Can organs of state be defamed?

Defamation is that part of our law which applies where a harmful statement made publicly with the intention to harm or damage someone's good name and reputation.[1] Our law recognises that we all have the right to freedom of expression to vent our perspectives on certain issues.[2] It is equally correct to also recognise that such right is limited.[3] However, it often occurs that a party would exercise his/her freedom of expression in a grievous manner leading to litigation. In South Africa, it is generally accepted that one can sue and claim damages against another party for defamatory remarks. However, the question remains as to whether organs of state enjoy such a right.

For example, Wakanda Municipality saw a poster by Thanos on social media and posters around Wakanda City. Wakanda Municipality views such statement as untrue, false and defamatory against it. Being so, the question is, can Wakanda Municipality go to court and ask that Thanos be stopped from making such statements? This newsletter seeks to answer that question.

In *Minister of Police and Others v Silvermoon Investments* 2020[4], the Department of Public Works concluded a lease agreement with Silvermoon Investments for a period of five years. The premises were to be occupied by the South African Police Service personnel and Stats SA. After some time, a dispute arose regarding arrears of rental, which were due to Silvermoon. Silvermoon later tried to evict SAPS and Stats SA from its premises. However, Silvermoon had certain difficulties, with the eviction being carried out as well as its attempt to secure arrear rentals owed.

In that regard, Silvermoon erected a billboard on the premises which stated:

"*SA government's first land grab in the new South Africa!!! This property has been hijacked by the Department of Public Works for the SAPS*."

It was followed by other newspaper articles which were in public domain with the same tone as the above. As a stimulus of these publications, it prompted the government to approach the court on an urgent basis to seek an order against Silvermoon to remove the billboard and to stop Silvermoon from publishing any false or defamatory statements about the government.

The court, in considering the legal intricacies involved, and relying on the principles of defamation and interdicts, concluded that an organ of state is not capable of being defamed, and thus dismissed the application against Silvermoon. Quite notably, the court held that "*the State should not use the courts as a means to muzzle or stifle the right of freedom of its citizens to criticise the government, no matter how harsh it may be perceived to be*."

Bearing the above in mind, it becomes clear that an organ of state cannot sue for defamation or seek interdictory relief premised on defamation. However, I must caution that it is not in all instances that an organ of state would not be entitled to sue or claim damages, as we have learned from *Moyane and SARS v Lackay*[5], that the right of an organ of state would be that of injurious falsehood.

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[1] The Law of Delict: Neethling, Potgieter, Visser 5th Edition.

[2] The Constitution of the Republic of South Africa 1996, section 16.

[3] The Constitution of the Republic of South Africa 1996, section 36.

[4] *Minister of Police and Others v Silvermoon Investments 145 CC and Others* (5126/2017D) [2020] ZAKZDHC 10 (24 April 2020)

[5] *Moyane and Another v Lackay* (35580/15) [2017] ZAGPPHC 1262 (24 November 2017)