

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

CASE NO: 21663/2019

In the matter between:

AFRO FISHING (PTY) LTD
(Registration No: 1998/016485/07)

First Applicant

JOHANNES AUGUSTINUS BREEDT

Second Applicant

and

ELIZABETH CATHERINA WESSELS

Respondent

SUPPLEMENTARY ANSWERING AFFIDAVIT

I,

ELIZABETH CATHERINA WESSELS

hereby make oath and say that:

1. I am the Respondent in this matter. I am an adult female and my residential address is 69 Hofmeyr Street, Mossel Bay. The contents of this Affidavit are within my personal knowledge, and is true.
2. I have on Friday 6 December 2019 deposed to my first provisional Answering Affidavit herein. At that stage I had not engaged the services of a firm of attorneys and/or an advocate to represent me to oppose the application, as I

simply could not afford to do so. I said as much in that affidavit. It has now come to my attention that the Applicants, opportunistically, on the morning of enrolment, Tuesday 10 December 2019, wished to immediately proceed with the matter notwithstanding my attorneys of record having filed a Notice of Intention to Defend on Monday 9 December 2019, arguing that I, in my previous affidavit, stated that I do not oppose the application and that they wanted to take a final interdict Order plus a punitive costs Order against me. This is not correct. Although perhaps awkwardly phrased here and there, I made it clear in my previous affidavit that I could not formally oppose the application by filing papers assisted by an attorney and an advocate, as I could not afford it. The one or two phrases that a legal practitioner from Mossel Bay, who did not act formally for me but merely informally gave me some guidelines, inserted, that the Applicants now wish to colour in as me not opposing the application, cannot be read in isolation. Read in the context of my full previous affidavit it should be very clear, objectively speaking, that I do not admit that anything that I have published is unlawful or defamatory or should be taken off from the websites and/or the Facebook pages where they are published. I oppose the Order sought by the Applicants to have my investigative journalism publications removed.

3. I oppose the punitive cost or any cost order they seek against me. I submit that the application should be dismissed, with costs, and that the Court should order the Applicants indeed to pay punitive costs, as a token of censure of the heavy-handed bully tactics the Applicants used in an attempt to stifle freedom of speech and to intimidate me as single freelance investigative journalist to remove my online publications.

4. I have between noon and 2pm to 3pm on Monday 9 December 2019 managed to engage the services of Advocate Theo Nel of the Cape Bar and of Mr Hugo van Heerden of Hayes Attorneys, Cape Town to represent me herein.
5. With this being the situation, I continue to oppose the application and the costs order sought against me, now on the basis that I can file this affidavit which was drafted after short consultations with my attorney and counsel and which affidavit they assisted me in drafting.
6. Nothing that I said in any of my online publications that the Applicants rely on in their founding papers, carry the message or implications or innuendo that the Applicants attempt to ascribe to it, in their melodramatic “interpretation” thereof. I deny any defamation as alleged. Only in the alternative, should the Court find that the allegations are indeed defamatory, I raise the defence that whatever I published, was true and that it is in the public interest to so publish it.
7. In my online articles I merely reported what had already been out in the public domain internationally – in particular in Namibia and elsewhere in South Africa regarding the Fishrot scandal in Namibia and Anglo and Iceland: that news broke dramatically very recently. The Namibian Minister of Fisheries and the Namibian Minister of Justice both were forced to resign, and both were arrested and imprisoned and they are still in prison awaiting trial. A very dramatic documentary exposing the blatant corruption and fraud was screened on Al Jazeera TV news channel in South Africa and Namibia. This is huge news everywhere. By the day more publications on this see the light: see for instance **Annexure “A”** hereto, being a copy of the *Noseweek* article “Breaking News:

Fishrot stink wafts into South Africa” published on 1 December 2019 in *Nosweek* Issue 242. The only aspect that I added was to point out that the First Applicant shares a shareholder (Mr Adriaan Louw) and a director (Mr Breedt) with the Angolese company AST that had an interest in the Namibian company Fishcor, which is now mired in corruption controversy. All of this is factually correct and indeed confirmed by the Applicants. Although this news “broke” now recently, the corrupt activities underpinning it occurred over the last few years, and are not recent activities.

