

WESTERN CAPE HIGH COURT
2017 -05- 02
CAPE TOWN / KAAPSTAD
WES. KAAPSTAD

COMBINED SUMMONS

COPY

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

CASE NO: 7090/17

In the matter between:

**MINERAL SANDS RESOURCES
PROPRIETARY LIMITED
ZAMILE QUNYA**

First Plaintiff

Second Plaintiff

and

**CHRISTINE REDDELL
TRACEY DAVIES
DAVINE CLOETE**

First Defendant

Second Defendant

Third Defendant

To the Sheriff or his Deputy:

INFORM:

**BALJU / SHERIFF
KANTOOR / OFFICE
VOORTRIEKERS STR. VRIJGE VRIJERDAG
05 MAY 2017
POSEBUS: PO BOX 614 VREDENHOOP 6155
TEL/FAX: 027 2131610**

CHRISTINE REDDELL , an adult female attorney, with place of employment at the Centre for Environmental Rights, Second Floor, Springtime Studios, 1 Scott Road, Observatory, Cape Town, Western Cape
(hereinafter called "the First Defendant").

AND INFORM:

TRACEY DAVIES, an adult female attorney, with place of employment at the Centre for Environmental Rights, Second Floor, Springtime Studios, 1 Scott Road, Observatory, Cape Town, Western Cape (hereinafter called "the Second Defendant").

AND INFORM:

DAVINE CLOETE, an adult female activist, who resides at Beckett Square, Lutzville, Western Cape (hereinafter called "the Third Defendant").

THAT:

MINERAL SANDS RESOURCES PROPRIETARY LIMITED, a company with limited liability, duly registered and incorporated in the Republic of South Africa under registration number 2001/016755/07 with its registered office at 1st Floor, Block A, The Forum, Northbank Lane, Century City, Cape Town, Western Cape, with its principal place of business at Tormin Mine, Skaapvlei Road, Koekenaap, Western Cape (hereinafter called "the First Plaintiff"),

AND

ZAMILE QUNYA, an adult male director of the first plaintiff, who carries on business at 1st Floor, Block A, The Forum, Northbank Lane, Century City Cape Town, Western Cape (hereinafter called "the Second Plaintiff"),

hereby institute action against the Defendants in which action the Plaintiffs claim the relief on the grounds set out in the particulars annexed hereto as "A".

INFORM the Defendants further that if the Defendants dispute the claim and wish to defend the action, the Defendants shall : -

(i) Within ten (10) days of service upon the Defendants of this Summons file, with the Registrar of this Court at Room 1, 35 Keerom Street, Cape Town, 8005, Notice of the Defendant/s Intention to Defend and serve a copy thereof on the attorneys of the Plaintiffs which Notice shall give an address (not being a post office or *poste restante*) referred to in Rule 19(3) for the service upon the Defendant/s of all Notices and documents in the action.

(ii) Thereafter, and within 20 (Twenty) days after filing and serving Notice of Intention to Defend as aforesaid, file with the Registrar and serve upon the Plaintiffs a Plea/s, Exception, Notice to Strike out, with or without a counterclaim.

INFORM the Defendants further that if the Defendants fail to file and serve Notice as aforesaid, Judgment as claimed may be given against the Defendants without further notice to the Defendants or if having filed and served such Notice, the Defendants fail to plead, accept, make application to strike out or counter-claim, judgement may be given against the Defendants.

DATED AT CAPE TOWN on this 1st day of MAY 2017.

PP

BERNARD VUNIC POTASH & GETZ ATTORNEYS

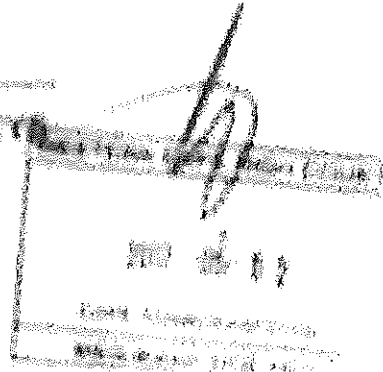
PLAINTIFFS' ATTORNEYS

11th Floor, 1 Thebusk Square

Cape Town

Tel: (021) 405 1800

(Ref: R42/16/150772)



TO: THE REGISTRAR
HIGH COURT
CAPE TOWN

AND TO: CHRISTINE REDDELL
First Defendant
Centre for Environmental Rights
Second Floor, Springtime Studios
1 Scott Road
Observatory

