

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

Case No: 2025-092980

On the roll for 4 and 5 May 2026

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 PROTESTORS AT CAPE UNION MART

PREMISES

Sixth Respondent

PALESTINIAN SOLIDARITY CAMPAIGN, CAPE TOWN

Seventh Respondent

CENTRE FOR APPLIED LEGAL STUDIES Applicant for admission as *amicus curiae*

FIRST TO FIFTH AND SEVENTH RESPONDENTS' HEADS OF ARGUMENT

A. INTRODUCTION AND OVERVIEW

1. This is an application for a final interdict on motion. The first and second applicants will be referred to, respectively, as “Cape Union Mart” and “Mr Krawitz”.
2. These heads of argument are delivered on behalf of the first to fifth and the seventh respondents. The first and the fifth respondents are not members of the seventh respondent, the Palestinian Solidarity Campaign, Cape Town (“the PSC”). The second, third and fourth respondents are members of the PSC. They, together with the PSC, will be referred to in these heads of argument as “the PSC respondents”. Where referred to together with the first and the fifth respondents, they will be referred to as “the respondents”.
3. The applicants seek far-ranging relief in the form of permanent interdicts that would prevent certain utterances, or other forms of political speech, on the part of the respondents, in the context of ongoing protests and calls for boycott action which are taking place at certain of the applicants’ stores in the Western Cape.¹
4. The applicants say that the interdicts, if granted, would not prevent continued criticism of Israel, its conduct in Gaza, or even calls for the boycott of applicants’ businesses.² They say that this case is only about the respondents’ unlawful conduct in connecting *them* to such conduct when, as a matter of fact, they have no connection thereto and do not speak on behalf of the State of Israel.³

¹ Notice of motion, paras 1.1 to 1.7, CL: 001-5 - 6

² Applicants’ heads of argument (“Applicant’s HoA”), para 3

³ Replying affidavit (“RA”), paras 62 and 64, CL: 010 - 19

5. They further say that the respondents' campaign against them is because Mr Krawitz is Jewish and Cape Union Mart is a Jewish-owned business.⁴ They accordingly allege that the respondents' conduct is motivated purely by antisemitism, and that certain of their utterances display disgust at Jews in general.⁵
6. Paradoxically, the applicants do not explain why, if neither Mr Krawitz nor Cape Union Mart has any connection to the State of Israel, the Israel Defence Force ("IDF") and Israel's conduct in Gaza, they are nonetheless content that the respondents continue protesting outside *their* stores and calling for a boycott of *their* businesses.
7. The respondents deny the slurs about them being motivated by antisemitism or expressing disgust at Jews in general. They say that their campaign against the applicants' businesses is a social-political one, deeply rooted in the history of South Africa under apartheid, and their moral outrage at Israel's conduct in Gaza and the Occupied Territories, and which conduct amounts to a genocide.⁶
8. They further explain that Mr Krawitz, and by extension Cape Union Mart, have been targeted because of Mr Krawitz's public support for Israel and the IDF, and his position as a leader in Zionist organisations with ties to the State of Israel, and which organisations support both such State, and particularly the IDF. They further accuse

⁴ Founding affidavit ("FA"), para 5, CL: 001-13

⁵ FA, para 114, CL: 001-40

⁶ Answering affidavit ("AA"), paras 9-14, CL: 009-6 - 7

Mr Krawitz, and by extension Cape Union Mart, of funding the ongoing genocide in Gaza.⁷

9. There is a fundamental factual dispute on the papers regarding this issue, and others.
10. It is trite that, where a party seeks final relief on motion, then, in the event of a conflict on the papers, the applicant must accept the respondent's version unless the latter's allegations are, in the opinion of the court, not such as to raise a real, genuine or *bona fide* dispute of fact, or are so far-fetched or clearly untenable that the court is justified in rejecting them merely on the papers.⁸
11. As recently explained by the Constitutional Court:

*“Motion proceedings are unsuitable to decide probabilities. In instances where final relief is sought, motion proceedings are aimed at resolving issues of law based on common cause facts. And where disputes of fact arise, absent a referral for oral evidence, the Plascon-Evans approach, as amplified in Wightman, must be employed.”*⁹

12. As explained below, the applicants, in the light of the disputes of fact on papers, fail to establish the three requisites for a final interdict, viz a clear right, an injury actually

⁷ AA, paras 72 – 73, CL: 009-22 - 23

⁸ *Plascon-Evans Paints Limited v Van Riebeck Paints (Pty) Ltd* [1984] (3) SA 623 (A) at 634 E – 635 C; *Rail Commuters Action Group v Transnet Ltd t/a Metrorail* 2005 (2) SA 359 (CC) at para 53

⁹ *African Congress for Transformation v Electoral Commission of South Africa; Labour Party of South Africa v Electoral Commission of South Africa and Others; Afrikan Alliance of Social Democrats v Electoral Commission of South Africa* (“Electoral Commission”) [2024] ZACC 7 at para 95

committed or reasonably apprehended, and the absence of similar protection by any other ordinary remedy.¹⁰

13. Accordingly, their relief cannot be granted.
14. There is a further insurmountable hurdle that stands in the way of the applicants obtaining the relief that they seek. They seek a final interdict against what they claim are defamatory statements by the respondents concerning them. The defamatory statements complained of are that they are killing children or are complicit in the killing of children, and that they fund genocide, the Israeli army, or the conflict in Gaza in any way.¹¹
15. Cape Union Mart, but not Mr Krawitz, seeks an *additional* interdict against statements that it is associated with the State of Israel in any way.¹²
16. It will be noted, in passing, that *neither* applicant seek an interdict against statements that they are supporting the genocide in Gaza, notwithstanding the fact that a significant number of the claims in the founding affidavit pertain to precisely such utterances or statements.
17. Although the applicants refer to the correct and binding authorities regarding the grant of an interdict in application proceeding based on defamation¹³, they misapply them. They contend, incorrectly, that, inasmuch as, according to them, the

¹⁰ *Hotz and Others v University of Cape Town* [2017] (2) SA 485 (SCA) at para 29

¹¹ Notice of Motion, paras 1.4, 1.5 and 1.6, CL: 001 - 5

¹² Notice of Motion, para 1.3, CL: 001 - 5

¹³ Applicants' HoA, paras 37 - 44

respondents have placed all the evidence available to them to show that the statements about the applicants are true and for the public benefit, alternatively constitute fair comment, the applicants are entitled to their relief.¹⁴

18. However, as the authorities show, and as we explain below, the correct position is that only if it is clear that there is *no defence* to the complaint, that final relief based on defamation will be granted on motion. The default position is that the matter will be left to a trial, with all the benefits of discovery, cross-examination and the like.
19. The applicants' contention that all the admissible evidence is *already* before the court subverts, and defeats, the correct approach. If that were the case, there would be no need for a trial.
20. The respondents have in any event placed sufficient facts before the court to show that their defences (truth and public interest, and fair comment) will succeed, or are at the very least, plausible. It follows that no interdict can ensue.
21. The respondents' argument is accordingly structured in the following way:
 - 21.1. *First*, there are preliminary objections: unclean hands and the strike-out application of impermissible matter in the replying affidavit (RA).
 - 21.2. *Secondly*, the relief should be refused on motion because of *Plascon-Evans*, the exceptional caution attaching to prior restraint, and the applicants' inability to prove publication and attribution against these respondents.

¹⁴ Applicants' HoA, para 50.

- 21.3. *Thirdly*, even if the Court reaches the merits, the statements must each be analysed by type, because they do not all stand or fall together.
- 21.4. *Fourthly*, the broader prayers (especially prayers 1.3 and 1.7) are vague, overbroad and constitutionally disproportionate.
22. A detailed schedule of the impugned statements accompanies these heads. It identifies each impugned publication, the respondents' position on publication or attribution, the prima facie meaning issue, and the applicable defences. These heads group the statements by theme, while the schedule is more granular.

B. *IN LIMINE*: APPLICANTS' UNCLEAN HANDS

23. The applicants seek final interdictory relief restraining future speech. A litigant who invokes a Court's coercive power in motion proceedings to suppress political expression must place a fair and candid version of the material facts before the Court. Where an applicant presents a partial, misleading account or uses litigation selectively to silence opponents, the Court is entitled to refuse to lend its process to the application on that basis alone.¹⁵
24. The Constitutional Court has confirmed that the "*unclean* hands" doctrine is a species of abuse of process and that the inquiry is not confined to whether a cause

¹⁵ AA paras 26–66, CL: 009-11 - 21

of action exists in the abstract; it concerns whether the Court should lend its process to the litigant in the circumstances.¹⁶

25. While this power is sparingly used, it informed the decision in the closely analogous defamation-interdict case of *M.M.S v H.K.*,¹⁷ where Wilson J held that the non-disclosure of a communication that placed the dispute in a materially different light was fatal to sustaining speech-restraining relief, and that non-disclosure need not be culpable to be fatal.
26. Though the *ex parte* nature of the case before Wilson J brought the duty of scrupulous honesty on the part of the applicant to the fore, we submit that the underlying principle of non-disclosure of material information for an ulterior purpose suffuses all claims.
27. The answering affidavit (AA) identifies material non-disclosures and distortions that go to the heart of the applicants' narrative of wrongdoing by '*the PSC*'.¹⁸ In particular:
- 27.1. The protests were not '*the PSC acting in isolation*'. Multiple civic organisations participated, including CAYCO, BDS, Cape Town Intifada, Mothers for Gaza and South African Jews for a Free Palestine.¹⁹ Yet the

¹⁶ *Villa Crop Protection (Pty) Ltd v Bayer Intellectual Property GmbH* [2022] ZACC 42; 2024 (1) SA 331 (CC) paras 72, 77–79.

¹⁷ *M.M.S v H.K and Another* [2025] ZAGPJHC 88 paras 11–15.

¹⁸ AA paras 26–31, 45–55, CL: 009-11 – 12, 009-16 – 19

¹⁹ AA paras 27–31, CL: 009-11 - 12

founding affidavit (FA) omits this fact and thus misstates the applicants' ability to attribute conduct and publications to the PSC.

