IN THE HIGH COURT OF SOUTH AFRICA
(WITWATERSRAND LOCAL DIVISION)

CASE NO: ***2008/6510***
P/H NO: ***1000***

JOHANNESBURG, ***13 February 2008***
BEFORE THE HONOURABLE ACTING JUDGE ***SUTHERLAND***

In the matter between:-

CHRISTIAAN JURIE ELS ***Applicant***

and

MEDIA 24 (PTY) LTD ***1st Respondent***
IZELLE VENTER ***2nd Respondent***

HAVING *read the documents filed of record and having considered the matter:-*

IT IS ORDERED THAT:-

1. *The Applicant's failure to comply with forms and times in terms of the Rules is condoned on grounds urgency.*

2. *An interim interdict shall issue immediately against the First and Second Respondents from publishing the article of which a copy was annexed as "A" to the Notice of Motion, pending the institution of an application for final relief by the Applicant within 10 (ten) days hereof.*

3. *The Respondents are to answer, if at all, within 10 (ten) days of service of such application, and the Applicant shall reply, if at all, within 5 (five) days of service of the answer.*

4. *The parties are given leave to approach the Deputy Judge President of the Witwatersrand in respect of a special set down to accommodate the parties' needs, if such becomes necessary.*

5. *The costs of the urgent application are reserved for adjudication in the application for final relief.*

6. *This order is transmitted to the following email addresses:*

   duminyw@law.co.za, johant@jans.co.za and koos@du-plessis.co.za.

BY THE COURT

OFFICE VAN DIE HOOFREGISTRATEUR
(WITWATERSRANDSE PLAASLIKE AFDELING)
PRIVAATSAK/PRIVATE BAG X7
2008 -02- 15
JOHANNESBURG 2000
(WITWATERSRAND LOCAL DIVISION)
REGISTRAR OF THE HIGH COURT

REGISTRAR
bh/

IN THE HIGH COURT OF SOUTH AFRICA

WITWATERSRAND LOCAL DIVISION

CASE NO: 2008/6510

In the Matter between;

CHRISTIAAN JURIE ELS **Applicant**

AND

MEDIA 24 (PTY) LTD **First Respondent**

AND

IZELLE VENTER **Second Respondent**

REASONS FOR JUDGMENT

PER SUTHERLAND AJ:

1. On 13 February 2008 at about 18h30, I made this order:

   1.1. The Applicant's failure to comply with forms and times in terms of the Rules of Court is condoned on grounds of urgency.

   1.2. An interim interdict shall issue immediately against the First and Second Respondents from publishing the article of which a copy was annexed as "A" to the Notice of Motion, pending the institution of an application for final relief by the Applicant within 10 Days hereof.

   1.3. The Respondents are to answer, if at all, within 10 days of service of such application, and the Applicant shall reply, if at all, within 5 days of service of the answer.

   1.4. The Parties are given leave to approach the Deputy Judge –President of the Witwatersrand Local division in respect of a special set down to accommodate the parties' needs, if such becomes necessary.

   1.5. The costs of the urgent application are reserved for adjudication in the application for Final relief.

2. I further directed that the order be transmitted to the email addresses of the parties as given to me. This was done.

3. I gave, orally, brief reasons and indicated that I would furnish full reasons later.

4. The matter came before at 18H00 on less than an hour's notice. The parties were represented by counsel; the applicant by A. Joubert SC, who appeared physically before me in Johannesburg, and the respondents were represented by W. Duminy SC, who was in Cape Town, who appeared via a speakerphone.

5. The controversy concerned the alleged harm that the applicant may suffer if an article describing him in admittedly defamatory terms is to be published. The lawfulness of the defamation is in dispute.