AND TO: TRACEY DAVIES
Second Defendant
Centre for Environmental Rights
Second Floor, Springtime Studios
1 Scott Road
Observatory

AND TO: DAVNE CLOETE

First Defendant

Beckett Square

Atlanta

ANNEXURE "A"

PARTICULARS OF CLAIM

1. The first plaintiff is **MINERAL SANDS RESOURCES PROPRIETARY LIMITED**, a company with limited liability, duly registered and incorporated in the Republic of South Africa under registration number 2001/016755/07 with its registered office at 1st Floor, Block A, The Forum, Northbank Lane, Century City, Cape Town, Western Cape, with its principal place of business at Tomlin Mine, Skaapvlei Road, Koekenaap, Western Cape.
2. The second plaintiff is **ZAMILE QUNYA**, an adult male director of the first plaintiff, who carries on business at 1st Floor, Block A, The Forum, Northbank Lane, Century City Cape Town, Western Cape.
3. At all material times hereto:
 - 3.1 the first plaintiff was involved in the exploration and development of major mineral sands projects in South Africa, being the Tomlin Mineral Sands Project and the Xolobeni Mineral Sands Project; and
 - 3.2 the second plaintiff has been a director of the first plaintiff.

4. The first defendant is **CHRISTINE REDDELL**, an adult female attorney, with place of employment at the Centre for Environmental Rights, Second Floor, Springtime Studios, 1 Scott Road, Observatory, Cape Town, Western Cape.
5. The second defendant is **TRACEY DAVIES**, an adult female attorney, with place of employment at the Centre for Environmental Rights, Second Floor, Springtime Studios, 1 Scott Road, Observatory, Cape Town, Western Cape.
6. The third defendant is **DAVINE CLOETE**, an adult female activist, who resides at Beckett Square, Lutzville, Western Cape.
7. At all material times hereto:
 - 7.1 the defendants were engaged by the University of Cape Town ("UCT") to present lectures at UCT's 2017 edition of its annual Summer School Programme ("Summer School"). As indicated on the Summer School website, <http://www.summerschool.uct.ac.za>, the objective of Summer School is to provide "*lectures and short courses for the general public*";
 - 7.2 during the course of Summer School, on 25 January 2017, and at the Kramer Law School, UCT, Rondebosch, the defendants presented lectures as part of a series of lectures entitled "*Mining the Wild and the West Coast: 'Development' at what cost?*" ("the lecture series").
8. The lecture series was introduced at the outset by Michelle Pressend ("Pressend"). Pressend introduced the lecture series by stating, *inter alia*, that "...today we are

going to focus on the Tormin Mine, which is the Australian Mining Company..." and "... the same Australian mining company, Mineral Commodities Limited, has another arm of their company called Mineral Sands Resources...", viz the first plaintiff.

CLAIM 1

9. On 25 January 2017, and as part of the lecture series, the first and second defendants, jointly presented a lecture with slide show presentation, at UCT in Rondebosch, Cape Town.
10. During the course of the lecture, and while discussing the operations at the first plaintiff's Tormin Mine, the first defendant stated that:

"If we could just focus on one of the biggest environmental problems, which is the cliff collapse. And the cause of that is really through illegal action. So we are talking about a mining operation that changed their, Glenn referred to it as their modus operandi, and their design. So they applied for one thing, they did assessments, for one thing and then what they did was something entirely different – and that is unlawful. They should have got a new permit. They should have applied for amendments. And they did all of these changes to their process pretty much from the get go, without those authorisations in place and that's what caused this devastating cliff collapse, and with the other environmental problems associated with it," (underlining supplied)

11. The reference to "a *mining operation*" was a reference to the first plaintiff and its operation at the Tormin Mine.
12. The reference to "a *mining operation*" was understood by participants at the lecture to be a reference to the first plaintiff. The first plaintiff's Tormin Mine was the focus of the lecture and the lecture series. The first defendant had made previous references to the first plaintiff in the course of the lecture and was engaged in a narrative describing the alleged conduct of the first plaintiff at the Tormin Mine.
13. The abovementioned words, in the context of the lecture and the lecture series, are wrongful and defamatory of the first plaintiff in that they were intended, and understood by participants of the lecture, to mean that the first plaintiff goes about its operations in an unlawful and deceitful manner that causes great environmental damage.
14. As a result of the defamation, the first plaintiff has been damaged in its reputation and has suffered damages in the sum of R250 000,00.

