SLAPP defence: David beats Goliath

The strategic litigation against public participation or the SLAPP defence was recently recognised for the first time in South Africa. The SLAPP defence was raised in the Western Cape High Court in the matter of Mineral Sands Resources (Pty) Ltd and Another v Redell and Others and Two Related Cases 2021 (4) SA 268 (WCC).

This defence was raised in the form of a special plea by three environmental attorneys and three community activists ("the defendants") against an Australian mining company Mineral Sands Resources and its local subsidiary Mineral Commodities (collectively, "the companies") after the companies had sued the defendants for defamation.

The companies based their case against the defendants on public statements the defendants made in the form of a published book, articles they wrote and published, and a lecture. During the lecture, they openly criticised the companies and, more specifically, their mining operations. The companies submitted that these allegations made against them were false and defamatory. As a result, they sued the defendants for damages in R14,25 million or the publication of apologies.

The defendants raised the SLAPP defence in the form of a special plea and argued that the suit was an abuse of process and further that it violated their constitutional right to freedom of expression. They alleged that the court proceedings were brought for the ulterior purposes of –

· discouraging, censoring, intimidating, and silencing the defendants; and

· intimidating and silencing members of civil society, the public and the media concerning public criticism of the companies.

The judge acknowledged that the companies claimed exorbitant amounts that they knew the defendants could ill afford to intimidate them. It was clear that the litigation was oppressive and instituted in bad faith.

The judge furthermore pointed out that, in the absence of specific legislative mechanisms to deal with SLAPP suits, the courts had limited powers to cure the symptoms of SLAPP suits. The judge dismissed the companies' exception to the

defendants' pleas and reiterated that the interests of justice should not be compromised due to a vacuum in South African legislation.

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