IN THE HIGH COURT OF SOUTH AFRICA

(WESTERN CAPE DIVISION, CAPE TOWN)

Case No.: **7595/2017**

In the matter between:

MINERAL SANDS RESOURCES

PROPRIETARY LIMITED First Plaintiff

ZAMILE QUNYA Second Plaintiff

and

CHRISTINE REDDELL First Defendant

TRACEY DAVIES Second Defendant

DAVINE CLOETE Third Defendant

Case No: **14658/2016**

In the matter between:

MINERAL COMMODOTIES LIMITED First Plaintiff

MARK VICTOR CARUSO Second Plaintiff

and

MZAMO DLAMINI First Defendant

CORMAC CULLINAN Second Defendant

Case No: **12543/2016**

In the matter between:

MINERAL COMMODOTIES LIMITED	First Plaintiff
MARK VICTOR CARUSO	Second Plaintiff
and	
JOHN GERARD INGRAM CLARKE	Defendant

CENTRE FOR APPLIED LEGAL STUDIES' HEADS OF ARGUMENT

TABLE OF CONTENTS

A - INTRODUCTION

1. This Application arises from an action launched by the Plaintiffs against the Defendants following statements made by the latter at a Summer School lecture held at the University of Cape Town. Subsequent to this event, the Plaintiffs sued the Defendants for defamation[1]. The Plaintiffs allege that the Defendants made defamatory statements which caused reputational damage to the natural and juristic persons of the Plaintiffs. As a result of these statements the Plaintiffs seek damages, alternatively the publication of apologies in prominent newspapers from the Defendants.[2]

2. The Defendants deny all allegations made against them and raise defences to contend the defamation claims of the Plaintiffs[3].

3. The Defendants in each of the actions have delivered pleas in which they raise two special pleas before raising their defences. The special pleas are substantively identical in each of the actions. In response to the special pleas, the Plaintiffs have taken identical exceptions in each action. It is these exceptions that the Court is called to make a determination on.

4. The first special plea deals with *the abuse of process[4] and strategic litigation against public participation ("SLAAP").* The second special plea addresses *the failure to plead patrimonial loss and failure to plead falsity[5]* respectively.

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[1] Particulars of claim in Reddel Special Plea Record, page 8 (hereafter Reddell Record).
[2] Reddell Record page 14.
[3] Reddell Record page 19.
[4] Reddell Record page 20.
[5] Reddell Record page 23.

5. The Plaintiffs allege that both of the special pleas lack averments necessary to sustain the defences raised by the Defendants[6].

6. In the main action CALS had sought to advance legal submissions to the effect that:[7]

   6.1. Statements made within the context of a learning environment such as a classroom constitutes fair and relevant content for the learning context; and

   6.2. Describe the nature of SLAPP and how SLAPP is utilised as a tool to victimise activists within the South African legal system. We maintain this view.

7. However, due to the exceptions brought by the Plaintiffs, the issue of whether this action constitutes a SLAPP has now been overtaken by events.

8. The main issues in dispute before this Court are thus as follows:

   8.1. Whether, in terms of the common law as enunciated *inter alia* in *Member of the Executive Council for the Department of Co-operative Governance and Traditional Affairs v Maphanga* [2020] 1 All SA 52 (SCA), legal proceedings or defamation proceedings are an abuse of process, and stand to be struck out, if brought for what can be regarded to be an ulterior purpose.

   8.2. If the abovementioned issue is answered in the negative, whether the common law is inconsistent with the Constitution, in particular sections 16(1) and 34 thereof, and falls to be developed.

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[6] Reddell Record page 52.
[7] Reddell Record page 71.

8.3. Whether the exception to the first special plea in each case should be upheld.

8.4. Whether, in terms of the common law as enunciated *inter alia* in *Media 24 Ltd v SA Taxi Securitisation (Pty) Ltd* 2011 (5) SA 329 (SCA), a trading corporation, suing for defamation, is required to plead and prove falsity, wilfulness and patrimonial loss, alternatively is precluded from claiming general damages.

8.5. If the abovementioned issues are answered in the negative, whether the common law is inconsistent with the Constitution, in particular section 16(1) thereof, and falls to be developed.

8.6. Whether the exception to the second special plea in each case should be upheld.

9. These heads of argument are structured as follows:

9.1. First, we address CALS's position in this proceedings;

9.2. Second, we demonstrate the nature of SLAPP suits and distinguish same from abuse of Court process;

9.3. Third, we deal with the applicable legal principle in exceptions;

9.4. Fourth, we consider the constitutional mandate on the Courts to develop common law;

9.5. Fifth; we consider whether this Court can develop common law in the circumstance of this case; and

9.6. Lastly, we address the Court on our conclusion and costs.

B - POSITION ADOPTED BY AMICUS IN THESE PROCEEDINGS

10. CALS seeks to assist this honourable Court in adjudicating this matter by addressing the novel issues in our law as they relate to SLAAP suits. CALS's position differs from that of the parties. In particular CALS's view is that SLAPP suits should not be conflated and or limited to abuse of Court Process and Defamation cases.

11. Further thereto, CALS's view is that the Applicant's exception in relation to the second part of the Respondents first Special plea "SLAPP" is unstainable in law.

12. CALS's stance is that SLAPP suits are *"a meritless case mounted to discourage a party from pursuing or vindicating their rights"*[8]. The aim of SLAPP suits is to intimidate, scare, or "chill" a person who brings a matter of public concern to light. At the heart of any SLAPP suit is the ulterior intention of the litigator and purpose of the litigation.[9]

13. The intention in SLAPP suits is not necessarily to win the case but simply to waste the resources and time of the other party until they bow out. These suits are frequently brought as defamation claims, abuse of process, malicious prosecution, or delictual liability cases[10]. We however maintain that SLAPP suits are not by their very nature limited to abuse of Court process and or defamation cases.

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[8] T Murombo and H Valentine 'SLAPP Suits: An Emerging Obstacle to Public Interest Environmental Litigation in South Africa' (2011) 27 *SAJHR* 82, at 84.