8. I e-mailed the papers to my newly appointed attorney and advocate only on Monday 9 November 2019. The day was marred by load shedding both in Mossel Bay where I am and in the Cape Town where they are. I only drove through to Cape Town early on the morning on Tuesday 10 December 2019. The Applicants’ legal practitioners were dead-set on proceeding with their application against me and to take a final interdict order plus costs order against me that day. The legal practitioners went to see Judge Desai in chambers, where the same attitude by Applicants was conveyed to the Judge. The Judge then ordered in chambers for the matter to be heard in open Court on forthcoming Friday, 13 December 2019. He then ordered the matter to be heard on the forthcoming Friday 13 December 2019 at 10h00 and that I am afforded to file this Supplementary Answering Affidavit and that the parties must file Heads of Argument by not later than 16h00 on Thursday 12 December 2019.
9. I submit that the matter was not right for hearing on Tuesday 10 December 2019 as I as Respondent have not had time to fully put my Answering Affidavit with full detail before the Court and I request an opportunity to do so. Also, the Applicant

has not even replied to my affidavit as submitted provisionally but which will now be amplified. No Heads of Argument had been filed. We proposed a program for the further conduct of the matter to the Applicants' legal practitioners in the format attached hereto marked **Annexure "B"** but they were not happy with that and insisted on going to Court on such Tuesday to take a final interdict Order and punitive costs Order against me. I request that any possible cost Order granted in my favour also include the wasted costs for Tuesday, 10 December 2019.

10. I submit that there is **no urgency** in this matter: the link between Mr Breed (Second Applicant) as director of First Applicant and the Angolese company involved in the Namibian Fishrot scandal, had been out in the public domain and published in many other publications long before I even wrote about it. My articles merely repeat such previous factual allegations which Mr Breed the Second Applicant and also the First Applicant do not deny and confirm it as correct. I submit that the whole method and basis upon which the Applicants' "urgent application" is based, is misconceived: there is no urgency and purely on this basis alone the application should be struck from the Roll, with a costs order in my favour.
11. The whole application is very untoward bullying process and an abuse of the process of Court by a financially very strong company bearing down on an individual investigative journalist. There are no merits in the urgency or the Applicants' and it should be summarily dismissed. I have been advised by my legal representatives that the Honourable Judge, in arranging for the matter to be heard on Friday 13 December 2019, did not rule on urgency and that this

issue still stands to be determined. The true purpose of this voluminous urgent application for a final interdict and punitive costs Order against me was rather aimed at an attempt to squash my submissions made during the public participation process in the First Applicant's application to be permitted to start a fish canning factory in Mossel Bay Harbour, which public participation process is to end on Thursday 12 December 2019, before the deadline, so removing such submissions to be considered as part of the process.

12. The Applicants have an alternative remedy namely an action for damages and they state in their papers that they will be pursuing that.
13. The application papers contain **four** articles that I published on my sites and Facebook pages. I will briefly deal with each below.
14. My first online publication that is found on Record: 51 – 67, bearing the heading: “Fishgate Quota Scandal between Angola and Namibia just the tip of the Iceberg – many other companies investigated”:
 - 14.1. Other than the heading quoted above, this first online publication of mine contains not a single word of my own creation or writing.
 - 14.2. The rest of the article consist of 7 links of earlier publications addressing the Fishgate scandal which arose as long ago as 2017. I only put together excerpts of what I considered to be the crux of the contents of those 7 links and every time provided the full hyperlink for the reader to access the full article as published in other publications, earlier, by other journalists.

- 14.3. By way of example I refer to the fifth article I linked, namely the one published under the heading “Fishcor overpaid for fish factory by Nam\$ 50 million, gets fishing quota with Nam\$ 1,8 billion that will also benefit Angolan-based partner”: I wish to emphasise that this was published as long ago as **13 April 2018** in the newspaper “*The Namibian*” and was written by the two investigative journalists N Shapwanale and S Immanuel. See: Record: 63 – 65. In my first article I merely quoted this link and added not one word of my own writing to that.
- 14.4. The seventh link that I printed under the heading: “Horse mackerel could stem pilchard job losses” was published as long ago as **15 December 2017** in the newspaper *The Namibian*: see at the bottom of Record: 65, 66 and the top of 67. Again, I added nothing to that, not a single word but merely quoted such a previous article.
- 14.5. In any event, on the Applicants’ own case, they do not allege any defamatory or other unlawful content to be found in my first online article and their case is not based on this first online article.
15. My second online article: published on 24 November 2019 under the heading “Icelandic and Russian captains arrested as Fishrot scandal deepens”:
- 15.1. This is found on Record: 73 – 82.
- 15.2. In this article I contributed not a single word or even the heading out of my own accord. I merely reposted on my online pages this article that had previously been published in the *Confidente* newspaper in Namibia.

