

**IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)**

CASE NO: 2026-192997

In the matter between:

THE UNIVERSITY OF SOUTH AFRICA

Applicant

and

EDNEWS.AFRICA

First Respondent

PRAGASEN EDWIN NAIDU

Second Respondent

INDEPENDENT ONLINE

Third Respondent

APPLICANT’S HEADS OF ARGUMENT

A. INTRODUCTION

1. This is an urgent application by the Applicant (“UNISA”) for interim interdictory relief, pending the return day of a rule *nisi*, restraining the continued publication of, and directing the removal of, false and defamatory statements published by the First and Second Respondents on the ednews.africa website.¹

¹ FA, para 5, CL 006-8.

2. It is important, at the outset, to identify what this application is not. UNISA does not seek to prevent the Respondents from reporting on or debating the welfare of its staff, workloads, burnout, the non-renewal of the contracts of markers and e-tutors, or the governance of the University. UNISA accepts that these are matters of legitimate public interest.² The relief is confined to two specific false imputations of fact: that UNISA caused, or is responsible for, the deaths and hospitalisation of its staff; and that it blocked the ednews.africa website in order to conceal its responsibility for those deaths.³
3. So confined, the application does not offend the principles that govern the restraint of publication. It is the vindication, by narrowly tailored relief, of a public university's right to its good name against a grave and specific falsehood.

B. THE ISSUES

4. The issues to be determined by this Honourable Court are whether:
 - 4.1. this application is urgent;
 - 4.2. in the light of the answering affidavit, UNISA retains a *prima facie* right in respect of the two impugned imputations;
 - 4.3. the requirements for interim relief, and the jurisprudence on the restraint of publication, are satisfied; and

² FA, paras 28–29 (freedom of expression; narrowly tailored relief), CL 006-17.

³ FA, para 14 (the two impugned imputations), CL 006-12.

C. URGENCY

5. The requirements of Rule 6(12) are trite.⁴ The harm caused by the continued publication of the two false imputations is ongoing and cumulative, and cannot be undone by a later award of damages.⁵ The urgency is not self-created: UNISA investigated, took advice, demanded a retraction, and launched upon refusal, over a period of days.⁶ That a responsible litigant took a short period to verify and to demand a retraction before approaching the Court does not render a defamation of this gravity non-urgent.⁷
6. The complaint that the Respondents had insufficient time to answer is not borne out, because they delivered a comprehensive answering affidavit of 138 paragraphs and twenty annexures, traversing the entire application.⁸

D. THE LEGAL FRAMEWORK

7. The requisites for an interim interdict are settled, a *prima facie* right, though open to some doubt; a well-grounded apprehension of irreparable harm; a balance of convenience favouring the relief; and the absence of a satisfactory alternative

⁴ *Luna Meubel Vervaardigers (Edms) Bpk v Makin and Another* 1977 (4) SA 135 (W) at 137F–138G.

⁵ FA, para 21, CL 006-14

⁶ RA, para 18.

⁷ *East Rock Trading 7 (Pty) Ltd and Another v Eagle Valley Granite (Pty) Ltd and Others* [2011] JOL 28244 (GSJ) paras 6–8.

⁸ RA, para 19.

remedy.^{9 10} The *prima facie* right is assessed on the *Webster v Mitchell* test as refined in *Gool* if, on the facts averred by the applicant together with the facts averred by the respondent that the applicant cannot dispute, the applicant would obtain relief at trial, even though open to some doubt, the right is established.^{11 12}

8. In defamation, once the publication of matter that is defamatory of the applicant is established, the publication is presumed to be wrongful and intentional, and the onus rests on the respondent to establish a recognised defence.¹³ The enquiry into meaning is objective and is one for the Court, what would the ordinary reasonable reader understand the statements to mean.¹⁴
9. UNISA accepts that the courts approach the restraint of publication with caution,^{15 16} and that an interim interdict will ordinarily be refused where a respondent foreshadows a *bona fide* intention to justify the publication as true and in the public benefit, or as reasonable publication.¹⁷ The decisive question, therefore, is whether the defence

⁹ *Setlogelo v Setlogelo* 1914 AD 221 at 227.

¹⁰ *National Treasury and Others v Opposition to Urban Tolling Alliance and Others* 2012 (6) SA 223 (CC) para 50.

¹¹ *Webster v Mitchell* 1948 (1) SA 1186 (W) at 1189.

¹² *Gool v Minister of Justice and Another* 1955 (2) SA 682 (C) at 688C–F.

¹³ *Khumalo and Others v Holomisa* 2002 (5) SA 401 (CC) paras 18–20.