27.2. The applicants omit the 13 December 2023 memorandum, in which the PSC set out *political* demands, and Cape Union Mart's subsequent engagement with those political demands as such. That exchange undermines the applicants' attempt to portray the campaign as driven by nothing more than antisemitism.²⁰

27.3. Mr Krawitz publicly admits that he chose whom to sue based on '*optics*' and identity, initially declining to sue a '*young Jewish boy*' because he did not want '*Jew versus Jew*', and then deciding to '*go for one of them*' because a '*big Jewish company suing this poor little Muslim family*' would not '*work*'.²¹ That is the antithesis of a neutral attempt to vindicate reputation.

27.4. The FA relies on selective snippets (photographs and video clips) without context, while omitting countervailing context: key incidents involved non-PSC protestors; counter-protests occurred; and the applicants' own Rule 35 disclosures show no intimidation by PSC members.²²

27.5. In the FA, the applicants disclose only certain Israel-linked roles (e.g. Keren Hayesod) while omitting other material leadership positions, including

²⁰ AA paras 39–42; UC5–UC6, CL: 009-14 – 16; 009-84 – 113

²¹ AA paras 32–38; UC4, CL: 009-13 – 14; 009-84 – 109

²² AA paras 45–53, 47, 49–50; UC7, CL: 009-16 – 19, 009-114 – 115

Mr Krawitz's role on the Board of Governors of the Jewish Agency for Israel (JAFI).²³

27.6. The FA also materially misstated Keren Hayesod's role, describing it as a "public benefit company and non-profit organization"²⁴, and omitting to disclose its ties to the Israeli State, and its support of the IDF.

27.7. Those omissions are material because the applicants seek to interdict speech about *precisely* those links.

28. These matters do not require the Court to decide disputed factual issues. They show, at a minimum, that the applicants' papers present a misleading narrative designed to maximise interdictory relief rather than to place the true controversy before Court.

29. The omission to refer to other organisations also calling for, and participating in, protests outside Cape Union Mart stores is particularly egregious. It undermines – we submit fatally – the core of applicants' case: that only the PSC is engaged in protest action.

30. In those circumstances, we submit, that the application falls to be dismissed on this preliminary basis as an abuse of process and for want of the candid evidential foundation required in final motion proceedings.²⁵

²³ AA paras 54–55, CL: 009-19

²⁴ FA para 33.4, CL: 001-21

²⁵ AA paras 63–66, CL: 009-20 – 21

31. Significantly, the applicants' heads do not engage this preliminary objection at all. They say nothing about the coalition nature of the protests, nothing about the memorandum exchange, nothing about the selective choice of defendants, and nothing about the non-disclosures concerning Keren Hayesod.
32. The silence is telling. A party seeking a final speech restraint yet declining to grapple with AA paras 26–66, cannot expect the Court to treat clean hands as an irrelevance, as the applicants' heads evidently do in ignoring the point. In reply, the applicants try to defend by pointing to the fact that CAYCO, only one of several protest bodies, stopped protesting in 2024. With respect, that is an incomplete response, which evades the point.
33. The point is that a large part of the applicants' narrative in the FA pertains to conduct by or on behalf of CAYCO, which the applicants falsely attributed to the PSC.

C. STRIKE OUT APPLICATION

34. Rule 6(15) permits the Court to strike out from any affidavit matter that is scandalous, vexatious or irrelevant, provided prejudice is shown.
35. Relatedly, it is trite that an applicant must stand or fall by the founding affidavit and may not make out a new case in reply. In *Pilane*,²⁶ also a final-interdict application involving a politically contentious meeting, the CC majority refused to entertain new

²⁶ *Pilane and Another v Pilane and Another* [2013] ZACC 3; 2013 (4) BCLR 431 (CC).

matter in reply and, endorsing *Director of Hospital Services v Mistry*,²⁷ reaffirmed that an applicant stands or falls by the founding affidavit.

36. Those principles matter acutely here because the RA seeks not merely to respond to the AA, but to repair defects in the founding case in several distinct categories.
37. *First*, the RA introduces incidents, complaints, recordings and publications that occurred after the applicants instituted these proceedings. The aim is to bolster injury, necessity and continuing unlawfulness. The new incidents allegedly occurred on 18 October 2025 and January 2026, and comprise fresh complaints by email, alleged verbal complaints, videos '*to be made available*', criticism of a '*Zionist Lawfare Defense Fund*', later social-media posts and later press reports.²⁸
38. *Secondly*, the RA and annexures R4 and R5, provide, for the first time, a summary of the different projects that Mr Krawitz and Keren Hayesod South Africa allegedly fund, to shore up the applicants' case in the FA that Mr Krawitz and Cape Union Mart support only humanitarian projects (not anything military- or settlement-linked).
39. They further make out an entirely new case, viz that Keren Hayesod South Africa only provides funding to benevolent causes.

²⁷ 1979 (1) SA 626 (A) at 635H–636B.

²⁸ RA paras 82–88, 530, CL: 010-23 – 27, 010-111

40. In presenting these allegations belatedly in reply, the applicants are attempting to introduce evidence that was always central to the founding case and should have been presented at the outset.²⁹
41. *Thirdly*, the RA advances broadened attribution and republication theories that were not pleaded before: organisational responsibility by convenorship, invitation, poster production and use, and republication by posting protest images to PSC's social-media accounts.³⁰
42. *Fourthly*, the RA contains pejorative and argumentative matter that adds nothing to the real issues, including repeated accusations that the respondents lie, distort, extort, have a '*casual relationship with the truth*', or are conducting a '*smear campaign*'.³¹
43. The prejudice, we submit, is plain. The respondents answered a case framed around particular, pleaded publications and broad denials of funding and support³². They are now faced with a reply that expands the injury case, tries to recast attribution, and seeks to fortify, and amplify, statements in the FA with institutional affidavits from Keren Hayesod and JAFI.

²⁹ RA paras 29–41, 253–319, 323–334, 366; annexures R4 and R5, CL: 010-11 – 14, 010-61 – 74, 010-75 – 77, 010-82, 010-124 - 127

³⁰ RA paras 45, 114, 162, 164, 229–230, 456 and 463; CL: 010-14, 010-32, 010-44, 010-56 – 57, 010-98, 010-99

³¹ RA paras 45.4, 72–74, 94, 142, 177–178, 222–226, 538, CL: 010-15, 010-21, 010-28, 010-40, 010-47, 010-55 - 56, 010-113

³² *Administrator of Transvaal and Others v Theletsane and Another* 1991(2) SA 192 (AD)

44. In an application seeking restraint of free expression, that is unfair and impermissible. The impugned reply matter should therefore be struck out where it is scandalous, vexatious or irrelevant, and to the extent that it constitutes impermissible new matter.
45. The Applicants rely heavily on the affidavits of Mr Zomer and Mr Ashirie as though they conclusively answer the respondents' factual case on funding, project allocation and the institutional role of Keren Hayesod and JAFI. But that overstates their evidential force.
46. In *Electoral Commission*³³ the Constitutional Court declined to entertain a multiplicity of so-called 'supporting' or 'answering' affidavits filed in urgent proceedings, holding that it was unfair and prejudicial to require the respondent to answer them in those circumstances; it added that a further factor weighing against admission was their '*dubious evidential value*', *because they consisted of 'bald averments without substantiating proof'*. That reasoning is apposite here.
47. The impugned portions of the Zomer affidavit, in particular, are not primary proof but *conclusionary* assertions offered in reply to shore up a case that the applicants should have made in the founding papers.

³³ Supra, at paras 77 and 78

48. The problem is especially acute where Mr Zomer purports to state, in substance, that neither Mr Krawitz nor '*Keren Hayesod South Africa*' contributed to any funds other than enumerated '*ring-fenced*' projects. That is evidence of the *contents* of records, not the records themselves. And, adding to the dubiousness of their evidential value, is the fact that Mr Zomer does not allege any personal knowledge of the correctness of the underlying records. His assertions are thus purely concessionary and derivative, to which little or no probative value can be attached—that underscores their inadmissibility as evidence on which this Court can safely rely.
49. Further, in *Gemeenskapsontwikkelingsraad v Williams*³⁴, as quoted with approval by the SCA in *Manwadu v Manwadu*³⁵, the Court held that, as a general rule, where the contents of a document are in issue, secondary evidence (viz, Mr Zomer's statement as to what the records show) may be rejected if the better evidence (viz, the records) was readily available and there is reason to think it is unsafe to accept the secondary evidence. Here, the underlying donor-allocation and project records appear, on Mr Zomer's own version, to be available and under institutional control, yet they are not annexed.
50. We submit that, on any of these bases, the Court should thus either decline to receive that secondary evidence on the disputed "ring-fencing" issue, or at the very least attach limited weight to it.

³⁴ 1977 (2) SA 692 (W) at 702D-F

³⁵ 2025 (3) SA 410 (SCA) at para 42

51. That conclusion is reinforced by the nature of the respondents' answering case. The respondents rely, in material part, on Keren Hayesod's and JAFI's own public-facing materials — impact reports, webpages, governance profiles and descriptions of programmes — as part of the objective factual matrix. The reply and affidavits of Messrs Zomer and Ashirie may, at most, seek to explain or qualify those public materials, but they cannot, through unsupported assertion based on undisclosed records, simply neutralise what their organisations publicly put into the world.
52. At minimum, the tension between the public materials, on the one hand, and the reply and Messrs Zomer's and Ashirie's affidavits, on the other, underscores a factual contest which is incapable of final resolution on motion; and we submit, it certainly cannot sustain final speech-restraining relief.

D. FINAL RELIEF OF MOTION: *PLASCON-EVANS* AND MATERIAL FACTUAL DISPUTES

53. The applicants seek a final interdict. They therefore bear the onus to establish a clear right, an injury actually committed or reasonably apprehended, and the absence of another satisfactory remedy. That onus is heavier where the interdict would restrain expression, because such relief operates as a prior restraint.³⁶

³⁶ *Hix Networking Technologies CC v System Publishers (Pty) Ltd and Another* (222/95) [1996] ZASCA 107; 1997 (1) SA 391 (SCA) at 403H–404C; *Herbal Zone (Pty) Ltd v Infitech Technologies (Pty) Ltd* [2017] 2 All SA 347 (SCA) paras 36–38; *Tau v Mashaba and Others* 2020 (5) SA 135 (SCA) paras 27–28.

