

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

CASE NO: 2025-092980

In the matter between:

CAPE UNION MART INTERNATIONAL (PTY) LTD	FIRST APPLICANT
PHILIP JOSEPH KRAWITZ	SECOND APPLICANT
and	
MAGHMUDA OCKARDS	FIRST RESPONDENT
MUHAMMAD SHAFIQ GAMIET	SECOND RESPONDENT
MOHAMED ZAIN JEENAH	THIRD RESPONDENT
SHERAZAAD RAHIMA SYLVESTER	FOURTH RESPONDENT
SAYED RIDHWAAN MOHAMED	FIFTH RESPONDENT
UNIDENTIFIED PROTESTERS AT	
CAPE UNION MART PREMISES	SIXTH RESPONDENT
PALESTINIAN SOLIDARITY CAMPAIGN,	
CAPE TOWN	SEVENTH RESPONDENT

APPLICANTS' HEADS OF ARGUMENT

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Introduction

1. The applicants seek a narrowly defined interdict against continuing defamation and other unlawful conduct.
2. Broadly speaking, the relief sought is:
 - 2.1. Against making the false claim that Cape Union Mart, one of its brands, or the second applicant (Mr Krawitz) is funding genocide or military conflict in Gaza in any way, or that the applicants are killing children or are complicit in the killing of children¹;
 - 2.2. Against harassment and/or intimidation of customers of Cape Union Mart or preventing customers access to certain stores²;

¹ Notice of motion, prayers 1.3-1.6; CL: 001-5

² Notice of motion, prayers 1.1-1.2; CL: 001-5

2.3. That all protest action held at Cape Union Mart premises complies with the provisions of the Regulation of Gatherings Act, Act 205 of 1993³.

3. Given the respondents' perspective on the matter, as expansively enunciated in the answering affidavits, it must be emphasised from the outset what the matter is not about and which relief is not sought by the applicants:

3.1. No relief is sought to limit the respondents' criticism of the State of Israel and the events that unfolded in Gaza in any way whatsoever.

3.2. No general relief is sought to "insulate the applicants from any public scrutiny or accountability", as the respondents suggest⁴. The respondents must simply refrain from making the false claim that the applicants are funding a genocide and are killing babies.

3.3. No relief is sought to prevent the respondents from assembling in public spaces or from boycotting Cape Union Mart⁵. All the applicants seek is compliance with the Regulation of Gatherings Act, which the opposing respondents have now undertaken not to breach⁶.

³ Notice of motion, prayer 1.8; CL: 001-6

⁴ Answering affidavit, para 18; CL:

⁵ Founding affidavit, para 140; CL: 001-45

⁶ PSC answering affidavit, para 20; CL: 009-9

4. Reams of paper have been dedicated by the respondents to the horrific details of the conflict in Gaza and impassioned pleas about political speech. That, with respect, misses the mark. The applicants have declined the invitation to get embroiled in a political debate. The applicants have no interest in speaking on behalf of Israel. The issue is that the respondents, through their defamatory statements, are impermissibly imputing collective liability for Israel's conduct to the applicants on bases that are clearly unsustainable.
5. Finally, there is a general thread in the respondents' case pitting "political speech" against "hate speech". The applicants have not claimed that any material – albeit hateful – constitutes prohibited hate speech. The applicants state that the statements and conduct in question defame them and impair the dignity of Mr Krawitz.

The unlawful conduct

6. The relief sought is in the form of an interdict against wrongful conduct. The unlawful conduct comprises of:
 - 6.1. Defamation of the applicants;
 - 6.2. Offending the dignity of the second applicant, Mr Krawitz;
 - 6.3. Contraventions of the Regulation of Gatherings Act, Act 205 of 1993.

7. Very little of the conduct in question is disputed by the respondents. The wrongfulness of such conduct is, however, disputed. Where the PSC respondents deny any conduct, it is for the most part on the basis that the particular conduct was not perpetrated by such respective respondent, but rather by other protestors, including the other respondents.
8. The wrongfulness of the conduct will be addressed below in accordance with the categories set out above.

Defamation

The defamatory content

9. The defamatory remarks made by the protestors of and concerning the applicants are common cause on the papers, and indeed largely documented through the photographs attached to the founding affidavit.
10. The relevant defamatory posters are:
 - 10.1. **“Boycott Cape Union Mart – They Fund Genocide”**⁷. These posters are produced by the Palestine Solidarity Campaign (“PSC”), being the seventh respondent.⁸ Non-PSC members also use PSC posters during protests⁹ with the blessing of the PSC.

⁷ Pictured in, inter alia, annexure C15; CL: 001-78

⁸ Main answering affidavit, para 52.2; CL: 009-18

⁹ Main answering affidavit, para 53; CL: 009-19

- 10.2. **“K-WAY Killer Way” or “K-Way Killers Way”**¹⁰. This poster has been republished by the PSC on their Instagram page¹¹. It is common cause that the first respondent, Ms Ockards, has also displayed a poster with this content¹².
- 10.3. **“Philip Krawitz, Genocide Funder”**¹³. Ms Ockards admits displaying this poster¹⁴. In the other pictured example, an unknown protestor displayed the poster. The PSC’s response is that the statements “cannot be attributed to the PSC”¹⁵, an aspect that is addressed below.
- 10.4. **“Philip Krawitz award winning baby killer”**¹⁶. This particular poster was published by an unidentified protestor. The PSC’s response is again that it “is not a PSC member and the poster is not PSC-authorised or -produced”¹⁷.

¹⁰ Pictured in, inter alia, annexure C11 (CL: 001-71); annexure C14 (CL: 001-77), annexure C26 (CL: 001-96), annexure C34 (CL: 001-103)

¹¹ Annexure C11; CL: 001-71

¹² Annexure C13; CL: 001-76. Admitted in Ms Ockards’s answering affidavit, para 8; CL: 009-848.

¹³ Pictured in annexure C14 (CL: 001-77) and annexure C23 (CL: 001-92)

¹⁴ Ms Ockards’ answering affidavit, para 26; CL: 009-852.

¹⁵ Main answering affidavit, para 50; CL: 009-18

¹⁶ Picture in annexure C22; CL: 001-91

¹⁷ Main answering affidavit, para 307; CL: 009-72

- 10.5. **“Philip J. Krawitz (owner) supports & funds occupation, colonisation, genocide, forced Starvation.”**¹⁸ The person(s) displaying the poster is/are unidentified.
- 10.6. **“Murderers of kids”, “Murders of kids” (with a picture of Mr Krawitz)**¹⁹, **“killed by Cape Union Mart”, “Cape Union Mart support(s) killing children in Palestine”**²⁰. The PSC denies liability on the basis that the posters were not published by PSC members²¹, but mostly by unidentified protestors. The fifth respondent, Mr Sayed Ridhwaan Mohamed, is one of the individuals who displayed this content²². In fact, Mr Mohamed continues to display this content on his Instagram account up until this day²³.
- 10.7. **“The owner of this store – Philip Krawitz – donates money to the Israeli Occupation Forces. DONATES MONEY TO THE ARMY THAT KILLS CHILDREN.”**²⁴ This poster was held by the first respondent, which was also published on Instagram.

¹⁸ Pictures in annexure C25; CL: 001-94

¹⁹ Pictured in, inter alia, annexure C32 (CL: 001-102) and annexure C43 (CL: 001-114)

²⁰ Pictured in C31; CL: 001-101

²¹ Main answering affidavit, para 213 (CL: 009-54); para 319 (CL: 009-73), para 321 (CL: 009-73).

²² Main answering affidavit, para 213; CL: 009-54. Mr Mohamed’s affidavit, para 7; CL: 009-868.

²³ Replying affidavit, para 530; CL: 010-111

²⁴ Depicted in annexure C37; CL: 001-106.

- 10.8. A misquote attributed to Mr Krawitz, stating **“I would be proud to be a bigger donor to Israel (Genocide)”** (sic), accompanying a picture of Mr Krawitz manipulated to include devil’s horns²⁵. It is common cause that the first respondent displayed this poster²⁶.
- 10.9. A poster claiming **Mr Krawitz made “financial contributions to the Israeli Occupation Force”**.²⁷ The poster contains a picture of Mr Krawitz and invited people to “follow PSC Cape Town for more ways to support Palestine.” The PSC claims that the poster is not “PSC-approved or produced”²⁸.
11. The defamatory remarks are not limited to printed posters. The following chants by protestors are set out in the papers:
- 11.1. **“Philip, Philip, you can’t hide; we charge you with genocide!”**²⁹ and **“Cape Union Mart, you can’t hide, you’re complicit in genocide”**³⁰. The latter chant is the PSC’s own version.

