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# Wynand Prinsloo & van Eeden Ing / Inc

Prokureurs/Attorneys

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Ons verw./Our ref: MR DERICK VAN WYK/SHANNEN/

U verw./Your ref: The Editor Middelburg Observer, Mr Gaffar, The CEO Caxton

THE EDITOR  
MIDDELBURG OBSERVER

BY EMAIL  
[tobie@mobserver.co.za](mailto:tobie@mobserver.co.za)

MR GAFFAR  
C/O MIDDELBURG OBSERVER

BY EMAIL  
[yaseen@mobserver.co.za](mailto:yaseen@mobserver.co.za)

**URGENT ATTENTION!**

THE CEO  
CAXTON AND CTP PUBLISHERS AND PRINTERS

BY EMAIL AND FAX  
HEADOFFICE - [nsooka@ctp.co.za](mailto:nsooka@ctp.co.za)  
Fax: +27 11 474 8229

15 FEBRUARY 2017

**URGENT APPLICATION – CASE NUMBER: 289/2017**

**22 FEBRUARY 2017**

**HIGH COURT OF SOUTH AFRICA,**

**GAUTENG DIVISION PRETORIA**

**(FUNCTIONING AS THE MPUMALANGA CIRCUIT COURT – MIDDELBURG)**

We refer to the above and attach herewith a copy of the URGENT Application.

We present you with the Application prior to signature thereof by the deponents due to the **extreme urgency** of the matter.

You will notice that the matter is enrolled for the 22<sup>nd</sup> February 2017 at 10h00.

The time of the day makes it impossible to have all the affidavits signed and commissioned.

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REG NR / REG NO: 2006/017307/21 ~ BTW / VAT: 4230235683  
OR TAMBO STR 19, MIDDELBURG, MPUMALANGA, 1050 ~ POSBUS / PO BOX 810, MIDDELBURG, 1050  
TEL: 013 243 1077 / 8 / 9 ~ FAKS / FAX: 013 243 2472 ~ E-POS / E-MAIL: [shannen.prinslaw@gmail.com](mailto:shannen.prinslaw@gmail.com)

Direkteure/Directors: Ella Prinsloo ~ Josef van Eeden ~ Derick van Wyk

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We have issued the Notice of Motion under Case Number: 289/2017 in the HIGH COURT OF SOUTH AFRICA, GAUTENG DIVISION PRETORIA (FUNCTIONING AS THE MPUMALANGA CIRCUIT COURT – MIDDELBURG)

Kindly accept that the documents sent to you will not be altered, and will be commissioned as it is presented to you.

We trust that you find the above in order.

Regards

**Yours faithfully,**

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**WYNAND PRINSLOO & VAN EEDEN INC**

**Per Mr Derick van Wyk**

**[derick.prinslaw@gmail.com](mailto:derick.prinslaw@gmail.com)**

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REG NR / REG NO: 2006/017307/21 ~ BTW / VAT: 4230235683  
OR TAMBO STR 19, MIDDELBURG, MPUMALANGA, 1050 ~ POSBUS / PO BOX 810, MIDDELBURG, 1050  
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Direkteure/Directors: Ella Prinsloo ~ Josef van Eeden ~ Derick van Wyk

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IN THE HIGH COURT SOUTH AFRICA  
(GAUTENG DIVISION, PRETOIA FUNCTIONING AS THE  
MPUMALANGA CIRCUIT COURT IN MIDDLEBURG)

Case No. 289/17

In the matter between:

RAMESH (JOE) SINGH

PETRUS (PEET) ERASMUS

JUST COAL (PTY) LTD



First Applicant

Second Applicant

Third Applicant

and

YASEEN GAFFAR

MIDDLEBURG OBSERVER

CAXTON & CTP PRINTERS AND  
PUBLISHERS LTD

First Respondent

Second Respondent

Third Respondent

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**NOTICE OF MOTION**

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TAKE NOTICE that urgent application will be made on behalf of the abovenamed applicants on Wednesday, 22 February 2017 at 10:00 am or as soon thereafter as counsel may be heard for an order in the following terms:

1. This application is heard as an urgent application in accordance with the provisions of Rule 6(12) and the requirements pertaining to the forms and manner of service are dispensed with.
2. An interdict is granted against the respondents precluding them from publishing the article or any similar article to the one foreshadowed in the email sent by the first respondent to the second applicant at 2:52 pm on 15 February 2017, unless and until Eskom confirms in writing that it is investigating the applicants for fraud and/or corruption and/or bribery.
3. An interdict is granted against the respondents precluding them from publishing any article suggesting, directly or indirectly, that any or all of the applicants either directly or indirectly has committed fraud and/or corruption and/or bribery *and* is being investigated for fraud and/or corruption and/or bribery involving the supply of coal to Eskom unless and until Eskom confirms such in writing *and* criminal charges have been laid against them *and* they have appeared in court on such charges.
4. An interdict is granted against the respondents from publishing any photographs of either the first and/or second applicant unless and until they have been charged with a crime *and* have appeared in court on such charges.
5. Further and/or alternative relief.
6. The first and second respondents are jointly and severally liable for the costs of this urgent application.

TAKE NOTICE that the applicants will rely on the affidavit of Ramesh (Joe) Singh together with the annexures thereto in support of this urgent application.

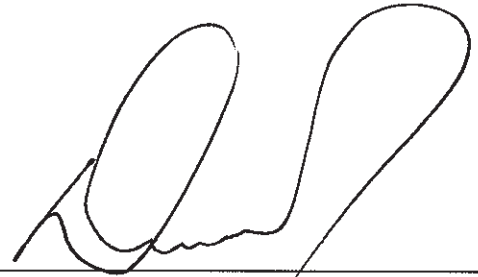
TAKE NOTICE FURTHER that the applicants have appointed the office of Wynand Prinsloo & van Eeden Inc situated at No. 19 OR Tambo Street, Middelburg in Mpumalanga as the address for service of all process in these urgent proceedings.