[9] Ibid. at 84

[10] Ibid. at 84

14. *Inter alia* there are two main contentions which arise from the exception application which require the intervention of CALS. We submit that the submissions are in line with the admission of CALS as amicus in the main case, and that the submission are useful and necessary in order to assist the honourable Court in its adjudication of this matter:

    14.1. Firstly whether, in terms of the common law legal proceedings or defamation proceedings such as the present are an abuse of process, and or ***strategic litigation against public participation***, and stand to be struck out, if brought for what can be regarded to be an ulterior purpose (we focus specifically the later contention of "SLAPP suits"); and

    14.2. Secondly, should this honourable Court find in the negative to the first contention, whether the common law is inconsistent with the constitution, in particular sections 16(1) thereof, and falls to be developed.

15. Before we deal with the applicable legal principles below, we pause to demonstrate the nature of SLAPP suits and their inherent distinction from the abuse of process.

C - NATURE OF STRATEGIC LITIGATION AGAINST PUBLIC PARTICIPATION

16. It follows from the definition that a SLAPP suit has two elements:

    16.1. First, the case has the intention (ulterior motive) or effect of discouraging the vindication or pursuing of rights; and

    16.2. Second, the case is a meritless case.

17. CALS submits that both these requirements have been pleaded accordingly in the first and second special plea read as a whole. Further thereto the litigation proceedings instituted by the Plaintiffs against the Defendants' fit the description of a SLAAP suit presented above. We submit this is beginning of what distinguishes these litigation proceeding from an typical abuse of Court process.

18. Further evidence that the Plaintiffs litigation can be catergorise as a SLAPP suit rests in: (a) the relief sought by the Plaintiff's in the main; (b) the effect the litigation is intended to have; and (c) the costs order sought by the Plaintiffs against the Defendants.

19. We submit that SLAPP suits are not to be conflated with and limited to cases of abuse of process, defamation or where people attempt to vindicate their own rights but apply even to cases where people seek to vindicate or protect the rights of others, for the following reasons:

    19.1. <u>There is a common and existing class of persons these suits are launched against</u>. The class may vary from human rights defenders, journalists who expose human rights violations, community activists who use social activism and mobilisation to challenge the human rights violations by repositories of powers, and lawyers who use the law as a means of redress or prevention.

    19.2. The only judgment in our law reports which mentions SLAPP suits in particular, bears mention: In *Waypex (Pty) Ltd v Barnes and Others "The defendants also made reference to the belligerent tone of Plaintiff's attorney's letters, which were <u>calculated to intimidate and create enmity</u>.*

There is much justification for this view taken by the defendants. The generally weak merits of the cases became obvious during the trial. The statements complained of were generally made to public officials, mostly in the course of administrative procedures. In some instances the allegations were trivial. Counsel likened the case to what is known in other jurisdictions as 'SLAPP'. The acronym stands for Strategic Litigation Aimed against Public Participation. No instances of cases so described are to be found in local law reports, but the concept of vicariousness corresponds very closely with the features of a SLAPP suit."[11]

19.3. The Court then found that the claims should not have been brought; that the litigation was purposeless and that the Defendants were unnecessarily involved in "heavy expenditure" in defending the claims brought against them.[12] It accordingly awarded costs against the Plaintiff (against whom the claim of a SLAPP suit was made) on an attorney-client scale as well as wasted costs on an attorney-client scale.[13]

19.4. The Court made the following notable observation in *Waypex, (which bear mention here)* the decision makes it clear that:

19.4.1. SLAPP suits relate to (but have not been found to be identical to) vexatious litigation;

19.4.2. SLAPP suits have not been disallowed by our Courts.

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[11] *Waypex (Pty) Ltd v Barnes and Others* 2011 (3) SA 205 (GNP), at 207B-207C.
[12] *Waypex (Pty) Ltd v Barnes and Others* 2011 (3) SA 205 (GNP), at 207D.
[13] Ibid at 207F-207G.

19.5. The factors considered by the Court in *Waypex* case, which are equally relevant in this case are:

19.5.1. The merit-worthiness of the case brought; and

19.5.2. The intention of intimidating and causing enmity.

20. On this premises it could be argued that our current jurisprudence acknowledges that SLAPP suits exist and are different to vexatious litigation and abuse of process.

21. The threat of costs alone generally serves as a tool of intimidation by litigants, and is a classic SLAPP suit tactic the purpose of dissuading parties from pursuing litigation being the prevention of public participation.

22. We share the Plaintiffs view that SLAPP suits are complex.[14] As apparent from this case, SLAPPs have a tendency to pit various sets of fundamental constitutional rights against each other: (1) Defendants' rights of free of expression[15], the Plaintiff's rights to (2) Access to Court.[16]

23. The absence of specific legislation, sufficient jurisprudence on the subject as well as the common cause complexity, lead us to direct this Court to other jurisdiction for better insight on SLAPP suits.

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[14] Plaintiff's Heads at para 48, 49 & 52.

[15] Section 16 of the constitution: (1) Everyone has the right to freedom of expression, which includes— (a) freedom of the press and other media; (b) freedom to receive or impart information or ideas; (c) freedom of artistic creativity; and (d) academic freedom and freedom of scientific research.

[16] Section 24 of the constitution: Access to courts-Everyone has the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court or, where appropriate, another independent and impartial tribunal or forum.

D - SLAAP SUITS LITIGATION IN FOREIGN JURISDICTIONS

America

24. The phenomenon of SLAPP suits first developed in the United States of America. To guard against the chilling effect of SLAPPs, twenty-eight states, the District of Columbia, and one U.S. territory have enacted anti-SLAPP statutes. Furthermore, Congress created Rule 11 among the Federal Rules in 1938 as a way to prevent litigants from filing lawsuits and claims "for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation" in federal Courts.[17]

25. The approach adopted by the American legal system is aimed to provide a quick, effective and inexpensive mechanism to combat such suits. Anti-SLAPP laws enable those who are the subject of a SLAPP suit to seek early dismissal and oftentimes get financial relief from possible future costs.

26. The common law and constitutional have developed in the United States to create a high substantive burden to tort and tort-like claims which seek redress for public speech, especially public speech which addresses matters of public concern. The common law in many states requires the pleader to state accurately the content of libellous words. Constitutional law has provided substantive protection which bars recovery against a first amendment defence except upon clear and convincing evidence that there has been deliberate or reckless falsehood. For this reason,

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[17] Pring. SLAPPs: Strategic Lawsuits against Public Participation. (1989) *Pace Environmental Law Review* Article 11 Volume 7 Issue 1.

ferreting out the bad faith SLAPP claim at an early stage of litigation should be accomplished with relative ease. Extension of the SLAPP penalties to factually complex cases, where the substantive standard of proof at common law is lower presents special challenges.

