

Big-budget 'lawfare' used to stifle dissent, bully smaller critics

John Yeld

South Africa's hard-won constitutional rights to freedom of expression and political protest are under pressure from both government and the private sector, and the courts are increasingly being used in this form of "lawfare" to stifle criticism and dissent.

This was emphasised last week at the Cape Town launch of a joint advocacy campaign called *Asina Loyiko* (We do not fear): United Against Corporate Bullying.

One of the campaign's aims is to counter the increasing use of strategic litigation against public participation (Slapp) lawsuits in which corporates with big budg-

ets bring defamation cases involving huge damages claims against usually smaller opponents and critics, in order to intimidate and commit them to long and expensive litigation that exhaust their resources.

"It's a horrible, horrible process," said attorney Tracey Davies, formerly of Centre for Environmental Rights (CER) and one of six defendants facing a combined total of R9.25 million in damages in what are widely regarded as Slapp suits. "And one of the most pernicious elements of such cases is how they single you out – that makes you feel very lonely."

The defamation cases against Davies and the others were instituted by Australian venture

capitalist Mark Caruso, his companies Mineral Commodities Limited (MRC) and SA subsidiary Mineral Sands Resources (MSR), and one of their black empowerment partners, Zamile Qunya.

Davies' co-defendants are Christine Reddell, an attorney and a former CER staffer; Davine Cloete, a community activist from Lutzville on the West Coast where MSR mines mineral sands from the beaches; Mzamo Dlamini, an community activist from Xolobeni, where MRC's attempts to mine the titanium-rich coastal dunes have been resisted by the Amadi-ba community; Cormac Cullinan, an environmental lawyer; and John GI Clarke, a social worker, writer and human rights activist,

who has been advising the Amadi-ba community since 2006.

On Wednesday, the first salvo in these lawsuits will be fired in the Cape High Court where Davies, Breddell and Cloete are bringing a "discovery" application against MSR and Qunya to force the mining company to provide a large number of internal documents that they believe are crucial to their defence against the defamation charges. The application is being defended.

This case stems from alleged defamatory remarks that they made in January 2017 at the University of Cape Town's Summer School, where they spoke about MSR's environmental impacts on the West Coast beaches and the

mining company's failure to comply with environmental laws.

Dlamini's defamation case is based on remarks he made in a radio interview where he said he was "not too worried" because he was "fighting for a good cause".

"But I am very frustrated," he added. "This [defamation suit] is not for justice. It's to keep us quiet, to shut us down."

Other supporters of *Asina Loyiko* include civil society organisations Right2Know, Open Secrets, Global Environmental Trust, Ox-fam SA and groundWork.

CER director Melissa Fourie said constitutional rights and freedom of speech were extremely important. – *Republished from GroundUp.org*