CLAIM 2

15. The plaintiffs repeat the contents of paragraph 9 above.
16. During the course of the lecture, and while discussing the operations at the first plaintiff's Tormin Mine, the second defendant stated that:

"They have armed guards on site and they have, on occasion, been extremely violent...

So, well we are now in the process of taking some concrete steps, but the overall point here is we now have a situation where this company operates and continues to operate in circumstances where it is in breach of multiple environmental laws, mining laws, municipal by-laws as well as planning laws. They don't have planning authorisation to conduct the operation in the expanded footprint and a regulatory system that is supposed to stop from happening is just completely absent... we have a situation where a very predatory and ruthless company has taken advantage of our regulatory system... because of the combination of regulatory confusion, regulatory ineffectiveness, political corruption and the extraordinary tactics of this outrageous company it's left to people like us... to actually apply, try and enforce the law." (underlining supplied)

17. The reference to "this company" was a reference to the first plaintiff and its operation at the Tormin Mine.
18. The reference to "this company" was understood by participants at the lecture to be a reference to the first plaintiff. The first plaintiff's Tormin Mine was the focus of the lecture and the lecture series. The second defendant had made previous references to the first plaintiff in the course of the lecture and was engaged in a narrative describing the alleged conduct of the first plaintiff at the Tormin Mine.

10. The abovementioned words, in the context of the lecture and the lecture series, are wrongful and defamatory of the first plaintiff in that they were intended and understood by participants of the lecture to mean that the first plaintiff goes about its operations in an unlawful manner, engaging in aggressive, predatory, dishonest, calculating, corrupt and violent behaviour.
20. As a result of the defamation, the first plaintiff has been damaged in its reputation and has suffered damages in the sum of R250 000,00.

CLAIM 3

21. On or about 25 January 2017, the third defendant presented a lecture at UCT in Rondebosch, Cape Town, as part of the lecture series.
22. In the course of the lecture, and while discussing the operations at the first plaintiff's Tormin Mine, the third defendant stated that:

"The people who were involved in this whole application from the community were people who received money from the MSR mine to mislead the community... What had happened here is that some of the police are employed as security at the MSR mine... I wanted this film to be shown in the community so that the people can see that because of the bribery at the mine therefore some people in the community were misleading other people in the community..." (underlining supplied)

23. The references to "MSR Mine" and "the mine" were understood by participants at the lecture to be references to the first plaintiff. The first plaintiff's Tormin Mine was the focus of the lecture and the lecture series. The third defendant had made previous references to the first plaintiff in the course of the lecture and was engaged in a narrative describing the alleged conduct of the first plaintiff at the Tormin Mine.
24. The abovementioned words, in the context of the lecture and the lecture series, are wrongful and defamatory of the first plaintiff in that they were intended, and understood by participants of the lecture, to mean that the first plaintiff is guilty of bribing members of the local community in order to mask the true nature of its operation.
25. As a result of the defamation, the first plaintiff has been damaged in its reputation and has suffered damages in the sum of R250 000,00.

CLAIM 4

26. The plaintiffs repeat the allegations of paragraph 21 above.
27. The third defendant's lecture was accompanied by slides and photographs including, *inter alia*, a photograph of the second plaintiff, a copy of which is annexed hereto, marked "POC.1".
28. During the course of her lecture, the third defendant pointed to the photograph (POC.1) and stated:

"...and you can see this guy. This is the biggest problem, because this is the biggest liar... This is the biggest liar because he is from Xolobeni. He is misleading the community and he is the guy who goes into Koekenaap and sits at the Shebeens and some of the leaders there, they believe in this guy because there is a lot of bribes involved and that's why they mislead the communities." (underlining supplied)

29. The reference to "this guy" was a reference to the second plaintiff and was understood by participants at the lecture to be a reference to the second plaintiff by virtue of the fact that the third defendant pointed to a picture of the second plaintiff (POC. 1) while stating the aforesaid.
30. The abovementioned words, in the context of the lecture and the lecture series, are wrongful and defamatory of the second plaintiff in that they were intended and understood by participants of the lecture to mean that the second plaintiff is dishonest, untruthful and is involved in corrupt activities including the bribery of community members.
31. As a result of the defamation, the second plaintiff has been damaged in his reputation and has suffered damages in the sum of R500 000,00.