- 15.3. At the bottom thereof, on page 82, I also gave the link to a related article headed “How I bribed the minister to fishing quota in Namibia”.
- 15.4. In any event the Applicants do not allege that this article contains any defamatory or any other unlawful content and their case is not based on it.
16. My third online publication under the Afrikaans heading “Fishrot se stank oor grootskaalse korrupsie en kwotabedrog in visbedryf waai tot in Mosselbaai”:
- 16.1. This online article is found in the Applicants’ Founding Affidavit as Annexure “DVZ9” (Record: 83 – 95).
- 16.2. The heading and all the portions in Afrikaans in this article was written and published by me.
- 16.3. The two portions thereof in English on Record: 88 and Record: 89 are excerpts from other publications so quoted and were not written by me.
- 16.4. The English portion on Record: 88 – 90 was also not written by me but is an excerpt from a previous publication dated 2 January 2019, as published in *Undercurrent News*.
- 16.5. Some links to online publications are given on Record: 91.
- 16.6. It is predominantly on this online publication, being my so-called third online article, that the Applicants’ case is found.
- 16.7. See in this regard paragraphs 53 to 62 of the Founding Affidavit (Record: 18 – 23).

16.8. In paragraph 53 of the Founding Affidavit by Mr Deon van Zyl he underlines the particular portions of my third article which he alleges is defamatory. I dispute that any of such underlined portions are defamatory. None of the underlined portions considered individually, or together as a whole, can by any stretch of the imagination be stated to be defamatory. Alternatively it is true and in the public interest for it to be published.

16.9. The Applicants jump up and down about the “disclosure” that I make, quoted in the middle of Record: 84, that Mr Breedt as well as Mr Adrian Louw and attorney Maren de Klerk represent the Angolan company African Selection Trust Limitada (“AST”) on the board of directors of the Namibian company known as Seaflower Pelagic Processing (Pty) Ltd. They state that this disclosure of mine, in the context of Afro Fishing (Pty) Ltd’s Mossel Bay Harbour fish factory application (and the public participation process part of it) is defamatory. I submit that this is without any merit. I have nowhere in any of the articles I wrote made the astonishing and hyperbolic statements or accusations or imputations ascribed to my articles by the Applicants or any innuendo to that effect:

- The factual accuracy of such information is undisputed and in fact admitted by the Applicants;
- It is not me who for the first time revealed this connection between AST and Seaflower PP: it had been previously published by others, amongst others in the Namibian newspaper “*The Namibian*”;

- It is a fact that Mr Breedt, the Second Applicant, is, from what I could gather, the Chief Executive Officer of the First Applicant, and also is the Chief Executive Officer of the Angolan company AST;
- The same goes for the financial interest by Mr Adrian Louw in the same two companies. I wish to add in this regard that a very reliable source had previously revealed to me that Mr Louw is a shareholder in the First Applicant. It is common knowledge on the Internet that Mr Louw has direct substantial financial interest in AST and/or SPP.

16.10. I refer to my previous affidavit where I relate the strange behaviour by Mr Van Zyl, in our interview, where he initially refused to disclose to me the names of the new directors and shareholders of the Applicant. When I determined such information myself from public records and publications in the public domain, and, in my updated article, presented same to him for his input, again, he confirmed the correctness of the two directors that I had so identified. He did not dispute that Mr Adrian Louw was indeed a shareholder in the First Applicant. He merely requested me not to mention this shareholdership as it could be interpreted as if it came from his mouth (which it did not).

16.11. The information pertaining to Mr Breedt being the CEO of both the Angolan AST company (involved, directly or indirectly in the Namibian Fishrot scandal) and as CEO of the Applicant, equally is factual

information that it would be relevant to publish and to be made known: it is in the public interest to do so.

16.12. I submit that the Applicants paraphrased their own interpretation of what is stated in my third article and does so incorrectly and without justification. They did this in a hyperbolic manner. As it is said in Afrikaans: “Hulle dik die saak aan.” I reiterate that nothing that I published in my third article can be said to be defamatory or unlawful in any manner. It is all factually correct and is not denied by the Applicants. Perhaps the Applicants should explain to the Court why they were not prepared to disclose the names of the directors and/or shareholders in the First Applicant to me during my interview with them?