²⁵ Depicted in annexure C35; CL: 001-104

²⁶ Ms Ockards’ affidavit, para 35; CL: 009-854.

²⁷ Depicted in paragraph C30; CL: 001-100

²⁸ Main answering affidavit, para 317; CL: 009-73

²⁹ Founding affidavit, para 49; CL: 001-24

³⁰ Main answering affidavit, para 216; CL: 009-55

- 11.2. **“Philip, Philip what do you say how many kids have you killed today?”**³¹
- 11.3. **“Say it loud, say it clear: We don’t want no Nazi’s here!”**³²
12. The PSC has not attempted to disclaim responsibility for any of the defamatory chants.
13. The two-stage enquiry whether a publication is defamatory and therefore prima facie wrongful is trite³³. A court is to consider the ordinary meaning of the words and then establish whether the meaning is defamatory.
14. The exercise is objective and based on what a reasonable reader/listener would understand from the posters or chants. In **Channing v South African Financial Gazette Ltd and Others**³⁴ the legal construct of a “reasonable reader” was described as a right-thinking person of average education and normal intelligence, not of morbid or suspicious mind, nor super-critical or abnormally sensitive.
15. An imputation is defamatory if it tends to lower the applicants in the esteem of the public³⁵.

³¹ Founding affidavit, para 69; CL: 001-29

³² Replying affidavit, para 82.2; CL: 010-24.

³³ Le roux and Others v Dey 2011 (3) SA 274 (CC) at para 38.

³⁴ [1966] 3 All SA 74 (W)

³⁵ Mohamed v Jassein 1996 (1) SA 673 (A) at 706H-J

16. All the statements set out above are defamatory *per se*. To quote from the PSC's own affidavit³⁶:

"Slogans like 'Cape Union Mart supports genocide' or 'Philip Krawitz funds the Israeli army' are provocative. On their face, they impute to the applicants' participation in grave wrongdoing." (Our emphasis)

17. Imputing participation in genocide, or the killing of babies, funding of starvation, being a "killer" or having "killer's ways", is defamatory and therefore prima facie wrongful.
18. It does not assist the respondents to phrase some of the statements as "not...a literal allegation of personally committing genocidal acts with intent"³⁷, a "morally and factually-informed viewpoint"³⁸ (i.e. allegation) or "an accusatory question"³⁹ as this has no effect on the defamatory nature thereof. As the Supreme Court of Appeal stated in **Times Media Ltd and Others v Niselow and Another [2005] 1 All SA 567 (SCA)**, even a carefully worded statement understood by a reasonable reader as an "allegation" as opposed to an established fact (which is not applicable here), does not undo the defamatory nature thereof:⁴⁰

³⁶ Main answering affidavit, para 185; CL: 009-49

³⁷ Main answering affidavit, para 219; CL: 009-56

³⁸ Main answering affidavit, para 200; CL: 009-52

³⁹ Main answering affidavit, para 228; CL: 009-57

⁴⁰ At para 20

“Where the words complained of are capable of bearing the imputation that there are reasonable grounds to suspect that a person has committed the impugned act they are defamatory.”

19. An “accusatory question”, “viewpoint”, et cetera, still conveys that the respondents have reasonable grounds to suspect that Cape Union Mart and Mr Krawitz are, inter alia, funding a genocide, killing babies, and funding the starvation of human beings.

Liability for publication

20. The PSC purports to only accept liability for posters and placards “originating” from the PSC.
21. A refrain from the PSC is that, “where a specific statement cannot be attributed to a PSC respondent, relief cannot be granted against (the PSC)”⁴¹. In their affidavit, the PSC attempts to neatly isolate itself from statements and conduct that are indefensible⁴².
22. This stance is contrary to established principles in the law on defamation. A person who repeats, confirms or draws attention to a defamatory statement also publishes the statement and attracts liability⁴³.
23. In **Tshedu v Lekota 2009 4 SA 372 (SCA)**, the Supreme Court of Appeal confirmed that a person “who repeats or adopts and re-publishes a

⁴¹ Main answering affidavit, para 227; CL: 009-57

⁴² In so doing, the PSC, ironically, at times, attributes the wrongful conduct to the other respondents.

⁴³ LAWSA, Defamation, 113 Publication of a Defamatory Statement

defamatory statement will be held to have published the statement”⁴⁴.

Moreover, publication on social media of pictures of the protests where “non-PSC produced” posters appear, undoubtedly constitutes a re-publication of such matter.

24. In addition, and akin to the situation of newspaper vendors, all people who have a role in the distribution of the defamatory matter are liable unless there is an absence of fault. (Vide: **Trimble v Central News Agency Ltd 1933 WLD 88**, 91-92). In this matter, the PSC respondents do not have a nominal role, but act as convenors of the protests where the defamation is perpetuated.
25. In the digital age, it has been held that even someone who is aware of defamatory statements and allowed their name to be coupled with that, is as liable as the author. (Vide: **Isparta v Richter and Another 2013 (6) SA 529 (GNP)** at para [35].)
26. In casu, the established facts around the involvement of the different respondents are as addressed above and as set out below.
27. The first respondent admits attending “pro-Palestinian protests, including those of the PSC”⁴⁵. The first respondent further admits displaying (publishing) various of the posters in question, as set out above. In addition

⁴⁴ At 374

⁴⁵ Ms Ockards’ affidavit, para 5; CL: 009-847

to the posters set out above, Ms Ockards admits affixing the “Synagogue of Satan” poster for display during a protest⁴⁶.

28. The second respondent, Mr Gamiet, is a PSC member⁴⁷. He is also, in the PSC’s words, the “central figure” in annexures “C38” and “C39”⁴⁸ claiming that “Cape Union Mart funds Genocide” and displaying a poster imputing complicity in the killing of children. Mr Gamiet also held up a poster with the face of Mr Krawitz (blurred out after the mall security requested this), in which people are invited to “follow PSC” for more information and wherein it is claimed that Mr Krawitz made “financial contributions to the Israeli Occupation Force”⁴⁹. Mr Gamiet “represented the PSC” in making arrangements with mall management at Canal Walk and at Gardens Shopping Centre⁵⁰. Mr Gamiet’s cell phone number is listed as a person to address enquiries to on a pamphlet under the banner of PSC inviting members of the public through social media to join the protests⁵¹. This fact is not disputed by the PSC⁵². In fact, Mr Gamiet is said to be “in charge of demonstrations” at Canal Walk⁵³.

⁴⁶ Ms Ockards’ affidavit, para 28; CL: 001-93

⁴⁷ Main answering affidavit, para 4; CL: 009-5

⁴⁸ Main answering affidavit, para 327; CL: 009-74

⁴⁹ Main answering affidavit, paras 327-328; CL: 009-74–009-75

⁵⁰ Main answering affidavit, para 76; CL: 009-24

⁵¹ Founding affidavit, para 45; CL: 001-23.

⁵² Main answering affidavit, paras 285-288; CL: 009-67 – 009-68

⁵³ Main answering affidavit, para 239; CL: 009-59

29. The third respondent, Mr Jeenah, is also a PSC member⁵⁴. Mr Jeenah's cell phone number was similarly listed on the pamphlet under the PSC's name inviting members of the public to the protests⁵⁵. He has been pictured holding up posters saying, "Cape Union Mart, they fund genocide"⁵⁶. Mr Jeenah also represented the PSC in alleged discussions with the V&A management⁵⁷. In fact, on the PSC's version, Mr Zeenah is "in charge of demonstrations at the V&A"⁵⁸. He was part of a group of posters chanting, "We don't want no Nazi's here!"⁵⁹
30. The fourth respondent, Mr Sylvester, is also a PSC member⁶⁰. He is, on the respondents' version, "in charge of demonstrations" at Canal Walk⁶¹. His cell phone number was listed as an organiser of the protests on the pamphlet distributed on social media⁶².
31. The fifth respondent, Mr Mohamed, has displayed the "Murders of Children" poster as set out above and still displays that poster on his Instagram account. Although he is said not to be a member of the PSC, he "often attend PSC-arranged demonstrations"⁶³. Mr Mohamed allegedly

⁵⁴ Main answering affidavit, para 4; CL: 009-5

⁵⁵ Founding affidavit, para 47; CL: 001-24

⁵⁶ Founding affidavit, para 102; CL: 001-37

⁵⁷ Main answering affidavit, para 75; CL: 009-23

⁵⁸ Main answering affidavit, para 239; CL: 009-59

⁵⁹ Replying affidavit, para 82.2; CL: 010-24

⁶⁰ Main answering affidavit, para 4; CL: 009-5

⁶¹ Main answering affidavit, para 239; CL: 009-59

⁶² Founding affidavit, para 47; CL: 001-24

⁶³ Main answering affidavit, para 6; CL: 009-5

subjected himself to the “instruction” of Mr Chikte not to display posters with Mr Krawitz’s image⁶⁴ (even though he still does so on Instagram).

