

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

CASE NO. 7595/2017

In the matter between:

MINERAL SANDS RESOURCES (PTY) LTD

First Plaintiff

ZAMILE QUNYA

Second Plaintiff

and

CHRISTINE REDDELL

First Defendant

TRACEY DAVIES

Second Defendant

DAVINE CLOETE

Third Defendant

FILING SHEET: FIRST TO THIRD DEFENDANTS' PLEA

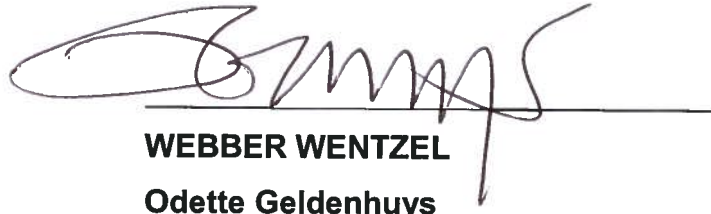
Documents filed herewith:

1. First to Third Defendants' Plea

DATED AT CAPE TOWN ON THE

14th

DAY OF SEPTEMBER 2017



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**FIRST TO THIRD DEFENDANTS' PLEA TO THE PLAINTIFFS'
PARTICULARS OF CLAIM**

The defendants plead as follows to the plaintiffs' particulars of claim –

AD PARAGRAPHS 1 AND 2

1. The allegations in these paragraphs are admitted.

AD PARAGRAPHS 3.1 AND 3.2

2. It is denied that the first plaintiff was involved in the exploration and development of the Xolobeni Mineral Sands Project.
3. Save as aforesaid the content of these paragraphs is admitted.

AD PARAGRAPHS 4 - 6

4. Save to state that the third defendant's home address is not correctly stated the remainder of the content of these paragraphs is admitted.

AD PARAGRAPH 7

5. The first and second defendants were engaged via their employer, the Centre for Environmental Rights (**the CER**), to participate in and make a presentation as part of the short course entitled "*Mining the Wild and the West Coast: 'Development' at what cost?*" (**the course**) which was offered by the University of Cape Town (**UCT**) as part of its annual summer school programme (**the Summer School**).
6. The CER's mission is to advance the realisation of environmental rights. It works to achieve improved governance of natural resources by the state, and to hold corporate actors accountable for violations of environmental laws. It does so by means of advocacy and litigation to strengthen implementation of the law through compliance monitoring and enforcement, to compel compliance with the law by corporate actors, and

to promote transparency, open access to information, and meaningful public participation in decision-making.

7. The third defendant was engaged directly by UCT to participate in and make a presentation as part of the course.
8. The third defendant is an activist and a member of among others the Agrarian Reform for Food Sovereignty Campaign, which seeks to promote the emancipation of its members from oppression, catalyse social action and citizen participation, and raise awareness of alternative and critical ways of thinking about issues that affect society.
9. The defendants gave presentations on 25 January 2017 as part of the course and engaged in discussions with the participants in the course in regard to the subject matter of the course.
10. The course ran over a period of 5 days. The defendants made presentations on one of those days, and one of them participated in a panel discussion on the last day of the course.
11. Save as aforesaid the remainder of the content of this paragraph is admitted.

AD PARAGRAPH 8

12. Michelle Pressend (**Ms Pressend**) introduced the course, but it is denied that she is accurately quoted in this paragraph and the plaintiffs are put the proof thereof.

CLAIM 1**AD PARAGRAPH 9**

13. On 25 January 2017, as part of the course, the first and second defendants gave a presentation, using a slide show presentation, and engaged in discussions with the participants in the course.

AD PARAGRAPH 10

14. The first defendant denies that she made the statement alleged in the first two sentences quoted.

15. The actual statement made by the first defendant was -

"[b]ut if I can just focus on one of the biggest, the biggest environmental problems or, which is the cliff collapse, and one of the causes of that is really through illegal action."

16. The first defendant made reference to a cliff collapse at the Tormin Mine (**the Tormin Mine**) of the first plaintiff (**Mineral Sands**) in the context of the subject matter of the course.