27. *Minnesota Supreme Court case, Middle-Snake-Tamarac Rivers Watershed Dist. v. Stengrim, 784 N.W.2d 834 (Minn. 2010)*[18] establishes a two-step process to determine whether SLAPP procedure should be applied. The decision arises in the context of an effort to enforce a settlement agreement between a local government and an opponent of a flood control project. The landowner had accepted a significant monetary settlement in settlement of his opposition to land acquisition. The landowner agreed as part of the settlement to address no further challenges to the project. When the local government sued the landowner for breach of settlement, the landowner contended that enforcement of the settlement was a strategic lawsuit against public participation. The Supreme Court rejected that claim and affirmed the District Court's denial of SLAPP relief, holding "The District Court properly denied a motion to dismiss where the underlying claim involved an alleged breach of a settlement agreement that potentially limited the moving party's rights to public participation.

Canada

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18 *Middle-Snake-Tamarac Rivers Watershed Dist. v. Stengrim*, 784 N.W.2d 834 (Minn. 2010).

28. In 2018, Ontario which is a province in Canada tested new anti-SLAPP legislation in the Court of Appeal, with six rulings[19], four of which were deemed strategic lawsuits against public participation.

29. The purpose of the anti-SLAPP legislation is to encourage public dialogue and debate with broad participation on matters of public interest, to prevent litigation aimed at stifling public discourse and prevent a chill from the threat of legal action harming public debate.

30. *In Daishowa Inc. v. Friends of the Lubicon: From 1995 to 1998 a series of judgements (OJ 1536 1995, OJ 1429 1998 (ONGD)*[20] established that Defendants, who had accused a global company of engaging in "genocide" were entitled to recover Court costs due to the public interest criticism, even if it was rhetorically unjustifiable.

31. *In Fraser v. Saanich (District) 1995, [BCJ 3100 BCSC]* [21]was held explicitly to be a SLAPP suit, the first known case to be so described. Justice Singh found Plaintiff's conduct to be "reprehensible and deserving of censure", ordering he pay "special costs"

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19 Cases involving SLAPP law: 1704604 *Ontario Ltd. v. Pointes Protection Association*, 2018 ONCA 685, *Able Translations Ltd. v. Express International Translations Inc*., 2018 ONCA 690, *Armstrong v. Corus Entertainment Inc*., 2018 ONCA 689, *Fortress Real Developments Inc. v. Rabidoux*, 2018 ONCA 686, *Platnick v. Bent*, 2018 ONCA 687, *Veneruzzo v. Storey*, 2018 ONCA 688.

20 Daishowa Inc. v. Friends of the Lubicon: From 1995 to 1998 a series of judgements (OJ 1536 1995, OJ 1429 1998 (ONGD).

21 *Fraser v. Saanich (District) 1995, [BCJ 3100 BCSC]*

32. In 2011, in *Robin Scory v. Glen Valley Watersheds Society, a BC*[22] Court ruled that "an order for special costs acts as a deterrent to litigants whose purpose is to interfere with the democratic process", and that "public participation and dissent is an important part of our democratic system." However, such awards remained rare.

33. In *Morris vs Johnson et al. October 22, 2012 ONSC 5824 (CanLII)*[23] during the final weeks of the 2010 municipal election in Aurora, Ontario, a group town councilors and the incumbent Mayor agreed to use town funds in order to launch what was later referenced as a private lawsuit fronted by the Mayor, seeking $6M, against both named and anonymous residents who were critical of the local government. After the mayor and a number of councilors lost the election the new town council cut public funding for the private lawsuit and they issued a formal apology to the Defendants. Almost one year after the town cut funding and after Morris lost a Norwich motion, Morris discontinued her case. The discontinuance cost decision delivered by Master Hawkins reads, per para. 32 (Ontario Superior Court of Justice Court file no.10-CV-412021): "Because I regard this action as SLAPP litigation designed to stifle debate about Mayor Morris' fitness for office, commenced during her re-election campaign, I award Johnson and Hogg special enhanced costs as was done in *Scory v. Krannitz 2011 BCSC 1344 per Bruce J. at para. 31 (B.C.S.C).*" Morris subsequently sued the town for $250,000 in the spring of 2013 in order to recover her legal costs for the period after the town cut funding of her case.

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22 *Robin Scory v. Glen Valley Watersheds Society*, a BC.

23 *Morris vs Johnson* et al. October 22, 2012 ONSC 5824 (CanLII).

34. It is evident from the above that South Africa does not yet have any specific legislation dealing with SLAPP suits. However, there are emerging threats to such litigation in South Africa. The American and Canadian examples above demonstrate the potential dangers of allowing the disregard of fundamental constitutional rights by institutions and or who have the economic, political or social capital to litigate against others solely for the purpose of discouraging and censoring their critics.

35. Section 39(2)[24] directs every Court or tribunal – when interpreting legislation or developing common law or customary law – to promote the object, purport and spirit of the Bill of Rights. Courts ought to on this premises use existing procedural and substantive legal tools to protect litigants faced with SLAPP suits.[25]

E - LEGAL PRINCIPLES

36. As we see it, the first Special plea raised by the Defendants deals with two separate contentions:

    36.1. First, the litigation proceedings instituted by the Plaintiffs against the Defendants is an abuse of process; and

    36.2. Second, the litigation proceedings instituted by the Plaintiffs against the Defendants are a SLAPP Suit.

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[24] Section 39 of the Constitution . (1) When interpreting the Bill of Rights, a court, tribunal or forum— (a) must promote the values that underlie an open and democratic society based on human dignity, equality and freedom; (b) must consider international law; and (c) may consider foreign law. (2) When interpreting any legislation, and when developing the common law or customary law, every court, tribunal or forum must promote the spirit, purport and objects of the Bill of Rights. (3) The Bill of Rights does not deny the existence of any other rights or freedoms that are recognised or conferred by common law, customary law or legislation, to the extent that they are consistent with the Bill.

[25] Murombo, & Valentine, SLAPP suits: an emerging obstacle to public interest environmental litigation in South Africa. (2011) 27 SAJHR.