16.13. The bulk of my article written in Afrikaans is replete with the references from the pre-existing sources where I obtained my information from, namely:

- The first page (Record: 83): the WikiLeaks documentation.
- The Namibian newspaper *The Namibian*: Record: 84.
- The general concern in Mossel Bay about the construction of the new pelagic fish bone factory in Mossel Bay Harbour as I reported on widely previously: Record: 85.
- Information obtained in the information session at the public participation process held in Mossel Bay: Record: 86.
- The Namibian newspaper *Die Republikein*: Record: 86.

- The whistleblower of the Iceland company Samherji: Record: 86.
- The information pertaining to who the directors of which companies are, is public knowledge and can be obtained from the official records of the CIPC. This is of course where I obtained all my information from: it is factually correct and had not been denied or proven wrong by the Applicants.
- *Noseweek*: Record: 88 – 89.
- The *amaBhunjane Centre for Investigative Journalism*: Record: 89
- *Daily Maverick*: Record: 89.
- *Undercurrent News*: Record: 89.
- *Informante* (Namibian newspaper): Record: 90.

[To explain, all the **English** portions in my Afrikaans third article, are *verbatim* copy and paste quotes taken from the English source article as clearly identified and to which I provided the full link to the full article that I am quoting from.]

16.14. The public participation process for the Applicants' pending application to conduct business as a fish canning factory in Mossel Bay is running out on 12 December 2019. It is in the public interest that the public know who the directors and shareholders and even the financiers are of the First Applicant and for some reason or the other the First Applicant was not forthcoming in disclosing that information voluntarily. If they are

involved in other companies that are now, directly or indirectly, linked in the forecourt or on the periphery on the Fishrot scandal in Namibia, it cannot be said to be defamatory to make that public.

17. The fourth article under the heading: “Journalist threatened for naming directors in fishing business”:

17.1.1. This article appears on Record: 108 – 123.

17.1.2. This article I published on my two websites and Facebook pages on 1 December 2019.

17.1.3. There is nothing defamatory in this article.

18. As is common with these rampant corruption matters that we have been experiencing in Southern Africa lately, it is widely reported upon by investigative journalists, reporters, commentators, newspapers, online publications etc. The same with the Namibian Fishrot scandal and the companies involved (directly or indirectly) therein, and such companies’ directors and shareholders. I refer to the article already attached hereto as **Annexure “A”**, being the “Breaking News” headline article in the latest *Noseweek*, where the very same issues are published. A survey of many other electronic pages and printed publications will reveal that this is now squarely within the public domain and analysed and discussed by all. This is the free press at work. No country needs this more now than South Africa and Namibia. This being so, I submit that there is no room for interdictory relief available to the Applicants any further: the horse has bolted: all the information is out in the public domain. The Applicants’ remedy is to address factual inaccuracies within each and every publication if there are any

such inaccuracies. In my publications there were none. They also have the alternative relief of a claim for damages: their papers make it clear that they will in any event pursue that. I will oppose any such action instituted against me for damages.

19. I wish to state that the crux of this matter has nothing to do with defamation: the Applicants are attempting to establish a huge fish canning factory in Mossel Bay: they were not forthcoming with the public in disclosing their directors and shareholders. It has now come to light that one of their directors and at least one of their shareholders are involved in an Angolan company that is involved (directly or indirectly) in the Fishrot scandal in Namibia. This is public knowledge. Nobody can change these facts.
20. I point out the very important role that independent forensic journalists like myself have played in South Africa to inform the public. The Courts in South Africa have strongly protected press freedom and in particular whistle-blowers and forensic journalists to go about in their task unhindered.
21. I conclude by requesting that the application be summarily dismissed, with costs for lack of urgency and/or it is constituting an abuse of the process of Court against freedom of press and independent forensic journalism in South Africa.

ELIZABETH CATHERINA WESSELS

I certify that the above signature is the true signature of the Deponent and that she has acknowledged to me that she knows and understands the contents of this affidavit, which affidavit was signed and sworn to before me in my presence at Cape Town on this the day of December 2019 in accordance with the requirements of Government Notice No. R1258 dated 21 July 1972 as amended by Government Notices No. R1648 dated 19 August 1977 and R1428 dated 11 July 1980

COMMISSIONER OF OATHS