IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL DIVISION, PIETERMARITZBURG

Case No.: 2025-084186
Not Reportable

In the matter between:

NTANDO PEACEMAN DUZE	**Applicant**
and	
PUMESHEN DEENADAYALU BISETTY	**First Respondent**
RAJENDRAN KANDASAMY NAIDOO	**Second Respondent**
MULTICHOICE AFRICA (PTY) LTD t/a MULTICHOICE SOUTH AFRICA	**Third Respondent**
MART-MARIE FAURE	**Fourth Respondent**

JUDGMENT

Jikela J

[1] This matter concerns an application for an interdict to prevent the broadcast of an insert scheduled to air on a current affairs programme, *Carte Blanche*, on the grounds that it is defamatory. The applicant contends that the content of the broadcast is likely to cause irreparable harm to his reputation and dignity and seeks relief prior to publication in order to avert that harm.

[2] The interview concerns complaints lodged by some of the applicant's patients with the Health Professions Council of South Africa ('HPCSA'). The applicant requests that the broadcast be prohibited until all complaints currently pending before the HPCSA have been finalised. A costs order is sought against the third and fourth respondents only in the event that they oppose this application.

[3] On 6 June 2025, this matter appeared on the urgent motion court roll before Sibisi AJ. The applicant withdrew the application against the first and second respondents and tendered their legal costs. An interim interdict was granted against the third and fourth respondents, pending the final determination of the matter. The parties were granted leave to approach the senior civil court judge to request that the matter be expedited and set down for hearing on 13 June 2025.

[4] The applicant is a specialist cardiologist who primarily practices in Westville, Durban, and also works part-time in Kempton Park, Gauteng. He has approached this court on an urgent basis seeking an interdict against the first and second respondents to prevent them from making slanderous, insulting, and defamatory statements about him in his professional capacity as a cardiologist. These statements pertain to his medical practice, the manner in which he conducts surgical procedures, and the way he processes medical aid claims.

[5] The first and second respondents are specialist cardiologists practising in the greater Durban area and are professional colleagues of the applicant.

Issues for determination

[6] I am required to determine whether the applicant has established a case for the granting of a final interdict, and whether the granting of such interdict would serve the interests of justice and promote the proper administration thereof.

[7] The third respondent is the owner and licensee of the M-Net Television Channel, which broadcasts, inter alia, the investigative current affairs programme *Carte Blanche*. The fourth respondent is a presenter and investigative journalist on *Carte Blanche* and is actively involved in the production and presentation of the insert in question.

The applicant's case

[8] In his founding affidavit, the applicant sets out what he contends is a compelling case of professional jealousy on the part of the first and second respondents, who are themselves practising cardiologists at Umhlanga and Westville Hospitals, respectively. The applicant, who has been practising as a specialist cardiologist for approximately three years, states that he has built a busy practice, with an average of 50 patients consulting him daily at his Westville surgery. He asserts that he manages the majority of cardiology patients at Westville Hospital. According to the applicant, the first respondent ceased all communication with him, which he attributes to the fact that many of the first respondent's patients have since moved over to his practice. The applicant further alleges that the first and second respondents have defamed him by lodging false and malicious complaints with both Discovery and Medscheme Medical Aid Schemes, accusing him of submitting fraudulent claims. These false accusations resulted in a six-month investigation by the medical schemes; however, no evidence of wrongdoing was found against the applicant.

[9] According to the applicant, the first and second respondents have gone further and disseminated these false allegations to colleagues, and hospital staff, that he performs unnecessary cardiovascular procedures on patients and detaining patients for longer periods in hospital so that he can claim more on their medical aid schemes. On one occasion, the first and second respondents gathered a group of patients and informed them that the applicant had performed unnecessary procedures by opening their blood vessels without medical justification.

[10] The applicant contends that, as a result of the professional jealousy harboured by the first and second respondents, approximately seven complaints have been lodged against him with the HPCSA. He states that he has since appeared before an HPCSA review panel tasked with determining whether he is duly qualified as a medical doctor, specialist cardiologist, or surgeon. The applicant regards these complaints as part of a broader conspiracy by colleagues within the medical profession aimed at discrediting him and tarnishing his professional reputation. He further alleges that the third and fourth respondents became aware of the pending complaints and, without due cause, initiated their own investigation. According to the applicant, they have since sought to air a segment on M-Net containing false and defamatory allegations which,

if broadcast, would severely damage his reputation and irreparably harm his medical practice.