AD PARAGRAPH 11

17. The first plaintiff admits the contents of this paragraph.

AD PARAGRAPH 12

18. The first defendant denies that the Tormin mine was the focus of the course. The focus of the course was the consequences of development associated with and/or arising from mining (including proposed mining) and commercial development (including proposed commercial development).
19. The first defendant made reference in her presentation, as part of the course, to the Tormin Mine in the context of the subject matter of the course.

AD PARAGRAPH 13

20. The content hereof is denied.
21. To the extent that the first defendant's statements consisted of factual allegations, the allegations are true or substantially true and were made in the public interest.
22. To the extent that the first defendant's statements consisted of statements of opinion:
 - 22.1. the statements were based on facts that are true or substantially true and fairly referred to;

22.2. the statements were a genuine expression of opinion;

22.3. the statements concerned a matter in the public interest; and

22.4. the statements were made in the exercise of the first defendant's right to freedom of expression, which includes the right to academic freedom in section 16 of the Constitution.

23. The statements were intended to have their ordinary meaning within the context of the course.

24. The first defendant has no knowledge of what was understood by the participants and the plaintiffs are put to the proof thereof.

AD PARAGRAPH 14

25. The first defendant denies that her statements have damaged the reputation of Mineral Sands and denies that Mineral Sands has suffered damages as alleged or at all.

26. The first defendant pleads further that:

26.1. Mineral Sands is a trading corporation.

26.2. in terms of the common law as developed in accordance with section 39(2) of the Constitution:

- 26.2.1. a trading corporation has no cause of action in respect of defamation unless it pleads and proves that the defamatory statement was false and wilfully made;
 - 26.2.2. to the extent that a trading corporation has a cause of action in respect of defamation, it has no claim for general damages; and
 - 26.2.3. to the extent that a trading corporation has a cause of action in respect of defamation, and it does not allege and prove patrimonial loss, its remedies are limited to an interdict, a declaration of falsity, the correction of the defamatory statement and/or an apology.
- 26.3. Mineral Sands –
- 26.3.1. does not allege that the allegedly defamatory statements were false and wilfully made;
 - 26.3.2. claims general damages for the alleged defamation;
 - 26.3.3. does not claim any of the remedies referred to in paragraph 26.2.3 above; and
 - 26.3.4. accordingly, the allegations in this paragraph do not disclose a cause of action.

27. The first defendant further pleads that:

27.1. the plaintiffs have instituted this action as part of a strategy aimed at censoring, intimidating, and silencing critics, including the defendants and the CER, thereby deterring them from making statements that are critical of the plaintiffs in pursuit of the protection of the environment;

27.2. the action is accordingly vexatious and an abuse; and

27.3. the plaintiffs accordingly ought to be non-suited.

AD PARAGRAPH 14A

28. The first defendant denies that Mineral Sands is entitled to the order which it seeks.

CLAIM 2

AD PARAGRAPH 15

29. The second defendant repeats the contents of paragraph 13 above.

AD PARAGRAPH 16

30. The second defendant denies that she made the statement alleged in the first two sentences quoted:

- 30.1. The first line of the first paragraph of the pleaded extract is inaccurate. The second defendant in fact stated “[T]here are armed guards on site.”;
- 30.2. The second paragraph of the pleaded extract is inaccurate. The second defendant in fact stated *“this company has been operating for ah three years and continues to operate in circumstances where it's in breach of multiple environmental laws, mining laws, municipal by-laws as well, they don't have planning authorisation to conduct the operation in the expanded part of the footprint. And already a regulatory system that's supposed to stop this from happening is just completely absent. The DEA is now petrified to take any steps because they are now in litigation. You know, litigation is sub judice in this country, you can't say anything, you can't do anything. And so, the whole situation where a very predatory and ruthless company, has taken advantage of our regulatory system. Ahm, there's a lot more we wanted to say about quite how that all happened but obviously we are running out of time. And it then falls on organisations like ourselves, who are not for profit organisations, limited funding and very limited people. You know we have every day someone contacting us and saying: what are you doing about Tormin, why aren't you sorting this problem out? It's not our job but because of the combination of regulatory confusion, regulatory ineffectiveness, political lack of political will, corruption, and extraordinary tactics of this*

outrageous company, it's left to people like us, and Glenn and Michelle and Merle and Davine, to actually apply to try to enforce the law."