TAKE NOTICE FURTHER that if the respondents intend opposing this urgent interdict application then they are advised as follows:

- (a) They must notify the applicants' attorneys in writing on or before 5:00pm on Friday, 17 February 2017 of their intention to do so;
- (b) They must deliver answering affidavits on or before 5:00pm on Monday, 20 February 2017;
- (c) The applicants will deliver their replying affidavit on or before 5:00pm on Tuesday, 21 February 2017; and
- (d) The application will be argued in court as an urgent application at 10:00 am on Wednesday, 22 February 2017 or as soon thereafter as counsel may be heard.

TAKE NOTICE that you are required to appoint in your notice of intention to oppose, an address referred to in Rule 6(5)(b) at which you will accept notice and service of all of the applicants process in these proceedings.

**Dated at Middleburg on Friday, 17 February 2017.**



**WYNAND PRINSLOO & VAN EEDEN INC**

Ref: Mr Derick Van Wyk  
19 OR Tambo Street, Middelburg,  
Telephone: 013 243 1077  
FAX: 013 243 12472  
CELL: (061) 448-2002  
Email: [derick.prinslaw@gmail.com](mailto:derick.prinslaw@gmail.com)

**TO:** THE REGISTRAR OF THE HIGH COURT  
**MIDDELBURG**

BY HAND

**AND TO: YASEEN GAFFAR**  
FIRST RESPONDENT  
SERVICE BY SHERIFF – C/O MIDDLEBURG OBSERVER  
And by email: [yaseen@mobserver.co.za](mailto:yaseen@mobserver.co.za)

**AND TO: MIDDLEBURG OBSERVER**  
SECOND RESPONDENT  
SERVICE BY SHERIFF  
And by email: [tobie@mobserver.co.za](mailto:tobie@mobserver.co.za)

**AND TO: CAXTON & CTP PRINTERS AND PUBLISHERS LTD**  
THIRD RESPONDENT  
SERVICE BY EMAIL: [nsooka@ctp.co.za](mailto:nsooka@ctp.co.za)

IN THE HIGH COURT SOUTH AFRICA  
(GAUTENG DIVISION, PRETOIA FUNCTIONING AS THE  
MPUMALANGA CIRCUIT COURT IN MIDDLEBURG)

Case No. \_\_\_\_\_

In the matter between:

RAMESH (JOE) SINGH First Applicant

PETRUS (PEET) ERASMUS Second Applicant

JUST COAL (PTY) LTD Third Applicant

and

YASEEN GAFFAR First Respondent

MIDDLEBURG OBSERVER Second Respondent

CAXTON & CTP PRINTERS AND  
PUBLISHERS LTD Third Respondent

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**FOUNDING AFFIDAVIT**

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I, the undersigned,

RAMESH (JOE) SINGH

do hereby state under oath that:

1. I am the first applicant. I am an adult man, 50 years of age, married to Chantal Singh with four children. I am the Chairperson of the Joe Singh Group (Pty) Ltd ("JSG") as am I a director of the coal mining company, Just Coal (Pty) Ltd ("Just Coal"), which has various contracts with Eskom. I am represented in these proceedings by Attorney Derick van Wyk from the firm Wynand Prinsloo & van Eeden Inc in Middleburg.
2. The facts contained in this affidavit are, to the best of my knowledge and belief, both true and correct.
3. The second applicant is Petrus (Peet) Erasmus. He is an adult man, 46 years of age, married to Celeste with two children. Mr Erasmus is the Chief Operating Officer of both JSG and Just Coal. He is also represented in these proceedings by Mr Van Wyk from Wynand Prinsloo & van Eeden Inc.
4. Mr Erasmus has deposed to a confirmatory affidavit. A copy is attached as Annexure FA1.
5. The third applicant is Just Coal (Pty) Ltd, a company incorporated under the company laws of South Africa with its head office situated at No. 165 Cowen Ntuli Street, Middleburg in Mpumalanga. Just Coal operates a coal mine and supplies Eskom with grade 21.4 CV coal in



terms of a contract that it has with the power utility to supply various power stations, including Tutuka and Matla. I am a director of Just Coal and Mr Erasmus is the company's Chief Operating Officer. We are authorized to represent it in these proceedings.

#### THE RESPONDENTS

6. The first respondent is Yaseen Gaffar, an adult male journalist, whose further particulars are unknown to me but who is employed as a reporter at the *Middleburg Observer*. His email address is [yaseen@mobserver.co.za](mailto:yaseen@mobserver.co.za).
7. The second respondent is the *Middleburg Observer*, a local newspaper in Middleburg which, apparently, is owned by Caxton & CTP Printers and Publishers Ltd. According to its website it boasts a distribution figure of more than 21,500 printed newspapers every Friday and another 7,000 every Tuesday. On its website it claims to be the voice of the Middelburg community. It also claims to have 285 distribution points and says that it has a bilingual readership of more than 90,000 people per publication per week. It is situated at No. 41 Meyer Street in Middleburg. The Editor is Tobie Van der Berg whose email address is [tobie@mobserver.co.za](mailto:tobie@mobserver.co.za).
8. The third respondent is Caxton and CTP Printers and Publishers Ltd, a media house that owns a number of newspapers including the *Middleburg Observer*. On its website, it claims to publish 11 urban newspapers and 120 local newspapers. Its head office is called Caxton

House which is situated at No. 368 Jan Smuts Avenue, Craig Hall in Johannesburg.

#### PURPOSE OF THIS URGENT APPLICATION

9. We were the victims of the terribly unfair and highly defamatory article penned by Mr Gaffar and published by the *Middleburg Observer* on 27 January 2017. I deal with this publication in more detail below. The point, however, is that Mr Gaffar and the *Middleburg Observer* intend publishing another highly defamatory, blatantly untrue, and significantly damaging article about us on Friday, 24 February 2017. The primary purpose of this application is to interdict that publication.