[11] On 21 May 2025, the applicant received an email from the fourth respondent indicating that *Carte Blanche* had received complaints from several patients alleging that the applicant had performed unnecessary procedures and engaged in unprofessional conduct. The fourth respondent advised that *Carte Blanche* was in the process of investigating these allegations and would be in Durban the following week to conduct in-person interviews with the complainants. In this regard, the fourth respondent requested an on-camera interview with the applicant and indicated that a list of questions would be forwarded in advance to allow the applicant to prepare for the interview. Attached to the email was a list of 14 questions directed to the applicant. For the sake of completeness and context, the following questions were sent to the applicant in preparation for the interview:

'1. What is the indication to subject a patient to a coronary angiogram?

2. What are the South African guidelines regarding asymptomatic patients requiring a cardiac evaluation?

3. Are your patients during the angiogram and are they made aware of your decision to implant a stent?

4. Why do you insert a temporary pacing lead while you are performing an angiogram? Is this according to guidelines?

5. Do you sedate your patients during the angiogram? What do you use, and have you had any complications as a result?

6. How long have you been qualified as a cardiologist?

7. Have you spoken to other cardiologists or experts prior to implanting stents in patients?

8. Do you have an anaesthetist at every angiogram?

9. Do you tell your patients prior that you can determine how many stents they might require just by looking at the ECG?

10. Have you approached patients in the early hours of the morning telling them that they require an urgent procedure or else they might die?

11. Have you suggested further procedures such as a bypass after you have implanted stents? What are the risks?

12. Have patients complained about your conduct to hospital management?

13. Has hospital management suggested a peer review?

14. Have patients lodged complaints at the HPCSA? If so, how many are pending?'

[12] The following day, 22 May 2025 the applicant responded to the fourth respondent's email and advised that his attorneys would provide a formal response to her during the course of the day. The applicant was unwilling to answer the questions, as he regarded them as defamatory and potentially harmful to his professional practice. He elected not to respond, primarily because the issues raised in the list of questions are currently *sub judice* before the HPCSA, and any response he might provide could prejudice him, particularly as he has yet to appear before the HPCSA for a formal hearing. The applicant asserts that he has no doubt the allegations are false and constitute a smear campaign orchestrated by the first and second respondents, motivated by professional jealousy. He indicated that he would be willing to accede to the fourth respondent's request for an on-camera interview once the HPCSA has concluded its investigation and he has been cleared of all accusations.

[13] Concerning the requirements for a final interdict, the applicant asserts that he has a clear right not to be defamed and not to be falsely accused of unprofessional conduct in his capacity as a specialist cardiologist, as such the allegations carry potentially severe financial and reputational consequences. In support of this contention, the applicant points out that the third respondent seeks to rely on untested and serious allegations made by laypersons in the field of medicine, namely, the complainants who are his patients as well as hearsay evidence from unidentified and unconfirmed medical specialists who purportedly provided opinions on the treatment rendered, all of which are to be broadcast on a national television programme. On this basis, the applicant submitted that he has a well-grounded apprehension of irreparable harm should the interdict not be granted.

Third and fourth respondents' opposition

[14] The gist of the third and fourth respondents' opposition is that the application is not urgent and was launched in circumstances where urgency (if any) was entirely self-created, thus constituting an abuse of process. The relief sought by the applicant is unsustainable on the facts and on the law and constitutes an impermissible attempt by the applicant to obtain a pre-publication interdict in circumstances where no case has been made out for one and such an extreme order is not justified.

[15] I do not propose to address the issue of urgency, as it has already been determined by the motion court judge that the matter was sufficiently urgent to warrant the granting of an interim interdict. The urgency has since been confirmed by the senior civil court judge, who granted leave for the matter to be enrolled and argued on the urgent opposed court roll. However, it is necessary to address the improper notice of motion upon which the applicant's relief is based. The notice makes no provision whatsoever for the filing of opposing papers, despite the fact that the relief sought entails a restriction on the exercise of the right to freedom of the press. In my view, this constitutes an abuse of the procedural advantage afforded to the applicant by bringing the matter on an urgent basis. It runs counter to the principles of fair and transparent litigation, which ought to be upheld even within our inherently adversarial legal system.

[16] From the outset, the third and fourth respondents stated in their answering affidavit that the complaints which form the subject matter of the insert to be broadcast, and which is entitled 'Dr Stent' were initiated by patients of the applicant who had all, alleged that they had been subjected to unnecessary surgical procedures by the applicant. These patients contacted *Carte Blanche* to tell their story about how unnecessary surgical intervention led to the most unfortunate consequences for them. One of the applicant's patients consulted him because he had high cholesterol. The applicant suggested an angiogram and then inserted a stent for no apparent justifiable medical purpose.