AD PARAGRAPH 17

31. The second defendant admits the content of this paragraph.

AD PARAGRAPH 18

32. The second defendant denies that the Tormin Mine was the focus of the course. The focus of the course was the consequences of development associated with and/or arising from mining (including proposed mining) and commercial development (including proposed commercial development).
33. The second defendant made reference, in her presentation, to the Tormin Mine in the context of the subject matter of the course.

AD PARAGRAPH 19

34. The content hereof is denied.
35. To the extent that the second defendant's statements consisted of factual allegations, the allegations are true or substantially true and were made in the public interest.

36. To the extent that the second defendant's statements consisted of statements of opinion:

36.1. the statements were based on facts that are true or substantially true and fairly referred to;

36.2. the statements were a genuine expression of opinion;

36.3. the statements concerned a matter in the public interest; and

36.4. the statements were made in the exercise of the second defendant's right to freedom of expression, which includes the right to academic freedom in section 16 of the Constitution.

37. The statements were intended to have their ordinary meaning within the context of the course.

38. The second defendant has no knowledge of what was understood by the participants and the plaintiffs are put to the proof thereof.

AD PARAGRAPH 20

39. The second defendant denies that her statements have damaged the reputation of Mineral Sands and denies that Mineral Sands has suffered damages as alleged or at all.

40. The second defendant pleads further that:

40.1. Mineral Sands is a trading corporation.

40.2. in terms of the common law as developed in accordance with section 39(2) of the Constitution:

40.2.1. a trading corporation has no cause of action in respect of defamation unless it pleads and proves that the defamatory statement was false and wilfully made;

40.2.2. to the extent that a trading corporation has a cause of action in respect of defamation, it has no claim for general damages; and

40.2.3. to the extent that a trading corporation has a cause of action in respect of defamation, and it does not allege and prove patrimonial loss, its remedies are limited to an interdict, a declaration of falsity, the correction of the defamatory statement and/or an apology.

40.3. Mineral Sands –

40.3.1. does not allege that the allegedly defamatory statements were false and wilfully made;

40.3.2. claims general damages for the alleged defamation;

40.3.3. does not claim any of the remedies referred to in paragraph 40.2.3 above; and

40.3.4. accordingly, the allegations in this paragraph do not disclose a cause of action.

41. The second defendant further pleads that

41.1. the plaintiffs have instituted this action as part of a strategy aimed at censoring, intimidating, and silencing critics, including the defendants and the CER, thereby deterring them from making statements that are critical of the plaintiffs in pursuit of the protection of the environment;

41.2. the action is accordingly vexatious and an abuse; and

41.3. the plaintiffs accordingly ought to be non-suited.

AD PARAGRAPH 20A

42. The second defendant denies that Mineral Sands is entitled to the order which it seeks.

THIRD CLAIM

AD PARAGRAPH 21

43. On 25 January 2017, as part of the course, the third defendant gave a presentation, using a slide show presentation, and engaged in discussions with the participants in the course.

AD PARAGRAPH 22

44. The third defendant denies that she made the statement in the last sentence of the alleged quotation. The third defendant in fact stated *"[S]o I told the people you must know what's going on in Xolobeni and by that time we didn't have a copy of the film, The Shore Break, and I wanted this film, really to be shown inside the community, so the people can see because of the lot of briberies that was given by the mine for some people inside the community mislead the people there was also conflict between people inside the community."*

AD PARAGRAPH 23

45. The third defendant denies that the Tormin Mine was the focus of the course. The focus of the course was the consequences of development associated with and/or arising from mining (including proposed mining) and commercial development (including proposed commercial development).
46. The third defendant admits that her reference to "the MSR mine" was a reference to the Tormin Mine.

47. The third defendant made reference to the Tormin Mine in the context of the subject matter of the course.
48. The third defendant has no knowledge of what was understood by the participants and the plaintiffs are put to the proof thereof.

AD PARAGRAPH 24

49. The content hereof is denied.
50. To the extent that the third defendant's statements consisted of factual allegations, the allegations are true or substantially true and were made in the public interest.
51. To the extent that the third defendant's statements consisted of statements of opinion:
 - 51.1. the statements were based on facts that are true or substantially true and fairly referred to;
 - 51.2. the statements were a genuine expression of opinion;
 - 51.3. the statements concerned a matter in the public interest; and

- 51.4. the statements were made in the exercise of the third defendant's right to freedom of expression, which includes the right to academic freedom in section 16 of the Constitution.
52. The statements were intended to have their ordinary meaning within the context of the course.
53. The third defendant has no knowledge of what was understood by the participants and the plaintiffs are put to the proof thereof.