54. Because the relief is final, the application falls to be determined in accordance with the *Plascon-Evans* rule: where genuine disputes of fact arise, the Court must accept the respondents' version together with such facts as are admitted by them, unless that version is so far-fetched or untenable that it can be rejected on the papers.³⁷
55. On a proper application of *Plascon-Evans*, we submit, this motion cannot succeed. The papers disclose multiple, serious disputes that go to threshold elements for liability for defamation (publication; meaning; wrongfulness) and to whether any interdict would be justified or proportionate. Those disputes cannot be resolved without oral evidence and cross-examination.
56. The applicants argue that the interdict is not urgent and that the respondents have had ample time to '*investigate*' and to prove their defences, such that the Court should treat the AA as the respondents' complete evidentiary record.³⁸
57. But that submission reverses the onus and misunderstands motion proceedings: *the applicants* elected to seek final relief on affidavit; if genuine disputes of fact arise, they fail. It is not for the respondents to transform the application into a trial, or to prove every defence finally, to resist a gag order.
58. The onus on special defences matters only once the applicants have crossed the anterior hurdles of publication, attribution, *prima facie* defamatory meaning, and wrongfulness in the interdict setting. In any event, the core documentary material

³⁷ *Plascon-Evans* (supra) at 634E–635C.

³⁸ Applicants' HoA, paras 49–50.

about donations and fundraising sits within the applicants' and their overseas deponents' control. The respondents sought access to this information but were refused.³⁹

59. The applicants further suggest that if the respondents wished to contest disputed factual issues, they should have sought a referral to oral evidence.⁴⁰

60. This misconceives the enquiry. The *applicants* chose motion proceedings for final relief; they bear the risk that genuine disputes of fact will be fatal under *Plascon-Evans*. If the applicants wanted a forum for credibility findings and cross-examination, the appropriate route was an action (or a properly motivated request for referral to oral evidence by the applicants), not a sweeping interdict on motion.

61. The following disputes, we submit, are material and dispositive on motion:

61.1. Who the relevant protest actors were, and whether '*the PSC*' can be treated as a single publisher. The respondents explain the character of the coalition protest environment, with multiple organisations and non-PSC protestors, and that PSC posters were sometimes used by non-PSC participants.⁴¹

61.2. Whether the impugned chants and placards were published by any of the cited respondents (as distinct from unidentified protestors), including those

³⁹ AA paras 333–334, CL: 009 -.

⁴⁰ Applicants' HoA, para 50.

⁴¹ AA paras 27–31, 45–53.

bearing the most provocative imagery (e.g., a Nazi swastika superimposed on Israel's flag). The respondents deny that the relevant poster-holders were PSC members and deny PSC authorship of certain posters.⁴²

61.3. Whether Ms Ockards and Mr Mohamed *personally* published any impugned statement relied upon for the wide interdict now sought against them. Ms Ockards explains the limited circumstances in which she held a placard and that she complied with security requests.⁴³

61.4. Whether the applicants can identify who is a PSC member, as opposed to a non-affiliated protestor. In reply, applicants concede that it has '*never been possible ... to discern*' who is a PSC member and who is not.⁴⁴

61.5. The proper meaning of the impugned slogans in the protest register: whether a reasonable observer would understand phrases like '*funds genocide*' or '*baby killers*' as literal allegations of personal criminal conduct, or as political condemnation and hyperbole.⁴⁵

61.6. Whether the protest campaign was motivated by antisemitism (as the applicants insist) or by political opposition to Israel's conduct in Gaza (as the respondents explain, with the memorandum exchange and political demands).⁴⁶

⁴² AA paras 50–53; 52.1

⁴³ Ockards affidavit paras 10–12; AA paras 328–331.

⁴⁴ RA para 158, CL: 010-44

⁴⁵ AA paras 175–177, 216–224.

⁴⁶ AA paras 39–44; UC5–UC6.

- 61.7. Whether the applicants' evidence of intimidation, harassment and breaches of the Gatherings Act⁴⁷ is accurate and attributable to the PSC respondents, in circumstances where the respondents identify non-PSC participants, counter-protests and missing context.⁴⁸
- 61.8. Whether the applicants have shown any quantifiable reputational or economic harm, and whether the Court can accept bare assertions of economic impact where the applicants refused discovery of relevant financial and footfall information sought under Rule 35(11) and/or (14).⁴⁹
- 61.9. The central factual dispute: whether, and in what sense, Mr Krawitz, Cape Union Mart or both are linked to funding or fundraising for Israel-linked institutions and (directly or indirectly) the Israeli state apparatus, in circumstances where -
- 61.9.1. Mr Krawitz admits leadership roles (in Keren Hayesod and JAFI);
and
- 61.9.2. the respondents present publicly available evidence from Keren Hayesod itself of its military-adjacent programmes.
- 61.10. Whether Israel's conduct in Gaza is plausibly a genocide (a live international legal controversy), and whether that controversy supplies the factual substratum for the respondents' political characterisations.⁵⁰

⁴⁷ Regulation of Gatherings Act, 1993 (**Gatherings Act**).

⁴⁸ AA paras 29–31, 45–50, 53.

⁴⁹ AA paras 333–334.

⁵⁰ AA paras 129–135; UC24–UC27; UC30.

61.11. Whether the RA introduces new facts and publications to patch up the case that the respondents were called on to answer. To the extent relied on to establish the requisites for final relief, this new matter is impermissible and should be disregarded.

E. DEFAMATION: APPLICANTS' ONUS ON CERTAIN ELEMENTS

(a) Publication / attribution is a threshold requirement

62. In a defamation claim (including an application premised on defamation like the present), the *applicants* must establish publication of the impugned words by *each respondent* whom they seek to restrain. That remains their burden throughout. It is not enough to show that a respondent supports a cause, attends a protest or prints posters that others later use.
63. Even where a person may attract liability by repeating or adopting defamatory matter, the applicants must still prove that adoption or republication occurred *by such person*, on admissible evidence.⁵¹
64. Most of the pleaded 'publications' are, on the respondents' version, attributable to unidentified protestors in a multi-organisational protest setting. The respondents explain that the coalition included numerous groups and unaffiliated supporters; that PSC posters were sometimes used by non-PSC participants; and that PSC

⁵¹ *Tshedu Publishing (Pty) Ltd and Others v Lekota and Another* [2008] ZASCA 143; 2009 (4) SA 372 (SCA) at 374E–F; Applicants' HoA, paras 20–23.

members would step back when the crowd approached the 15-person threshold under the Gatherings Act.⁵²

65. The RA concedes the central difficulty. Mr Krawitz admits that it has '*never been possible ... to discern*' who is a PSC member and who is not.⁵³ On that acknowledgment alone, the applicants cannot obtain a final, sweeping interdict against the *respondents* for whatever '*unidentified protestors*' might say or hold in the future.
66. The RA nevertheless reveals an important shift in the applicants' attribution case: the FA was framed as a case about particular pleaded publications, said to have been made by identified respondents, or by protestors whose conduct the applicants sought to pin to the cited respondents.
67. But the RA goes further—it now contends that, because the PSC arranged demonstrations, printed posters, invited the public and allowed protestors to use PSC-produced material, it is '*irrelevant*' who actually held the poster. And on that footing, the applicants conclude that the PSC itself '*quite clearly publishes the defamatory matter*'.⁵⁴
68. That is not merely a reply on the facts; it is a materially different juridical basis of liability. It shifts the case from one about specific publication, adoption, authorisation or republication of particular statements to a broader theory of organisational

⁵² AA paras 27–31, 45–53.

⁵³ RA para 158, CL: 010-44

⁵⁴ RA paras 45, 162 and 164, CL: 010-14 – 15, 010-44, 010-45.

responsibility for protest content. It is based almost entirely on an uncontextualized cherry-picking of portions of the AA.

69. This is, however, impermissible. In *Administrator of Transvaal and Others v Theletsane and Another*⁵⁵ the Appellate Division cautioned against seeking to make out a case, not advanced in the founding affidavit, on the basis of what is said in the answering affidavit. The reason is that the deponent to the answering affidavit would not have been required to direct his mind to the new case, and the respondent may accordingly be prejudiced.⁵⁶

70. The same shift appears in RA para 463, where the applicants say that the PSC cannot distance itself from '*the rest of the protestors*' when their conduct is allegedly unlawful. That shift is objectionable because it is a new case in reply and, in any event, legally unsound.

71. The RA also vacillates on this issue.

71.1. In RA para 461, the applicants say they have '*never ascribed all of the posters to the PSC*', because some protestors remain unidentified.

71.2. Yet elsewhere in the same section they advance a theory that increasingly treats the identity of the actual holder as irrelevant.

⁵⁵ 1991(2) SA 192 (A)

⁵⁶ At 196B – E. See also *Ramakatsa and Others v Magashule and Others* 2013 (2) BCLR 202 (CC) at paras 53 and 54 of the minority judgment.

71.3. That inconsistency, we submit, underscores why the attribution case is both factually and legally unsustainable.

72. In contrast, the respondents have been consistent: publication must be proved statement-by-statement and respondent-by-respondent.

(b) Applicants' Gatherings Act theory does not establish publication

73. The applicants' heads of argument collapse two distinct legal inquiries: they invoke the Gatherings Act, and the PSC's alleged role as convener or marshal, to say that publication by *any* protestor is attributable to the PSC. They thus commit a category error.

74. The Gatherings Act regulates responsibility for convening gatherings. A cause of action for defamation requires proof that the *particular* defendant published, authorised, adopted, or was otherwise legally responsible for the particular defamatory statement. One regime does not deem publication for the other.

75. That proposition is confirmed by authority squarely concerned with whether the plaintiff has fixed the right defendant with the publication. In *NEHAWU v Tsatsi*,⁵⁷ the Supreme Court of Appeal (**SCA**) held that—

75.1. even if one or more union members had re-published a report to outsiders, there was no basis to hold the union or its office-bearer liable, absent

⁵⁷ *National Education, Health and Allied Workers Union and Another v Tsatsi* [2005] ZASCA 125; 2006 (6) SA 327 (SCA) para 16.

evidence that they had authorised or were otherwise responsible for that republication; and

75.2. nor was there evidence of an employer–employee or principal–agent relationship to found vicarious liability.

76. That is the point here. It is not enough that words or placards at a protest later find wider circulation; the applicants must still show that the PSC, or the particular individual respondents, published, authorised, adopted or republished the specific matter complained of.