#### URGENCY

10. The matter is urgent. On Wednesday 15 February at 2:52 pm, Mr Gaffar told us that the *Middleburg Observer* intended publishing the proposed article *that* Friday, namely 17 February 2017. We were given a draft of the proposed article and asked to respond to it, if we so wish, before publication. Our Attorney, Mr Van Wyk, contacted the Editor of the *Middleburg Observer*, Mr Van der Berg, advising him that unless he agreed, in writing, to not publish the article as proposed, we would approach the Urgent Court on *that* Thursday, 16 February 2017 for an urgent interim interdict. Mr Van der Berg agreed not to publish the article as initially proposed but said that he would

nevertheless publish it a week later, namely on Friday, 24 February 2017.

11. As things currently stand, therefore the article *will* be published on Friday, 24 February 2017 unless the Urgent Court hears *this* application *this* week and grants us the interim interdict that we seek. Quite aside from the merits of the interim interdict application (whether the media can be stopped from publishing a defamatory and injurious article) the matter is urgent because of the looming date of the proposed publication.

#### BACKGROUND

12. Before dealing with the impugned article that the *Middleburg Observer* intends publishing on Friday, it is important to provide some background and context.
13. Let me begin by explaining that last month, on 27 January 2017, Mr Gaffar penned an article that was published by the *Middleburg Observer*. For the sake of convenience, I have copied and pasted it below:

##### **Businessmen Accused of Billions in Fraud**

By Yaseen Gaffar

Police are investigating a case of fraud and possible corruption against two well-known businessmen, Joe Singh and Peet Erasmus.

But whether it is a case opened by Eskom to the value of R5.8 billion is still uncertain. Preliminary indications are that the amounts mentioned are either false or unfounded.

It was initially reported that Eskom registered a case against Just Coal, Middleburg Power Supplies, JS Group, Camm Transport, Kusile Mining and Joe Singh Group.

But upon investigation it was revealed that the allegations were published on a fake news site and it appears that policemen have no information on the matter.

The case is said to have been opened at the Sandton Police Station, where the spokesperson confirmed that a case relating to fraud was opened but never investigated.

“Unfortunately we do not have the details regarding the case as it has been taken off our hands” the spokesperson said. None of the allegations could be confirmed”.

In response and on behalf of himself and Mr Singh, Mr Peet Erasmus told the Middleburg Observer that the matter was only brought to his attention following an enquiry from the Middleburg Observer. “We had no contact from the SAPS nor were we advised of the case being laid or what it is about”, said Mr Erasmus.

He said that he arranged a meeting with the investigating officer, Lt Col. Baatjies in Johannesburg to discuss the matter, who in turn referred him to Capt. Ngobeni who has taken over the docket. “Capt. Ngobeni has bluntly refused to engage with me” said Mr Erasmus. “We have in the interim referred the matter to the crimes unit, who in turn confirmed to us that the case is invalid”.

According to reports, there is a buzz in intelligence circles regarding the case but authorization have so far failed to confirm any of the allegations.

14. The article, which was accompanied by a photograph of me, essentially told 90,000 readers of the *Middleburg Observer* four things:
  - 14.1 First, that the police are investigating a case of fraud against both Mr Erasmus and I; and
  - 14.2 Secondly, that it is not known whether the fraud arises out of a case opened by Eskom as is it not known whether the value

of the fraud is R5.8 billion; and

14.3 Thirdly, the only information about the fraud comes from a fake news site; and

14.4 Finally, that the police have no information on the matter and none of the allegations have been confirmed by anybody.

15. It is difficult to understand why the article was published. A reading of it suggests that there is absolutely no evidence at all that we have committed any fraud nor is there any evidence that the police are even investigating a fraud. That being the case, what was the purpose of publishing the article? The *Middleburg Observer* has done little more than plant a seed in the minds of its readers that we may be connected to a massive fraud involving Eskom in the order of R5.8 billion. Although the article says that none of this can be confirmed and that it has been gleaned from a fake news site, the seeds of doubt have nonetheless been sown. Moreover, those seeds of doubt have been sown in circumstances where there is absolutely no evidence that anything published in the article is even remotely true. The reporting was highly reckless. It was also *unreasonable* given the nature, extent and tone of the allegations.

16. It can never be reasonable for a newspaper to publish an article with the headline *Businessmen Accused of Billions in Fraud* which clearly raises suspicion in the minds of the local community and has the community wondering whether we are dishonest, unless there is a factual basis for doing so. But the article, in its own terms, does not

disclose any such basis. In fact it all but concedes that there is no factual basis. Moreover, the allegations are severe and have the potential to destroy our lives and livelihoods. This, I submit, placed a duty on the *Middleburg Observer* to ascertain that there is, at least, some evidence that a fraud case is being investigated. Yet, as Mr Gaffar says in the 27 January 2017 article, there is no credible information at all to support any suggestion that such a fraud is being investigated, much less one involving R5.8 billion.

17. Despite this, the *Middleburg Observer* went ahead and published the non-story based on non-facts which it admits was sourced from a fake news website which it *knew* to be fake.
18. And so our attorney, Mr Van Wyk, prepared a complaint to the Press Council. I attach a full copy of the complaint as Annexure FA2 and request that the content of the complaint be incorporated into this affidavit.
19. Essentially we complained that the mere fact that the *Middleburg Observer* disclosed to its readers that it had picked the story up from a fake news site is no justification for the reckless and defamatory conduct that followed for the following reasons:
  - 19.1 The headline of the newspaper article – *Businessmen Accused of Billions in Fraud* - sets the tone of the article and raises suspicion in the minds of the readers that our integrity is in need of checking; and
  - 19.2 It makes little difference that the article tries to claw back

some of the harsh seeds of suspicion that it has sown by later claiming that the police know nothing about the allegations of fraud levelled against us; and

19.3 Ordinary right-thinking citizens reading a newspaper article tend to believe that where there is smoke there is fire; and

19.4 Our reputations have been called into question when there was no good for that to happen.

20. We submitted to the Press Council that:

20.1 The article is defamatory in the delictual sense;

20.2 It is also unreasonable in the *Bogoshi* sense;

20.3 It was unlawful in the sense that newspapers should not report that people are being investigated for committing crimes in circumstances where they have not yet been charged nor appeared in court on a charge;

20.4 It constitutes a violation of the Press Council's Code of Ethics and Conduct for South African Print and Online Media; and

20.5 A criminal offence may have been committed under section 69 of the South African Police Services Act No. 68 of 1995, which section prohibits the publication of a person's photograph if that person is merely suspected of committing an offence but has not yet appeared in court.