AD PARAGRAPH 25

54. The third defendant denies that her statements have damaged the reputation of Mineral Sands and denies that Mineral Sands has suffered damages as alleged or at all.

55. The third defendant pleads further that:

55.1. Mineral Sands is a trading corporation.

55.2. in terms of the common law as developed in accordance with section 39(2) of the Constitution:

55.2.1. a trading corporation has no cause of action in respect of defamation unless it pleads and proves that the defamatory statement was false and wilfully made;

55.2.2. to the extent that a trading corporation has a cause of action in respect of defamation, it has no claim for general damages; and

55.2.3. to the extent that a trading corporation has a cause of action in respect of defamation, and it does not allege and prove patrimonial loss, its remedies are limited to an interdict, a declaration of falsity, the correction of the defamatory statement and/or an apology.

55.3. Mineral Sands –

55.3.1. does not allege that the allegedly defamatory statements were false and wilfully made;

55.3.2. claims general damages for the alleged defamation;

55.3.3. does not claim any of the remedies referred to in paragraph 54.2.3 above; and

55.3.4. accordingly, the allegations in this paragraph do not disclose a cause of action.

56. The third defendant further pleads that:

56.1. the plaintiffs have instituted this action as part of a strategy aimed at censoring, intimidating, and silencing critics, including the defendants, thereby deterring them from making statements that are critical of the plaintiffs in pursuit of the protection of the environment;

56.2. the action is accordingly vexatious and an abuse; and

56.3. the plaintiffs accordingly ought to be non-suited.

AD PARAGRAPH 25A

57. The third defendant denies that Mineral Sands is entitled to the order which it seeks.

CLAIM 4

AD PARAGRAPH 26

58. The third defendant repeats the content of paragraph 43 above.

AD PARAGRAPH 27

59. The third defendant admits the contents of this paragraph.

AD PARAGRAPH 28

60. The third defendant denies that she made the statement in the last sentence of the alleged quotation. What she actually stated was: *"[W]hen you have an action to the mine with a lot of young guys. This one came and he received the memorandum. But by the end of the day we don't know they throw it in the bin. This is the biggest liar because he is from Xolobeni. He's misleading the community. He's the guy who goes into Koekenaap, sit at the shebeens and some of the leaders there they believe in this guy because there is a lot of briberies involved and that's why they mislead the communities."*

AD PARAGRAPH 29

61. The third defendant has no knowledge of what was understood by the participants and the plaintiffs are put to the proof thereof. Save as aforesaid the third defendant admits the remainder of the contents of this paragraph.

AD PARAGRAPH 30

62. The content hereof is denied.
63. To the extent that the third defendant's statements consisted of factual allegations, the allegations are true or substantially true and were made in the public interest.

64. To the extent that the third defendant's statements consisted of statements of opinion:

64.1. the statements were based on facts that are true or substantially true and fairly referred to;

64.2. the statements were a genuine expression of opinion;

64.3. the statements concerned a matter in the public interest; and

64.4. the statements were made in the exercise of the third defendant's right to freedom of expression, which includes the right to academic freedom in section 16 of the Constitution.

65. The statements were intended to have their ordinary meaning within the context of the course.

66. The third defendant has no knowledge of what was understood by the participants and the plaintiffs are put to the proof thereof.

AD PARAGRAPH 31

67. The third defendant denies that her statements have damaged the reputation of the second plaintiff.

68. The third defendant further pleads that

68.1. the plaintiffs have instituted this action as part of a strategy aimed at censoring, intimidating, and silencing critics, including the defendants, thereby deterring them from making statements that are critical of the plaintiffs in pursuit of the protection of the environment;

68.2. the action is accordingly vexatious and an abuse; and

68.3. the plaintiffs accordingly ought to be non-suited.

WHEREFORE the defendants pray for an order dismissing the plaintiffs' claims with costs on a scale as between attorney and client.

SIGNED AT CAPE TOWN ON THE 14th SEPTEMBER 2017.




G BUDLENDER SC



M ADHIKARI

Defendants' counsel



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