77. The same point was made in *Moyane v Lackay*,⁵⁸ where the Court held that republication by the media constituted a separate cause of action against the media and did not, without more, create vicarious liability for the cited defendant (a different party). The Court also reaffirmed that it is an essential averment in a defamation claim—and thus essential to prove for liability—that *the defendant* published the impugned statement.

78. On the other hand, the cases that the applicants rely on for attribution do not take them any further. At most, *Tshedu v Lekota*, *Trimble v Central News Agency Ltd* and *Isparta v Richter* show that a defendant may be liable for his or her *own* repetition, adoption or dissemination of defamatory matter.⁵⁹

⁵⁸ *Moyane and Another v Lackay* [2017] ZAGPPHC 1262 paras 35–36.

⁵⁹ Applicants' HoA paras 20–25.

79. None of those cases creates a freestanding rule that a protest convenor, marshal or organisation automatically ‘publishes’ all third-party placards or chants at a gathering, merely because it organised the protest, printed some posters, or later posted a protest image on social media. The applicants’ reliance on those cases thus *reinforces*, rather than avoids, the need to prove publication by the particular respondents.
80. The analogy with *Du Preez v Minister of Police*⁶⁰ is instructive. There, although some defamatory placards were proven, the Court refused to attribute other protest placards and a Facebook post to the Minister, where the link was tenuous and the involvement of SAPS officials had not been proved.
81. The same logic applies here, we submit even if *some* statements were published at protests where PSC members were present, that does not establish that *all* statements by all actors in that environment are attributable to the PSC, Ms Ockards or Mr Mohamed.

(c) Cape Union Mart: trading corporation reputational interests and absence of evidence of business injury

82. Cape Union Mart is a trading corporation. It is not a bearer of the constitutional right to human dignity and cannot claim protection on that basis; its protectable interest is a common-law right to a good name and reputation, objectively enjoyed.⁶¹

⁶⁰ *Du Preez v Minister of Police* [2025] ZAECKMKHC 99 paras 59–60 and 66.

⁶¹ *Reddell and Others v Mineral Sands Resources (Pty) Ltd and Others* [2022] ZACC 38; 2023 (2) SA 404 (CC) paras 16, 61, 104.

83. In *Reddell*,⁶² the CC reaffirmed that a trading corporation may sue for defamation without being required to prove actual patrimonial loss; indeed '*loss is not an element of the delict of defamation*', and it would be wrong to demand proof of actual loss from a corporation where no such loss is required of a natural person.
84. But *Reddell* also emphasises that where the speech forms part of '*public discourse on issues of public interest*', the constitutional balance shifts sharply toward freedom of expression: the '*importance of the limitation shrinks dramatically*' and, in such discourse, general damages '*may not be considered*'.⁶³
85. This case is paradigmatically public discourse. It concerns boycott advocacy and weekly pickets about Israel/Palestine, Gaza and allegations of genocide, and the applicants' asserted links to Israel-linked institutions.⁶⁴ In that context, Cape Union Mart's reputational interest carries limited weight and cannot ground a wide, standing interdict restraining protest speech on motion.
86. Even on the analysis in *Reddell*, the mention of an 'interdict' as one of the less restrictive remedies presupposes that unlawful defamation has been established on proper evidence, and it does not license prior restraint in the face of sustainable defences and material disputes.⁶⁵

⁶² *Reddell* (supra) paras 51, 109; *Dhlomo NO v Natal Newspapers (Pty) Ltd* 1989 (1) SA 945 (A) at 953.

⁶³ *Reddell* (supra) paras 104, 114.

⁶⁴ AA paras 129–135, 145–174.

⁶⁵ *Reddell* (supra) para 110; *Herbal Zone* [2017] 2 All SA 347 (SCA) paras 36–38; *Tau* 2020 (5) SA 135 (SCA) paras 27–28.

87. In any event, if Cape Union Mart seeks to justify a permanent restraint by alleging injury to its trade or goodwill, it must at least place a credible evidentiary basis for that injury before Court. But the applicants have not done so—they rely on assertion while refusing to disclose financial records capable of testing the alleged commercial impact.⁶⁶
88. Moreover, the corporate case is *derivative* of the case against Mr Krawitz: the sting is that the family business under his stewardship is implicated through his public roles, fundraising, and statements.⁶⁷ The FA claims that Cape Union Mart is targeted for being seen as a Jewish *company*, because of its association with him and his family, and that it is *that* characteristic that drives the claim.⁶⁸
89. The applicants thus accept the proximity between them, to the extent that Cape Union Mart is described as “*Jewish*”. It is not open to them in reply to emphasize the separate corporate personality of Cape Union Mart.
90. If the case against Mr Krawitz is disputed and turns on protected political inference, Cape Union Mart’s case is weaker still. At minimum, these are material disputes of fact that cannot be resolved on affidavit and are dispositive against final relief.

⁶⁶ AA paras 333–334.

⁶⁷ AA para 12.

⁶⁸ FA, paras 5 and 114.

(d) Meaning: protest slogans are read in context, not as forensic charges

91. Meaning is determined objectively, contextually and impressionistically, through the eyes of the reasonable observer who is conscious of constitutional values. The Court must guard against an over-analytical, literal approach that strips protest language of its setting and political register.⁶⁹
92. The pleaded words are paradigmatic protest rhetoric--slogans, moral condemnation, historical analogies and boycott advocacy. They were deployed in the context of public controversy about Gaza and alleged genocide, and in the context of the respondents' claim that Mr Krawitz holds leadership positions in Israel-linked fundraising and governance structures.⁷⁰
93. On that footing, expressions such as '*funds genocide*', '*supports genocide*' and '*kills babies*' are, objectively, political condemnation and hyperbole. No reasonable protest-goer or bystander would understand them to allege that Mr Krawitz personally kills children. They convey, at most, that he (and by extension, his business) is said to be morally or politically complicit in grave State violence.
94. Foreign jurisprudence on political protest speech, dealt with in Part I below, reinforces the same contextual approach. UK courts caution against treating

⁶⁹ *Economic Freedom Fighters and Others v Manuel* [2020] ZASCA 172; 2021 (3) SA 425 (SCA) para 16; AA paras 175–177.

⁷⁰ AA paras 129–135, 145–174, 216–224.

political comment as literal fact and stress that meaning in a broadcast or protest setting is a matter of overall impression.⁷¹

(e) Wrongfulness and intention: constitutional context, and the applicants' 'hate speech' insinuations

95. Even if the Court were to find that a publication was *prima facie* defamatory, that is only the beginning. Wrongfulness is excluded where publication is justified by truth for public benefit or protected comment; and intention (*animus iniuriandi*) is not assessed in a vacuum, but in the constitutional context of political speech and protest.⁷²
96. The applicants repeatedly label the campaign '*antisemitic*' and, in the FA, invoke the substance of section 8(5) of the Regulation of Gatherings Act as part of the basis for prayer 1.8.2.⁷³
97. They do not, however, plead prohibited hate speech as the juridical basis for the broad speech restraints sought in prayers 1.3–1.7. Nor do they engage the distinct statutory architecture of the Equality Act.⁷⁴

⁷¹ *Ware v Waters* [2025] EWHC 389 (KB) paras 25–27; *Campaign Against Antisemitism v Director of Public Prosecutions* [2019] EWHC 9 (Admin) paras 63–66; *Greenstein v Campaign Against Antisemitism* [2020] EWHC 2951 (QB).

⁷² *National Media Ltd v Bogoshi* 1998 (4) SA 1196 (SCA) at 1212B–C; *The Citizen 1978 (Pty) Ltd and Others v McBride* [2011] ZACC 11; 2011 (4) SA 191 (CC) paras 80–83, 99.

⁷³ FA paras 126.1–128.

⁷⁴ Promotion of Equality and Prevention of Unfair Discrimination Act, 2000.

98. Thus, if that is indeed their intention, the applicants cannot use section 8(5) and the language of hate speech to widen a defamation interdict while avoiding the separate statutory enquiry and remedies that such a case would ordinarily require.
99. In any event, the respondents' case is that the speech is directed at Israel, Zionism and state conduct, not Jews as Jews; and that it does not cross the constitutional threshold of hate-based incitement to serious harmful discrimination, exclusion, harassment or violence.
100. In *Stand With Us*, discussed in paragraphs 177 and 178 below, the United States Court of Appeals dismissed the contention that anti-Israel and anti-Zionist statements could be construed as necessarily antisemitic. The judgment also contains a useful discussion about the contested definitions of Zionism and genocide.
101. The applicants accept that criticism of the Israeli government or Zionist ideology is not hate speech.⁷⁵ And even if some expression is offensive or distasteful, that does not make it unlawful.
102. The applicants' heads go further and invoke a distinct common-law infringement of dignity or *dignitas*.⁷⁶ This was not a case pleaded in the FA and cannot be introduced for the first time in argument. And in any event—

⁷⁵ RA para 216; AA paras 39–44.

⁷⁶ Applicants' HoA, paras 91–96.

102.1. breach of *dignitas* cannot assist Cape Union Mart, which as a trading corporation lacks that human quality; and

102.2. even a dignity-based case for Mr Krawitz would remain subject to the same threshold questions of publication, meaning, justification, and the exceptional caution attaching to speech-restraining interdicts.

103. But whatever the cause of action, the relief sought here is still a final order prospectively restraining speech. The constitutional injury is thus the same: the Court is asked to silence contentious political expression in advance on a disputed factual record. Re-describing the interest said to be harmed does not relax the legal standard.

F. IF THE ONUS SHIFTS: TRUTH FOR PUBLIC BENEFIT OR PROTECTED COMMENT

(a) Approach to respondents' defences

104. The respondents do not contend that every impugned statement stands on the same footing. The proper analysis is differentiated:

104.1. On the papers, the defence of truth for public benefit is strongest in relation to statements that Mr Krawitz supports Israel, supports the Israeli state apparatus, is associated with Israel-linked fundraising and governance structures, and is linked to institutions that materially enable the State project during a period of plausible genocide.

104.2. The compressed slogans, like ‘*funds genocide*’ and ‘*kills babies*’, are strongest as protected political comment or protest hyperbole, though they may also be true in gist, when understood as allegations of material enablement rather than literal personal commission.