6. The first respondent is the owner of several magazines which circulate throughout South Africa. Among these publications are *Huisgennoot* and *You,* sister publications in Afrikaans and English respectively. The Second respondent is identified as the "*Gauteng Editor of Husigenoot/You, Sandton.*"

7. The applicant is a South African, who, ostensibly, has recently moved, with his family, to New Zealand and, at all material times to this application, was in New Zealand.

8. The application was instituted as a matter of extreme urgency. Urgency was not is dispute but the degree of urgency was not agreed.

9. Other than a Notice of Motion, to which was annexed as "A" the controversial article, no founding affidavit had been filed. At the hearing, Mr Joubert outlined the key facts, as he was instructed, with reference to the documentation before me. He tendered to have his remarks on the facts verified under oath by the applicant's attorney. Mr Duminy,

generously, indicated that this could be dispensed with for the purposes of these proceedings. It was an honourable allowance and wholly appropriate as the parties both understood that the respondents would be going to press at 19H00, barely 45 minutes hence and the aim of the application was to inhibit the article's inclusion in the issue of *Husigenoot/You* to be printed that night and circulated the following day.

10. Mr Duminy furthermore, tendered an undertaking that the publication would not be circulated, in the sense that the printed material would not leave the warehouse, before 15h00 on Thursday 14 February. The significance of this undertaking is twofold, first to address the degree of urgency, and secondly in relation to the question of the identification of the court with jurisdiction over the first respondent.

11. As to the degree of urgency, I took the view that the aim of the order sought, if it was to be of practical value, would not be appropriately served by allowing the offending material to be printed and thereafter inhibiting distribution. The reason for that is simply the impracticality of an honourable publisher being able to genuinely inhibit unauthorised dissemination. If there were proper grounds to inhibit the publication of the article, common sense dictated that it should not be printed. At the time the matter was being entertained that result was achievable, and distinctly preferable.

12. The applicant is required to show that the elements for an interim interdict are present.

13. The prospect of irreparable harm is plain. The article accuses the applicant of being a child molester and the disclosures of his alleged victim, now an adult, form the body of the report. The applicant disputes the truth of the disclosures. It was correctly argued that

if the article is published unlawfully the applicant may sue the respondents for huge damages. This form of remedy, it was argued by Mr Joubert, offers little comfort to the incalculable damage done to his reputation. I am inclined to agree. In the prevailing social climate our social mores concerning the abuse of vulnerable people, most of all children, affords a platform for the most severe manifestation of opprobrium for those culpably linked to such abuse. The likelihood of mud coming unstuck is slim. Thus I am persuaded that an award of damages is no adequate alternative remedy.

14. That the applicant has a prima facie right to preserve his reputation is indisputable.

15. As to the balance of convenience several factors deserve weight. The respondents' role as purveyors of news and information ought not to be underscored. However, there is no particular reason why the article, if its publication is lawful, must be published immediately. The story relates to episodes of long ago. The impact and social relevance of the story cannot be diminished by a delay; nor will the ostensible public interest that this particular story be published be undermined by delay. On the other hand, the harm to the applicant, alluded to above, must take precedence, on the facts.

16. This is illustrated especially by the facts, limited as they may, which are to hand. The text of the article was emailed to the applicant on 13 February at 12.01 South African time. The applicant axiomatically received it in night. The covering email from the second respondent acknowledges that he would have been awakened to deal with it. The email of second respondent also apologises that that an earlier undertaking to send a copy of the draft article for comment had been transmitted later than promised. The email further blandly states that the article is going to press at 19h00; ie 7 hours after his first

reading of the text. Lastly, there is an express acknowledgement that what the respondents have written does not yet contain the applicant's version and that the applicant's version of the events is necessary in the public interest.

17. Whether these are sincerely expressed sentiments or simply lip service to the values of an even handed report need not trouble me in these proceedings. What is pertinent is that it is manifestly unreasonable to expect of the applicant, within 7 hours, from the far side of the world, to address, meaningfully, the matter in hand. A further email emanating from the applicant was exhibited to me, sent on 13 February at 12.36 South African time, to the applicant's attorney, invoking attorney Du Plessis's aid to protect his interests. As alluded to in a broader context above, no case is advanced why immediate publication is necessary, either in the public interest or in any other interest.