32. The sixth respondent is the unidentified protestors at Cape Union Mart Premises which could not be identified⁶⁵, but who continue to publish defamatory statements of and concerning the applicants. It bears mentioning that the respondents have not attempted to identify to this Honourable Court a single protestor photographed during PSC-arranged protests, even though Mr Chikte intimates in his affidavit that he knows the identity of some of the unidentified protestors.

33. The seventh respondent, being the PSC, has the following involvement in the protests on its own version:

33.1. Its members (the second to fourth respondents) act as people for enquiries in social media invites to the general public to attend protests, as set out above. Even though the PSC denies “producing”⁶⁶ the pamphlet attached as “C7”⁶⁷, it admits that the pamphlet carries its logo and clearly has no objection thereto and aligns itself with the invitation. The PSC explicitly admits having invited, and currently inviting, people to attend protests at V&A premises⁶⁸.

⁶⁴ Main answering affidavit, para 213; CL: 009-54

⁶⁵ Founding affidavit, para 18; CL: 001-17

⁶⁶ Main answering affidavit, para 285; CL: 009-67

⁶⁷ CL: 001-61

⁶⁸ Main answering affidavit, para 285; CL: 009-67

- 33.2. The PSC takes responsibility for the protests. They do so by purportedly “instructing participants, through appointed marshals”, to act lawfully⁶⁹, “coordinating with venue security and, where relevant, the police”, and “emphasising to all protestors the importance of respecting the rights of shoppers and staff”. Mr Chikte says the marshals instructed “protestors” to obey the law⁷⁰.
- 33.3. The PSC accepts responsibility for the “vetting of posters and placards” in terms of a “verbal protocol” and purports to “intervene where material deviates from the protocol”⁷¹. By allowing material to be displayed at PSC-organised posters and passing the muster of the marshal’s enforcement of the PSC “protocol”, the PSC associates itself with, and adopts, the posters being displayed at those events.
- 33.4. The PSC does not seriously suggest that it only takes charge of PSC members. To the contrary, Mr Chikte details giving instructions to the fifth respondent, a non-member, who allegedly complied with such instruction⁷².

⁶⁹ Main answering affidavit, para 74.1; CL:009-23

⁷⁰ Main answering affidavit, para 236; CL: 009-59

⁷¹ Main answering affidavit para 212; CL: 009-54

⁷² Main answering affidavit, para 213; CL: 009-54

- 33.5. The PSC alleges to rotate protestors “when a demonstration approaches or exceeds 15 participants”. The PSC then makes available their “PSC posters” for non-members to use⁷³.
- 33.6. The PSC publishes pictures of the protests, including of “non-PSC produced posters” on its social media accounts – thereby also publishing the content of such posters⁷⁴.
34. In the premises, the PSC condones, draws attention to and, in terms of its protocol, moderates/approves all the content published during the protests which it has arranged and purports to control through its own “marshals”.
35. In the premises, the PSC’s distinction between the conduct of, and contents of PSC members vs non-members, and PSC-produced vs non-produced posters is untenable.

The law on interdicts against defamatory matter

36. Once an applicant has shown that prima facie defamatory matter was published of and concerning him, the respondent, in a defamation interdict, has the onus to raise a defence to rebut either wrongfulness or intention. (Vide: **Malema v Rawula [2021] ZASCA 88** at para [31])
37. Where defamation is established and the defences to a claim for an interdict are shown on the papers to be without substance, the grant of a

⁷³ Main answering affidavit, para 53; CL: 009-18

⁷⁴ Replying affidavit, paras 229-20; CL: 010-56 – 010-57

final interdict is permissible. (Vide: **Economic Freedom Fighters and Others v Manuel 2021 (3) SA 425 (SCA)** at para 88)

38. The proper approach of a court to an application for an interdict to restrain the publication of defamatory matter was enunciated by the then Appellate Division in **Hix Networking Technologies v System Publishers (Pty) Ltd and Another 1997 (1) SA 391 (A)**: Cases involving an attempt to restrain publication must be approached with caution⁷⁵. The court endorsed, with some clarification, the approach taken in **Heilbron v Blignaut**⁷⁶ that it must be “clear that the defendant has no defence”⁷⁷.
39. The qualification is that the ipse dixit of a respondent of a defence is not enough to prevent a court from granting an interdict. As the Supreme Court of Appeal remarked in **Herbal Zone (Pty) Ltd and Others v Infitech Technologies (Pty) Limited and Others [2017] 2 All SA 347 (SCA)**:⁷⁸

*“What is required is that a **sustainable foundation** be laid by way of evidence that a defence such as truth and public interest or fair comment is available to be pursued by the respondent. It is not sufficient to simply state that at a trial the respondent will prove that the statements made were true and made in the public interest, or some other defence to a claim for defamation, without providing a **factual basis** therefor.”* (Our emphasis)

⁷⁵ At 402C

⁷⁶ 1931 WLD 167

⁷⁷ At 399C-F

⁷⁸ At para [37]

40. It goes without saying that the evidence required to be put up by the respondents must be admissible and relevant evidence laying a sustainable factual foundation.
41. Where final relief is sought, a respondent is aided by the operation of the Plascon-Evans rule. If there is a material dispute of fact as to whether a defence has been proven, the applicant cannot succeed with final relief. (Vide: **Malema supra** at para [74]; **NBC Holdings (Pty) Ltd v Akani Retirement Fund Administrators [2021] 4 All SA 652 (SCA)** at para [28])
42. To raise a material dispute, the respondents must either prove their defence on a balance of probabilities or, at the very least, set up a sustainable factual basis for a defence.
43. In **Tau v Mashaba and Others 2020 (5) SA 135 (SCA)**, that Court again stressed the qualification about setting up an alleged defence to defamation in motion proceedings⁷⁹:

“Put simply, the mere say-so of a deponent who alleges a defence of justification should not be accepted at face value: the facts on which it is based must be analysed to determine its weight.”

44. A respondent can put up such a defence by either presenting direct evidence laying a sustainable foundation for a defence recognised in law, but also through a plausible claim by a respondent that, with the advantage of discovery and being able to subpoena witnesses and documents, they

⁷⁹ At para [23]

will be able to produce evidence to sustain their defence. (Vide: **NBC Holdings (Pty) Ltd supra** at para 30).

45. In casu, the respondents have done neither.
46. The respondents (improperly) availed themselves of Rule 35(14)⁸⁰ without seeking leave from this Honourable Court to make the rules of discovery applicable to motion proceedings. Despite this, the applicants delivered a comprehensive response to the notice⁸¹. As part of that response, the applicants provided detailed information, such as extracts from the First Applicant's records reflecting entities to which the First Applicant has donated money from 2020 to date⁸² and the First Applicant's internal incident report log of protest activity and incidents and additional video footage⁸³.
47. Moreover, the respondents launched an urgent application on 19 August 2025 seeking relief to make the rules of discovery applicable to these proceedings under Rule 35(13)⁸⁴. However, the respondents did not persist with the application and therefore abandoned the bid to seek further discovery.
48. The respondents do not seek a referral to oral evidence. Moreover, there is no suggestion of any nature by the respondents that they would be able

⁸⁰ "Notice in terms of Rule 35(11) or, alternatively, Rule 35(13) & (14)".

⁸¹ CL: 048-106

⁸² Affidavit in response to notice in terms of Rule 35(11), para 20; CL: 048-112

⁸³ Ibid para 27; CL: 048-113

⁸⁴ Notice of motion, para 2; CL: 048-77

to prove their “defences” more fully through oral evidence, trial, a discovery process (which was abandoned), or further investigation.