37. We deal with the later contention herein below.

38. The Plaintiff's exception at paragraph 1 to 2 reads:[26]

> *"The protection in South African law for a defendant against abuse of process is limited to:*
>
> *1.1 the Vexatious Proceedings Act 3 of 1956 ("the Vexatious Proceedings Act") and*
>
> *1.2 the common law as enunciated inter alia in Member of the Executive Council for the Department of Co-operative Governance and Traditional Affairs v Maphanga [2019] ZASCA 147 (18 November 2019 ("Maphanga")*
>
> *2 In short, the Defendants have not brought an application in terms of the Vexatious Proceedings Act, nor have they pleaded the requirements of common law defence of abuse of Court process, inter alia requires that the Court to finds that the proceedings are obviously unsustainable as a certainty and not merely on a preponderance of probability*

39. The Plaintiffs in the exception assert that the Vexatious Proceedings Act, No 3 of 1956[27] (the Act) and common are sufficient to deal with the contentions raise by the Defendants in the first special plea. To the extent that the Defendant have not brought an application in term of the Act and or have not pleaded averments in line with the existing common law both parts of the first special pleas are rendered excipiable for lack of necessary averments. We limit our view to the SLAPP allegations and make no submissions on what the current state of the law is in relation to abuse of process in particular.

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[26] Reddell Record page 52

[27] Vexatious Proceedings Act, No 3 of 1956.

40. The exception procedure has specific relevance to how the assessment in relation to the special plea raised by the Defendants in the main will be made.

41. Rule 23(1) of the Uniform Rules of Court stipulates that:

> *"Where any pleading is vague and embarrassing... the opposing party may, within the period allowed for filing any subsequent pleading, deliver an exception thereto. Provided that where a party intends to take an exception that a pleading is vague and embarrassing, he shall within the period allowed as aforesaid by notice afford his opponent an opportunity of removing the cause of complaint within 15 days..."* [28]

42. In considering an exception, a Court commences from the premise that the allegations contained in the particulars of claim are correct, and then considers the pleadings as a whole. No facts outside those contained in the pleadings can be brought into issue. An Excipient will have to show that the pleading is excipiable on every possible interpretation that can reasonably be attached to it, wherefore the onus rests upon the Excipient.

43. A pleading lacks averments, which are necessary to sustain a defence, <u>if it does not justify the conclusions drawn therein</u>. Thus an exception founded upon the contention that a plea lacks averments necessary to sustain a defence, is designed to obtain a decision on a point of law which will dispose of the case in whole or in

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[28] Uniform Rules of Court.

part and avoid the leading of unnecessary evidence at the trial. An exception founded upon the contention that a plea lacks averments necessary to sustain a defence, is designed to obtain a decision on a point of law which will dispose of the case in whole or in part, and avoid the leading of unnecessary evidence.[29]

44. On the reading of the exception one notes that the Applicants take the first part of the first special plea to task, i.e. “abuse of Court process”.

45. CALS submits without taking any stance on whether abuse of process has sufficiently been pleaded, that the Applicants have failed to take the SLAPP suit plea to task for purposes of the exception.

46. The critical requirements and averments necessary in SLAPP suit can be seen in the Defendants first special plea[30].

47. The Applicants have however set out at length the complexity of SLAPP suites in their heads of argument. We submit this is in fact a concession from the Applicant’s that SLAPP Suits are not an abuse of Court process.

48. Admittedly, we agree with the Applicants on the consideration of the complex nature of SLAPP Suits. However the complex nature of a SLAPP Suits in of itself is doesn’t make the Defendants first special plea excipiable. CALS submits on this front that the applicants Exception to the SLAPP suit is unstainable in law.

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29 *Alphina Investments Ltd v Blacher* 2008 (5) SA 479 (C) at 483B.

30 First Special Plea, *Reddell* matter, p 20, para 2.2, para 2.3, para 3, & p 21, para 4

49. The purpose of an exception is to protect litigants against claims that are bad in law or against an embarrassment which is so serious as to merit the costs even of an exception.[31] It is a useful procedural tool to weed out bad claims at an early stage, but an overly technical approach must be avoided.[32]

50. An exception is generally not the appropriate procedure to settle questions of interpretation because, in cases of doubt, evidence may be admissible at the trial stage relating to surrounding circumstances which evidence may clear up the difficulties[33].

51. Accordingly, the consequences of upholding the exceptions directly and substantially impact on the case as a whole. The exceptions if upheld will limit the case from the onset and thereby deny the Defendants their rights in terms of section 34 of the Constitution.[34]

52. On the other hand, the dismissal of the exception on the grounds raised by the Defendants does not deprive the Plaintiffs in the main case of the opportunity answer to them as substantively and for their merits to be determined after the

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31 *Barclays National Bank Ltd. v Thompson* [1988] ZASCA 126; 1989 (1) SA 547 (A) at 553F-I and *Kahn v Stuart* 1942 CPD 386 at 391.

32 *Telematrix (Pty) Ltd v Advertising Standards Authority SA* [2005] ZASCA 73; 2006 (1) SA 461 (SCA) at para 3.

33 *Murray & Roberts Construction Ltd v Finat Properties (Pty) Ltd* 1991 (1) SA 508 (A)

34 Everyone has the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court or, where appropriate, another independent and impartial tribunal or forum.

leading of evidence at the trial. That is probably, in any event, a better way to determine the potentially complex factual and legal issues involved.[35]

53. The dismissal of an exception is not usually finally dispositive of the legal issue at stake, unlike the upholding of an exception on the basis that the claim is bad in law.[36]

54. What follows then is a two stage inquiry on whether there is a duty on Courts to develop common law, and if so, whether this Court can develop common law in the circumstances of this case as proposed by the Defendants in the alternative and CALS. We deal with this in turn.

F- CONSTITUTIONAL MANDATE TO DEVELOP COMMON LAW

55. As a starting point we reiterate that South African "Superior Courts have always had an inherent power to develop the common law in order to reflect the changing social, moral and economic make of the society". [37]

56. The Constitutional Court holds the view that the Constitution gives a general mandate to Courts to develop the common law. This position was strongly

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35 *Member of the Executive Council for Health and Social Development, Gauteng v DZ obo WZ* [2017] ZACC 37; 2018 (1) SA 335 (CC); 2017 (12) BCLR 1528 (CC); (DZ) at para 29; *H v Fetal Assessment Centre* [2014] ZACC 34; 2015 (2) SA 193 (CC); 2015 (5) BCLR 127 (CC) (Fetal Assessment Centre) at para 10 and *Wellington Court Shareblock v Johannesburg City Council*; Aghar Properties (Pty) Ltd v Johannesburg City Council [1995] ZASCA 74; 1995 (3) SA 827 (A) (Wellington) at 834.

