person against whom an order was granted in such person's absence in an urgent application may by notice set down the matter for reconsideration of the order*'.⁵ It is an in-built urgent reconsideration, for which no timeframes are prescribed and no prior leave from the

³ *Economic Freedom Fighters and Others v Manuel* [2020] ZASCA 172; [2021] 1 All SA 623 (SCA); 2021 (3) SA 425 (SCA) para 111. See also *Munetsi v Madhuyu and Another* (16255/2024) [2024] ZAWCHC 209 (6 August 2024) para 15.

⁴ Emphasis added.

⁵ Emphasis added.

court is required. It also protects a respondent against having to comply with the order, at least not before the respondent, against whom the order is granted, is heard. Mr Harman did not avail himself of this simple remedy.

(c) Third, if, according to Mr Harman's contention, Petersen J had erred in granting the order with final effect, he (Mr Harman) could have lodged an application for rescission of the order in terms of Rule 42, as it was granted in his absence. He did not file such application. Instead, Mr Harman acted unlawfully and disingenuously, by including in his notice of appeal to this Court, paragraph 2 of Petersen J's order, as one of the grounds of appeal against the orders of Djaje DJP of 13 March 2023. Djaje DJP did not confirm paragraph 2 of Petersen J's order.

(d) Fourth, the contention that Mr Strydom was abusing the court process when he instituted the proceedings in the high court on 1 July 2022, is misplaced. Mr Harman first posted material concerning Mr Strydom on his Facebook account. As a result, Mr Strydom approached the magistrate court for an interdict, protecting him against harassment. When the magistrate's order was served on Mr Harman on 30 June 2022, he thereafter, in contempt of the protection order, posted material for the second time on his Facebook account. This conduct, on the part of Mr Harman, caused Mr Strydom to approach the high court on 1 July 2022. Therefore, Mr Harman's conduct, is the cause of the subsequent high court proceedings.

(e) Fifth, a final interdict granted on an urgent basis, cannot be read and understood in isolation. It is essential to consider the context in which it was granted. The order was obtained by way of urgency, implying that the non-compliance with the ordinary rules relating to application proceedings, was condoned. Paragraph 1 of Petersen J's order, worth repeating, stated explicitly that *'this application be heard in camera, on an extremely urgent basis, and that the applicant's failure to comply with the ordinary rules related to time periods and service of the application, as well as the applicant's failure to comply with the practice directives that govern the ordinary enrolment of urgent applications be condoned in terms of Rule 6 (12)'*. That paragraph clearly conveys a sense that Petersen J considered the application to be extremely urgent, having regard to the imminent threats to Mr Strydom's life, as posted on Mr Harman's Facebook account. (Own underlining.)

(f) Sixth, after Petersen J granted the final interdict (paragraph 2) Mr Harman chose to comply with it. He removed references to Mr Strydom on his Facebook account. He, however, argues that his reason for complying was that he had only one hour to do so. This argument has no merit, in that had he exercised any of the remedies stated in paragraphs (a) to (c) above, these would have had the effect of suspending the obligation to comply with the order. Mr Strydom, in his heads of argument submits, correctly so, that by complying with paragraph 2 of the order of Petersen J, Mr Harman effectively rendered any complaint concerning the impact of paragraph 2, moot.

[16] Consequently, there is no merit in Mr Harman's contention that paragraph 2 of Petersen J's order, since it was final in effect, is impermissible in law and amounts to abuse of court processes. This Court, in *Economic Freedom Fighters and Others v Manuel*,⁶ held that an interdict (whether interim or final) can be sought in respect of the publication of defamatory statements. The ground of appeal against paragraph 2 of Petersen J's order, in addition to being unlawfully included in the record of this appeal, is meritless and for reasons stated above, falls to be dismissed. I turn to the second ground of appeal, which concerns Djaje DJP's order.

Djaje DJP's order

[17] On 13 March 2023, Djaje DJP granted the following order:

'1. THAT: Paragraphs 3 and 4 of the Order of this Court dated 1 July 2022 is confirmed as follows:

(3) The Respondent [Mr. Harman] is ordered, forthwith upon service of this order on him, to furnish a complete list ("the list") to the Applicant's attorney of record wherein the Respondent discloses the full names, addresses and contact details of each and every person/institution with whom/which he shared, or to whom he sent or made available by any means, any of the media referred to in paragraph 2 of the Order dated 1 JULY 2022, of and concerning the Applicant [Mr. Strydom], his firm, his employees or any other party who engages with, associates with or conducts business with the Applicant;

(4) The list referred to in the preceding paragraph must be accompanied by an affidavit deposed to by the Respondent wherein he confirms:

(4.1) that the list is complete and accurate in all respects;

⁶ *Economic Freedom Fighters and Others v Manuel* [2020] ZASCA 172; [2021] 1 All SA 623 (SCA); 2021 (3) SA 425 (SCA) para 111.