49. The interdict application was not brought on an urgent basis. The conduct complained of started in 2023⁸⁵ – almost three years ago. The respondents have had an extensive opportunity to gather their evidence in support of a justification for the defamation.
50. It must therefore be accepted that the respondents resign themselves to the “evidence” put up in the answering affidavit as its comprehensive factual foundation of a defence.
51. Lastly, and as the respondents claim that the interdict application is seeking a prior restraint of speech⁸⁶, it is highlighted that there is a cautionary rule against prior restraint of publication for its potential to be a drastic interference with freedom of speech. Such prior restraints are to be ordered only where there is a substantial risk of grave injustice. (Vide: **Midi Television (Pty) Ltd v Director of Public Prosecutions (Western Cape) 2007 (5) SA 540 (SCA)** at para [15]).
52. It must, however, be emphasised that “prior restraint” logically and strictly refers to matters not already in the public domain. It speaks to a right to the “free flow of information”⁸⁷ and stems from the premise that one “must expect that freedom will not be abused until he has adequate grounds for

⁸⁵ Founding affidavit, para 44; CL: 001-23

⁸⁶ Main answering affidavit, para 209; CL: 009-53; para 8; CL: 009-6; para 17, CL: 009-8, para 24; CL: 009-11

⁸⁷ Midi at para [6]

believing the contrary”⁸⁸. In casu, the applicants seek to restrain the repetition of defamatory matter. There is no guesswork in what the respondents want to continue saying, and therefore no impediment to the free flow of information. The respondents have been making the defamatory statements for years and are simply called upon to justify those statements or refrain from continuing to publish them.

First defence – Truth and public benefit

53. The respondents rely on truth and public benefit as a ground for justification. A defendant raising the truth of a defamatory statement as a ground of justification must prove the truth of the “sting” of the charge⁸⁹.

54. In this matter, the sting of the defamatory remarks is as follows:

54.1. That Mr Krawitz and Cape Union Mart fund a genocide.

54.2. That Mr Krawitz and Cape Union Mart are complicit in the killing of babies and starvation of people.

55. These statements are framed as factual statements. It is stated as fact that Mr Krawitz and Cape Union Mart fund genocide and are complicit in the killing of babies.

⁸⁸ Midi at para [27]

⁸⁹ Johnson v Rand Daily Mails 1928 AD 190, at 206

56. In respect of Mr Krawitz, the only factual basis laid by the respondents is the common cause fact that Mr Krawitz holds leadership positions in Keren Hayesod and the Jewish Agency for Israel (“JAFI”).
57. From here, the argument becomes contrived in the extreme. It is premised on the respondents’ aversion to Zionism, which the respondents directly link to “the actions of the Israeli state”⁹⁰. No factual basis whatsoever is laid for why Zionism can logically be linked to the war in Gaza and the killing of children.
58. To the contrary, the respondents’ only attempt to show why Zionism is worthy of criticism, is a heavily disputed and controversial definition of Zionism provided in paragraph 15 of the main answering affidavit⁹¹. That definition of Mr Chikte is supposedly informed by external “sources” quoted in a footnote. When such external “sources” were requested, Mr Chikte said he could not find it again⁹².
59. Mr Chikte’s views about Zionism should, with respect, be disregarded in totality. Not only is it inadmissible opinion evidence by a layperson, but it is also incongruent with what actual experts on the subject, such as UN Special Rapporteurs say⁹³: It is perfectly acceptable to criticise Israeli Government actions and policies. But the “assertions that Zionism, the self-determination movement of the Jewish people, is an inherently racist

⁹⁰ Main answering affidavit, para 14; CL: 009-7

⁹¹ CL: 009-7

⁹² Replying affidavit, para 14; CL: 010-5

⁹³ Replying affidavit, para 16; CL: 010-5 – 010-6

ideology and...suggesting that supporting Zionism is inherently equivalent to supporting racial discrimination” is not only false but dangerous as “it has also shown to fuel resentment against Jews”.

60. It has been accepted by the Constitutional Court⁹⁴ that the majority of Jewish people are Zionists in South Africa and globally. Yet, as Mr Chikte rightly points out, many Jews oppose Israel’s actions⁹⁵. On Mr Chikte’s own assessment of affairs, it can by no stretch of the imagination be a sustainable point of departure that support of Zionism equates support for Israel’s actions in Gaza after 07 October 2023.
61. There is therefore no logical basis – let alone a factual basis – in the respondents’ entire premise that support of Zionism is support for the policies and actions of the Israeli government. Doing so is nothing less than imputing collective liability for the actions of the Israeli government to everyone forming part of the respondents’ subjective understanding of a “Zionist”.
62. Yet, that is exactly the respondents’ case: “Mr Krawitz is enmeshed in the global Zionist institutional network”⁹⁶ and therefore funds genocide and kills babies.

⁹⁴ South African Human Rights Commission obo South African Jewish Board of Deputies v Masuku and Another 2022 (4) SA 1 (CC) at para 156.

⁹⁵ Main answering affidavit, para 85.6; CL: 009-26

⁹⁶ Main answering affidavit para 142; CL: 009-40

63. The “zionist network” referred to, is Keren Hayesod and the Jewish Agency for Israel (“JAFI”). In an attempt to make out a case, the respondents resort to statements and opinions ranging from being speculative to farcical:

63.1. They charge that Keren Hayesod is “the official fundraising arm of the State of Israel”⁹⁷ and that “Keren Hayesod works in close coordination with the government to advance Israel’s national priorities”⁹⁸. The deponent, Mr Chikte, does not claim any personal knowledge of these claims. No basis is laid for this claim. The claims are explicitly refuted by office-bearers of Keren Hayesod and JAFI⁹⁹. Mr Shlomo Zomer, chief financial officer of Keren Hayesod, confirms that organisation’s independence from the government of Israel¹⁰⁰. In fact, Keren Hayesod does not provide any funding whatsoever to the government of Israel or the Israeli Defence Force. Mr Moshe Ashirie, JAFI’s chief financial officer, confirms the same¹⁰¹.

63.2. The respondents claim – without any credible evidence and basis for the deponent’s supposed knowledge of these matters – that these organisations “directly support Israel’s military and settlement actions and policies”¹⁰². Again without any evidence, it

⁹⁷ Main answering affidavit, para 143; CL: 009-40

⁹⁸ Main answering affidavit, para 145; CL: 009-41

⁹⁹ Replying affidavit, para 34; CL: 010-12; Annexures “R4” and “R5”

¹⁰⁰ Supporting affidavit, “RA4”, para 8; CL: 010-132

¹⁰¹ Supporting affidavit, paras 7-8; CL: 010-142

¹⁰² Main answering affidavit, para 142; CL: 009-40

is charged that Keren Hayesod is “effectively a governmental entity”¹⁰³.

63.3. In an attempt to bolster this speculation, the respondents misrepresent the “lone soldier” and mechinot programmes¹⁰⁴ and even make plainly false allegations, such as the claim that JAFI is operating the “Garin Tzabar program” recruiting volunteers for the IDF. That programme has nothing to do with JAFI, as confirmed by Mr Ashirie¹⁰⁵. The “lone soldier” programme gives emotional and practical support for immigrants who have no family in Israel and to adapt to life after the army upon their discharge¹⁰⁶. The mechinot programmes are leadership programmes for school-leavers, provide no military training whatsoever, and do not involve the Israeli Defence Force¹⁰⁷.

63.4. Particularly egregious is the bare claim by the deponent that Keren Hayesod has been engaged in activities in breach of international law¹⁰⁸. Not only is are the alleged illegal activities not possibly within Mr Chikte’s knowledge and not borne out in any of the annexures to his affidavit, but specifically refuted by Keren Hayesod and JAFI who both confirm that they operate exclusively

¹⁰³ Main answering affidavit, para 146; CL: 009-41

¹⁰⁴ Main answering affidavit, para 147.1; CL: 009-41

¹⁰⁵ JAFI affidavit, para 16; CL: 010-143

¹⁰⁶ Replying affidavit, para 264.1; CL: 010-63

¹⁰⁷ Keren Hayesod affidavit, para 26; CL: 010-135

¹⁰⁸ Main answering affidavit, para 150; CL: 009-42

within the “Green Line”¹⁰⁹. Mr Ashirie explicitly states that JAFI does not fund, undertake, or even support any settlement activities outside of the “Green Line”. Keren Hayesod confirms the same¹¹⁰.

63.5. The respondents half-heartedly refer to an award received by Mr Krawitz a decade ago – several years before the Gaza conflict in question – for his fundraising efforts for the Victims of Terror Fund¹¹¹. The respondents say: “The PSC does not dispute that he raised funds to assist Israeli victims in conflict”¹¹², which ought to be the end of this matter, but then goes on to speculate that Mr Krawitz surely has a “broader commitment beyond any one project”¹¹³. They argue that the distinction between humanitarian donations and funding of an army in an international conflict is “facile”: “money that is not earmarked for humanitarian aid is fungible, and supporting soldiers’ welfare enables the continuation of an unlawful war”¹¹⁴. No explanation – let alone factual basis – for such speculation is provided. To the contrary, Mr Krawitz has stated repeatedly that he has never donated any money whatsoever to any project but humanitarian projects. Nothing in the answering affidavit casts doubt on this fact. In fact, Keren

¹⁰⁹ JAFI supporting affidavit, para 14; CL: 010-143

¹¹⁰ Keren Hayesod affidavit, para 29; CL: 010-136

¹¹¹ Main answering affidavit, para 156; CL: 009-43

¹¹² Main answering affidavit, para 158; CL: 009-43

¹¹³ Main answering affidavit, para 158; CL: 009-43

¹¹⁴ Main answering affidavit, para 194; CL: 009-51

Hayesod and JAFI confirm with the greatest particularity in their affidavits what Mr Krawitz has donated money to.