36 *Maize Board v Tiger Oats Ltd* [2002] ZASCA 74; 2002 (5) SA 365 (SCA) at paras 12-4 and *Blaauwbosch Diamonds Ltd v Union Government* (Minister of Finance) 1915 AD 599 at 601 for dismissal of an exception and compare with upholding an exception that is bad in law that is finally dispositive of the legal issue.

37 *S vTheus* 2003 6 SA 505(CC) para31.

conveyed in *Carmichele v Minister of Safety and Security*[38] as follows: *"It needs to be stressed that the obligation of Courts to develop the common law, in the context of the section 39(2) objectives, is not purely discretionary. On the contrary it is implicit in section 39(2) read with section 173 that where the common law as it stands is deficient in promoting the section 39(2) objectives, the Courts are under a general obligation to develop it appropriately*." [39]

57. The Constitutional Court In *K v Minister of Safety and Security* [40] also said, when fulfilling the mandate or obligation to develop the common law, Courts of law do not have to wait for a perfect opportunity or a moment where "some startling development of the common law is in issue, but in all cases where the incremental development of a common law rule is in issue". In addition, where a Court realises the need to develop the common law in a particular case in order to fill a gap in law, such a Court does not always have to rely on litigants to make a relevant allegation regarding the need to develop a common law rule in the interests of justice, but can under certain circumstances intervene of its own accord. What is expected of the Courts in keeping with their constitutional mandate to develop the common law is to be at all times "alert to the normative framework of the Constitution".

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38 *Carmichele v Minister of Safety and Security)* 2001 4 SA 938 (CC) paras 54-6; *Napier v Barkhuizen* 2006 4 SA 1 (SCA); Barkhuizen v Napier 2007 5 SA 323 (CC) para 39

39 *Carmichele v Minister of Safety and Security* 2001 4 SA 938 (CC) paras 54-6; *Napier v Barkhuizen* 2006 4 SA 1 (SCA); *Barkhuizen v Napier* 2007 5 SA 323 (CC) paras 28-9; *Brisley v Drotsky* 2002 4 SA 1 (SCA).

40 *K v Minister of Safety and Security* 2005 6 SA 419 (CC) para 17.

58. It is essential at this stage to point out that the Courts' "obligation" to develop the common law, in order to promote the objectives of sections 39(2) and 173[41] (which provides that: "The Constitutional Court, Supreme Court of Appeal and High Courts have the inherent power to protect and regulate their own process, and to develop the common law, taking into account the interests of justice.") of the Constitution is to be found from within the Bill of Rights in sections that come earlier than sections 39(2) and 173.

59. The clearest of the mandate on Courts to develop the common law when applying the Bill of Rights to a practical situation where violation of a right is alleged, comes from section 8(3).

60. Section 8(3)(a) states that "*When applying a provision of the Bill of Rights to a natural or juristic person in terms of the subsection (2), a Court –*

> *(a) In order to give effect to a right in the Bill of Rights, the Court must apply, or if necessary develop, the common law to the extent that legislation does not give effect to that right;*
>
> *(b) may develop rules of the common law to limit the right, provided that the limitation is in accordance with section 36(1)".*

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41 S 173 provides as follows: "The Constitutional Court, Supreme Court of Appeal and High Courts have the inherent power to protect and regulate their own process, and to develop the common law, taking into account the interests of justice."

61. This provision is of the essence in that when a Court of law applies a right in the Bill of Rights, it must do so through the medium of the common law, and must develop common law by adapting, modifying or supplementing its rules where necessary to fill a gap in the law (the gap in this instance is in relation to SLAPP suits).

G- CAN THIS COURT DEVELOP COMMON LAW

62. CALS submits the Act and common law are insufficient, to deal with SLAPP suits, leaving a gap in the law. In this regards common law stands to be developed by this court as pleaded by the Defendants only and to the extent necessary to distinguish SLAPP suits from abuse of Court processes.

63. This assertion is located within the context of the constitutional framework. The supremacy of the Constitution, which means that all laws enforced in South Africa and applied by the Courts, including the common law, now derive its force from the Constitution.

64. The basic approach to statutory interpretation has been clearly stated by the Constitutional Court:

    64.1. The "fundamental tenet" is that "the words in a statute must be given their ordinary grammatical meaning, unless to do so would result in an absurdity"[42].

65. There are three important interrelated riders to this general principle:

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[42] *Cool Ideas 1186 CC v Hubbard and Another* [2014] ZACC 16; 2014 (4) SA 474 (CC)

65.1. statutory provisions should always be interpreted purposively;

65.2. statutory provisions must be properly contextualised; and "all statutes must be construed consistently with the Constitution." [43]

65.3. the last rider is important. It flows from s 39(2) of the Constitution. It demands that a Court must not only avoid an interpretation that would render a provision unconstitutional. In addition:

65.3.1. courts are "required to adopt the interpretation which better promotes the spirit, purport and objects of the Bill of Rights"; [44] and

65.3.2. courts must adopt "a meaning that does not limit a right in the Bill of Rights".[45]

66. Further thereto, Section 233 of the Constitution provides "When interpreting any legislation, every Court must prefer any reasonable interpretation of the legislation that is consistent with international law over any alternative interpretation that is inconsistent with international law.[46]

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43 Ibid at para 28 (my emphases).

44 *Wary Holdings (Pty) Ltd v Stalwo (Pty) Ltd and Another* [2008] ZACC 12; 2009 (1) SA 337 (CC) at para 46 (emphasis in original).

45 *Makate v Vodacom (Pty) Ltd* [2016] ZACC 13; 2016 (6) BCLR 709 (CC); 2016 (4) SA 121 (CC) at para89

46 *Government of the Republic of South Africa and Others v Grootboom and Others* [2000] ZACC 19; 2001 (1) SA 46 (CC) at paras 29-31; *Motswagae and Others v Rustenburg Local Municipality and Another* [2013] ZACC 1; 2013 (3) BCLR 271 (CC); 2013 (2) SA 613 (CC) at fn 6; *Doctors for Life International v Speaker of the National Assembly and Others* [2006] ZACC 11; 2006 (12) BCLR 1399 (CC); 2006 (6) SA 416 (CC) at paras 95-6.