(4.2) that it represents a true and accurate reflection of all the individuals and institutions with whom the Respondent shared, or to whom he sent or made available by any means, any of the media referred to in prayer 1 above of and concerning the Applicant, his firm, his employees or any other party who engages with, associates with or conducts business with the Applicant;

2. THAT: The respondent is ordered to pay the costs of the application on the scale as between attorney and own client;

3. THAT: If reasons for the order are required, same should be requested within 10 days of this order.'

[18] In his answering affidavit, Mr Harman raises several defences, which are as follows:

(a) He was *'unable to comply with the order [to provide the list], as he did not have the full particulars of all the relevant persons, which he is required to provide, and he is not entitled to divulge such personal information (had he been in a position to do so) due to the implications of the Protection of Personal Information Act 4 of 2013, read with s 14 of the Constitution'*. He did not elaborate on this defence;⁷

(b) The exercise of freedom of expression in terms of s 16 of the Constitution; and

(c) The statements he posted on his Facebook concerning Mr Strydom, were true and made for the purpose of starting a public discourse concerning the conduct of Land Bank officials and legal representatives, allegedly involved in a scheme to deprive farmers of their farms, (the truth and public benefit defence).

[19] Only the issues in (a) of the preceding paragraph of this judgment, are relevant for this appeal. The others, in paragraphs (b) and (c), would be relevant to a defamation claim, which is not the subject of this appeal. Paragraphs 1 and 2 of the DJP's order concerns the compiling and verification under oath, of the particulars of persons who posted material on Facebook. Some of the names appear in the excerpt, quoted earlier in this judgment. Those postings were made by individuals connected to Mr Harman on his Facebook account, who as account holders and followers may access each other's information.

⁷ Emphasis added.

Compliance with the court order

[20] Mr Harman does not, in the first place, inform the Court of any attempts he made, to compile the list. Starting with himself, as he also posted messages on his Facebook page, surely, he must know his name, address and cellular phone number. Second, in paragraph 33 of his answering affidavit, Mr Harman admits that he has *‘certain Facebook friends who see postings made by myself as well as postings shared by third parties on my Facebook page’*. He does not explain how it would be possible to have friends whose names, at the very least, he does not know. Third, he refers the Court, vaguely to *‘the Protection of Personal Information Act 4 of 2013 (POPIA), read with s 14 of the Constitution’*, as sources of authority that ‘he is not entitled to divulge such personal information’, without pointing to the specific provisions on which he relies. The orders are not overbroad, as he contends.

[21] Mr Harman asserts excuses as defences. He contends that the orders are overbroad, without first having attempted to compile the list. The information is sought as per court order, and unless it is demonstrated by reference to a specific provision in the POPIA or the Constitution that the court has no jurisdiction to grant such order, he has to obey it. Moreover, Mr Harman has not presented any cogent reason as to why he is unable to comply with this order. This ground of appeal is equally meritless and also falls to be dismissed.

[22] Neither s 14 of the Constitution nor any provision of POPIA, protects a person who posts defamatory material of and concerning another, on a social media platform. To post a message on Facebook that someone *‘needs a bullet between the eyes’*, is impermissible exercise of freedom of expression.⁸ The right to freedom of expression, like all rights, has limits. The one obvious limit of a right is when its exercise encroaches or intrudes into the domain of another person’s right.

[23] Having regard to the content of the Facebook postings of and concerning Mr Strydom, his right to personal safety from harm and loss of life were threatened. His rights to dignity as a person, and to his reputation as a professional, were assailed. He is entitled to the list of persons responsible for these unlawful acts, in order to

⁸ Emphasis added.

vindicate his rights, if he deems it fit to do so. Therefore, the appeal must fail and the costs should, in this instance, follow the result.

[24] Accordingly, I make the following order:

The appeal is dismissed with costs, including costs of two counsel.

S P MOTHLE
JUDGE OF APPEAL

Appearances

For the Appellant: F G Janse van Rensburg
Instructed by: Hurter Spies Inc, Pretoria
Hendre Conradie Inc., Bloemfontein

For the Respondent: S Tsangarakis with A J Schoeman
Instructed by: JI Van Niekerk Inc., Pretoria
Van Wyk Preller Attorneys, Bloemfontein.