(b) Defence 1: truth for public benefit

105. The factual substratum is set out in detail in the AA and supporting annexures:

105.1. Israel’s conduct in Gaza and the allegation of genocide is a matter of serious international legal controversy, including proceedings before the International Court of Justice.

105.2. The applicants themselves say that whether Israel is perpetrating ‘genocide’ is not the dispute before the Court; they contend that the dispute is only whether the respondents may link the applicants to that alleged genocide.⁷⁷

105.3. The applicants’ stance thus underscores that the protest speech occurs in, and responds to, a live public debate about atrocity crimes and complicity.⁷⁸

105.4. Mr Krawitz admits that he is Chairperson of Keren Hayesod South Africa.⁷⁹

105.5. The AA sets out Keren Hayesod’s role as a major fundraising arm in a wider infrastructure of material support for Israel, including post-7 October 2023 campaigns framed as support for Israel during wartime.⁸⁰ And the RA goes

⁷⁷ Applicants’ HoA, para 88

⁷⁸ AA, paras 129–135; UC24–UC27; UC30

⁷⁹ FA, para 33.4.

⁸⁰ AA, paras 145–153; UC40.

further and says that '*Keren Hayesod South Africa*' is not a separate entity at all, but simply the South African manifestation of Keren Hayesod's work.

105.6. We submit that those facts *collapse* the attempted distance between Mr Krawitz's local role and Keren Hayesod proper.

105.7. The AA places evidence before Court that Keren Hayesod's operations are intertwined with JAFI, that a substantial portion of funds raised are earmarked for JAFI-linked programmes, and that Mr Krawitz sits on JAFI's Board of Governors.⁸¹

105.8. Mr Krawitz accepts in reply that the Board approves budgets, elects members of the executive and receives reports. Even if that is not day-to-day management, we submit, it is a governance role sufficiently close to JAFI's activities to justify public censure.

105.9. On the respondents' evidence, the Keren Hayesod/JAFI environment includes programmes that intersect with Israeli State priorities and state institutions. The AA identifies lone soldiers, pre-military academies (*Mechinot*), settler-linked bodies, immigration and settlement support, and other programmes said to be military-adjacent or State-supportive.⁸²

⁸¹ AA paras 160–163; UC45–UC46

⁸² AA paras 147–153, 164–172; UC33–UC35; UC41–UC51.

105.10. That is the factual platform from which protestors draw the inference that senior leaders in these bodies are materially supportive of the Israeli State apparatus, including the IDF, at a time of plausible genocide.

105.11. Mr Krawitz also chairs local fundraising structures (UJC) that allocate donations to Israel-linked organisations including Keren Hayesod and other Israel-focused bodies. And the AA sets out why protestors regard these structures as part of a broader apparatus of support for Israel.⁸³

105.12. Mr Krawitz publicly professed *pride* in the IDF and acknowledged that suing protestors for associating him with the IDF would be difficult because he does not regard that association as shameful.⁸⁴ He did so *while* Israel's onslaught on Gaza, following Hamas's attack on 7 October 2023, was underway.

105.13. We submit that it makes the proposition that he supports Israel's military project, and thus supports a plausibly genocidal campaign, easier to justify on these papers than the narrower proposition that he personally financed a particular military item.

105.14. Mr Krawitz is not a private bystander—he chairs Keren Hayesod's activities in South Africa, acts as its local face and liaison, and sits on the Board of Governors of JAFI. Public figures who place themselves at the

⁸³ AA paras 166–172; UC48–UC51.

⁸⁴ AA paras 56–59; UC4.

centre of controversial public issues must tolerate wider scrutiny and more robust criticism than private individuals.⁸⁵

105.15. While we do not suggest that his role with Israeli public institutions licenses falsehood, it does reinforce why public criticism of the organisations that he helps to govern is constitutionally legitimate.

106. On these facts, the respondents contend that describing Mr Krawitz as supporting the Israeli state and its military apparatus is true or substantially true.

107. To the extent that the slogans go further and say, '*funds genocide*', they are condensed political comment based on true facts: that he leads, fronts, channels, and legitimises South African fundraising and governance support for institutions intertwined with the Israeli state apparatus during a period of plausible genocide.

108. Understood in that sense, the gist is support and material enablement, not literal personal purchase of weapons.

109. Accordingly, the facts that determine this application, on a proper application of *Plascon-Evans*, establish—

109.1. a sustainable foundation for the truth for public benefit defence in relation to statements of support, association, and complicity; and

⁸⁵ *Mthembi-Mahanyele v Mail & Guardian Ltd and Another* [2004] ZASCA 67; 2004 (6) SA 329 (SCA) paras 63 and 67; *The Citizen 1978 (Pty) Ltd v McBride* [2010] ZASCA 5; 2010 (4) SA 148 (SCA) para 68

109.2. the factual substratum for protected comment in relation to more compressed slogans such as '*funds genocide*' and '*kills babies*'.

110. The RA merely contests that foundation but does not displace it or show it to be so untenable that it may be rejected out of hand. It is that very genuine contestation, we submit, that underscores why final interdictory relief cannot be granted on motion.

(c) Defence 2: protected comment on a matter of public interest

111. In the alternative, the respondents rely on protected comment. The requirements are well-established: the statement must be comment (opinion), based on true facts, on a matter of public interest, and 'fair' in the constitutional sense.⁸⁶

112. The apogee of the applicant's rebuttal is that many of the impugned slogans do not, on their face, separate fact from comment or spell out the factual basis of the criticism.

113. It may be so that some protest slogans, *read in isolation*, are too terse to carry the whole defence of protected comment on their own. But the law does not require a protest placard to contain an evidentiary schedule. The question remains contextual: whether the publication indicates, at least in general terms, what the criticism is about, and whether the reasonable observer would understand the

⁸⁶ *McBride* (supra) 2011 (4) SA 191 (CC) paras 80–83.

statement as evaluative political condemnation grounded in notorious facts or facts expressed in the campaign.

114. Protest speech is intentionally pithy. Its meaning is drawn not from the wider course of campaigning, chants, imagery, pamphlets, and the public controversy to which it responds.
115. For that reason, statements such as '*supports genocide*' or '*complicit in genocide*', or materials expressly linking Mr Krawitz to Keren Hayesod, JAFI, the IDF or the Israeli Occupation Forces are stronger instances of protected comment because they disclose, or make obvious, the factual premise of the criticism.
116. More concise epithets, like '*K-Way Killer's Way*', '*award-winning baby killer*', '*how many kids have you killed today?*', are protest-register hyperbole, non-literal moral condemnation. They must be seen in the context of the other facts expressed or implicit⁸⁷ in the campaign as a whole.
117. Here, characterisations such as '*complicit*' and '*genocide funder*' are evaluative conclusions on the facts set out above. They are characteristically political opinion about moral responsibility for State violence and institutional complicity. A reasonable person observing the campaign would recognise them as such and would not take them literally at face value.⁸⁸

⁸⁷ *McBride* at para 95.

⁸⁸ AA paras 173–174, 217–224

118. In particular, '*supports genocide*' is strongly defensible as comment, and '*funds genocide*' is likewise defensible as a condensed description of leadership, fundraising, and institutional enablement rather than a literal allegation of direct remittance to the IDF.
119. The same differentiated approach applies to other campaign items pleaded in the FA: the leaflet, annexure C7,⁸⁹ is not a PSC-produced pamphlet despite using the PSC logo; but even if the slogan '*voetsek*' were attributed to PSC, it is an emphatic boycott expression in South African protest culture, expressing strong condemnation of perceived complicity in atrocities, and not as a statement of fact or incitement of hatred on the ground of religion.⁹⁰
120. While the respondents deny having produced or authorised the following items, which cause Mr Krawitz subjective distress, their content is either justifiable or does not warrant the relief sought:
- 120.1. The Nazi swastika superimposed on the flag of Israel, in the same colour as the Star of David, is a model example of protest art of a political character. It does not equate Judaism with Nazism, as the applicants suggest; it is a moral and political reproach of Israel (signified by its flag) using irony through imagery.

⁸⁹ relied on at FA paras 45–47.

⁹⁰ AA paras 285–288

120.2. The ‘*synagogue of Satan*’ reference is evidently to a verse from the Bible. It may be as offensive as other biblical verses displayed on banners in the context of other protests on contentious issues, like same-sex marriage, abortion or women’s suffrage. But assuming it to be so, it does not follow that the law proscribes its display in this context.

121. Comparative authority supports the breadth of this protection for opinion on matters of public controversy and cautions against ‘*whittling away*’ honest opinion by artificially treating political comment as fact.⁹¹

(d) Even if not finally proven now: colourable defences defeat prior restraint

122. The parties accept that the Court need not finally determine truth or comment for all statements to decide this application. The decisive point is procedural and constitutional: where sustainable foundations are laid for these defences and the issues are hotly contested on the papers, a court will not impose a blanket, anticipatory restraint on future speech.⁹²

123. The applicants’ remedy, if they can prove defamation and defeat these defences, lies in an action for damages. That is the ordinary course in our law. It is especially so where what is sought is not the restraint of a single fixed publication, but the suppression of an ongoing political campaign and its future messages.

⁹¹ *Ware v Waters* [2025] EWHC 389 (KB) paras 27–31; *Greenstein v Campaign Against Antisemitism* [2020] EWHC 2951 (QB) para 17(a)

⁹² *Herbal Zone* [2017] 2 All SA 347 (SCA) paras 36–38; *Tau* 2020 (5) SA 135 (SCA) para 28. Applicants’ HoA paras 37–44.

G. KEY FACTUAL DISPUTE: ‘FUNDING GENOCIDE’, FUNDRAISING AND BELATED FACTS IN REPLY

124. The applicants’ case rises or falls on a central factual and interpretive dispute: whether the respondents have a defensible factual foundation to link Cape Union Mart and Mr Krawitz to support for Israel’s state apparatus during a plausibly genocidal military campaign, and to condemn that support in boycott speech.
125. The respondents’ case is not confined to whether Mr Krawitz personally signs cheques ‘to the IDF’. The criticism is about leadership, fundraising, governance and institutional support, including through structures that are intertwined with the Israeli State’s priorities, military-adjacent programmes, settlement policy and IDF recruitment support.⁹³
126. The AA, accordingly, addresses the impugned slogans ‘*funds the army*’ and ‘*funds genocide*’:
- 126.1. the factual premise—Mr Krawitz’s leadership roles (in Keren Hayesod, JAFI and UJC) and the nature of those institutions and programmes;⁹⁴
- 126.2. the inferential step—given the scale of civilian death and the live allegation of genocide, support for those institutions is characterised as support for genocide;⁹⁵ and

⁹³ AA paras 160–173, 165.1–165.3, 168–172, 217–224.