[17] Another patient consulted the applicant due to chest pains and was similarly advised to undergo an angiogram. This patient, too, awoke to find that a stent had been inserted into his artery, again, without any justifiable medical reason. These patients subsequently sought further medical advice, obtaining third and even fourth opinions. The collective medical opinions, some of which are annexed to the respondents' answering affidavit and others were obtained independently by *Carte Blanche*, consistently conclude that the stent insertions were medically unwarranted. More concerningly, these procedures are said to have induced heart disease in patients who previously had no such diagnosis.

[18] These medically unnecessary procedures carry inherent and potentially life-threatening risks, with lasting adverse consequences for the affected patients. As a result, there is a significant public interest in being informed about the conduct of a medical professional whose actions may place both current and future patients at undue risk. Many of these patients will likely be required to remain on blood-thinning and other chronic medications for the remainder of their lives.

[19] The independent medical experts who have reviewed the patients' pre-stent angiographic scans have confirmed that the patients did not present with heart disease or any arterial obstruction warranting the insertion of a stent whether on an emergency basis or otherwise.

[20] The respondents deny that the broadcast is based on false allegations made by either of the first or second respondents. They assert that the accounts provided by the applicant's patients have been thoroughly interrogated and independently corroborated. Accordingly, the respondents contend that the allegations are not only factually accurate but also serve a legitimate public interest.

[21] The respondents allege that the program will fairly disclose the material facts upon which any inference or criticism are based. Evaluative remarks, editorial framing or inferences would clearly be recognisable as comment and not presented as undisputed fact. Such comment would be made honestly, in good faith and without *animus iniuriandi*, all of that while fulfilling a journalistic duty to inform the public.

[22] Neither the first nor second respondents have been interviewed for the intended broadcast.

[23] The fourth respondent believes that she has acted reasonably in giving the applicant ample notice of the allegations and every opportunity to reply. The applicant has been provided with detailed questions on two occasions, and he therefore now possesses knowledge of what the allegations against him are.

[24] The respondents further contend that there is no factual or legal basis for the granting of an interdict. While the applicant has pleaded the general requirements for

such relief, he has failed to demonstrate, on the facts, how these requirements have been met. The respondents deny that the applicant is without alternative remedies and submit that suitable legal recourse remains available to him, other than the extraordinary remedy of an interdict.

The applicant's reply to the respondent's opposition

[25] In reply, the applicant confirms his awareness of the five complaints that have been referred to the HPCSA. He acknowledges that three of these complaints were lodged by former patients who subsequently approached *Carte Blanche* with their accounts. The applicant further states that he has submitted responses to four of the five complaints currently before the HPCSA.

[26] The applicant maintains his assertion that all the complaints lodged against him are the result of professional jealousy. He contends that, insofar as the *Carte Blanche* insert relies on information provided by the three complainants, who are his former patients and laypersons in the field of medicine, amounts to speculation and constitutes defamation of his character. Regarding the medical opinions obtained from independent professionals, the applicant submits that such opinions constitute hearsay evidence and should be disregarded. He points out that the identities of the experts have been redacted from the written reports, and no confirmatory affidavits have been filed to authenticate the contents thereof.

[27] The applicant expresses concern that the broadcast of the insert would amount to a conviction and condemnation by the media prior to the HPCSA's adjudication of the complaints. In his view, the airing of the insert is likely to have a prejudicial and subjective influence on the HPCSA panel tasked with considering the complaints against him. He therefore concludes that the harm he stands to suffer is irreparable and would not only prejudice him personally but also undermine the proper administration of justice.

[28] The applicant further contends that a claim for damages does not constitute an adequate alternative remedy.

Applicant's submissions

[29] Mr *Snyman* SC submitted on behalf of the applicant that the applicant has successfully established a clear right as a matter of substantive law and as a matter of evidence. As far as substantive law is concerned, it was submitted that s 10 of the Constitution of the Republic of South Africa states that '[everyone] has inherent dignity and the right to have their dignity protected'. It was submitted that the intended broadcast may be regarded by the viewers of the program as unprofessional conduct on the part of the applicant and would have serious medical malpractice and other related consequences. He added that the respondents rely on the evidence of medical laypersons and hearsay evidence in the form of unidentified expert reports. Further, it was submitted that the name of the program itself, 'Dr Stent', is defamatory.

[30] With regard to injury committed or reasonably apprehended, the applicant submitted that if the interviews are broadcast, the applicant will suffer prejudice as the airing of the program would happen before the HPCSA finalised its investigation and enquiry processes. It was further submitted that the apprehension of harm is well grounded.

[31] It was submitted further that although freedom of expression is protected by s 16 of the Constitution, the constitutional promise of a free press is not absolute. It was submitted that this right may be limited in terms of the limitation clause in our Constitution.