18. As a result of these considerations, I was persuaded that a proper case for the relief granted was made out.

19. An important issue advanced on behalf of the respondents related to whether or not this court had jurisdiction over the respondents. To this topic I now turn.

20. It was contended that the Witwatersrand Local Division had no jurisdiction over the parties and that the Cape Provincial Division did. Mr Duminy invited the applicant, in the context of the undertaking that circulation would not occur before 15H00 on Thursday 14 February, referred to above, to launch proceedings in the Cape the next day.

21. No mention was made in the hearing, either on paper or orally about the location of the first respondent's registered address. For all that may be known, the registered office may in Johannesburg or Cape Town or Durban. What I was told was that the printing of *Huisgenoot /You* was to take place in the Cape. Further, the Chief Editor of those magazines was in the Cape, albeit the second respondent, the Gauteng Editor, was in Johannesburg. A concession was made that it was conceivable that the Witwatersrand Local Division could exercise jurisdiction over the second respondent, but not over the first respondent.

22. On the facts, it is plain that the second respondent did not act in this matter other than in her capacity as an employee and representative of the first respondent. This she did from Johannesburg, from the place of business of the first respondent in Johannesburg. It is to be fairly inferred that the article was written in Johannesburg. Certainly the only contact between the applicant and the second respondent, and a journalist who, I infer, actually penned the article, Marie Opperman, occurred from their base in Johannesburg. Indeed, other than for the printing of the magazine, which would have included the offending article, all other relevant activity carried out by the second respondent, through its servants, took place in Johannesburg.

23. The second respondent presents herself as the primary driver of the publication of the article and as such is the person, primarily, if publication is indeed unlawful, who is responsible for the delict. Her acts were all perpetrated in Johannesburg.

24. I am satisfied that jurisdiction over the second respondent is established.

25. The question that remains is whether upon a proper interpretation of *section 19 of the Supreme Court Act 59 of 1959,* this court can exercise jurisdiction over the first respondent.

26. The relevant portion of *section 19 of the Supreme Court Act* provides:

"(1) (a) A provincial or local division shall have jurisdiction over all persons residing or being in and in relation to all causes arising and all offences triable within its area of jurisdiction and all other matters of which it may according to law take cognizance, and shall, subject to the provisions of subsection (2), in addition to any powers or jurisdiction which may be vested in it by law, have power.....

(b) A provincial or local division shall also have jurisdiction over any person residing or being outside its area of jurisdiction who is joined as a party to a cause in relation to which such provincial or local division has jurisdiction or who in terms of a third party notice becomes a party to such a cause, if the said person resides or is within the area of jurisdiction of any other provincial or local division."

27. As alluded to above, the *de jure* domicile of the second respondent is undisclosed. What is in the cape is the editor of the particular magazines in which the article is sought to be included and the printers.

28. What has occurred in Gauteng is the conception of the alleged delict, by the second respondent, through the instrumentality of its human agents, including the second respondent. If the first respondent is indeed 'residing' outside Gauteng, the cause of

action to which it is a party with the second respondent has and is being perpetrated in Johannesburg.

29. In my view, *Section 19(1)(b)* vests jurisdiction in this court over the first respondent on those grounds. (*See: Majola v SANTAM Insurance Co Ltd 1976 (1) SA 874 (SECLD) at 876H-877C)*

30. Accordingly, in my view jurisdiction is established over both respondents.

ROLAND SUTHERLAND
Acting Judge of the High Court of South Africa
14 February 2008.

For the Applicant:	**Altus Joubert SC**
Instructed by:	**Du Plessis and Associates**
For the Respondents:	**Willem Duminy SC**
Instructed by:	**Jan S De villiers**