67. Section 39(1) (b) of the Constitution provides that when it interprets the Bill of Rights, Courts "must consider international law". This includes both binding and non-binding international law.[47]

68. South African law authorizes its Courts to consider foreign law in interpreting the Bill of Rights section of the South African Constitution. The Constitution states when interpreting the Bill of Rights, a Court, tribunal or forum must[48]:

68.1 promote the values that underlie an open and democratic society based on human dignity, equality and freedom;

68.2 must consider international law; and,

68.3 may consider foreign law.

69 The consideration of foreign law is permissive. In *S v Mankwanyane*[49]the Constitutional Court stated we can derive assistance from public international law and foreign case law but we are in no way bound to follow it. The influence of foreign law may extend beyond the interpretation of the Bills of Rights provisions of the Constitution[50] A comparative consideration of foreign law virtually guarantees that jurisprudence will be developed that will be used to address legal issues that are not directly germane to the Bill of Rights.

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47 Ibid

48 SECTION 39(1) of the Constitution. The language of the mandate for the use of foreign law was slightly different in the 1993 Interim Constitution. The 1993 Constitution provided that in interpreting the chapter on Fundamental Rights, a court "… may have regard to comparable foreign case law." S. Afr. (Interim) Const. 1993, § 35(1). This, however, did not prevent courts from referring to sources outside of court cases..Du Plessis & Corder, *Understanding South Africa's Transitional Bill of Rights* 121 (Juta & Co., Ltd. 194).

49 *S v Makwanyane and Another (CCT3/94) [1995] ZACC 3; 1995 (6) BCLR 665; 1995 (3) SA 391; [1996] 2 CHRLD 164; 1995 (2) SACR 1* at para 39.

50 George Devenish, A Commentary on the South African Bill of Rights 620 (Butterworths, 1999).

70 The authorization to consider foreign law by our Courts is exercised to resolve jurisprudential issues precipitated by the justiciability of provisions of the Bill of Rights.

71 The Act[51] seeks to provide relief to applicants that can demonstrate that a respondent has persistently instituted legal proceedings without reasonable grounds. Furthermore, the Act seeks to protect an applicant who is subjected to costs and unmeritorious litigation as well as the functioning of the Courts to proceed unimpeded by groundless proceedings.

72 According to Nicholas J in *Fisheries Development Corp v Jorgensen*:[52] *"In its legal sense, vexatious means frivolous, improper: instituted without sufficient ground, to serve solely as an annoyance to the defendant. Vexatious proceedings would also no doubt include proceedings which, although properly instituted, are continued with the sole purpose of causing annoyance to the defendant, abuse connotes a misuse, an improper use, a use mala fide, and a use for an ulterior motive". ' Section 2(1) (b) of the Act[53] provides as follows: "If, on application made by any person against whom legal proceedings have been instituted by any other person or who has reason to believe that the institution of legal proceedings against him is contemplated by any other person, the court is satisfied that the said person has persistently and without any reasonable ground instituted legal proceedings in any court or in any inferior court, whether against the same person*

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51 The Vexatious Proceedings Act, No 3 of 1956.
52 *Fisheries Development Corp v Jorgensen* 1979 (3) SA 1331 (W) at 1339E-F
53 The Vexatious Proceedings Act, No 3 of 1956.

or against different persons, the court may, after hearing that person or giving him an opportunity of being heard, order that no legal proceedings shall be instituted by him against any person in any court or any inferior court without the leave of the court, or any judge thereof, or that inferior court, as the case may be and such leave shall not be granted unless the court or judge or the inferior court, as the case may be, is satisfied that the proceedings are not an abuse of the process of the court and that there is prima facie ground for the proceedings."

73 In *Beinash and Another v Ernst and Young* [54] *the Court considered the constitutionality of section 2 (1) (b) of the Act. The Court confirmed that: "The provision does limit a person's right of access to court. However, such limitation is reasonable and justifiable. While the right of access to court is important, other equally important purposes justify the limitation created by the Act. These purposes include the effective functioning of the courts, the administration of justice, and the interests of innocent parties subjected to vexatious litigation. Such purposes are served by ensuring that the courts are neither swamped by matters without any merit, nor abused in order to victimise other members of society".*

74 *In Christensen NO v Richter*[55] the Court consequently, in summary, stated the following appears to be the position: *"The only manner by which the institution of future vexatious proceedings can be prevented is to rely on the provisions of the Act, the only manner to stay, strike out or otherwise deal with vexatious proceedings which have already been instituted or to deal with any process or action or inaction leading up to, or during or subsequent to, any legal proceeding*

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54 *Beinash and Another v Ernst and Young and Others* 1999 (2) SA 116 (CC).
55 In *Christensen NO v Richter* 2017 JDR 1637 (GP).

or proceedings already instituted, and which constitutes an abuse of process, or generally brings the administration of justice into disrepute, shall be done in terms of the applicable common law principles and the court's inherent power to apply same ".

75 The main purpose of enacting the law on the subject was to prevent a person from instituting or continuing vexatious proceedings habitually and without reasonable ground in the High Courts and subordinate Courts.

76 In this matter the Act is limited in addressing the nuances as it arises through a SLAPP suit. Primarily the test as purported by the Act requires that legal proceedings must be instituted without reasonable grounds. In this instance, when the merits of this case are considered prima facie one notes the potential basis for reasonable grounds. However for purposes of SLAPP suits the consideration of the presence of reasonable grounds is not sufficient on its own and therefore intention and ulterior motive to achieve the discouraging of public participation in discourse as a consequence of the litigation must be considered.

77 On this premises CALS submits that the Defendants are well placed to rely directly on the constitution section 39(1) and 8(3) for the development of common law.

78 Notably, the question whether the principle of subsidiarity stating that "where legislation is enacted to give effect to a constitutional right, a litigant may not bypass that legislation and rely directly on the Constitution without challenging that legislation as falling short of the constitutional standard", applies.