[32] It was submitted that while it may be argued that the proceedings before the HPCSA are not judicial in nature, the airing of the insert may have serious negative consequences for the applicant, and it may eventually lead to him being stripped of his privileges as a medical practitioner. In this regard the applicant relies on the decision of the Supreme Court of Appeal (SCA) in *Midi Television t/a ETV v Director of Public Prosecutions*.[1]

[33] With regard to the unavailability of a satisfactory requirement, it was submitted that the civil action processes naturally take time before a matter is heard and a

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[1] *Midi Television (Pty) Ltd t/a E-TV v Director of Public Prosecutions (Western Cape)* [2007] ZASCA 56; 2007 (5) SA 540 (SCA) (*Midi Television*).

decision is made. The applicant anticipated that he may have to wait for a date on the trial roll, and this date may only be 2 to 3 years from now, that on its own is not a satisfactory remedy available to the applicant. Further, an action for damages is generally expensive and there is very little remedy that it may offer after a defamatory publication has been aired.

The third and fourth respondents' submissions

[34] On the other hand, Mr *Shapiro* SC, on behalf of the third and fourth respondents, submitted that the allegations against the applicant were made by his patients and these have been confirmed by independent experts. These independent medical experts reasoned that the surgical interventions in respect of three of the patients (or complainants) were not justified and did not serve any medical purpose. The consequences of these medical procedures were that these three patients now suffered from heart disease when no heart disease was previously present.

[35] He criticised the applicant for launching the interdict proceedings as it was not founded on the basis of the complaints by the patients and on the truth of these complaints. The interdict was founded on allegations of defamation and professional jealousy allegedly perpetrated by the first and second respondents, who have been accused of a long-executed campaign of character assassination against the applicant. Lo and behold, the applicant , on the first day of court proceedings, withdrew his application against the first and second respondents.

[36] The interdict sought by the applicant against the third and fourth respondents is a pre-publication interdict or what is commonly known as the prior restraint on expression. It was submitted further that the Constitutional Court and the SCA have determined that a prior restraint is a drastic interference with freedom of expression which is only granted in very narrow circumstances.[2]

[37] The respondents submitted further that the applicant has not met the requirements for this type of interdict. The facts of this case present no prejudice to the applicant that the publication might cause to the administration of justice and there

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[2] *Midi Television.*

is no real risk that the prejudice will occur if publication takes place. The applicant's case is based on mere conjecture or speculation that prejudice might occur.

[38] Mr *Shapiro* argued that even if the applicant is able to demonstrate that the relevant insert is defamatory, he would have to defeat each of the defences raised by the respondent in order to succeed for this type of interdict.[3]

[39] Further it was submitted that the applicant has not shown that the disadvantage of curtailing the free flow of information outweighs its advantage. Once all these requirements are met, then the court would consider whether the applicant has established the absence of an alternative remedy.

[40] It was submitted that there is no prejudice to the administration of justice because neither a rule nor substantial risk of demonstrable harm has been established. The applicant failed to establish prejudice. The only reference in this regard in the founding papers was that the HPCSA proceedings were *sub judice*. This was based on a wrong interpretation of the law, it lacks merit and is against the very purpose of a free press. Only in the replying affidavit that the applicant attempts to support this point by stating that the HPCSA panel would be negatively influenced by the publication. The applicant has not advanced any facts to explain why trained and experienced medical professionals in his area of discipline would be swayed by the narrative of ex patients or by the views of other professionals who gave second opinions.

[41] It was submitted that the intended publication will not be actionably defamatory. In the founding papers, the applicant makes the case that he will suffer reputational damage due to defamatory statements made by his colleagues namely the first and second respondents based on professional jealousy. In the replying affidavit the applicant sought to move away from his initial position, that is stating that the defamation is to be caused by his patients being interviewed, whilst very ill and whilst

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[3] *HIX Networking Technologies v System Publishers (Pty) Ltd and Another* 1997 (1) SA 391 (A) (*HIX Networking*) at 402F-H.

relying on unidentified experts and they themselves being laypersons in the field of medicine.

[42] It was further submitted that *Carte Blanche* has established a defence to every leg of the necessary enquiry. The applicant has failed to show that the balance of convenience favours him in circumstances where he has several alternate remedies available to him. Any reputational damage that may be suffered by the applicant (which is denied by the respondents) would be minimal and outweighed by the interests of the public in access to the information and the respondents' right to freedom of expression.[4]

[43] At the hearing of this matter, Mr *Shapiro* informed the court from the bar that the facts of the case are already in the public domain. While preparing for the hearing, he came across an online article concerning this matter and the circumstances that led the applicant to bring the application. Mr *Snyman* objected to this submission on the grounds that it was not information relied upon in the papers. Although I ruled that the information was relevant to the issues at hand, I did not consider it appropriate to accept printed copies of the online publication or to visit the website to read the article.