⁹⁴ AA paras 145–173, 217–223.

⁹⁵ AA paras 173–174, 221–224.

126.3. the meaning—a reasonable reader or listener understands the slogans as moral and political condemnation of complicity, not an allegation of personal commission of genocide.⁹⁶

127. In the AA the respondents referred to Keren Hayesod own publications which identify the IDF as a beneficiary of donor-funded projects. It refers both to Keren Hayesod's 2023 Impact Report (UC33) as well as the United Israel Appeal (UIA) website in relation to the Lone Soldiers Programme (UC34) and a UIA article relating to the *Mechinot* Programme (UC35).⁹⁷

128. In answer the applicants deny these allegations and affirm that Keren Hayesod does not provide funding to the IDF. *Inter alia*, they refer to the affidavit by Mr Zomer, annexure R4 to the RA.⁹⁸

129. They refer to annexure UC33 (it is incorrectly referred to as annexure UC32) and emphasise the words “*offering a package of services to help guide discharged soldiers as they adapt to life after the army*”.⁹⁹

130. The applicants' denials are without merit and are not supported by a fair consideration of the documents attached to the AA. In this regard:

⁹⁶ AA paras 219–224.

⁹⁷ AA, para 147, CL: 009-41

⁹⁸ RA, para 261 to 266, CL: 010-62 to 64

⁹⁹ RA, para 264.1, CL: 010-63

130.1. First, as explained by the applicants themselves, the State of Israel has conscription laws for all genders and immigrants, and all Israeli citizens must perform military service.

130.2. The applicants have misquoted and misrepresented the support afforded by Keren Hayesod to “Lone Soldiers” as only being provided *after* they have been discharged from their conscripted service. The complete quote is as follows:

“The Wings Lone Soldiers program becomes their support network, giving them a place to call home when on leave and offering a package of services to help guide discharged soldiers as they adapt to life after the army.”

130.3. It is, accordingly, apparent that the support provided by Keren Hayesod to Lone Soldiers also takes place during their military service.

130.4. The applicants do not deal at all with annexures UC34 and UC35 to the answering affidavit. UC35, dealing with the *Mechinot* Programme, is particularly instructive as to the way Keren Hayesod’s financial support aids and strengthens the IDF. It says the following:

“The IDF is considered the ‘great equaliser’ in Israeli society - a melting pot where national solidarity and camaraderie are forged. Service in elite units is almost certainly a key to future success and a springboard for social mobility. Mechinot have a transformative effect on participants, enhancing their maturity and readiness for the military, and paving the way for acceptance to higher-level IDF units.”

These academies help give disadvantaged Israeli youth a brighter future. Youth from Israel's social and geographical periphery often lack the qualifications for acceptance into these select units and are typically placed in low-level positions.

WHAT WE OFFER

Keren Hayesod - UI supports pre-army academies (Mission) focused on supporting disadvantaged youth to enhance their military service and enriches their commitment to Israel, the global Jewish family and their community.

Ofek Mechinot

This program serves over 500 at-risk youth from Israel social and geographic periphery. These teens are usually enlisted to lower-level units and also more likely not to complete their full service, putting them at further risk for delinquency and underachievement ... They gain the ability and opportunity to reach their leadership potential, achieve success in their army roles and solidify their ties to Israel and the Jewish people.

Kol Ami Mechinot

Six-month programs designed to create an international network of young leaders who take responsibility for impact and the future of the Jewish people.

This project is in partnership with the Jewish Agency for Israel, the Government of Israel and local authorities."

131. The respondents submit that this provides a factual basis for the assertion that Keren Hayesod *supports* the IDF. It does so, *inter alia*, by supporting Lone Soldiers *during* their military service, and by supporting the Mechinot Programme, which has

the avowed purpose of preparing young people for service in the IDF, and ensuring their success therein, *inter alia*, to serve in elite units thereof.

132. It is a reasonable inference to draw from these facts that such programmes strengthen the ability of the IDF to carry out its functions.
133. Given that the applicants do not dispute that the IDF is engaged in a genocidal campaign in Gaza, it is accordingly *factually correct* for the respondents to claim that Keren Hayesod *supports* such genocide by funding the *Mechinot* Programme.
134. Given Mr Krawitz's role in Keren Hayesod, it follows that he too supports such genocide, and so does Cape Union Mart, by extension.
135. In paragraph 148 of the answering affidavit the respondents refer to an incident in 2019, where the Canadian Revenue Agency (CRA) revoked the charitable status of a Canadian organisation, *inter alia*, on the basis that it was providing funds to a *Mechinot*.
136. In reply the applicants allege that this constitutes inadmissible hearsay evidence; they also attempt to show that the respondents have been selective in their interpretation and presentation of the evidence.¹⁰⁰
137. The evidence relied upon at UC36 is a report in the Canadian Jewish News pertaining to an organisation called the Beth Oloth Charitable Organization.

¹⁰⁰ Reply at paras 267 to 268, CL: 010-64 to 64

138. It is apparent from UC36 that the news report is based upon a 94-page document released by the CRA and which was available to the author of the article and contains quotes therefrom.
139. Among these quotes are the following:
- 139.1. *“Increasing the efficiency and effectiveness of the Israeli army forces, [...] is not a recognised charitable purpose in Canada”.*
- 139.2. *“It is our position that these pre-army Mechinot exist to provide support to the Israel defence forces, and that funds forwarded to these Mechinots are therefore in support of foreign armed forces,”.*
140. It is submitted that the aforementioned extracts support the reasoning adopted by the respondents in this matter, viz that support for the *Mechinot* Programme provides support to the IDF, rendering it more effective.
141. Although the CAR’s conclusion is, of course, not a legal one, let alone one binding on a South African Court, it demonstrates that the respondents’ reasoning in this regard is, at least, plausible, and cannot be dismissed out of hand.
142. Only in reply do the applicants attempt to narrow the debate to an assertion that Mr Krawitz’s personal donations were ring-fenced to benign charitable projects, supported by new confirmatory material.¹⁰¹ They did not advance their founding

¹⁰¹ RA paras 35–39, 256–266, 280, 284, 286, 300–305; annexures R4–R5.

case that way. Theirs is an attempt to repair, in reply, an evidential weakness in the applicants' case on falsity and their claim to an interdict.

143. To that end, the applicants rely heavily on the affidavits of Mr Zomer and Mr Ashirie as though they finally resolve the dispute about what Mr Krawitz funded, what Keren Hayesod South Africa raised funds for, and whether Keren Hayesod or JAFI support military- or settlement-linked functions. That, however, overstates the evidential position.
144. The best-evidence rule applies where the contents of a document are directly in issue, and secondary evidence may in an appropriate case be admitted, but the weight to be attributed to such secondary evidence depends on the circumstances.
145. Here, the applicants rely on institutional deponents who merely *summarise* what internal records are said to show, yet do not produce the primary sources. In those circumstances, their evidence is at best secondary evidence of disputed documentary facts, and it is poor material on which to grant final speech-restraining relief on motion.¹⁰²
146. The distinction drawn by this Court in *E.A.P v S.W.* is also apposite: the admission of a document, or of a witness' description of it, does not prove the truth of

¹⁰² *Ameropa Commodities (Pty) Ltd v Charalambus* [2021] ZAKZDHC 34 at paras 19–20; *S v Thabethe and Others* [2025] ZASCA 88; 2025 (2) SACR 335 (SCA) at paras 70 and 73; *African Congress for Transformation v Electoral Commission of South Africa* [2024] ZACC 7 at para 78

everything recorded in it; at best it may establish that the records referenced exist, with probative value depending on context.¹⁰³

147. The Court should therefore treat the Zomer and Ashirie affidavits with caution and recognise that, at best for the applicants, they underscore a factual contestation, inconsistent with granting final interdictory relief on motion.

148. In any event, the applicants' new material does not sever the link on which the respondents rely. The strongest footing for the respondents' defence is that—

148.1. Mr Krawitz is the South African chair and public face of Keren Hayesod.

148.2. on his own version, '*Keren Hayesod South Africa*' is not a separate entity at all but simply people in South Africa working with Keren Hayesod; and

148.3. he openly acts as liaison between Keren Hayesod in Israel and the South African Jewish community.¹⁰⁴

149. Accordingly, Mr Krawitz's South African role is not severable from Keren Hayesod's fundraising and programmes. It places him at the *forefront* of a South African fundraising effort for the institution itself.

150. Even the reply is narrowed to denying that some donations were earmarked for projects described as charitable and that Mr Krawitz is not involved in day-to-day operations. That however does not neutralise the respondents' criticism of

¹⁰³ *E.A.P v S.W* (Appeal) [2025] ZAWCHC 540 at paras 39–40.

¹⁰⁴ RA paras 285, 293–296

fundraising, governance, fungibility and institutional support in the context of a plausibly genocidal military campaign.

151. There is thus nothing to refute the respondents' claim that there a link between Mr Krawitz and the Israeli state apparatus. We make six submissions in this regard:

151.1. *First*, even if Mr Krawitz could prove that certain personal donations were charitable, that would not answer the broader factual matrix that he spearheads fundraising, acts as the local face of Keren Hayesod, sits in governance structures, and channels South African support into institutions intertwined with Israeli state priorities and military-adjacent programmes.¹⁰⁵

151.2. On that footing, the sting of '*funds genocide*' is at least substantially true in gist or is squarely protected comment.

151.3. *Secondly*, even accepting *arguendo* that some donations are earmarked for ostensibly charitable purposes, that does not negate the inference that leadership of Keren Hayesod, JAFI or UJC materially supports the Israeli state apparatus during wartime.

151.4. In public-interest political debate, leadership and fundraising for the institution itself are facts from which the moral and political inference of complicity may honestly be drawn.

¹⁰⁵ AA paras 143–159, 160–165, 166–172, 217–224.

151.5. At minimum, ‘*funds genocide*’ is a compressed evaluative description of those true facts, and therefore protected comment.