21. The complaint was lodged on Monday, 12 February 2017 and the process before the Press Council is currently underway. That notwithstanding, Mr Gaffar and the *Middleburg Observer* are not deterred. They boldly continued on their quest to publish more articles about us despite the fact that there is a pending investigation by the Press Council. This much is apparent from two annexures to the complaint, B and C. Annexure B is an email from Mr Gaffar telling us that he intends publishing another article and asking us to address him on a list of queries. Annexure C is our response from our attorney, Mr Van Wyk, explaining to the journalist and the newspaper why a further article would be unreasonable in the circumstances.
22. In the complaint to the Press Council, the point was made that there are aggravating factors present:
  - 22.1 First, the personal circumstances of both Mr Erasmus and I are highly relevant. We are both respected businessmen in the Middleburg community. We are both married with families. The damage done to our reputations is enormous. In addition to this, I am a pastor in the Middleburg community and am considered to be an honest, God fearing citizen that people can respect and look up to. Our reputations have been severely compromised by the reckless publication in the *Middleburg Observer*. Our wives, children and friends have begun to question us in ways that do not justify questioning because there would have been no questions had it not been for the *Middleburg Observer's* publication. Apart from the



obvious damage to reputation and dignity, the publication has also caused us serious embarrassment and humiliation. Of great concern is the fact the publisher itself knows that there was no reasonable basis for imputing any fraud. There was no proof of any investigation into fraud nor was there any proof that anybody has actually even made an allegation of fraud.

22.2 Secondly, I am the Managing Director, and Mr Erasmus the Chief Operating Officer, of a company that does business with Eskom, namely Just Coal. The article suggests that we have defrauded Eskom to the tune of a massive R5.8 billion. Although the article says there is no verification that this is true, the publication is threatening the commercial viability of the coal mining company. Just Coal, an entirely separate legal entity, is also therefore compromised. Our positions in the eyes of the company's customers and service providers is being compromised. And the point, quite simply, is that there is no truth at all to the allegations made in the newspaper article. There is not even a hint of evidence that the allegations *may* be true. If Eskom was the complainant in a fraud case, which is a reasonable inference to draw from the article, then Eskom would have stopped trading with Just Coal. Eskom has a practice of immediately suspending business with entities suspected of irregularities pending the outcome of an investigation into the alleged irregularities. As this has not happened here, clearly Eskom has no such suspicion. The problem, of course, is that it may still happen

for no reason other than because of the reckless article suggesting that there may be fraud. If there is another article then we will almost certainly be suspended.

- 22.3 Finally, the newspaper published a photograph of me next to the article on 27 January 2017. It is a criminal offence for a newspaper to publish a photograph of a person who has not yet been charged and who has not yet made a first appearance in court. That much is apparent from section 69 of the South African Police Services Act No. 68 of 1995. That this is unlawful has been confirmed by Supreme Court of Appeal in case law.

#### THE PRESENT

23. With that background in place, I turn now to address the events that triggered the need for this urgent application.
24. As I mentioned in earlier parts of this affidavit, Mr Gaffar and the *Middleburg Observer* have indicated that they intend publishing a new article. In that regard, I attach as Annexure FA3, a copy of the email sent to Mr Erasmus by Mr Gaffar at 2:52 pm on Wednesday, 15 February 2017. In that email he tells Mr Erasmus that he has prepared a draft article and that he wants our comment on “allegations of bribery of Eskom officials and allegations of selling discard coal mix to Eskom”. These allegations, according to Mr Gaffar, are made against both Mr Erasmus and I. They also implicate Just Coal.

25. The proposed article which will be published on Friday, 24 February 2017 *unless* we are successful in getting this interdict, will read as follows:

A former plant manager working for the Joe Singh Group of Companies has presented damning video footage of what appears to be illegal and fraudulent activities taking place at Just Coal mine, and implicates Eskom officials as “corrupt and easily bribed”.

His information and video footage collaborates with that of disgruntled truck drivers who have a CCMA conflict with CAMM TRANS and last week disclosed photographic evidence to appear to back the same claims. It shows discard coal being mixed with higher grade coal and directly loaded onto CAMM TRANS trucks, destined for Eskom and apparently bypassing the entire process where Rovers, or Inspectors, verify quality of a coal stockpile before being approved.

“I worked at the mine for five years and this was going on from day one until the day I left, and this is only the tip of the iceberg. Eskom Rovers were bribed to accept thousands of loads of discard coal, and those who were a little cheeky, would somehow be replaced within days,” said the former plant manager. He asked for his identity not to be revealed, but in the same breath said that he was prepared to testify in court if it means corrupt activities can be rooted out of the industry. “Does anyone not find it strange that there is not much discard coal at the mine? What is the reason for this? where has it gone? They’ve been doing this for years and I still believe it is one of the reasons which contributed to load shedding”.

Just Coal has however denied these claims and pointed out that it operates in a market where various types of coal are purchased from suppliers and then on-sold to various customers.

Just Coal is just one of 27 mines that deliver coal directly to Eskom, and have over the year been consistently doing business with power stations.

“I can’t believe that all the corruption going on has been ignored for so long and they are still trusted by Eskom. Everyone is being bribed from the top to the bottom”.

According to the New Age newspaper, Eskom is said to have appointed private investigators Magma Risk Solutions to investigate the allegations against Joe Singh and his business partner Peet Erasmus. The newspaper also reported that criminal charges have been laid against Singh relating to the alleged under-delivery of coal to Eskom at an inflated bill.

The Middelburg Observer previously reported that a R5.8 billion case of fraud have been opened against Singh and Erasmus but it is unclear if the latest allegations of mixing coal with discard and bribing Eskom officials has anything to do with that case.