¹⁴ *Le Roux and Others v Dey* 2011 (3) SA 274 (CC) paras 89–91 (objective test of meaning; the ordinary reasonable reader).

¹⁵ *Hix Networking Technologies v System Publishers (Pty) Ltd and Another* 1997 (1) SA 391 (A) at 400.

¹⁶ *Heilbron v Blignault* 1931 WLD 167 at 169.

¹⁷ *Herbal Zone (Pty) Ltd and Others v Infitech Technologies (Pty) Ltd and Others* 2017 (2) SA 347 (SCA) paras 38–43.

now raised meets the specific imputations that UNISA impugns. It is submitted that it does not.

E. THE DEFENCE DOES NOT MEET THE IMPUGNED STING

10. The Second Respondent's defence of truth and reasonable publication must be assessed against the specific sting UNISA impugns, and not against a broader and more benign meaning.¹⁸ On analysis, the defence does not reach the two impugned imputations, for three reasons.

10.1. At paragraphs 52 and 53 of the answering affidavit he expressly denies that his articles mean, or were intended to mean, that UNISA caused or is responsible for the deaths, and states that "at no point" did he suggest as much.¹⁹ A defence of truth cannot be directed at an imputation that the publisher denies making. The Second Respondent cannot deny the imputation of causation and, in the same breath, justify it as true.²⁰

10.2. Taken at its highest, the Second Respondent's evidence shows that staff died, that workloads were heavy, and that sources, families and a union believe or suspect a connection, "they say", "in the view of families", "cannot be ruled

¹⁸ *National Media Ltd and Others v Bogoshi* 1998 (4) SA 1196 (SCA) at 1204–1205 and 1212 (reasonableness of publication assessed against, among other things, the seriousness of the allegation and the steps taken to verify).

¹⁹ AA, para 53 ("at no point in any of my articles do I state or suggest that UNISA is directly responsible for the deaths and hospitalisations of its staff") CL 011-15

²⁰ RA, para 11.

out”, “may be leading to”.²¹ The medical information he himself puts up points to identifiable medical causes such as, kidney failure, a stroke, stomach complaints.²² Concern that conditions may be harmful, and correlation between stress and illness, are not proof that UNISA caused the deaths. The NEHAWU memorandum records risks, and pre-dates the deaths relied upon.²³ None of this justifies the imputation of causation.²⁴

10.3. The imputation that UNISA blocked the website *in order to conceal its responsibility for the deaths* is an imputation of improper motive. The Second Respondent’s evidence, at its highest, is that access was for a period disrupted and that “sources allege” a connection to his reportage.²⁵ There is no evidence that UNISA blocked the site to conceal responsibility for deaths. The sting of a deliberate cover-up remains false and unjustified.²⁶

11. It follows that, even accepting the Second Respondent’s factual evidence about deaths, workloads, concerns and disrupted access, as the Court must, on the papers

²¹ AA, para 52 (the “sting” reframed as concern that stress “may be leading to” hospitalisations and deaths “in the view of those impacted”), CL 011-15.

²² AA, paras 69–77 (kidney failure, stress, contracting), CL 011- 19 to 23, paras 65–67 (stroke; stomach complaints), CL 011-19.

²³ AA, paras 62–64 (NEHAWU memorandum of 13 May 2026, recording risks and pre-dating the publications), CL 011-18.

²⁴ RA, para 12.

²⁵ AA, paras 79–84 (disrupted access; “sources allege” connection to reportage), CL 011-24 to 25.

²⁶ RA, para 14.

that evidence does not establish a defence to the two impugned imputations. UNISA's *prima facie* right in respect of those imputations is not displaced.²⁷

F. DISPUTES OF FACT

12. Insofar as the Respondents contend that the matter cannot be decided on the papers, the *Plascon-Evans* rule does not assist them.²⁸ There is no genuine dispute of fact on the narrow issues that matter, the Second Respondent admits the primary facts (deaths, workloads, concerns, disrupted access) and denies the imputation of causation. On his own version, therefore, there is no factual foundation for the proposition that UNISA caused the deaths or covered them up. The falsity of those two imputations can be determined on the papers.

G. FREEDOM OF EXPRESSION AND THE RESTRAINT OF PUBLICATION

13. UNISA is mindful of section 16 of the Constitution and of the caution with which any prior restraint is approached.²⁹ But the freedom protected by section 16 does not extend to false statements of fact, which enjoy no, or attenuated, protection; the restraint of a demonstrable and continuing falsehood does not offend the values underlying the guarantee.³⁰ A court may restrain publication where the prejudice is

²⁷ RA, para 16.

²⁸ *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* 1984 (3) SA 623 (A) at 634E–635C.