151.6. *Thirdly*, the ring-fencing claim made in reply is evidentially weak for granting final relief. The applicants do not put up primary proof such as bank records, allocation schedules, donor instructions, or audited donation trails.

151.7. Instead, they ask the Court to accept mere summaries and platitudinal assurances, given for the first time in reply. That is not an appropriate basis on which finally to restrain speech in motion proceedings.

151.8. *Fourthly*, the stronger proposition on these papers is that Mr Krawitz supports genocide in a non-financial sense. The AA points to his December 2024 interview, in which he said he was proud of “*my country*” and loved the State of Israel and expressly indicated that he did not wish to suggest that association with the Israeli army was defamatory.¹⁰⁶

151.9. Those statements were made *after* the devastation in Gaza was already notorious. On the respondents’ case, they plainly justify the political condemnation that he supports, or is supportive of, a plausibly genocidal campaign. That is, at the very least, a sustainable basis for protected comment.

151.10. *Fifthly*, a similar point arises in relation to JAFI. Mr Krawitz admits that he sits on JAFI’s Board of Governors representing Keren Hayesod and that

¹⁰⁶ AA paras 56–60

the Board approves budgets, elects members of the executive, and receives and considers reports.¹⁰⁷

151.11. The respondents' case is that JAFI historically engaged settlement and security-related functions, and that Keren Hayesod and JAFI are institutionally intertwined.¹⁰⁸

151.12. Even if Mr Krawitz is not an operational manager, his admitted governance role places him sufficiently close to JAFI to make him a legitimate target of public censure for its activities and priorities. That supports, at minimum, the slogans that he supports the Israeli state project and its conduct.

151.13. *Sixthly*, the applicants' own stance exposes the content-based object of this litigation. They claim not to object to protest as such. And the RA insists that the case is not about the mere use of the word '*genocide*'; it is about linking the applicants' names to genocide.¹⁰⁹

151.14. Once the core allegations of support, complicity, funding, Zionism and association with Israeli institutions are removed, however, what would remain of the boycott protest is an empty shell.

151.15. Coupled with Mr Krawitz's own statement that he was proud of the association with Israel and did not wish to suggest that being associated with

¹⁰⁷ RA paras 306–307

¹⁰⁸ AA paras 160–165

¹⁰⁹ RA paras 247–249

the Israeli army was defamatory, this demonstrates that the real target of the application is the content and sting of the campaign, not unlawful protest conduct.

H. PRIOR RESTRAINT: WHY THIS CASE FITS *HERBAL ZONE* AND *TAU*, NOT *MANUEL*

152. The applicants' core relief constitutes a prior restraint—a standing restraint on future speech at political protests, framed as a blanket ban on 'defamatory' statements and on any assertion of an alleged 'association' between the applicants and Israel.¹¹⁰ That is the paradigm of the relief that the SCA cautioned against in *Herbal Zone* and in *Tau*.
153. In *Print Media*,¹¹¹ the CC described *administrative* prior classification as a form of prior restraint—an inhibition on expression before it is disseminated. It endorsed the principle that prior restraint is a drastic interference with freedom of expression and exceptional, while free expression is the norm.
154. Although *Print Media* concerned administrative prior restraint, the constitutional warning applies with equal force here: a court should be slow to suppress political expression in advance.
155. The applicants contend that '*prior restraint*' strictly refers only to information not already in the public domain, and that they seek merely to restrain repetition.¹¹² With

¹¹⁰ Notice of Motion prayers 1.3–1.7

¹¹¹ *Print Media South Africa and Another v Minister of Home Affairs and Another* [2012] ZACC 22; 2012 (6) SA 443 (CC) paras 16 and 102

¹¹² Applicants' HoA paras 51–52

respect, that is incorrect, and it is inconsistent with the very authorities on final interdicts in defamation: *Hix*¹¹³, *Herbal Zone*¹¹⁴ and *Tau*¹¹⁵ all concern restraints on *future* publication or repetition.

156. The constitutional vice affecting the applicants' relief is the same: a court order that prospectively prohibits speech (especially in overbroad categories), chills protected expression and risks converting motion proceedings into a regime of pre-publication censorship.
157. Even in relation to repeated placards, the dispute remains closer to *Herbal Zone* and *Tau* because publication, meaning and justification are genuinely contested on the papers.
158. In *Herbal Zone*,¹¹⁶ the SCA set aside an interdict restraining future publication, emphasising that such relief impinges on freedom of expression and is '*only infrequently granted*'; the ordinary remedy is a damages action where unlawfulness can be determined after evidence.
159. In *Tau*, the SCA reiterated the same approach in a political context. It stressed that harsh criticism is common in politics; that the parties' dispute must be decided on the basis of the case pleaded; and that an interdict pending defamation litigation is

¹¹³ *Hix Networking Technologies v System Publishers (Pty) Ltd and Another* 1997 (1) SA 391 (A)

¹¹⁴ *Herbal Zone (Pty) Ltd and Others v Infitech (Pty) Ltd and Others* [2017] 2 All SA 347 (SCA) at paras 36–38.

¹¹⁵ *Tau v Mashaba and Others* 2020 (5) SA 135 (SCA) at paras 1, 20–21, 27–28

¹¹⁶ *Herbal Zone* [2017] 2 All SA 347 (SCA) paras 36–38

an extraordinary remedy which should not be granted where defences of truth, fair comment and political commentary have a sustainable foundation on the papers.¹¹⁷

160. The same approach was applied recently in *M.M.S v H.K.*¹¹⁸ Wilson J refused to sustain a speech-restraining interdict where a material communication had not been disclosed and where the respondents had laid a sustainable evidential foundation that the impugned allegations might be true or constitute fair comment. The Court held that even if the publications were *prima facie defamatory*, final interdict relief could not survive on disputed facts.¹¹⁹ That reasoning fits the present case closely.
161. We have referred above to the applicants' contention that the respondents have placed all the evidence before the Court that they could muster in support of their defences. This is not so. The respondents have been denied the applicants' financial records and those of Keren Hayesod. They have been confronted with second-hand evidence in reply as to Keren Hayesod's financial records and activities.
162. They would be entitled to these documents in a trial. This much was recognised by the SCA in a closely analogous case on its facts, *Malema v Rawula*¹²⁰. The SCA there held that, in the absence of the EFF's financial reports, the inference was

¹¹⁷ *Tau* 2020 (5) SA 135 (SCA) paras 1, 20–21, 27–28

¹¹⁸ *M.M.S v H.K and Another* [2025] ZAGPJHC 88

¹¹⁹ paras 15, 17–18, 22–23

¹²⁰ [2021] ZASCA 88, at para 64

compelling that the defamatory statement was true, viz that costs had been improperly inflated¹²¹.

163. *Malema* is also instructive regarding the continuing refrain in the applicants' RA and heads of argument that the respondents' contentions are hearsay and speculative and have been dispositively dealt with in the affidavits of Messrs Zomer and Ashirie.

164. In this regard the SCA said the following about the allegation of inflated costs:

*"The appellant's reply once more, was a bald denial. He said that the statement lacked specifics and was hearsay. This, when the facts show that the costs of service providers and the manner in which EFF funds are expended lie purely within the appellant's knowledge. Despite this, he did not produce a single document to show that those costs had not been inflated"*¹²². (Emphasis supplied)

165. The resemblance to the facts of this case is, we submit, striking.

166. This dispute is accordingly materially much closer to *Herbal Zone*, *Malema* and *Tau* than to *Manuel*¹²³, for at least four reasons:

166.1. *First*, the relief sought here is sweeping and open-ended. It is not limited to a specific fixed publication already made. It is the kind of anticipatory restraint disfavoured in *Herbal Zone*, *Malema* and *Tau*.

¹²¹ At para 57

¹²² At para 60

¹²³ *EFF v Manuel* 2021 (3) SA 425 (SCA)

166.2. *Secondly*, the case is deeply fact-bound and contested. Publication, context, meaning, and justification are all disputed. On *Plascon-Evans* these disputes must be resolved in the respondents' favour on motion, which is fatal to final relief.¹²⁴ No genuine factual disputes arose in *Manuel*.

166.3. *Fourthly*, the applicants have an adequate alternative remedy: an action for damages. They expressly contemplate such action. This is precisely the route endorsed in *Herbal Zone* and *Tau*.¹²⁵

166.4. *Fifthly*, in *Manuel* the impugned publication was a targeted allegation of personal corruption, made without evidential foundation, and the relief was directed at that publication and its repetition. Here, by contrast, the applicants seek to silence an ongoing political boycott campaign and protest rhetoric about international crimes and complicity. That distinction, we submit, is constitutionally decisive.

I. COMPARATIVE FOREIGN LAW IN THE UK, USA AND EUROPE

167. The comparative authorities, referenced here, are persuasive sources that reinforce three propositions: meaning must be assessed contextually; harsh political opinion enjoys strong protection; and prior restraints on protest speech are exceptional.

168. Only English-language authorities, or authorities available in an official English text, are relied on in these heads.

¹²⁴ AA paras 27–31, 45–53, 175–177, 216–224; RA para 158

¹²⁵ *Herbal Zone* paras 36–38; *Tau* para 28

(a) United Kingdom: protest rhetoric, context, and honest opinion

169. In *Campaign Against Antisemitism v DPP*, the Divisional Court reviewed a decision not to prosecute a protest leader who had used inflammatory anti-Israel slogans at a London rally, including descriptions of Zionists / Israelis as ‘terrorists’, ‘murderers’ and ‘baby killers’.
170. The Court held that context is of the first importance, that legitimate protest may be offensive, shocking or disturbing, and that there is no universal test detached from the facts of the occasion.
171. That reasoning supports the respondents’ submission that protest chants in the present case cannot be treated as literal factual indictments without a contextual enquiry.¹²⁶
172. Secondly, in *Greenstein v Campaign Against Antisemitism*¹²⁷, the High Court granted summary judgment on an honest-opinion defence to articles calling the claimant antisemitic. The Court stressed that the objective limits of comment are ‘exceedingly wide’ and that the question is whether an honest person could hold the view on the admitted facts.
173. We refer to the case not because its facts are identical, but because it confirms the width of political opinion protection once a factual basis is shown.