Applicable legal principles

[44] The constitutional right to freedom of expression, which includes freedom of the press and other media, is enshrined in s 16 of the Constitution. Section 16 provides as follows:

'Freedom of expression

(1) Everyone has the right to freedom of expression, which includes-

(a) freedom of the press and other media;

(b) freedom to receive or impart information or ideas;

(c) freedom of artistic creativity; and

(d) academic freedom and freedom of scientific research.

(2) The right in subsection (1) does not extend to-

(a) propaganda for war;

(b) incitement of imminent violence; or

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[4] *University of Limpopo v eNews Channel Africa (Pty) Ltd and Others* [2019] ZAGPJHC 329; 2019 JDR 1792 (GJ) para 19.

(c) advocacy of hatred that is based on race, ethnicity, gender, or religion, and that constitutes incitement to cause harm.'

[45] However, this right is not absolute and does not protect speech that is unlawful, such as hate speech or defamatory statements. The right to free speech may be limited by the requirements laid down in s 36 of the Constitution[5].

[46] Section 10 of the Constitution, although already set out above, is set out again as it is important to note for this discussion, states:
'Everyone has inherent dignity and the right to have their dignity respected and protected.'

[47] The right to dignity includes the right to reputation, and protection from false or unfair attacks that may diminish one's standing in society. A balance must be struck between the right to freedom of expression and the right to dignity and reputation, as protected under s 10 of the Constitution. In *Government of the Republic of South Africa v 'Sunday Times' Newspaper and Another*,[6] the court held:
'It is the function of the press to ferret out corruption, dishonesty and graft wherever it may occur and to expose the perpetrators. The press must reveal dishonest mal- and inept administration. . .It must advance communication between the governed and those who govern.'

[48] In *Midi Television (Pty) Ltd v Director of Public Prosecutions (Western Cape)* the SCA highlighted that the constitutional guarantee of press freedom serves not only the media, but the broader public interest in the free flow of information, which is possible only if there is a free press. *Midi Television* specifically worded it as follows:[7]
'To abridge the freedom of the press is to abridge the rights of all citizens and not merely the rights of the press itself.'

[49] In *Khumalo and Others v Holomisa*,[8] the Constitutional Court held:

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[5] Midi Television paras 5-7; See also S v Mamabolo (E TV and Others intervening) [2001] ZACC 17; 2001 (3) SA 409 (CC); 2001 (5) BCLR 449 (CC) para 41.
[6] *Government of the Republic of South Africa v 'Sunday Times' Newspaper and Another* 1995 (2) SA 221 (T) at 227I-228A.
[7] *Midi Television* para 6.
[8] *Khumalo and Others v Holomisa* [2002] ZACC 12; 2002 (5) SA 401 (CC); 2002 (8) BCLR 771 (CC) (*Khumalo*).

'[24] In a democratic society, then, the mass media play a role of undeniable importance. They bear an obligation to provide citizens both with information and with a platform for the exchange of ideas which is crucial to the development of a democratic culture. As primary agents of the dissemination of information and ideas, they are, inevitably, extremely powerful institutions in a democracy and they have a constitutional duty to act with vigour, courage, integrity and responsibility. The manner in which the media carry out their constitutional mandate will have a significant impact on the development of our democratic society. If the media are scrupulous and reliable in the performance of their constitutional obligations, they will invigorate and strengthen our fledgling democracy. If they vacillate in the performance of their duties, the constitutional goals will be imperilled. The Constitution thus asserts and protects the media in the performance of their obligations to the broader society, principally through the provisions of s 16.

[25] However, although freedom of expression is fundamental to our democratic society, it is not a paramount value. It must be construed in the context of the other values enshrined in our Constitution. In particular, the values of human dignity, freedom and equality.' (Footnote omitted.'

[50] The importance of protecting human dignity in democratic South Africa was underscored by the Constitutional Court in *S v Makwanyane*,[9] wherein the court reasoned that:

> '[328] The importance of dignity as a founding value of the new Constitution cannot be overemphasised. Recognising a right to dignity is an acknowledgement of the intrinsic worth of human beings: human beings are entitled to be treated as worthy of respect and concern ...
>
> [329] Respect for the dignity of all human beings is particularly important in South Africa.'

[51] In the present matter, the applicant seeks to interdict the broadcast of a current affairs programme on the basis that it infringes his right to dignity and may cause reputational harm. I am mindful, however, that any restriction on media reporting warrants careful and cautious consideration.[10]

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[9] *S v Makwanyane and Another* [1995] ZACC 3; 1995 (3) SA 391 (CC); 1995 (6) BCLR 665 (CC).