64. The so-called justification for branding Mr Krawitz a genocide funder and baby killer is baseless. But the respondents' justification for saying **Cape Union Mart** funds genocide and kills babies is even more far-fetched.
65. Here the respondents say their statements "track the publicly-embraced identity of Mr Krawitz, as its executive chairperson, and brand association. The statements articulate derivative complicity..."¹¹⁵
66. Stripped of all the novel concepts and niceties, the respondents say Mr Krawitz and Cape Union Mart are essentially the same. They are not.
67. Cape Union Mart is a company duly incorporated in terms of the laws of the Republic of South Africa. It has a board of nine directors. Mr Krawitz is not even a shareholder – let alone the "principal owner" as the respondents baldly claim under oath¹¹⁶. It has its own corporate social investment policy and donates money to worthy causes. Cape Union Mart even provided the respondents with a list of all beneficiaries of donations since 2020. This confirms that Cape Union Mart has never donated any funds whatsoever to any entity outside of South Africa. Yet, Mr Chikte (after receiving the list of beneficiaries) continues to assert in his answering affidavit that it is "untrue" that Cape Union Mart only funds local humanitarian causes¹¹⁷.

¹¹⁵ Main answering affidavit, para 220; CL: 009-56

¹¹⁶ Main answering affidavit, para 72; CL: 009-22

¹¹⁷ Main answering affidavit, para 92; CL: 009-28

68. The fact that Mr Krawitz derives financial benefit from Cape Union Mart can never be a rational reason to impute on the company “derivative complicity”, as the respondents say.
69. It follows that there is not even a speculative basis laid for imputing genocide funding and baby killing on Cape Union Mart and its brands. The answering affidavits show that the respondents’ actual gripe is with Mr Krawitz and Zionists.
70. In light of all the above, there is no sustainable basis for a defence of truth and public benefit, and the respondents’ purported defence ought to be rejected on the papers as far-fetched and untenable.

Second defence – Fair comment

71. The second purported defence raised is one of protected commentary.
72. The requirements for this defence in defamation are well-established. The essential elements were confirmed in **The Citizen 1978 (Pty) Ltd and Others v McBride 2011 (4) SA 191 (CC)** to be¹¹⁸:
- 72.1. A statement must be one of comment and not of fact;
- 72.2. The comment must be fair, in that it must be relevant to the matter commented upon and must not be actuated by malice;
- 72.3. The facts upon which it is based must be true; and

¹¹⁸ At para 159

72.4. The comment must relate to a matter of public interest.

73. The respondents fail at no less than two of the hurdles, being the requirement for the statements to be identified or identifiable as comment, and the requirement that opinion must be based on facts that are true and fairly stated or “so notorious that they may be incorporated by reference”¹¹⁹.

74. It is submitted that all the statements in question constituted factual statements as opposed to opinion, automatically disqualifying any reliance on a defence of fair comment.

75. In **Democratic Alliance v African National Congress and Another 2015 (2) SA 232 (CC)**, the Constitutional Court provided a detailed excursion on the difference between factual statements and opinions in our law. From the authorities quoted, the following is highlighted:

75.1. In order to be justifiable as fair comment, it must appear as comment “and must not be so mixed up with the facts that a reader cannot distinguish between what is report and what is comment”. If fact and comment is intermingled, a reasonable reader “will naturally suppose that the injurious statements are based on adequate grounds known to the writer, though not necessarily set out by him”.¹²⁰

¹¹⁹ McBride *supra*, para 89.

¹²⁰ Roos v Stent and Pretoria Printing Works, Ltd, quoted in paragraph 70.

- 75.2. “There must surely be a placing before the readers of the facts commented upon before the plea of fair comment can operate at all... (T)here must be some reference in the article which indicates clearly what facts are being commented upon. If there is no such reference, then the comment rests merely upon the writer’s own authority.”¹²¹
- 75.3. A defence of fair comment must fail if no reference was made to any sources from which the writer deduced the facts on which he based the assertion complained of as “no opportunity was afforded to a reader of the article to know the grounds on which the imputation was based”¹²².
- 75.4. To receive the benefit of the defence it must be clear to those reading the publication what the facts are and what comments are made upon them. “A commentator is not protected if he or she ‘chooses to publish an expression of opinion which has no relation, by way of criticism to any fact before the reader.”¹²³ The main judgment added: “The rationale for this is that the reader must be able to separate fact from opinion and assess the correctness or otherwise of the opinion for himself or herself. If an opinion is expressed without any facts placed before the reader, the reader

¹²¹ Hunt v Star Newspaper Co, quoted in paragraph 72

¹²² Roos supra, quoted at paragraph 72.

¹²³ With reference to McBride supra, quoted in paragraph 75.

is deprived of the opportunity of assessing the correctness of the opinion himself or herself.”

76. As stated above, the assertions complained of are all factual statements: The applicants fund genocide. The applicants are responsible for the killing and starvation of babies. “...Philip Krawitz – donates money to the Israeli Occupation Forces. DONATES MONEY TO THE ARMY THAT KILLS CHILDREN.” Mr Krawitz made “financial contributions to the Israeli Occupation Force”.
77. The respondents take the untenable position that a reasonable reader would not see these statements as a “literal allegation of personally committing genocidal acts with intent”¹²⁴. This is untenable in light of the dicta of Innes CJ in **Roos v Stent and Pretoria Printing Works Ltd 1909 TS 988**¹²⁵, quoted with approval in all three separate judgments of **Democratic Alliance supra**:

“If a writer chooses to publish an expression of opinion which has no relation, by way of criticism, to any fact before the reader, then such an expression of opinion depends upon nothing but the writer’s own authority, and stands in the same position as an allegation of fact. It cannot be covered by a plea of fair comment.”

78. The respondents further rely on what they call an “inference from...facts” and therefore feel “entitled to express such view”¹²⁶ and that the claim that

¹²⁴ Main affidavit, para 219; CL: 009-56

¹²⁵ At 988

¹²⁶ Main answering affidavit, para 173; CL: 009-47

the applicants are funding a genocide is a “value-laden inference from facts”¹²⁷.

79. It is, of course, permissible to make inferences from true facts to justify the truth of a factual statement. But that, too, does not assist the respondents in laying any sustainable foundation for a defence of fair comment. Another matter quoted with approval by the Constitutional Court, is the matter of **Crawford v Albu 1917 AD 102** where the issue of inference from facts is specifically dealt with by Innes CJ¹²⁸:

“It is possible, however, for criticism to express itself in the form of an assertion of fact deduced from clearly indicated facts. In such cases it will still be regarded as comment for the purposes of this defence...Then the superstructure of comment must rest upon a firm foundation, and it must be clearly distinguishable from that foundation. It must relate to a matter of public interest and it must be based upon facts expressly stated or clearly indicated and admitted or proved to be true. There can be no fair comment upon facts which are not true. And those to whom the criticism is addressed must be able to see where the fact ends and comment begins, so that they may be in a position to estimate for themselves the value of the criticism. If the two are so entangled that inference is not clearly distinguishable from fact, then those to whom the statement is published will regard it as founded upon

¹²⁷ Main answering affidavit, para 223; CL: 009-56

¹²⁸ At 114-5

unrevealed information in the possession of the publisher; and it will stand in the same position as an ordinary allegation of fact".

(Our emphasis)

80. Even if this Honourable Court finds that one or more of the statements in question were expressed as an opinion (which we submit is not the case) and that the defence of fair comment is, in principle, available in respect of those statements (which we submit is not the case), the respondents fail to set out a sustainable defence for the following reasons:

80.1. The "facts" upon which such opinion is supposedly based, are not true for reasons set out under "truth and public benefit" above.

80.2. The "facts" are not fairly stated for a reasonable reader or receiver of the messages.

81. The deponent to the main answering affidavit referred to the respondents' "campaign literature"¹²⁹. This was within the context of the explicit allegation of Mr Chikte that, "The PSC makes that connection explicit in our campaign literature and it is protected opinion on disclosed facts".

82. The reference to this literature prompted the applicants to request these highly relevant documents in terms of a Rule 35(12) notice¹³⁰, for the averment is made that the relevant campaign literature disclosed facts upon which the respondents' comments were allegedly founded.

