

# Defamation suit a warning to all influencers about appropriate conduct

By [Pierre le Roux](#)

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The courts have sent a strong message to influencers, a growing group of celebrities made famous by their commercial interventions and paid handsomely to drive consumers towards certain brands, suppliers or advertisers.



Image source: Ron Lach from [Pexels](#)

In a nutshell, the court's message is this: there is at least one group that you can't influence – the judiciary. And if you post defamatory material, the courts will call it out and there will be consequences, regardless of how many members of the public you count among your followers.

[Read the judgment](#)

At the centre of this case is Mary Oluwatobiloba Akinwale. She's a student at the University of Pretoria where she's studying quantity surveying. But Akinwale also has another life as an influencer. According to the judgment in this case, she has well over 100,000 followers on different social media platforms, and she 'lives a lavish lifestyle', charging R10,000 for a 60-second video that she posts on her social media accounts.

Akinwale has been involved in a dispute with Native Child Africa (NCA), a small business that makes and sells natural haircare products. It's run by Sonto Pooe who started the business in 2016 and sells her products online as well as in her own stores and in retailers like Clicks and Dischem.

She also runs four small 'natural haircare salons', that employ 50 people.

Pooe and Akinwale originally had an agreement for Akinwale to promote NCA haircare products, but the arrangement soured and then things became ugly.

## Defamatory claims made on social media

During November 2023, Akinwale began publishing a series of statements and videos about Pooe and NCA that Pooe claims are defamatory. Posted on Akinwale's social media accounts, they would have been seen by her more than 108,000 followers.

The comments by Akinwale claimed that Pooe exploited her workers and followed unethical business practices. According to Pooe, Akinwale also urged her followers to harass Pooe on social media, and to repost the allegedly defamatory posts. Akinwale also told her followers to demand that Clicks and Dischem stop selling Pooe's products.

Clearly, Akinwale has considerable clout with her followers. For, as a result of Akinwale's urgings, Pooe began receiving harassing posts, Clicks and Dischem were sent emails and harassing messages on their social media pages – and revenue from NCA virtually collapsed, falling more than 80%.

Pooe said that she had tried to engage with Akinwale but that she had refused to stop defaming her, or to remove the defamatory posts. She therefore had no option but to ask the court for help.



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## Restraining order to stop any more defamatory posts

The main case is still to be heard, and if she succeeds, the court will have to decide on the damages that Akinwale must pay for the harm caused to Pooe and NCA by her defamation. But in the meantime, Pooe asked for an interim order, restraining Akinwale from any more posts that defamed Pooe and her products and withdrawing the comments that she had already posted.

Central to their dispute is the contract between Pooe and Akinwale, and Akinwale's failure to keep her side of the deal. In terms of their agreement, Akinwale, in her role as influencer, was to reach a certain target number of 'insights'. But she didn't make the agreed number and so she was not entitled to the full payment agreed in the contract. Angered by getting less money than she would have had if she had met her side of the bargain, Akinwale began her campaign against Pooe.

Akinwale was supposed to be the 'brand ambassador' for NCA hair care products. In terms of the deal with Pooe, she was supposed to promote the NCA brand on social media, but when she failed to reach the agreed promotional target, and it became clear that she therefore wasn't going to get the full payment, Akinwale 'started trashing ... the reputation and goodwill' of Pooe's product instead of promoting it.

## Followers ‘know she lies sometimes’

Confronted with her actions, Akinwale’s position shifted. She maintained that the comments she made against Poee were true, but she also said it was correct that she had lied in some of her posts. However, she added, as though this would let her off the hook: ‘her followers know that she lies sometimes’.

Poee’s legal team argued that the claim against Akinwale was ‘unassailable’. Akinwale did not deny that she had clearly ‘published’ the defamatory material to more than 100,000 followers, and the court should put a stop to it continuing.

Akinwale did not put up any proper defence that would justify her defamatory statements. Though at one point she claimed that she had told the truth to her followers, this was clearly not so.