[10] J Botha 'Disinformation and Democracy in Africa and South Africa', in RJ Krotoszynski, Jr, A Koltay and C Garden (eds) Disinformation, Misinformation, and Democracy: Legal Approaches in Comparative Context (2025) 270 at 277. See also Koen J's remarks in University of Kwazulu-Natal v Independent Newspapers (Pty) Ltd and Others 2018 JDR 1623 (KZD); [2018] JOL 40414 (KZD) para 26.

[52] It is trite that a defamatory statement is one which injures the person to whom it refers by lowering him in the estimation of ordinary intelligent or right-thinking members of society generally.[11] When one applies this test, it may be accepted that the reasonable reader would understand the statement in its context and that they would have had regard not only to what is expressly stated but also to what is implied.[12]

[53] Several defences may be raised in response to an allegation of defamation. In this matter, the respondents' answering affidavit sets out the defences that directly address the core grounds upon which the applicant has based his case. Notably, they contend that the broadcast in question centres on the personal accounts of the applicant's former patients, which are supported by medical records and independent expert opinion. The applicant himself states that he consults, on average, 50 patients per day and that he treats nearly every heart patient at Westville Life Hospital. In these circumstances, there is a compelling public interest in the dissemination of information concerning the conduct of a medical professional whose actions may pose a risk to the health and safety of current and future patients.

[54] Furthermore, the respondents contend that there is no prejudice to the administration of justice, as the applicant has failed to demonstrate a real or substantial risk of irreparable harm. On the contrary, they argue that the intended broadcast comprises comments made honestly, in good faith, and without *animus iniuriandi*. As such, the statements fall within the ambit of protected fair comment and do not amount to actionable defamation.

[55] It is trite that media publications on matters of public interest enjoy protection, provided they were made reasonably, without animus iniuriandi, and after taking reasonable steps to verify the information prior to publication. In *National Media Ltd and Others v Bogoshi*[13] the SCA held that 'lawfulness of a harmful act or omission is determined by the application of general criterion of reasonableness based on considerations of fairness, morality, policy and the court's perception of the legal convictions of the community'.

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[11] *HIX Networking* at 403G-H quoting with approval *Mohamed and Another v Jassiem* 1996 (1) SA 673 (A) at 703G-704D.
[12] *Le Roux and Others v Dey (Freedom of Expression Institute and Restorative Justice Centre as Amici Curiae)* [2001] ZACC 4; 2011 (3) SA 274 (CC); 2011 (6) BCLR 577 (CC) para 89.
[13] *National Media Ltd and Others v Bogoshi* 1998 (4) SA 1196 (SCA)

[56] Similarly, in *Argus Printing and Publishing Co Ltd v Esselen's Estate*,[14] the appellate division reaffirmed that fair comment on matters of public interest, even if defamatory, will not give rise to liability if it is opinion and not a statement of fact; based on facts that are true and properly stated; and made without malice.

[57] Lastly, the requirements for a final interdict are well established. In *Setlogelo v Setlogelo*,[15] the court set out the trite legal requirements, namely,

(a) A clear right;

(b) Any injury actually committed or reasonably apprehended; and

(c) Absence of similar protection by another ordinary remedy.

Discussion and analysis

[58] I take note that the applicant's case, as set out in the founding affidavit, rests primarily on allegations of slander, professional jealousy, and a purported conspiracy by the first and second respondents, allegedly aimed at damaging his professional reputation. Accordingly, the applicant sought to protect his right not to be defamed on the strength of these factual averments. It was only in the replying affidavit that the applicant appeared to recognise the actual basis and origin of the complaints that gave rise to the intended broadcast. Furthermore, the case against the first and second respondents has since been withdrawn, rendering much of the content of the founding affidavit moot or irrelevant to the present dispute.

[59] Nonetheless, the applicant contends that he is entitled to an interdict restraining the broadcast of the interview on the basis that he has a clear right to protect his reputation and professional standing from harm. However, this right is not absolute, nor does it trump the respondents constitutionally protected right to freedom of expression, which includes the freedom of the press. Importantly, the public also has a legitimate interest in being informed about matters that concern public health and potential risks to patient safety.

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[14] *Argus Printing and Publishing Co Ltd and Others v Esselen's Estate* 1994 (2) SA 1 (A) at 25C/D-E.
[15] *Setlogelo v Setlogelo* 1914 AD 221 at 227.