¹²⁶ *Campaign Against Antisemitism v Director of Public Prosecutions* [2019] EWHC 9 (Admin)

¹²⁷ [2020] EWHC 2951 (QB)

174. *Thirdly*, in *Ware v Waters*, a libel action arising from a televised interview about Gaza and allegations of antisemitism, the High Court reiterated that meaning in a broadcast setting is assessed by overall impression and that the distinction between fact and opinion is closely tied to context.¹²⁸

(b) *United Kingdom: Israel/Nazi comparisons and anti-Zionist speech*

175. In *Husain v Solicitors Regulation Authority*,¹²⁹ the Administrative Court considered disciplinary findings arising from tweets making harsh comparisons between Israeli conduct and Nazi conduct. Chamberlain J held that such comparisons are not automatically antisemitic; the legal inquiry depends on language, context, and whether hatred is directed at Jews as Jews.

176. The case therefore reinforces the respondents' submission that criticism of Zionism or Israeli state conduct is not, without more, anti-Jewish hate speech.

(c) *United States of America: Israel/Nazi comparisons and anti-Zionist speech*

177. In *Stand With Us Centre for Legal Justice and Others v Massachusetts Institute of Technology*¹³⁰ the Court had to consider whether anti-Israeli and anti-Zionist protests about the Gaza War, (including 'the river to the sea' chant) constituted antisemitism. The court considered the contested definitions of Zionism in dictionaries and academic literature, as also divided views on whether what was

¹²⁸ *Ware v Waters* [2025] EWHC 389 (KB)

¹²⁹ [2025] EWHC 1170 (Admin)

¹³⁰ *United States Court of Appeals for the First Circuit* (21 October 2025)

happening in Gaza could be considered as genocide, and if so, whether this was antisemitic speech.

178. The Court concluded that, no matter how offensive the applicants found the speech, they were not entitled to impose their views (that anti-Zionism must be equated with antisemitism) on others, including protestors.¹³¹

(d) ECtHR: boycott advocacy and political expression

179. In *Baldassi v France*,¹³² activists who had called for a boycott of Israeli products were criminally convicted in France. The Strasbourg Court held that the convictions violated Article 10. It characterised the boycott call as political expression on a matter of general interest; stressed that the applicants were ordinary citizens seeking to stimulate public debate; and it emphasised the absence of racist or antisemitic language or speech inciting hatred, violence or intolerance.

180. *Baldassi* is therefore useful in two related respects:

180.1. It supports the proposition that boycott advocacy aimed at Israel-linked products is core political expression.

180.2. And it shows that, even in a highly contentious setting, courts must distinguish between sharp political condemnation and unlawful incitement to hatred or violence.

¹³¹ AA para 28

¹³² *Baldassi and Others v France* (Applications nos 15271/16 and others) (ECtHR, 11 June 2020)

181. Taken together, these authorities support the respondents' position that controversial Israel/Palestine protest speech is presumptively protected political expression; that meaning and lawfulness are context-sensitive; and that broad restraints are exceptional.

J. APPLICATION OF PRINCIPLES TO RELIEF SOUGHT

182. For the reasons above, we submit that the applicants cannot satisfy the requisites for final interdictory relief. On the respondents' version (which must be accepted under *Plascon-Evans*), the applicants fail at the threshold on publication/attribution; fail on meaning; and in any event face sustainable defences of truth/public benefit and protected comment.

183. That conclusion is stronger still if the Court strikes out, or simply disregards, the impermissible new matter, hearsay complaints, and new assertions in reply. Without the new material, the founding case cannot sustain the final, speech-restraining relief the applicants seek.

184. Further, the prayers in the Notice of Motion are drafted at a high level of generality and would operate as a standing gag order on future protest speech.

185. The applicants' repeated refrain that they do not object to protest, only to what is said in the protest, we submit, *underscores* the problem rather than supports the relief:

185.1. In reply Mr Krawitz expressly says that the case is not directed at the word ‘genocide’ in the abstract but at the linking of his and Cape Union Mart’s names to genocide.¹³³

185.2. His stance reveals that the application is not a neutral attempt to regulate time, place or manner, but an attempt to excise the central political content of the boycott campaign.

186. In particular:

186.1. Prayers 1.1 and 1.2 (in respect of the harassment of customers and preventing access to stores) are not justified on the evidence, including the pictorial evidence in the FA. The respondents deny having acted in this manner, and there is no basis for the Court to find to the contrary.

186.2. Prayer 1.3 (interdicting any statement that Cape Union Mart is ‘*associated with Israel*’) is impermissibly broad. It is also untrue: the association is via Mr Krawitz.

186.3. Mr Krawitz openly embraces his connection to Israel and holds leadership positions in Israel-linked organisations.¹³⁴ The prayer would restrain even truthful statements and political opinion and would chill legitimate protest.

186.4. Prayers 1.4–1.6 (interdicting statements that the applicants ‘*fund genocide*’, ‘*fund the IDF*’, ‘*support genocide*’.) cannot be granted on motion because

¹³³ RA paras 247–249

¹³⁴ FA para 33.4; AA paras 145–174, 56–59

(a) publication is disputed; (b) the meaning is political condemnation or hyperbole; and (c) the respondents provide a substantial factual foundation linking Mr Krawitz to fundraising structures, governance roles, military-adjacent programmes, and express public support for Israel and the IDF in the context of a live genocide allegation.¹³⁵

186.5. Prayer 1.7 (interdicting ‘*any defamatory statements*’) is hopelessly vague and overbroad. It effectively asks the Court to issue an open-ended prior restraint and leave future meaning disputes to contempt proceedings. The SCA has deprecated restraints of this nature.¹³⁶

186.6. Moreover, it would prevent criticism of the applicants on matters entirely unrelated to the present dispute. It cannot be granted.

187. Prayer 1.8 invokes sections 2(1) and 8(5), (6), (7) and (9) of the Gatherings Act 205 of 1993.

187.1. As to section 2(1), the respondents dispute the factual premise that the PSC respondents convened unlawful gatherings of more than 15 persons.

187.2. The protests took place in a fluid coalition environment involving other organisations, unaffiliated supporters and counter-protestors; PSC’s own members often numbered well below 15; and where numbers swelled, the

¹³⁵ AA paras 56–60, 129–135, 143–174, 160–173, 217–224; RA para 158

¹³⁶ *Hix* at 403H–404C; *Herbal Zone* at paras 36–38; *Tau* at para 28

applicants do not show that this was a single pre-planned PSC gathering that triggered a notice obligation.

187.3. In any event, the notice provisions cannot justify the broad speech restraints sought in prayers 1.3 to 1.7.

187.4. As to section 8(5), the provision regulates core protest speech and must be interpreted consistently with sections 16 and 17 of the Constitution. It cannot be read to prohibit merely offensive, hostile or provocative political expression. Properly construed, it targets serious hate-based exhortation that encourages discrimination on the listed grounds that incites harm.¹³⁷

187.5. As to section 8(6), the applicants do not show that any PSC-authored or PSC-endorsed words or acts were calculated or likely to cause or encourage violence. The slogans complained of accuse the applicants of complicity and urge boycott; they do not exhort protestors or customers to attack anyone.

187.6. As to section 8(7), the applicants seek effectively a blanket order against masks or covered faces. On the respondents' evidence, keffiyehs, Covid masks and religious face coverings were used for solidarity, health or religious reasons; the applicants were in any event able to identify the cited respondents from photographs; and any wider order would be disproportionate.

¹³⁷ As analogies, we refer to *Islamic Unity Convention v Independent Broadcasting Authority* [2002] ZACC 3; 2002 (4) SA 294 (CC); *Qwelane v South African Human Rights Commission and Another* [2021] ZACC 22; 2021 (6) SA 579 (CC) paras 107–108.

187.7. As to section 8(9), the applicants have not proven that PSC marshals failed to take reasonable steps to keep entrances open. The respondents deny obstruction, say store entrances were not blocked, and point to the presence of mall security and SAPS.

187.8. The Gatherings Act, in any event, does not impose strict liability on the PSC as convener for every placard held by others. Sections 8(1) and (2) impose reasonable-steps duties on a convener, whereas section 8(5) itself is directed at the person who utters or displays the prohibited material.

187.9. At most, if the Court were persuaded that there is a real risk of genuinely hateful or violent, attributable expression of the kind contemplated by the Act, that could justify only narrow conduct-regulating relief that closely mirrors the statute. It cannot justify the wider suppression of the campaign's political message.

188. Prayer 1.9, which seeks to empower the Sheriff, assisted by unidentified private security companies, to take steps to enforce the order, is extraordinary and unsupported. It would outsource the policing of a vague, speech-restraining order to private actors in a politically charged protest setting, thereby heightening the risks of arbitrary enforcement, confrontation and further abuse.

189. If the substantive relief fails, prayer 1.9 falls away. But even if the Court were minded to grant any narrowly tailored relief, prayer 1.9 should still be refused **(a)** for want of

factual foundation and **(b)** because it is disproportionate and inappropriate in the context of political assembly and protest.

190. The applicants' reliance on a sixth respondent ('Unidentified Protesters') underscores the fatal attribution problem. A defamation-based interdict must be clear, targeted and enforceable; it cannot competently issue as a sweeping order against an amorphous and shifting class of unknown persons engaged in political protest.
191. The applicants' attempt to overcome this by blaming the PSC respondents for '*convening*' protests or for not producing a '*membership list*' misconceives the onus: it is for the *applicants* to prove publication by the cited respondents and to frame workable relief.
192. The authorities on anonymous but identifiable groups do not license an open-ended gag order on political expression where meaning and attribution are disputed.
193. The application, we submit, should therefore be dismissed. If the applicants believe they can prove defamation and defeat the respondents' defences, their remedy lies in an action for damages. The Court should not impose a censorship order in advance in a live political controversy.

K. Costs

194. The respondents seek costs. The application is overbroad, seeks extraordinary relief, and is pursued on a disputed factual record with material non-disclosure and

selective presentation. The applicants should bear the costs of this attempt to suppress lawful protest speech.¹³⁸

L. CONCLUSION

195. For these reasons the respondents respectfully submit that the application falls to be dismissed with costs.

I JAMIE SC
UK NAIDOO
N ESSA

Counsel for first to fifth and seventh
respondents

Chambers, Cape Town

20 March 2026

¹³⁸ AA paras 26–66