WHEREFORE

In respect of claim 1, the first plaintiff claims against the first defendant:

- a) Payment of damages in the amount of R250 000,00;

- b) Interest on the aforesaid amount at the legally prescribed rate of interest from date of judgment to date of payment;
- c) Costs of suit; and
- d) Further and / or alternative relief.

In respect of claim 2, the first plaintiff claims against the second defendant:

- e) Payment of damages in the amount of R250 000,00;
- f) Interest on the aforesaid amount at the legally prescribed rate of interest from date of judgment to date of payment;
- g) Costs of suit; and
- h) Further and / or alternative relief.

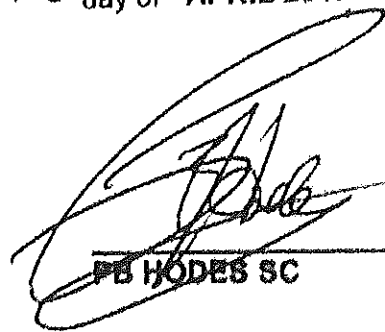
In respect of claim 3, the first plaintiff claims against the third defendant:

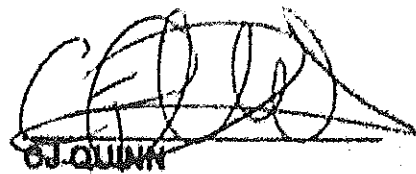
- i) Payment of damages in the amount of R250 000,00;
- j) Interest on the aforesaid amount at the legally prescribed rate of interest from date of judgment to date of payment;
- k) Costs of suit; and
- l) Further and / or alternative relief.

In respect of claim 4, the second plaintiff claims against the third defendant:


- m) Payment of damages in the amount of R500 000,00;
- n) Interest on the aforesaid amount at the legally prescribed rate of interest from date of judgment to date of payment;
- o) Costs of suit; and
- p) Further and / or alternative relief.

DATED at CAPE TOWN on this the *28th* day of APRIL 2017


PB HODES SC


GJ QUINN

Plaintiffs' counsel

BERNADT VUKIC POTASH
& GETZ ATTORNEYS
Per 

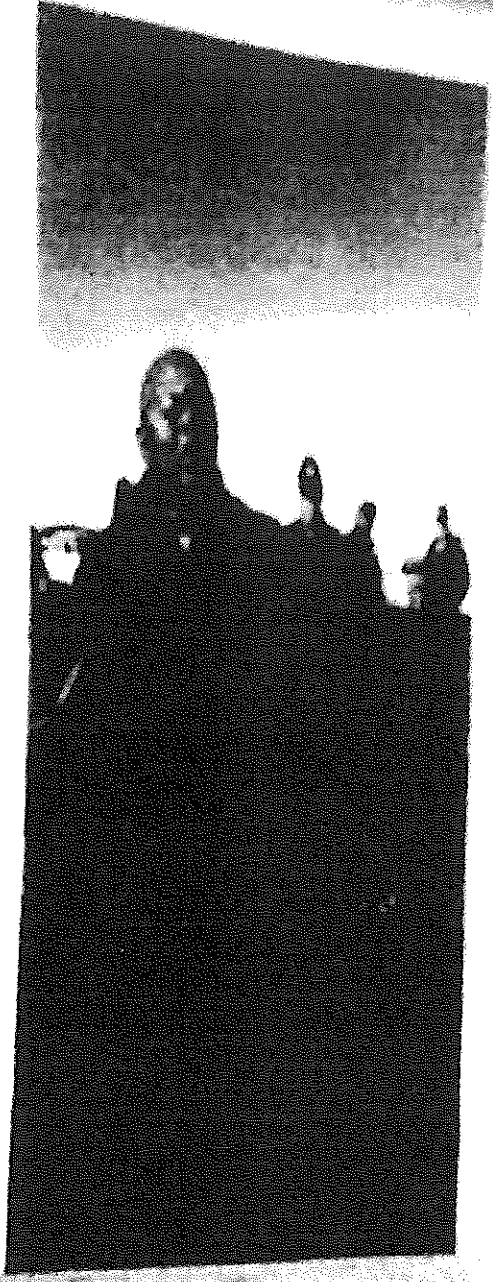
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Tel: (021) 405 3800
(Ref: Mr R Kudo/mk/150772)

TO: THE REGISTRAR
High Court
CAPE TOWN

AND TO: THE ABOVENAMED DEFENDANTS

"POC.1"



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