[60] Where competing constitutional rights are at stake, a careful balancing exercise is required.[16] It must be one that does not unduly prioritise the applicant's reputational interests over the broader societal interest in the free flow of information. Our courts have dealt with this issue. The Constitutional Court in *Khumalo* confirmed that both freedom of expression and the right to reputation and dignity are foundational to democracy.[17] The court emphasised the need for a balancing approach, where the right to freedom of expression, particularly on matters of public interest, must be weighed against the right to dignity.[18]

[61] *In NM and Others v Smith and Others (Freedom of Expression Institute as Amicus Curiae)*[19] the Constitutional Court considered the publication of private health information and stressed the importance of context in determining whether dignity was unjustifiably infringed.

[62] In balancing the applicant's right to dignity and reputation against the respondents' right to freedom of expression, particularly on a matter affecting public health and safety, I adopt the principles laid down in *Khumalo*, *NM*, and *Midi Television.* While the applicant seeks to protect his reputation, the respondents' publication engages issues of significant public interest and thus attracts stronger constitutional protection. Furthermore, the applicant has not demonstrated that the harm he fears is certain and irreparable. I address this issue in detail further down in this discussion.

[63] In the founding affidavit, much is made of the applicant's successful and busy medical practice, as well as his treatment protocol, which according to him, distinguishes him from others in the field of specialist medicine. By contrast, little is said about the actual harm he apprehends, beyond the existence of pending complaints against him before the HPCSA. Sparse detail is provided regarding the nature or status of these complaints, and the applicant himself appears to lack substantial knowledge of the stage they have reached. While reference is made to

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[16] *Midi Television* para 9.
[17] *Khumalo* para 21.
[18] *Khumalo* para 25.
[19] *NM and Others v Smith and Others (Freedom of Expression Institute as Amicus Curiae)* [2007] ZACC 6; 2007 (5) SA 250 (CC); 2007 (7) BCLR 751 (CC) (*NM*).

ongoing investigations, the applicant simultaneously refers to pending hearings, thereby invoking the *sub judice* rule.

[64] In my view, the replying affidavit does not adequately address or sustain the applicant's assertion of a clear right necessary to justify the grant of an interdict. I am not persuaded by the applicant's argument in this regard. Vague references to pending investigations or hearings, without evidence of imminent or actual prejudice, are insufficient to justify a restraint on publication. I do not think that all references to pending proceedings would result in a ban on publication. In my view, a ban on publication to protect the administration of justice would be allowed if there was a real risk of prejudice, as opposed to a remote possibility or a risk of prejudice that was serious or real or substantial.

[65] The *Midi Television* case is the leading authority on balancing freedom of expression with fair trial rights and the *sub judice* rule. A real and demonstrable risk of substantial prejudice must be shown, not speculative or theoretical harm.[20]

[66] The HPCSA is not a court of law. It is a statutory body dealing with professional conduct. The *sub judice* rule does not apply automatically to its processes. Even if hearings are pending, a party invoking *sub judice* must demonstrate how the publication or broadcast would materially prejudice the proceedings. The applicant has not sufficiently addressed this point in his papers. The onus rests on the applicant to show actual or substantial harm, especially where an interdict is sought prior to publication. In my view, the applicant has not discharged the onus resting upon him.

[67] I do not believe that the broadcast would improperly influence the panel of medical professionals tasked with adjudicating the complaints against the applicant, particularly where those complaints are supported by scientific and clinical evidence. The panel is presumed to act independently and objectively, and there is no basis to suggest that public reporting would impair their ability to do so. Therefore, I conclude that there is no prejudice to the administration of justice, as alleged by the applicant. The harm complained about, is merely not speculative.

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[20] *Midi Television* para 19.

The balance between the freedom of press, public interest and the right to protection of dignity and reputation

[68] Courts are accordingly required to balance these competing rights within the framework of established defamation law and the principles governing prior restraint. It is trite that the Constitution does not allow one right to automatically trump the other. The right to dignity demands protection against false, malicious or reckless statements, however, the right to freedom of expression, especially where it concerns matters of public interest and information that offend, shock or disturb the State or any sector of the population, require robust debate[21].

[69] *In Modiri v Minister of Safety and Security and Others*[22], the SCA discussed at length how to balance the right to freedom of expression and the right to dignity, both in principle and as applied to a particular set of circumstances of the case. The court reasoned:

'[22] As explained by the Constitutional Court in *Le Roux v Dey* 2011 (3) SA 274 (CC) para 122, common-law grounds of justification play a pivotal role within the framework of our Constitution. The reason is that it is primarily in the province of justification that the common law allows the courts to strike a proper balance between the often-conflicting fundamental rights of freedom of expression, including freedom of the press, on the one hand, and the rights to freedom of privacy and dignity, including reputation, on the other. Under the rubric of truth and public benefit, the balancing act turns mainly on the element of public interest or benefit. If a defamatory statement is found to be substantially untrue, the law does not regard its publication as justified. Publication of defamatory matter which is untrue or only partly true can never be in the public interest, end of story. But the converse does not necessarily hold true. Our law does not regard publication of a defamatory statement as justified merely because it is true, precisely because the court may, in its performance of the balancing act, find that, in the particular circumstances of the case, the freedom of expression is outweighed by the victim's right to privacy or dignity'.