Akinwale’s lawyers argued that Poee had suffered ‘no prejudice’, as Akinwale had removed content that Poee ‘deemed defamatory’. They added that their client was ‘a student, ... trying to make a living out of social media through content creation’ and that she ‘enjoys her constitutional right to freedom of expression’.

## ‘Obstinate disregard’ for consequences of defamatory posts

But the acting judge hearing the application, ENB Khwinana, didn’t agree with that portrayal of Akinwale, saying she had several opportunities to stop her posts and reconsider what she was doing. One such moment was when the sheriff contacted her to serve an official letter of demand about Poee’s litigation. However, the very next day, Akinwale again wrote a post about NCA, thus showing ‘an obstinate disregard for the consequences of her actions’.

When Akinwale first appeared in court she claimed to be ‘just a student’ without any source of income. That, however, was a lie and the court later learned that she ‘has a rate card in terms of which she charges up to R10,000 per 60-second video posted on her timeline’.

Akinwale had agreed to serve as a ‘brand ambassador’ for NCA and was expected to conduct herself accordingly. ‘Her failure to do so indicates a significant lapse in fulfilling her contracting duties,’ Khwinana wrote.

## Influencer driven by ‘vindictiveness and malice’

Akinwale’s actions seemed to be driven by ‘vindictiveness and malice’, the judge continued. And when she had a chance to present oral submissions in court, she showed no remorse. Her vindictive behaviour ‘as observed throughout the proceedings’ was another ground for considering a punitive costs order, according to the judge.

If Poee had not brought legal action against Akinwale, the image and reputation of NCA risked “irreversible harm due to this character defamation”.

The most appropriate order for the court to make was to restrain Akinwale, pending the outcome of further legal action. “Having reviewed all the evidence and relevant case law, I am convinced that [Poee and NCA] has fulfilled the requirements ... for the issuing of an interdict.” Further, given Akinwale’s conduct, it would be appropriate to order punitive costs against her as well, said the judge.



Edit button or no, you could still be sued for that Twitter post

Chanique Rautenbach 8 Apr 2022



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## Post apologies, retractions on social media platforms

She was thus interdicted from publishing any defamatory statements or video material on any social media platform referring to NCA or encouraging her social media followers to do so. She was also barred from calling on the public to boycott NCA's products, and all her defamatory statements on all public platforms had to be removed.

Further, the court ordered Akinwale to post an apology and a retraction in video and written format for the defamatory statements made against NCA – and these apologies must be kept on her social media pages for two months.

There's a lesson in this case for all social media users, starting with influencers. The court quotes the South African Human Rights Commission's social media charter that contains a salutary message. The charter recognises the 'very real perils' of ordinary social media users posting defamatory content on social media platforms. "These perils are exacerbated when it is a social media influencer using these platforms" for such a purpose, the court stressed.

The judge advised both companies and social media influencers to make reference to this charter when they drew up contracts. They should also make the charter available to the public in their online spaces, Khwinana said.

## **Don't repost defamatory content created by 'influencers'**

The decision is important reading for influencers and for the companies hiring them to make brand endorsements. It stresses the importance of both sides fully understanding the terms of the contract they sign and the implications of any breach of contract, and highlights the dangers of resorting to self-help by way of defamatory social media posts if either side is dissatisfied. It urges both sides to consider the SA Human Rights Commission's social media charter as a way of avoiding problems.

But it's also a significant judgment for people not directly involved.

It gives ordinary members of the public a better idea of what 'influencers' are and their potential impact on the sales – and the reputation – of a brand.

And there's an implied warning in the judgment aimed at ordinary social media users – the people who 'follow' influencers and buy the products and services they endorse. In this case, many of her 'followers' reposted Akinwale's defamatory comments and allegations. Luckily for them, NCA didn't act against them along with Akinwale in this defamation case.

The lesson of the judgment for 'followers' is not to repost defamatory material – or comments that you don't know for sure are fair or true. If you do, you could land in big trouble.

Eight days after the court granted the order, NCA brought an application contending that Akinwale was in contempt of court for failing to comply with the court order. The matter is ongoing.

## **ABOUT THE AUTHOR**

Pierre le Roux is director (Litigation and Dispute Resolution) and CEO of Herold Gie Attorneys

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