A list of questions relating to the allegations was presented to Erasmus and Singh last week, who responded instead with a lawyers letter saying that any further publication on these allegations will be defamatory and unlawful. The letter stated that no criminal investigation has been launched by Eskom and that they are yet to be approached by any member of the SAPS relating to the case, and that Just Coal buys coal from various sources and on-sells it to various customers but nothing is illegal or improper. "There is no truth to any suggestion that coal is or has been under-delivered nor that invoices have or were over-inflated. The allegations that you claim were made by truck drivers are untrue and unfounded" the letter reads.

Watch the VIDEO of CAMM TRANS trucks being loaded with what seems to be discard coal and bound for Eskom on [www.mobserver.co.za](http://www.mobserver.co.za).

26. Our attorney, Mr Van Wyk, sent a letter to the *Middleburg Observer* essentially foreshadowing this urgent application. A copy of Mr Van Wyk's letter is attached as FA4. It is clear from *that* letter that we requested a copy of the apparently incriminating video footage. We wanted to see the footage so that we could properly comment on it.
27. The Editor, Mr Van der Berg, gave us access to view the video at the offices of the *Middleburg Observer*. And so Mr Erasmus, accompanied by our attorney, Mr Van Wyk, went to view the short video clip which is approximately 50 seconds long. It appears to be

amateur footage shot with a cellphone camera. The videographer is positioned on the top of a truck. The footage shows coal that has been processed traveling down a feed belt (essentially a conveyer belt that transports coal) and at the end of the belt the coal is shown falling onto a stockpile (a stockpile is a pile or storage location for bulk materials and is formed by machinery dumping coal into a pile, either from a feed belt as is the case here or else from trucks). The footage shows that there are two Camm Trans link trucks waiting at the stockpile to get loaded (a link truck is large truck that is used to transport coal and Camm Trans is a company that I own). A loader is loading coal from the stockpile into the two waiting trucks. That is all that the 50-second clip shows. It is an ordinary day at an ordinary coal mine with nothing extraordinary happening. The video clip is undated and so Mr Erasmus was unable to say when it was shot. What he does know, however, is that the footage was taken at Bankfontein which is a Just Coal mine. I know Bankfontein very well.

28. After viewing the video clip in the late morning on Thursday, 16 February 2017, we consulted with our legal team to tell them what we had seen, to go through the proposed article that Mr Gaffar had sent us via email the day before, and to decide on how to best manage the situation.
29. It is important to appreciate what the proposed article says and conveys to its readers. It has already been quoted by me in this affidavit in full. Broken down, the article tells 90,000 *Middleburg Observer* readers that:

- 29.1 One of our former plant managers has damning video footage of what appears to be illegal and fraudulent activities taking place at the Just Coal mine *and* implicates Eskom officials as being corrupt and easily bribed;
  - 29.2 The video footage shows discard coal (unusable coal) being mixed with higher grade coal and then loaded directly into dump trucks headed for Eskom and apparently bypassing the entire process where Eskom rovers or inspectors are supposed to do a quality control check;
  - 29.3 Just Coal has been doing this for years during which time Eskom rovers were bribed to accept thousands of loads of discard coal;
  - 29.4 Eskom officials are corrupt and are being bribed from the top to the bottom;
  - 29.5 Eskom has initiated an investigation into allegations that Mr Erasmus and I are defrauding them and that criminal charges have been laid against us because we have under-delivered amounts of coal to Eskom and over-inflated our bill *and* that this constitutes a massive R5.8 billion fraud.
30. There is simply no way that this article can be published. It is highly defamatory, will damage the reputations of both Mr Erasmus and I as well as that of Just Coal. It will cause irreparable harm, both reputational and financial. Moreover, there can be no justification for printing the article. To demonstrate the proposed article's untruth, I

have been advised to respond to what is said in it to demonstrate the problem. I do so below:

- 30.1 Firstly, the Joe Singh Group of Companies is made up of three separate coal mining companies. They are Just Coal (Pty) Ltd, Ferret Coal Kendal (Pty) Ltd and Fentonia Colliery (Pty) Ltd. The Joe Singh Group of Companies supplies coal to Eskom under contract. We have been doing so since approximately 2010 and have, throughout the period from then until now, enjoyed a good working relationship with Eskom (which can very easily turn sour as a result of articles such as the one published by the *Middleburg Observer* on 27 January 2017 and the latest one proposed to be published on 24 February 2017);
- 30.2 In terms of our contract with Eskom, we are obliged to provide it with a certain grade of coal. Coal is graded for quality purposes and the grade is determined, amongst other factors, by four things (a) its CV or calorific value; (b) its ash content; (c) its moisture content; and (d) the size of the coal;
- 30.3 The CV or calorific value of coal refers to the amount of energy, measured in kilojoules, that the coal can generate when burned. Not all coal is suitable for the generation of electricity;
- 30.4 The calorific value of coal varies depending on the coal seam from which it is taken. Just Coal, for example, has some coal

with a calorific value of around 19 CV whereas other coal from other seams has a calorific value of 23 CV;

- 30.5 Coal of differing grades can and is, as a matter of industry practice, blended;
- 30.6 In terms of the contract between Just Coal and Eskom, we are obliged to supply Eskom with coal that has a calorific value of 21.4 CV;
- 30.7 The process of ensuring that coal meets a specific grade or quality or has a certain CV-level is a complicated process and the details of it do not need to be traversed here, save to say that it involves samples of coal being taken from stockpiles to a laboratory where the coal needs to be tested and where the laboratory will specify precisely how the coal needs to be washed and processed in order to come out at a required spec. In our case, one of the required specs is 21.4 CV and the process embarked upon is designed to achieve that;
- 30.8 There are extensive checks put in place to ensure that the produced coal ultimately meets the required specs of 21.4 CV;
- 30.9 Eskom requires a “dual management system” for quality control. Essentially, Just Coal will check the quality and sizing of the coal to ensure that it is up to scratch before transporting it to the Eskom power station. We do this by engaging the services of our own laboratory technicians and



inspectors to oversee the process. It is extremely important for us that this be done because if we are found not to meet Eskom's required grade (as set out in our contract) then Eskom will reject the coal that we supply and penalise us by only paying us R30 per ton for the coal whereas if it met the specs then we are paid R270 per ton;