[70] I acknowledge that there is often tension between these rights. Both the right to freedom of expression and the right to dignity are of central importance in the value system of the Constitution. It is imperative that the conflicting rights be balanced in a way that least impairs the essence of either right.

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[21] Waldis and Another v Von Ulmenstein 2017 (4) SA 503 (WCC) para 22.

[22] *Modiri v Minister of Safety and Security and Others* [2011] ZASCA 153; 2011 (6) SA 370 (SCA) paras 22 and 24

[71] The requirement that a comment must be fair is consistent with the values that underpin our constitutional democracy. Our courts have long accepted that an expression of comment is fair if it is relevant and is made honestly and without malice.

[72] I take comfort in the fact that *Carte Blanche* took deliberate steps to verify the complaints and to seek external, objective opinions from experts. In addition, the applicant has been given the right of reply and to provide his side of the story, which would be reflected in a balanced manner in the segment to be broadcast. Although he has chosen not to do so at this stage, I am of the view that he remains at liberty to reconsider his position.

[73] I take heed that the provision of health care is inherently a public function, and the applicant, as a specialist cardiologist, occupies a position of trust whose primary responsibility is to preserve life. However, where there exists a grave risk of harm or even potential loss of life to patients as a result of a medical professional's conduct, the media bears a constitutional duty to facilitate the free flow of information in the public interest. In such circumstances, the right of the public to be informed must be weighed meaningfully against individual reputational concerns, particularly where the information is supported by evidence and pertains to patient safety.

[74] Media reports are vital in ensuring transparency, accountability, and the protection of the public, particularly in sectors as essential as health care. Moreover, the ethical obligations of medical practitioners, as codified under the Health Professions Act 56 of 1974 and enforced by the HPCSA, emphasise the duty to act in the best interests of patients, to do no harm, and to maintain professional integrity. Where there are alleged breaches of these obligations, the public has a constitutionally protected right to be informed, especially if the allegations are supported by medical evidence and expert opinion.

[75] While the right to dignity and reputation under s 10 of the Constitution must be respected, it cannot be invoked to shield conduct that may endanger lives or compromise patient care.

[76] Taking into account all the relevant considerations, and the facts of this matter, I am of the view that, the public's right to be informed on issues affecting health, safety, and professional conduct, outweigh reputational harm, provided the broadcast is responsible, truthful expression and without malice.

[77] I am of the view that the appropriate remedy lies not in prior restraint, which has a chilling effect on right to freedom of expression, but in the availability of post-publication redress should the broadcast indeed be found to be unlawful or defamatory. This takes me to the question whether the applicant has satisfactory protection by another legal remedy.

[78] The natural remedy for defamation and reputational harm in South African law is a delictual claim for damages. While it is true that a damages claim may be more costly and time-consuming than urgent interdictory relief, this alone does not justify the prior restraint of expression where the publication concerns matter of public interest. The inconvenience of pursuing a damages claim does not outweigh the importance of safeguarding freedom of expression, particularly where the applicant has not demonstrated irreparable harm or the falsity of the statements.

[79] Regard must be had to the principle that prior restraints on press freedom constitute a drastic infringement on the right to freedom of expression and should only be granted where the anticipated prejudice is likely to cause substantial harm, and no less restrictive means are available to prevent such harm[23].

[80] The applicant has failed to prove that he is entitled to a final interdict and that if an interdict were to be granted, it would promote the administration of justice. On the contrary, I find that the material sought to be broadcast is not prejudicial to the administration of justice. In such circumstances, an interdict would amount to unjustified prior restraint and would undermine the essential role of the media in a democratic society.

Costs

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[23] Van Breda v Media 24 Limited and Others [2017] ZASCA 97; 2017 (2) SACR 491 (SCA) para 37; See also South African National Editors Forum v Abbu and Others (Leave to Appeal) [2023] ZAKZPHC 163 para 29.

[81] With regard to the costs of this application, there is no reason to depart from the normal position that costs follow the result.

Order:

[82] In the result, the following order is made:

(a) The application is dismissed.

(b) The applicant is ordered to pay the party and party costs of the third and fourth respondents. The aforesaid costs shall include the costs of two counsel where so employed.

(c) The costs of senior counsel shall be taxed on scale C.

JIKELA J

Appearances

Heard:	13 June 2025
Delivered:	21 July 2025
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