¹²⁹ Main answering affidavit, CL: 009-57

¹³⁰ CL: 028-15

83. Mr Chikte's response to this request was that the statement was "merely illustrative" of a point¹³¹. Despite being invited – and with respect guided by the applicants – to avail themselves of the opportunity to show to this Honourable Court where they disclosed the facts in their campaign material upon which they supposedly expressed opinions, the respondents confined themselves to literature "dealt with expressly in the affidavit" and only to those "where the PSC acknowledges authorship of a particular item of campaign literature"¹³².

84. The only "campaign literature" of which the PSC acknowledges authorship, is the following:

84.1. Annexure C11¹³³, limited to an A2 size poster reading, "Stop the Genocide"¹³⁴.

84.2. Annexure C36¹³⁵. The poster reads: "Boycott Cape Union Mart – They Fund Genocide"¹³⁶.

84.3. Annexure C38¹³⁷. The poster reads: "Boycott Poetry, Old Khaki, Cape Union Mart – They Fund Genocide"¹³⁸.

¹³¹ Reply to notice in terms of Rule 35(12), at para 9; CL: 028-22

¹³² Reply, para 9; CL: 028-22

¹³³ CL: 001-74

¹³⁴ Authorship acknowledged in main answering affidavit, para 295; CL: 009-69

¹³⁵ CL: 001-105

¹³⁶ Authorship acknowledged in main answering affidavit, para 326; CL: 009-74

¹³⁷ CL: 001-107

¹³⁸ Authorship acknowledged in main answering affidavit, para 327; CL: 009-74

- 84.4. Annexures C13-C14¹³⁹ (only the background posters). Those posters read, “Zionism is Racism”, and “Boycott Cape Union Mart – They Fund Genocide”¹⁴⁰, and “Boycott Apartheid Israel”.
- 84.5. Posters bearing the following slogans: “Stop the Genocide – Free Palestine”, “Boycott Apartheid Israel”, and “Boycott Cape Union Mart – They Fund Genocide”¹⁴¹.
85. Apart from stating as fact (the blatant falsity) that Cape Union Mart funds genocide, none of the campaign literature remotely purports to offer any facts upon which an opinion is expressed.
86. The respondent’s claims that their “moral condemnation (opinion), based on disclosed facts, such as Mr Krawitz’ affiliations to Israeli state entities and the carnage in Gaza”¹⁴², are “political comment...based on disclosed facts”¹⁴³ are simply untrue. They have not disclosed any “facts” whatsoever to the receivers of their messages, apart from a false averment coached as a factual statement that Cape Union Mart funds genocide.
87. It is settled law that the facts upon which opinions are based, may be “so notorious that they may be incorporated by reference”. (Vide: **McBride supra** at para 89)

¹³⁹ CL: 001-76 – 001-77

¹⁴⁰ Authorship acknowledged in main answering affidavit, para 51; CL: 009-18

¹⁴¹ Main answering affidavit, para 52.2; CL: 009-18

¹⁴² Main answering affidavit, para 197; CL: 009-51

¹⁴³ Main answering affidavit, para 218; CL: 009-55

88. Unsurprisingly, the respondents marshal all their efforts in this department to justifying the factual statement that a genocide is occurring/has occurred. Without conceding the correctness thereof, the branding of the conflict in Gaza as a genocide is not the dispute ventilated in the papers. It is the claim that Mr Krawitz and Cape Union Mart are funding such “genocide” that is unlawful.
89. It is not the respondents’ case that Mr Krawitz’s curriculum vitae, involvement with Keren Hayesod, JAFI, and the alleged activities of those organisations are “so notorious” to an ordinary reader that it was not even necessary to state such “facts” to members of the general public as a supposed basis for the “opinion” that “Cape Union Mart funds genocide”. Had it been, such notion that an ordinary shopper in Cape Town knows Mr Krawitz’s background and the activities of organizations in Israel in detail would have been so far-fetched as to justify a rejection thereof on the papers.
90. As such, and based on the authorities cited above, the respondents lay no sustainable foundation for a defence of protected commentary/fair comment to the impairment of the applicants’ reputations.

Assault on Mr Krawitz’s dignity

91. Mr Krawitz asserts his common law right to dignity¹⁴⁴, which is also constitutionally entrenched in section 10 of the Constitution of the Republic of South Africa, 1996.
92. An infringement of a person's dignity is actionable if it violates the person's subjective feelings of dignity and self-esteem. The "subjective element" that a plaintiff "feel insulted", is tempered by an objective element. In **Le Roux v Dey** supra¹⁴⁵, the test was phrased as follows: "...if a reasonable observer would agree with Dr Dey that he has been humiliated, infringement of dignity has been established".
93. Some of the utterances ventilated in the papers are not alleged to be defamatory of Mr Krawitz. However, such conduct does violate Mr Krawitz's right to dignity and therefore remains unlawful conduct.
94. The conduct in question is as follows:
- 94.1. In annexure "C35"¹⁴⁶, unidentified protestors made a poster with a photograph of Mr Krawitz and his wife. The picture has been manipulated to include red "devil's horns" on the head of Mr Krawitz. It also referred to Mr Krawitz as "Fill-lip Krapwits", which was intended as an insult to him.

¹⁴⁴ Founding affidavit, para 8; CL: 001-15

¹⁴⁵ At para 149

¹⁴⁶ CL: 001-104

- 94.2. The Nazi swastika is displayed to his face, which Mr Krawitz, as a Jew, finds insulting in light of the well-known history of the Holocaust¹⁴⁷.
- 94.3. Protestors chanted, "Philip, Philip, you can't hide, we charge you with genocide!"¹⁴⁸ and, "Philip, Philip, what do you say, how many kids have you killed today?"¹⁴⁹
- 94.4. Ms Ockards displayed a poster¹⁵⁰, directed at the applicants, loosely quoting from the Bible, revelations 2:9: "I know your suffering and your poverty (but you are rich), and how you are BLASPHEMED & SLANDERED by those who say they are Jews (Zio's) and are not. THEY ARE THE SYNAGOGUE OF SATAN". This is an attempt to demonise Jews in general and Mr Krawitz, to whom it is directed, in particular¹⁵¹.
95. None of the above-mentioned conduct is placed in dispute in the answering affidavits. In fact, Mr Chikte concedes the existence of what he euphemistically terms "anti-Jewish speech" at the protests¹⁵². All the PSC respondents do, is to disavow involvement of the PSC in such conduct and repeating that the PSC does not condone it.

¹⁴⁷ Founding affidavit, para 132; CL: 001-43

¹⁴⁸ Founding affidavit, para 49; CL: 001-24

¹⁴⁹ Founding affidavit, para 69; CL: 001-29

¹⁵⁰ Annexure C24; CL: 001-93

¹⁵¹ Founding affidavit, para 80; CL: 001-32

¹⁵² Main answering affidavit, para 227; CL: 009-57

96. It must again be stressed that the applicants' do not rely on such conduct to be prohibited hate speech against a group of people on impermissible grounds. Mr Krawitz's dignity is impaired when such hate symbols and vitriol are directed at him.
97. In **AfriForum NPC v Nelson Mandela Foundation Trust and Others 2023 (4) SA 1 (SCA)**, the Court accepted that the gratuitous display of the apartheid flag constitutes an assault on the dignity of Black South Africans (and is hate speech). Similarly, the display of the Nazi swastika – the symbol of persecution and murders of Jews – deeply impacts on the dignity of Mr Krawitz as a Jew.
98. In **Masuku supra**, the Constitutional Court also accepted that references to "Hitler" evoke semantic associations with the entire global Jewish community¹⁵³.
99. The display of the swastika next to the Star of David, while it is clearly directed at Mr Krawitz, is a deep affront to his dignity as a Jew, which is also objectively unacceptable.
100. On the part of the first respondent, Ms Ockards, and the "Synagogue of Satan" poster, she admits "affixing the poster to a barrier"¹⁵⁴. She then states, incoherently, that the poster was "clearly aimed at Zionists, who say that they are Jews" and does not reference Mr Krawitz¹⁵⁵. This rings hollow for the simple fact that the poster was displayed as part of a broader

¹⁵³ At para [156]

¹⁵⁴ Ms Ockards' affidavit para 28; CL: 009-853

¹⁵⁵ Ms Oc

protest against Mr Krawitz and Cape Union Mart. It did not appear in a vacuum.

101. Ms Ockards does not attempt at all to disclose a sustainable defence to her prima facie unlawful conduct. She merely states that she relies on protected commentary and “adopt(s) the analysis” of the PSC Respondents’ answering affidavit as a defence¹⁵⁶. The difficulty with that is that the PSC Respondents do not, in fact, seek in any way to address the “Synagogue of Satan” issue. They in fact seek to distance themselves therefrom. The first respondent therefore provides no justification whatsoever.