79 This question has been placed before the Constitutional Court on several occasions and has been left open. *In South African National Defence Union v Minister of Defence*[56] Ngcobo J held as follows: "*In NAPTOSA and Others v Minister of Education, Western Cape, and Others,*[40] *the Cape High Court held that a litigant may not bypass the provisions of the* Labour Relations Act 66 of 1995 *and rely directly on the Constitution without challenging the provisions of the* Labour Relations Act on *constitutional grounds. The question of whether this approach is correct has since been left open by this Court on two subsequent occasions in "National Education Health and Allied Workers Union v University of Cape Town and Others [2002] zacc 27, 2003 (3) SA 1 (CC), 2003 (2) BCLR 154(CC) (NEHAWU) at para 17; Ingledew v Financial Services Board: In Re Financial Services Board v Van Der Merwe and Another [2003] ZACC 8, 2003 (4) SA 584 (CC) 2003 (8) BCLR 825(CC) at paras 23-24. Then, in Minister of Health And Another NO v New Clicks South Africa (Pty) Ltd and Others (Treatment Action Campaign and Another as Amici Curiae),*[42] *Ngcobo J writing a separate judgment held that there was considerable force in the approach taken in NAPTOSA. He noted that if it were not to be followed, the result might well be the creation of dual systems of jurisprudence under the Constitution and under legislation. In my view, this approach is correct: where legislation is enacted to give effect to a constitutional right, a litigant may not bypass that legislation and rely directly on the Constitution without challenging that legislation as falling short of the constitutional standard. Accordingly, a litigant who seeks to assert his or her right to engage in collective bargaining under section 23(5) should in the first place base his or her case on any legislation enacted to regulate the right, not on*

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56 *South African National Defence Union v Minister of Defence* 2007 (5) SA 400 (CC) at para 51.

section 23(5). If the legislation is wanting in its protection of the section 23(5) right in the litigant's view, then that legislation should be challenged constitutionally. To permit the litigant to ignore the legislation and rely directly on the constitutional provision would be to fail to recognise the important task conferred upon the legislature by the Constitution to respect, protect, promote and fulfil the rights in the Bill of Rights.[43] *The proper approach to be followed should legislation not have been enacted as contemplated by section 23(5) need not be considered now."*

80 It is important to note that even if the principle limits direct reliance on the constitution, that the principle only applies if the legislation purports to give exhaustive effect to the constitutional right, that is, if it "covers the field". [57]

81 We submit that on a proper reading and interpretation of the Act, the Act does not purport to give exhaustive effect to the constitutional right of freedom of expression, to this end it does not cover SLAPP' suits. If we accept that the Act does not cover the field, then the principle does not apply.

82 We submit further that, even if the Court is not with us and it finds that principle of subsidiarity does apply, the Constitutional Court has made it clear that it is not a hard and fast rule.

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[57] *Mazibuko v City of Johannesburg* 2010 (4) SA 1 (CC) paras 74 to 76; *My Vote Counts v Speaker of the National Assembly* 2016 (1) SA 132 (CC) paras 126 and 136 to 149.

83 In fact, in *My Vote Counts v Speaker of the National Assembly case,* the majority stated: "We should not be understood to suggest that the principle of constitutional subsidiarity applies as a hard and fast rule. There are decisions in which this Court has said that the principle may not apply. This Court is yet to develop the principle to a point where the inner and outer contours of its reach are clearly delineated. It is not necessary to do that in this case." [58]

84 We agree with the Plaintiffs consideration regarding the complex nature of SLAPP suits. As this court would know development of the common law can be gradual, development therefore does not necessarily entail the development of common-law rules altogether at once.[59]

85 The complexities in of itself though, should not deter the Courts, or create a situation where the gaps in our law are left to remain unabated in hopes that a solution will follow from the legislature someday. On this front , we agree with the submission made by the Respondents at paragraph 48 of their heads, it reads: "This approach does not ignore that the principal engine for law reform is the legislature but rather requires a court to take into account factors such as whether the common law rule is a judge-made rule; the extent of the development required; and the legislature's ability to amend or abolish the law.[61] Ultimately, whether a common-law rule offends section 39(2) or whether the wider interests of justice necessitate development under section 173, the context of the inquiry, being the factual matrix that is placed before the court, is important."

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58 *My Vote Counts v Speaker of the National Assembly* 2016 (1) SA 132 (CC) at para 182

59 *MEC for Health and Social Development, Gauteng v DZ obo WZ* 2018 (1) SA 335 (CC)

86 SLAPP suits require consideration from our Courts, which the current legislation and common law does not afford. They are not an abuse of process in the typical sense, as evidence above. The current common law principles and inquiries do not afford litigants protection from SLAPP suits to this extent they are inconsistent with the constitutional value system, which prospects freedom of speech particularly when it relates to public participation.

87 We submit this is amongst others is what triggers the duty established in *S v Theus*[60] to develop the common law.

88 The Plaintiffs contentions against the development of common law are noted. The Plaintiffs contend that even if it would have been appropriate to develop common law for legal reason raised in the special plea. This Court cannot do so as this Court is bound by the decision in *Maphanga*.

89 The Plaintiff's state as follows *"In the circumstances, it is not open to this Court to entertain developing the common law so as to re-formulate the test for an abuse of process by shifting the focus to motive, let alone to regard ulterior purpose on its own as constituting an abuse of process*."

90 CALS submits the law relating to the principle of precedent is not contentious, in this matter. CALS submits, however that, *Maphanga* and the principles articulated

60 S v Theus 2003 6 SA 505 (CC) at para 28

in that case, was not at all in relation to SLAPP' suits. The facts of the Maphanga[61] case were infect as follows*:*

The matter had a long and unhappy history for Mr Maphanga, which stretches back to the dawn of democracy. Mr Maphanga was employed by the appellant while it was still the Natal Provincial Administration. Following the amalgamation and rationalisation process in terms of which the provincial administrations of the former TBVC homelands were incorporated into the structures of the new democratic government, Mr Maphanga was absorbed into the Department of Local Government and Housing. According to him, the problems began at that point as he was not afforded a promotion to which he was entitled and suffered ill-treatment at the hands of the Department. His foray into litigation started with a claim, which he brought in the Labour Court, seeking promotion or appointment to certain positions within the Department.

The Labour Court dismissed the claim in on the basis that it had no jurisdiction as the dispute predated the empowering legislation, the Labour Relations Act 66 of 1995 His subsequent action in the Industrial Court, was unsuccessful. That tribunal took the view that the claim should have been pursued in the civil Courts. Thereafter Mr Maphanga lodged complaints with various bodies, including the Public Protector, the South African Human Rights Commission and the City Press newspaper. He also complained in writing to a Member of Parliament and the Parliamentary Portfolio Committee on Justice. All these efforts came to naught.

After a long lull, he referred an unfair labour practice dispute to the General Public Service Sectorial Bargaining in respect of the Department's failure to promote him. These proceedings also failed. His attempt to have this decision reviewed by the Labour Court was dismissed. And so was the application for leave to appeal and his petition to the Labour Appeal Court a year later, after he failed in the Labour Court.