²⁹ FA, paras 28–29 (freedom of expression; narrowly tailored relief), CL 006-17

³⁰ *Print Media South Africa and Another v Minister of Home Affairs and Another* 2012 (6) SA 443 (CC) paras 53–55.

demonstrable and substantial and there is a real risk that it will occur, which a continuing false imputation that a university killed its staff plainly is.³¹

14. The relief sought is the least restrictive means of preventing the harm. It targets two false statements of fact, not opinion, comment or legitimate reportage; and UNISA has tendered to narrow it further not persisting in the take-down of the 29 July 2026 article and confining the restraint to the two identified imputations.³² So confined, the order is proportionate and constitutionally compliant.

H. THE “BRUTUM FULMEN” AND OTHER PUBLISHERS

15. The contention that the relief is futile because others have published similar material is misconceived. The First and Second Respondents are the authors and publishers of the impugned articles, relief restraining them is effective to stop their continued publication. A person defamed by several publishers is not obliged to sue all or none, and the existence of other publications is not a defence available to these Respondents.³³ UNISA reserves its rights against any other publisher.

I. RULE 16A

16. Rule 16A is directed at matters raising a constitutional issue of the kind an interested party or *amicus* may wish to address, typically the development of the common law or the validity of a law or conduct.³⁴ UNISA raises no such issue, it asserts a private-law

³¹ *Midi Television (Pty) Ltd t/a e-TV v Director of Public Prosecutions (Western Cape)* 2007 (5) SA 540 (SCA) para 19.

³² RA, para 25.

³³ RA, paras 20–22.

³⁴ Uniform Rule 16A (notice of a constitutional issue).

right to reputation and seeks to restrain specific false statements of fact. In any event, any non-compliance is not fatal, occasions no prejudice, and the Second Respondent has himself filed a Rule 16A notice; the Court may give such direction as it considers appropriate, which UNISA abides.³⁵

J. BALANCE OF CONVENIENCE AND NO ALTERNATIVE REMEDY

17. The balance of convenience favours narrowly confined interim relief. The Respondents have no right to publish falsehoods, and the prejudice to them of restraining two false imputations is minimal, whereas the continued publication causes UNISA serious and ongoing reputational harm.³⁶ An action for damages would neither stem the continuing harm nor be an adequate remedy for it.³⁷

K. COSTS

18. UNISA sought costs on the attorney-and-client scale only in the event of opposition, on the basis of the alleged publication of grave falsehoods and the failure to remedy them after demand, not to punish the exercise of press freedom.³⁸ The scale of costs is a matter for the Court's discretion, which UNISA abides.³⁹

³⁵ RA, paras 23–24.

³⁶ FA, para 26, CL 006-16

³⁷ FA, para 27.

³⁸ RA, para 27.

³⁹ RA, para 28.

L. CONCLUSION

19. It is respectfully submitted that UNISA has established the requisites for interim relief in respect of the two impugned imputations, and that the narrowly tailored relief sought (as tendered) ought to be granted, with the matter proceeding on the return day.⁴⁰

Adv N MEMELA

COUNSEL FOR THE APPLICANT

Chambers, Sandton

Date 15 August 2026

⁴⁰ FA, para 30, CL-17.

LIST OF AUTHORITIES

Economic Freedom Fighters and Others v Manuel 2021 (3) SA 425 (SCA)

Gool v Minister of Justice and Another 1955 (2) SA 682 (C)

Heilbron v Blignault 1931 WLD 167

Herbal Zone (Pty) Ltd and Others v Infitech Technologies (Pty) Ltd and Others 2017 (2) SA 347 (SCA)

Hix Networking Technologies v System Publishers (Pty) Ltd and Another 1997 (1) SA 391 (A)

Khumalo and Others v Holomisa 2002 (5) SA 401 (CC)

Le Roux and Others v Dey 2011 (3) SA 274 (CC)

Luna Meubel Vervaardigers (Edms) Bpk v Makin and Another 1977 (4) SA 135 (W)

Midi Television (Pty) Ltd t/a e-TV v Director of Public Prosecutions (Western Cape) 2007 (5) SA 540 (SCA)

National Media Ltd and Others v Bogoshi 1998 (4) SA 1196 (SCA)

National Treasury and Others v Opposition to Urban Tolling Alliance and Others 2012 (6) SA 223 (CC)

Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd 1984 (3) SA 623 (A)

Print Media South Africa and Another v Minister of Home Affairs and Another 2012 (6) SA 443 (CC)

Setlogelo v Setlogelo 1914 AD 221

Webster v Mitchell 1948 (1) SA 1186 (W)

Uniform Rules of Court — Rules 6(12) and 16A