102. Nothing in the answering affidavits addresses Mr Krawitz’s subjective feelings of insult through:

102.1. Being depicted with devil’s horns; i.e. demonised;

102.2. Being accused of attending the “Synagogue of Satan”;

102.3. Being asked in public how many children he has killed that day and being told he can’t hide, as he is accused of genocide.

102.4. And being subjected to the display of the Nazi swastika.

103. Nothing in the answering affidavit addresses why a reasonable observer would not view this conduct as an affront to the dignity of any individual, and a devoted Jew in particular.

¹⁵⁶ Ms Ockards’ affidavit, para 30; CL: 009-853

104. A reasonable observer will consider:

104.1. The gravity of the accusations of baby-killing and being complicit in genocide.

104.2. The fact that all of the above conduct occurred in public spaces and with the specific intent to draw attention thereto.

104.3. The fact that Mr Krawitz is a devoted Jew and prominent member of that community.

104.4. The horrors of the Holocaust, and the insulting nature of the Nazi swastika, being displayed to a Jew.

105. Even after the institution of the application, the affront to Mr Krawitz' dignity continues. A group of protestors, including the third respondent, chanted on 18 October 2025: "Say it loud, say it clear: We don't want no Nazi's here!"¹⁵⁷. A reasonable observer would agree that it is an insult in the extremist form to call a Jew such as Mr Krawitz a "Nazi", the latter being the political grouping responsible for the persecution of millions of Jews.

Contraventions of the Regulation of Gatherings Act

¹⁵⁷ Replying affidavit, para 82.2; CL: 010-24

106. The applicants readily concede¹⁵⁸, in principle, the respondents' right to assemble, peacefully and unarmed, as is indeed set out in section 17 of the Constitution.

107. In **South African Transport and Allied Workers Union and Another v Garvas and Others 2013 (1) SA 83 (CC)** the Constitutional Court held¹⁵⁹ that "the mere legislative regulation of gatherings to facilitate the enjoyment of the right to assemble peacefully...may not in itself be a limitation". (That Court has, however, held that the civil liability conferred in sections 11(1) and 11(2) of the Act was indeed a limitation, albeit constitutionally justifiable.)

108. The preamble to the Act starts by highlighting that "every person has the right to assemble with other persons and to express his views on any matter freely and to enjoy the protection of the State while doing so", but immediately qualifies such right by saying the "exercise of such right shall take place peacefully and with due regard to the rights of others". In **Garvas**, the Court said¹⁶⁰ "the fact that every right must be exercised with due regard to the rights of others cannot be overemphasised".

109. While **Garvas** dealt with monetary riot damage to property, the same principle applies to the protection of other competing rights, such as the applicants' right to reputation and Mr Krawitz's right to dignity. They equally have constitutional rights deserving of protection. The rights to freedom of

¹⁵⁸ Founding affidavit, paras 119-120; CL: 001-41; para 6, CL:001-13

¹⁵⁹ At para 55

¹⁶⁰ At par 68

expression, freedom of religion, belief and opinion, the right to dignity, the right to freedom of association, and the right to assembly are all intertwined¹⁶¹.

110. It is against this backdrop that the Regulation of Gatherings Act must be understood as an attempt to balance the competing rights of protestors, members of the public, and those who form the subject of the protest. Of particular importance for this matter, are the following provisions:

110.1. An organization or any branch of an organization intending to hold a gathering shall appoint 'marshals' and give notice of such planned gathering, being an assembly of more than 15 people. (Section 2(1))

110.2. No person present at or participating in a gathering or demonstration shall by way of a banner, placard, speech or singing or in any other manner incite hatred of other persons or any group of other persons on account of differences in culture, race, sex, language or religion. (Section 8(5))

110.3. No person present at or participating in a gathering or demonstration shall perform any act or utter any words which are calculated or likely to cause or encourage violence against any person or groups of persons. (Section 8(6))

¹⁶¹ South African National Defence Union v Minister of Defence 1999(4) SA 469 (CC) at para 8

110.4. No person shall at any gathering or demonstration wear a disguise or mask or any other apparel or item which obscures his facial features and prevents his identification. (Section 8(7))

110.5. Marshals at a gathering shall take all reasonable steps to ensure that no entrance to any building is barred by participants that reasonable access to the said building or premises is denied to any person. (Section 8(9))

111. The protests in casu have contravened the Act in several respects:

111.1. Assembling more than 15 persons, i.e. a gathering, without prior notice¹⁶², as can be gleaned from some of the pictures to the founding affidavit¹⁶³, and confirmed through the applicants' internal incident log provided to the respondents upon demand¹⁶⁴. The respondents say, "from January to October 2025, there have been approximately 30 demonstrations at the V&A, 35 at Canal Walk and 37 at Cavendish". The respondents further claim that the "number of protestors has varied from between three to 15"¹⁶⁵. This is, however, contradicted by Mr Chikte himself where he

¹⁶² Founding affidavit, para 123; CL: 001-41

¹⁶³ For e.g. annexure C13; CL: 001-76; annexure C15; CL: 001-78;

¹⁶⁴ CL: 048-183. The numbers exceeded 15 on 2 August 2025, 26 July 2025, 21 June 2025, 14 June 2025, 31 May 2025, 15 February 2025, 7 December 2024, 23 November 2024, 31 August 2024, 3 August 2024, 18 May 2025, 2 March 2024, 27 January 2024, 6 January 2024, 23 December 2023, 9 December 2023, 2 December 2023, 25 November 2023, 25 November 2023, 18 November 2023, and 18 November 2023.

¹⁶⁵ Main answering affidavit, para 291.3; CL: 009-69

explained: “When a demonstration approaches or exceeds 15 participants, PSC members excuse themselves, to give other supporting protestors the opportunity to join the demonstration.”¹⁶⁶ The PSC therefore does not seriously dispute that there are often more than 15 participants, but only that they “rotate” the protestors when the threshold is exceeded.

111.2. Protestors wear masks in order not to be identified¹⁶⁷. This is not disputed by the respondents, who only say there are “possible benign reasons for this attire, such as health precautions...and religious reasons in the case of Muslim women”¹⁶⁸.

111.3. Protestors displaying symbols against Judaism, such as the Nazi swastika equated with the Star of David¹⁶⁹, posters depicting the swastika superimposed on an Israeli flag¹⁷⁰, the Star of David alongside the swastika¹⁷¹, the “Synagogue of Satan” poster dealt with above, and the chants that “Zio’s” are not welcome. The PSC respondents admit that some “material...crosse(d) into anti-Jewish speech”¹⁷², but disavow responsibility therefor.

¹⁶⁶ Main answering affidavit, para 53; CL: 009-18

¹⁶⁷ Founding affidavit, para 21; CL: 001-19

¹⁶⁸ Main answering affidavit, para 46; CL: 009-16

¹⁶⁹ Founding affidavit, para 63; CL: 001-28

¹⁷⁰ Founding affidavit, para 68; CL: 001-29

¹⁷¹ Founding affidavit, para 81; CL: 001-32

¹⁷² Main answering affidavit, para 22; CL: 009-57

111.4. As already indicated above, much of the protest material is deeply personal and aimed at Mr Krawitz. He is depicted with devil's horns, had his picture (and that of his wife) on numerous posters, and is wrongly accused of directly funding the Israel Defence Force through made-up "quotations". In terms of the Act, no person shall perform any act or utter any words which are a) either calculated, or b) likely to cause or encourage violence against any person. These actions do both. And it is not merely hypothetical: A General from the Hawks confirms under oath that the Hawks have received credible information of danger to the safety of Mr Krawitz and his family¹⁷³.

112. None of the above is seriously disputed in the papers. The respondents say:¹⁷⁴ "The applicants try to paint every instance, where more than 15 people joined the demonstrations outside a Cape Union Mart store, as a blatant illegality. That is not correct: often these were spontaneous congregations of protestors, or protests by different organisations, and police on the scene did not take action against the PSC."

113. This argument is based on several misconceptions:

113.1. The distinction between "PSC members" and "other protestors" and "different organisations" is artificial and unsustainable. Such transparent attempts to avoid accountability – and exploiting a perceived loophole to avoid appointing a responsible person who

¹⁷³ Founding affidavit, para 116; CL: 001-40

¹⁷⁴ Main answering affidavit, para 259; CL: 009-62

can be held accountable – was foreseen by the Legislature, leading to the inclusion of section 13(3) of the Act:

“For the purpose of this Act, where a convener has not been appointed in terms of section 2(1), a person shall be deemed to have convened a gathering–

(a) If he has taken any part in planning or organizing or making preparations for that gathering; or

(b) If he has himself or through any other person, either verbally or in writing, invited the public or any section of the public to attend that gathering.”