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61 *Member of the Executive Council for the Department of Co-operative Governance and Traditional Affairs v Maphanga* [2020] 1 All SA 52 (SCA) at para 2-6.

Ultimately Mr Maphanga delivered a notice of his intention to institute legal proceedings against the MEC in terms of the Institution of Legal Proceedings against Certain Organs of State Act 40 of 2002. Thereafter, he launched an action in the KwaZulu-Natal Division of the High Court, Durban. In that matter, he sought damages allegedly arising from the wrongful and unlawful sale in execution of his home by the Department, to settle his taxed costs arising from his losses in the Labour Courts

Upon receipt of Mr Maphanga's notice to sue, the MEC approached the Court to interdict Mr Maphanga from referring to any forum or institution any complaint relating to his said employment in the public service, unless he first obtains leave from this Court.

91 The main issues for the court to determine in this case were the respective scope of application meaning of 'persistently instituting proceedings in terms of the Vexatious Proceedings Act 3 of 1956.

92 We submit with respect that the present case is distinguishable. It stands to be distinguished from the facts in the present case and the principles we seek the court to establish. In this present case this Court is called to develop common for purposes of recognising SLAPP suits and the "test required", simply put the line of enquiry to be followed therein, by the Courts.

93 For present purposes the South African Courts have not, but for the matter of *Waypex v Barnes*[62] made any pronouncement of the issue of SLAPP suits. It therefore cannot, with respect be correct that Maphang is the reason cannot develop the law on this particular issue.

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62 *Waypex (Pty) Ltd v Barnes and Others* 2011 (3) SA 205 (GNP), at 207B-207C.

94 We note the authorities relied on by the Plaintiffs where motive is said to have no bearing in the inquiry. While it is correct that motive may be irrelevant in for example dealing with a review of the decision of the *National Director of Public Prosecutions v Zuma case.*[63]

95 It is simply incorrect to paint motive as an irrelevant legal consideration in our jurisprudence, and particularly in light of these proceedings. To this end we submit the Plaintiffs correctly highlight the dictum of HarmsDP in *National Director of Public Prosecutions v Zuma.* We submit that this is a correct concession of the need for consideration of motive in conjunction with the merits.

96 In *Beckenstrater v Rottcher and Theunissen* [64]set out the test for 'absence of reasonable and probable cause'. The test contains both a subjective and objective element, meaning there must be both actual belief on the part of the Defendant and also that that belief is reasonable in the circumstances.

H – CONCLUSION & COSTS

68 If it is accepted that in this matter the principle of subsidiarity does not apply, at least at the exception stage, there is no reason to find that this Court cannot develop the law to allow for adjudication of the special pleas in the main case. A SLAPP suit like this, invoking the protection to the fundamental right to freedom of expression under section 16(1), has not been litigated before. We submit that

63 National Director of Public Prosecutions v Zuma 2009 (2) SA 277 (SCA)
64 *Beckenstrater v Rottcher and Theunissen* 1955 (1) SA 129 (AD) at 136A-B.

the Court should not uphold an exception on the basis that the protection to litigants even in suspected cases of SLAPP suits is limited only to the existing common law practices and the Vexations Proceeding Act.

69 Dismissal of an exception does not usually involve a final dispositive pronouncement on a legal issue.[65] For that reason, as well as the complexity of the factual and legal issues surrounding all the claims made in the Plaintiffs particulars of claim, it is not in the interests of justice to uphold the exception to the first and second special plea.

70 CALS further submits that this Court should affirm that this application is a SLAPP suit based on its demonstration that this application is without merit, and is intended to discourage the vindication of rights. Doing so would not be an extraordinary deviation from the principles of our common law. To the extent that it is, such decision should nonetheless be made so as to develop the common law in the right of the "spirit, purport and object" of the Bill of Rights as commanded by section 39(2) of the Constitution.

71 We submit that no costs order should be made against CALS if this application is unsuccessful. CALS should be protected by the rule established in the matter of *Biowatch Trust v Registrar Genetic Resources and Others*.[66] Although CALS

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65 *Pretorius and another v Transport Pension Fund and others* 2018 at ZACC 10 at para 56. See also *Maize Board v Tiger Oats Ltd* [2002] ZASCA 74; 2002 (5) SA 365 (SCA) at paras 12-4 and *Blaauwbosch Diamonds Ltd v Union Government* (Minister of Finance) 1915 AD 599 at 601 for dismissal of an exception and compare with upholding an exception that is bad in law that is finally dispositive of the legal issue.

66 *Biowatch Trust v Registrar Genetic Resources and Others* 2009 (6) SA 232 (CC).

accepts that this case, unlike *Biowatch*, is not one brought by aggrieved individuals against the state.

72 We submit however, that CALS acted in the public interest in this matter and pursued this application in order to protect and vindicate a constitutionally entrenched right to freedom of expression.

73 The trite principle laid out by the Constitutional Court in the *Biowatch case* are that:

"In the first place it diminishes the chilling effect that adverse costs orders would have on parties seeking to assert constitutional rights. Constitutional litigation frequently goes through many Courts and the costs involved can be high. Meritorious claims might not be proceeded with because of a fear that failure could lead to financially ruinous consequences. Similarly, people might be deterred from pursuing constitutional claims because of a concern that even if they succeed they will be deprived of their costs because of some inadvertent procedural or technical lapse. Secondly, constitutional litigation, whatever the outcome, might ordinarily bear not only on the interests of the particular litigants involved, but on the rights of all those in similar situations. Indeed, each constitutional case that is heard enriches the general body of constitutional jurisprudence and adds texture to what it means to be living in a constitutional democracy. Thirdly, it is the state that bears primary responsibility for ensuring that both the law and state conduct are consistent with the Constitution. If there should be a genuine, non-frivolous challenge to the constitutionality of a law or of state conduct, it is appropriate that the state should bear the costs if the challenge is good, but if it is not, then the losing non-state litigant should be shielded from the

costs consequences of failure. In this way responsibility for ensuring that the law and state conduct is constitutional is placed at the correct door."[67]

68 CALS submits that the exception to the first and second special plea in each case should be dismissed and that no other of cost should be made against CALS.

Lerato Phasha

Lungelo Ntshangase

Chambers, Sandton

27 May 2020

Counsel for the Centre for Applied Legal Studies.

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