30.10 So the first stage in the dual management process concerns us ensuring quality compliance because we know that if we do not meet the requisite standard, we will be heavily penalised. There have, at times, been problems (mostly caused by human error) and we have been penalised. This is not unusual and happens from time to time when mistakes are made and mistakes do, unfortunately, creep in occasionally. This is understandable when thousands of truckloads of coal are involved;

30.11 Just Coal supplies the Eskom's Tutuka power station as well as the Matla power station. In the latter part of last year Eskom penalised Just Coal five times. On the Tutuka contract invoice 101024 dated 30 September 2016 attracted a penalty of R1,545,218.89 and invoice 101042 dated 31 October 2016 was penalised R367,248.40 for a total penalty of R1,912,467.29. On the Matla contract the penalties were higher at R2,912,629.47, ie. invoice 101025 dated 30 September 2016 was penalised R1,733,182.86, invoice 101029 dated 30 September 2016 was penalised R387,488.43

and invoice 101048 dated 31 October 2016 was penalised R791,958.18;

- 30.12 Eskom is able to detect non-compliance because it also has a mechanism to check grade quality and sizing on its side. This is the other part of the dual management process. Eskom does its checks by employing rovers or inspectors who are effectively Eskom employees based at coal mines. They make sure that the correct product is loaded onto the trucks destined for their power stations. In fact, Eskom makes use of an independent laboratory onsite (at coal mines). It randomly takes samples from Stockpiles designated for its power stations and checks them before the coal gets loaded into the link trucks. But, there are more checks at a further laboratory that analysis the coal when it arrives at the Eskom power station as well (just to make sure that nothing improper happened along the road between the point of departure and the point of arrival). Again, if Eskom pick up a discrepantcy (as it did twice at the end of last year in respect of the Tutuka contract and three times in respect of the Matla contract) then the supplier is penalised. This is standard practice in the industry and mining companies that supply coal to Eskom do their best to ensure that errors do not creep in because the penalties are expensive;
- 30.13 Not only are the penalties expensive, but Eskom has the power to terminate contracts if they suspect deliberate foul

play;

30.14 The same goes for the amount of coal being supplied to Eskom's power stations. We have weigh bridges at which we weigh the dump trucks that transport our coal to Eskom. They get weighed when they leave our mine. But they also get weighed again when they reach Eskom's power station. If there is any discrepancy between our weight and Eskom's weight, then Eskom's weight will *always* prevail (sometimes there may be a discrepancy, either because somebody has made a mistake on one side or else because coal may have been lost along the way during transit). The point is that Eskom cannot be cheated on weight because they have their own checking systems;

30.15 And so the dual management process functions well. As I have already mentioned, there have been some discrepancies in the past and we have been penalised in the past. But that is not to say that we are doing something deliberately wrong but rather that the process of checks and balances is working properly.

31. It is now time to consider the article that Mr Gaffar has penned and which the *Middelburg Observer* proposes publishing on Friday, 24 February 2017. I have done this by examining the propositions that I identified above and then commenting on them by demonstrating how they are palpably untrue:

31.1 The first proposition made by the journalist is that one of our former plant managers has damning video footage of what appears to be illegal and fraudulent activities taking place at the Just Coal mine *and* implicates Eskom officials as being corrupt and easily bribed. I respond as follows:

31.1.1 Firstly, I do not know who the “former plant manager” is. I have my suspicions and invite the respondents to confirm them in their answering affidavit. In order to be discrete, on some level, I merely record that his first name is “Frans”. To this I add that Frans was not a good plant manager and we ultimately had to terminate his contract of employment prematurely. This followed a long standing dispute (the details of which I will not get into in this founding affidavit but will, if I need to, elaborate on in reply). The point is that when Frans left our employment, aggrieved by having his contract terminated, he threatened to destroy our company. How precisely he was going to do this was, at the time, unknown to me. I now have a better idea of what he meant if he is in fact the source of the untruthful allegations. It is extremely important that the respondents not be coy with his identity nor with what he told them. That is so because if my inclination is correct, which I strongly suspect that it is, namely that it is “Frans” then his credibility is

bad. Mr Gaffar should trust him no more than he should have trusted the fake news website on 27 January 2017;

31.1.2 Newspapers cannot repeat untruths fed to them in circumstances where they have it within their power to verify suspicious facts. I am now giving the newspaper more information so that it can verify its facts before it makes the publication. If it chooses to ignore what I am saying in this paragraph then it does so in its own peril. There is no longer any excuse for it to simply accept what it was told by “the former plant manager” without properly investigating.

31.1.3 The video footage is not damning and certainly does not depict any illegal or fraudulent activities taking place at the Just Coal mine. I have already explained what the video footage shows. It shows an ordinary day at the Bankfontein mine where processed coal is being conveyed across a feed belt and dropped onto a stockpile. It is then being loaded onto a link truck. How on earth this suggests that something illegal is happening is beyond me. But what is concerning is that, if the proposed article is published, there is a suggestion that we loaded the truck with sub-standard coal headed for Eskom’s power station. But

there is no evidence of this in the video. Without more, it is impossible to say what the video depicts other than an ordinary day at Bankfontein. From the video it is impossible to tell what the grade of the coal is. It is also impossible to tell where the dump trucks are taking it to. We provide our own transport at the coal mine and very often move stockpiles from one place to another place. It is unknown whether this is pre-certification coal or post-certification coal. It is also unknown where the stockpile is going to. Just because it is being loaded onto one of our trucks does not mean that it is headed for Eskom. It may, for all I know, simply be in the process of getting moved from the current stockpile position to another stockpile position so that it can be tested by the laboratory. It would be highly reckless of the newspaper to claim that this video footage show illegal and fraudulent activities taking place. It does not shows that nor is it evidence of illegality.

