



**IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, PRETORIA**

CASE NO: 060917/2024

**DELETE WHICHEVER IS NOT APPLICABLE**

- (1) REPORTABLE: YES/NO  
(2) OF INTEREST TO OTHER JUDGES: YES/NO  
(3) REVISED:

DATE 20 June 2024

SIGNATURE

**In the matter between:**

**DIRECTOR GENERALA DEPARTMENT**

**OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT**

**DEPARTMENT OF JUSTICE**

**AND CONSTITUTIONAL DEVELOPMENT**

**FIRST APPLICANT**

**SECOND APPLICANT**

**And**

**MARIO ROCHA**

**RESPONDENT**

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**JUDGEMENT DELIVERED ON 20 JUNE 2024**

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**F J Nalane AJ**

1. This is an application for an urgent final interdict firstly for an order prohibiting and interdicting the Respondent from spreading unfounded defamatory statements about the Director General of the Second Applicant, Advocate Doctor Mashabane.
2. Secondly, the Applicants seek relief that the Respondent be interdicted from spreading unfounded defamatory statements about the employees of the Department of Justice and Constitutional Development, the Second Applicant . Thirdly that the allegations made by and about the First Applicant and the employees of the Department in a thread of emails, alleging that the First Applicant and the employees of the Department are involved in corruption, are defamatory and false. Fourthly that that Respondent be ordered to retract the defamatory and false emails relating to the First Applicant and employees of the Department. Fifthly that it be declared that the Respondent's publication of the emails is unlawful.
3. I treated the matter as agent because it involves privacy and dignity and a victim of such cannot generally be expected to endure continued violation of their rights.

4. The only issue remaining is whether the Applicants have made out a case for the relief sought, which is of a final nature.
5. It is common cause that the Respondent caused a few emails to be sent to different and varied individuals within the Presidency and other government institutions. In some of the emails the Respondent alleged that the Director General, the First Applicant, was complicit in launching a witch hunt against certain people that were not suspended only because he wanted to keep his criminal activities from being exposed and that the way he acted against a whistleblower by fabricating false dismissal charges is nothing but a disgrace.
6. Respondent raised a point *in limine* based on *locus standi*. The point made is that the Applicants are organs of state and government bodies and therefore cannot sue for damages for defamatory statements that allegedly injured their reputation. It is submitted that the applicants are organs of state for the purpose of section 239 of the Constitution.
7. Respondent submits that it is settled law that organs of state cannot have a right to sue for defamation as they do not enjoy *locus standi* to interdict publication of allegedly defamatory subject matter.
8. Respondent relies on the case of **Moyane and Another v Lackay**<sup>1</sup>

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<sup>1</sup> (35580/15) [2017] ZAGPPHC 1262 (24 NOVEMBER 2017)

9. The court in **Moyane** said the following in relation to a claim by the South African Revenue Service ("SARS") and its Commissioner:

*"[18] What SARS can have in relation to its reputation is not a personality right, as it is with legal persons, but an integral part of its patrimony. The protection of his reputation is in the sense of its goodwill, therefore lies, not in the claim for defamation but in the claim for actual damages which constitute a patrimonial loss for which compensation can be claimed under actio legis Aquiliae and not the actio iniuriarum: see University of Pretoria v Tommie Meyer Films (Edms) Bpk 1977(4) SA 376 (T) at 387."*

10. It has been held as far back as 1946, by the Appellate Division as it then was, in **Die Spoorbond and Another v South African Railways; Van Heerden & Others v South African Railways**<sup>2</sup> that the state is incapable of suing for damages for defamation.

11. The **Spoorbond** judgment predates the passing of Constitution of the Republic of South Africa. The court held that the State's main function is that of government and its reputation or good name is not a frail thing connected with or attached to the actions of individuals who temporarily direct or manage some particular one of the many activities in which the government engages. The court stated that te

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<sup>2</sup> 1946 AD 999



State reputation is a far more robust and universal thing which seems to be invulnerable to attacks<sup>3</sup>.

12. It would involve a serious interference with the free expression of opinion if the wealth of the State, derived from the State subjects, could be used to launch against those subjects actions for defamation because they have, falsely and unfairly it may be, criticized or condemned the management of the country.<sup>4</sup> These remarks are even more applicable in a constitutional state that we have in this country where freedom of expression is guaranteed as one of the fundamental rights.
13. In **Moyane** it was held that this common law position has not been altered and that this approach was also followed in *Bitou Municipality and Another*<sup>5</sup> where it was confirmed that: *"It is therefore clear that the common law denies standing to the Crown (or in this case the State) to sue for defamation."*<sup>6</sup>
14. The Department is clearly a part of the State. It is a national department mentioned in Column 1 of Schedule 1, referred to under Section 7(2) of the Public Service Act, Proclamation 103 of 1994 ("the PSA"). Respondent submits that the First Applicant is the head of department of the Second Applicant, and an

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<sup>3</sup> Per Watermeyer CJ at 1009

<sup>4</sup> Per Sshreiner JA at 1012-1013

<sup>5</sup> 2011(5) SA (YVCC)

<sup>6</sup> See par 7

incumbent of the post mentioned in Column 2 of schedule 1, as referred to under section 7 (2) of the PSA and accordingly organs of state as defined under section 239 of the Constitution.

15. Applicant's counsel rightly conceded that the Second Applicant is indeed an organ of state but submitted that the First Applicant is not an organ of state. Clearly both applicants are organs of the state as they exercise public power in terms of legislation. In the founding affidavit the First Applicant states that he is acting in his official capacity as Director General of the Department. He is thus not acting in his personal capacity as an ordinary citizen of the country.
16. In the absence of a right to sue for damages, the Applicants as organs of state do not have a clear right entitling them to a final interdict
17. Accordingly, this application stands to be dismissed and I make the following order:

#### **ORDER**

1. The application is dismissed.
2. Applicants are ordered to pay the Respondent's costs on the tariff in terms of scale A.

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FJ NALANE  
ACTING JUDGE OF THE HIGH COURT  
GAUTENG DIVISION, PRETORIA

Date of Hearing: 11 June 2024

Date of Judgment: 20 June 2024

**Appearances**

Counsel for the applicant: Adv Katlego Shole

Counsel for the respondent: Mr M Vally