113.2. It is common cause in the papers that the PSC respondents are actively inviting members of the public to take part in their protests¹⁷⁵. The PSC has no objection to have their logo used, and PSC members being listed for enquiries. The PSC further advertises the protests on its Instagram account with 19500 followers¹⁷⁶. It is fanciful in the extreme to postulate that the PSC could be surprised by the “spontaneous congregation” of people after inviting tens of thousands of people to join.

113.3. Failure to act by the police does not illustrate compliance with the law. In fact, the respondents would be aware of the judgment in **Mlungwana and Others v S and Another 2019 (1) BCLR 88**

¹⁷⁵ Main answering affidavit, para 285; CL: 009-67

¹⁷⁶ Replying affidavit, para 431; CL: 010-93

(CC) declaring section 12(1)(a) of the Act unconstitutional. It is therefore not a criminal offence not to give the required notice and it is unsurprising that the police did not arrest PSC organizers. However, it is still a legal requirement to give notice and failure to do so is unlawful, if not illegal and punishable by criminal sanction.

114. The PSC respondents say they have provided an undertaking not to breach the Regulation of Gatherings Act¹⁷⁷. It is an implicit acknowledgement that everyone is expected to abide by the laws of the country. Given the undertaking (which was actually simply pending the finalisation of this application), there is no prejudice in granting the relief sought in the notice of motion.

Requirements for an interdict

Clear right

115. The applicants have established a clear right to their reputations.
116. The respondents have failed in their onus to set up a factual basis for a defence to justify the defamation, being truth and public benefit and fair comment.
117. The assault on Mr Krawitz' dignity, being further unlawful conduct based on different facts than the defamatory conduct, is not met with any

¹⁷⁷ Main answering affidavit, para 20; CL: 009-9

cognisable factual basis attempting to set up a defence to such unlawful conduct.

118. Finally, contraventions of the Regulation of Gatherings Act are clearly established on the papers.

Injury

119. The injury already suffered by the applicants is to their reputation, to Mr Krawitz's dignity, and Cape Union Mart's business interests.

120. Defamatory statements are presumed to have caused damage to their target. (Vide: **Daily Maverick (Pty) Ltd and Another v Modiba [2022] ZAGPJHC 582** at para 21; **Simmonds v White and Another [1980] 1 All SA 412 (C)** at 415).

121. The applicants continue to suffer harm to their reputations every time the same, false, and defamatory claims are repeated during the protests or posted online.

122. The respondents show no sign of relenting or changing their defamatory messages in the slightest. They insist in these proceedings that they are justified to say what they have been saying over the past years, confirm that they continue to invite members of the public to these protests, and some have even doubled down after the institution of this application.

123. That the PSC respondents in particular are intent on further fuelling the fire, is evident from the quotation attributed to Mr Chikte in a News24

report: “We will not be silenced by billionaires who want to whitewash war crimes behind a veil of philanthropy.”¹⁷⁸

124. The inflammatory conduct of the respondents also constitutes a reasonable apprehension of physical harm for Mr Krawitz and his family, as is evident from the affidavit by a General from the Hawks.

No alternative remedy

125. It is trite that an alternative legal remedy must be an alternative **legal** remedy¹⁷⁹. The respondents’ suggestion that the applicants must rely on “counter-speech” as an alternative remedy¹⁸⁰, is meritless.

126. While the applicants intend instituting a damages action in future for, inter alia, an apology¹⁸¹, this is no suitable alternative legal remedy for the following reasons:

126.1. The harm is continuing and ongoing. There is a continuing violation of the applicants’ rights and the rights of Cape Union Mart’s shoppers. (Vide: **Wynberg Municipality v Dreyer 1920 AD 439**)

¹⁷⁸ Replying affidavit, para 87; CL: 010-27

¹⁷⁹ Chapmans Peak Hotel (Pty) Ltd and another v Jab and Annalene Restaurants CC t/a O’Hagans [2001] 4 All SA 415 (C)

¹⁸⁰ Answering affidavit, para 92; CL: 009-28

¹⁸¹ Founding affidavit, para 143; CL: 001-46

126.2. It is impossible to institute a damages action against those protestors who remain unidentified¹⁸², notwithstanding the invitation in this matter to be joined.

126.3. It will be an impossibility for Cape Union Mart to accurately quantify its pecuniary damages suffered.

127. In **Hotz v University of Cape Town 2017 (2) SA 485 (SCA)**, the Court held¹⁸³ that the purpose of an interdict is to put an end to conduct in breach of the applicant's rights. Any proposed alternative remedy will have to give similar protection to an interdict against the injury that is occurring or is apprehended. The court said:

“That is why, in many cases a court will weigh up whether an award of damages will be adequate to compensate the injured party for any harm they may suffer. There may also be instances where, in the case of a statutory breach, a criminal prosecution, in appropriate circumstances, will provide an adequate remedy, but there are likely to be few instances where that will be the case.”

Unidentified individuals

128. Due to the very nature of protest action, the applicants have been unable to identify numerous individuals taking part in demonstrations and gatherings outside Cape Union Mart's stores¹⁸⁴. Some protesters have

¹⁸² Founding affidavit, para 145.3; CL: 001-46

¹⁸³ At para 36

¹⁸⁴ Founding affidavit, para 18; CL: 001-17

been wearing disguises¹⁸⁵. The applicants have, however, cited all the individuals they have managed to identify.

129. The PSC respondents avoid identifying any other protestor in their answering papers, even where Mr Chikte clearly intimates that he knows exactly who the individuals are. This further illustrates the difficulties experienced by the applicants.

130. The applicants are compelled to seek an order against the unidentified individuals. This much is evident from the PSC's strategy in this matter to distinguish between "members" and "non-members" without disclosing any membership list or giving a clear indication of who the members are¹⁸⁶.

131. Any interdict would plainly not be effective if it does not include the sixth respondent.

132. In **City of Cape Town v Johannes Rooyen and Another [2025] ZAWCHC 507**, a Full Court of this Honourable Court considered the competence of granting an effective order against an unidentified but ascertainable group of individuals. This court also considered foreign authorities about interdicts against protestors who have not been identified.¹⁸⁷

133. This Honourable Court found¹⁸⁸ that respondents who are anonymous but identifiable can be served with the application by various forms and that

¹⁸⁵ Founding affidavit, para 21; CL: 001-19

¹⁸⁶ Replying affidavit, para 200; CL: 010-51

¹⁸⁷ At paras [58]-[59]

¹⁸⁸ At para [61]

persons in occupation of land or who attempt to occupy land can be viewed as an ascertainable group even though their names might not be known.

134. In casu, the ascertainable group constitutes “individuals taking part in demonstrations and gatherings outside of Cape Union Mart’s stores in the Victoria & Alfred Waterfront, Cape Town, the Canal Walk shopping centre at 490 Century Blvd, Century City, and the Cavendish Shopping Centre at 1 Dreyer Street, Claremont, Cape Town”¹⁸⁹.

135. The effectiveness of the order is ensured by the clearly defined parameters of the identifiable group. An individual who takes part in a protest at those clearly defined locations would form part of the group.

136. The applicants sought, and obtained, directions from this Honourable Court on how the unidentified protestors had to be served with the application. (Vide: Court order, CL: 074-3).

137. Over and above the compliance with the court order, the matter has enjoyed widespread coverage in the news media¹⁹⁰, and the applicants explicitly invited a further individual (Mr Rosengarten) who resumed his participation in protest action after institution of the proceedings to oppose the application, should he wish¹⁹¹.

138. Nobody sought to oppose the relief sought.

¹⁸⁹ Founding affidavit, para 18; CL: 001-17

¹⁹⁰ Replying affidavit, para 107; CL: 010-30

¹⁹¹ Replying affidavit, para 132.2; CL: 010-37

139. In the premises, it is submitted that there was proper notice to any interested party who may have wanted to oppose the application and it is appropriate to grant the relief sought against the sixth respondent.

Costs

140. The applicants did not seek any costs against any respondent who did not oppose the application but only against those who persisted with opposition in the face of what is set out in the founding affidavit.

141. The applicants therefore seek costs on a party-party scale against all opposing respondents, jointly and severally, including the costs of two counsel on scale C.

DATED THIS 09th DAY OF MARCH 2026 AT PRETORIA

C WOODROW SC

H SCHOLTZ

Counsel for the applicants

Parc Nouveau Chambers, Pretoria