31.1.4 It is also untrue that the video footage implicates Eskom officials being corrupt and easily bribed. The video footage does not even show any Eskom officials. In fact there are no Eskom officials (or any other people) being videographed in the short 50 second clip. How on earth the newspaper can

propose publishing a story where it says that the 50-second video clip provides damning evidence of Eskom officials being bribed is, once again, beyond me. The newspaper cannot be allowed to publish these kinds of reckless allegations dressed up as fact.

31.2 The second proposition made by the journalist is that the video footage apparently shows discard coal being mixed with higher grade coal and then loaded directly into dump trucks headed for Eskom and apparently bypassing the entire process where Eskom rovers or inspectors are supposed to do a quality control check. I respond as follows:

31.2.1 The video footage does not show discard coal being mixed with higher grade coal. The video footage merely shows processed coal being conveyed down a feed belt. The article says that the coal is sub-standard and unusable (discard coal is unusable). That is not true. We do not supply discard coal. Moreover, the stockpile is not discard coal but processed coal.

31.2.2 There is also no evidence that the trucks are headed for Eskom's power station.

31.2.3 The article says that the video footage clearly shows Eskom rovers and inspectors being bypassed in order to avoid a quality check. That is not true. I

have already explained the dual management process that involves our laboratory, our inspectors and our weigh bridge on one side of the transaction and then Eskom's laboratory, Eskom's inspector's and Eskom's weigh bridge on the other side. The video footage cannot therefore show that Eskom's entire check process is being bypassed. What about Eskom's check process on the other side (when the coal gets to the power station). The video has nothing to do with that. The statement is therefore ridiculous.

31.3 The third proposition made by the journalist is that Just Coal has been doing this for years during which time Eskom rovers were bribed to accept thousands of loads of discard coal. I respond as follows:

31.3.1 Just Coal has *never* done this. We have *never* bribed Eskom rovers nor have we *ever* bribed any other officials in order to bypass the dual management process.

31.3.2 That somebody would make this allegation is astonishing to say the least. I have already explained that if my inclination as to the journalist's source is true, that *that* source has an ulterior motive for making these statements. But until the source and the veracity of the allegations can be verified, it is



highly reckless and enormously prejudicial to publish these speculations dressed up as fact.

31.4 The fourth proposition made by the journalist is that Eskom officials are corrupt and are being bribed from the top to the bottom. I respond as follows:

31.4.1 I have no knowledge of Eskom officials being corrupt. Moreover, I do not believe that Eskom officials are corrupt from the top of the organizational structure to the bottom (which is what the article suggests). As I have stated above, Just Coal has been supplying coal under contract to Eskom since 2010. During that time we have enjoyed a good working relationship. I have also explained that, at times, where there have been discrepancies between our quality control checks and those of Eskom, we have been penalised. More often than not, we accept the penalty and pay it. Our relationship with Eskom continues to be a good one;

31.4.2 Perhaps I should add that the allegations against Eskom appear to be highly defamatory to Eskom as well. It is simply too easy for a journalist to impute corruption without providing any proper evidence. The mere say so of a disgruntled former plant manager is *not* evidence. Before the article can be published, the newspaper must surely do better to

verify the facts in the story.

31.5 The fifth proposition made by the journalist is that Eskom has initiated an investigation into allegations that Mr Erasmus and I are defrauding them and that criminal charges have been laid against us because we have under-delivered amounts of coal to Eskom and over-inflated the bill that we charge them *and* that this constitutes a massive R5.8 billion fraud. I respond as follows:

31.5.1 I know nothing about an investigation instituted by Eskom. I have already pointed out that if Eskom were investigating us then we would know about it. Moreover, I have also pointed out that Eskom has a practice in place whereby it suspends the operation of any contract pending the outcome of an investigation. That we are still operating under the contract *ipso facto* implies that there is no investigation. I challenge the respondents to produce evidence of it in the answering affidavit. To date, they have not done so. In fact in the 27 January 2017 article Mr Gaffar, himself, tells us that he has been unable to verify whether there is an investigation and that all he knows is what he gleaned from a fake news website;

31.5.2 I also have no knowledge of any criminal investigation that is being undertaken. I know of no

criminal charges nor of any investigating officer appointed to investigate a fraud. I asked Mr Erasmus, and he contacted each and every one of the policemen and persons mentioned in the *Middelburg Observer's* article of 27 January 2017. None of them were able to confirm with him that a case of fraud has been opened against us. In fact, once again, Mr Gaffar's own article makes it quite clear that he has also been unable to verify that any criminal charges have been laid against us.

- 31.5.3 There is manifestly no truth to this part of the story either nor any evidence that it may even be true. I also note that the first part of the story implicates our employees being corrupt and bribing Eskom. The second part implicates a different illegality, namely us over-charging Eskom for the coal we supply. I invite the respondents to clarify this in their answering affidavit and to provide evidence of the facts behind the story.

#### REQUIREMENTS FOR AN INTERIM INTERDICTION

32. It is respectfully submitted that the applicants have a prima facie right not to have Mr Gaffar and the *Middelburg Observer* publish the impugned article on Friday, 24 February 2017. I further submit that such right is being violated. I elaborate on this submission as follows:

- 32.1 All three of the applicants have the right not to be defamed and not to have their reputations sullied. The circumstances animating this case demonstrate that the reputations of all three applicants are being sullied in a manner that is both unlawful and unreasonable. The publication is per se defamatory. Our reputations, in the estimate of a right thinking citizen, will be diminished in consequence of the proposed publication.
- 32.2 Additionally, Mr Erasmus and I have a constitutional right to human dignity which is protected from being unreasonably and unjustifiably violated. Again, the proposed article, if published, will amount to an unreasonable and unjustifiable infringement of that right.
- 32.3 Moreover, Just Coal has a right not to have its commercial interests arbitrarily violated. The proposed publication will be extremely damaging and will unquestionably hurt the company financially. The company has a large labour force and the ramifications will not only be felt by it but also by its labour force and the families that they support (the proposed publication may result in Eskom suspending its contract with Just Coal in order to investigate the allegations. The economic rights of Just Coal are being severely compromised. To this I can add that last night (Thursday, 17 February 2017) there was serious labour unrest at the Just Coal mine. One of the reasons for that is because the

community has seen the 27 January 2017 article and now thinks that the mine is making more money than it actually is. This is as a direct result of the reckless 27 January 2017 article that Mr Gaffar penned and the *Middelburg Observer* published. Things will only get worse if this latest article is also published. Moreover, Eskom, for reasons that I have already explained in this affidavit, are likely to suspend the operation of our contract if it gets wind of the fact that a fraud may have been perpetrated against it. Once again, that kind of harm is not only of reputational damage but also of significant financial damage. Without Eskom's contract the mine will be unable to survive.

32.4 All three applicants have the right to privacy. That right, similarly, will be both unreasonably and unjustifiably violated if the proposed publication takes place. Our right to privacy will be interfered with because the kind of information that is being published, quite apart from being untrue, strikes to the very core of our integrity as human beings and effects the way that people see us and the way in which engage with the world.

33. The balance of convenience favours us, the applicants, for the following reasons:

33.1 I have already demonstrated the irreparable harm that will be caused to our reputations, human dignity and privacy, and economic sustainability. Moreover, I have demonstrated that

the harm will be felt well beyond those that are targeted in the newspaper article. If the mine suffers, which it will if Eskom suspends the contract, then the mine will not be able to survive and the workers will be out of jobs and the people that they financially support will all get hurt. The foreseeable damage if the proposed article is published on Friday is immense.

- 33.2 Juxtaposed to the massive harm that will occur if the article is published, there is no harm if the article is not published. The case law on the balance of convenience in interim interdicts designed to prevent the media from publishing an article explains that the harm in not publishing the article must be understood in the context of the newspaper's readers missing out on an opportunity to get important news. In other words, the public have a right to know what is going on. The problem with this article, for reasons that I have already explained, is that it does not tell the public what is going on. It only tells them about untruths and speculations. The balance of convenience can never favour the publishing of a blatantly untruthful or unverified article. We readily concede that if the respondents verify their facts and establish a proper factual basis for publishing the story, then and only then, will the balance of convenience tilt the other way.

34. Finally, I respectfully submit that we have no other suitable or appropriate remedy available to us apart from this interim interdict. That submission is made for the following reasons:

34.1 Damages in defamation cases are notoriously low. They are certainly never adequate to compensate an applicant who has genuinely been harmed by an unlawful publication. Damages, therefore, are not a suitable or adequate remedy.

34.2 Moreover, there is nothing else that we can do apart from getting an interim interdict. Perhaps the only other thing that we can do, which we have tried to do in this affidavit, is to give the proper facts to the newspaper. Our hope in doing so is that the respondents will carefully consider what we have to say here before publishing an article which they should have known ought not be published but which they now know definitely must not be. The facts contained in this affidavit, unless they are capable of being contradicted with proper evidence, stand as a reliable indicator that the article is false and should not be published.

#### THE RELIEF SOUGHT

35. We do not want to censor or muzzle the media from publishing important and newsworthy articles. We accept that articles about fraud and corruption are important and that the media, when they publish these articles, play an important role in society's fight against

corruption. However, nobody benefits when the reporting is reckless and unreasonable. The fight against corruption is not advanced when journalists report on stories in a sensational manner in circumstances where they have not properly investigated the facts.

36. The interdict that we seek is not a final interdict. We merely want to stop the reckless, unreasonable, and highly prejudicial publication of an article *until* the journalist and newspaper have done some proper investigation into the story that they intend publishing. That request, I respectfully submit, is not only consistent with the media's duty to report responsibly but it also benefits the public because the public benefit from hearing *true* stories. They lose out when they hear false ones. Indeed, the rising scourge of fake news – news deliberately known not to be true but published for some ulterior motive – needs to be controlled. If the *Middleburg Observer* does not do proper research and proper investigation and if it cannot verify the source of the information that it has, then it becomes nothing more than a fake news site itself and/or a purveyor of fake news.
37. So, far from wanting to censor or muzzle the *Middleburg Observer*, all that we want to do is make sure that it gets the facts straight before it publishes highly damaging articles. The relief that we seek is set out in the notice of motion in the following terms:

An order is sought in the following terms:

1. This application is heard as an urgent application in accordance with the provisions of Rule 6(12) and the requirements pertaining to the forms and manner of service are dispensed with.



2. An interdict is granted against the respondents precluding them from publishing the article or any similar article to the one foreshadowed in the email sent by the first respondent to the second applicant at 2:52 pm on 15 February 2017, unless and until Eskom confirms in writing that it is investigating the applicants for fraud and/or corruption and/or bribery.
3. An interdict is granted against the respondents precluding them from publishing any article suggesting, directly or indirectly, that any or all of the applicants either directly or indirectly has committed fraud and/or corruption and/or bribery *and* is being investigated for fraud and/or corruption and/or bribery involving the supply of coal to Eskom unless and until Eskom confirms such in writing *and* criminal charges have been laid against them *and* they have appeared in court on such charges.
4. An interdict is granted against the respondents from publishing any photographs of either the first and/or second applicant unless and until they have been charged with a crime *and* have appeared in court on such charges.
5. Further and/or alternative relief.
6. The first and second respondents are jointly and severally liable for the costs of this urgent application.

## CONCLUSION

38. In conclusion, it is submitted that an interdict is justified to prevent Mr Gaffar and the *Middleburg Observer* publishing the proposed article. Moreover, it is urgent that the interdict be granted before the proposed publication date. Finally, it is submitted that it should not have been necessary for us to bring this application and that, if we are successful with it, a suitable costs order should follow the result.

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**RAMESH (JOE) SINGH**

Thus signed and sworn to before me at \_\_\_\_\_ on \_\_\_\_\_  
February 2017 by the Deponent having acknowledged that he/~~she~~ knows  
and understands the contents of this Affidavit, and that he/~~she~~ considers the  
oath to be binding on his/her conscience.

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**COMMISSIONER OF OATHS**