

Can Organs of State Institute Legal Proceedings for Defamation?

Exploring Legal Limits and Freedom of Expression

INTRODUCTION

On 20 June 2024, the Johannesburg High Court delivered a judgement in the matter of **Director Generala Department of Justice and Constitutional Development and Another v Rocha [2024] ZAGPPHC 548** [sic], concerning defamation and the legal standing of organs of state in defamation proceedings.

The matter centred around an urgent application brought by the Department of Justice and Constitutional Development and its Director General, seeking to prohibit the Respondent from spreading defamatory remarks and statements.

BACKGROUND AND DEFAMATION

Defamation involves making false statements about a person or entity that damages their reputation. In this matter, the Respondent allegedly sent emails accusing the Director General of the Department of Justice and Constitutional Development and various other employees of the Department of corruption and misconduct.

These emails were circulated to various individuals within the Presidency and other governmental institutions.

CASE OVERVIEW

The Applicants sought several forms of relief, namely:

1. to interdict the Respondent from making unfounded defamatory statements about the Director General of the Department of Justice and Constitutional Development;
2. to interdict the Respondent from spreading defamatory statements about the Department of Justice and Constitutional Development's employees;

By **Hnerique Greeff** (Candidate Attorney), and **Charissa Kok** (Partner)

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3. a declaration that the Respondent's allegations of corruption against the Applicants were defamatory and false;
4. an order directing the Respondent to retract the defamatory statements; and
5. a declaration that the Respondent's publication of the emails was unlawful.

LEGAL STANDING FOR DEFAMATION

The legal question in this matter was whether the Applicants, as organs of state, possessed the requisite legal standing to institute proceedings for defamation against the Respondent for the allegedly defamatory emails. The Respondent argued that the Applicants, being organs of state, did not possess the necessary locus standi.

The Respondent referred to the cases of **Moyane and Another v Lackay [2017] ZAGPPHC 1262** ("Moyane") and **Die Spoorbond and Another v South African Railways; Van Heerden and Others v South African Railways (1946 AD 999)** ("Spoorbond").

In **Moyane**, the Court held that the South African Revenue Service and its Commissioner could not claim damages for defamation. Instead, they could only seek compensation for actual financial loss by way of the Aquilian action.

In **Spoorbond**, the Appellate Division remarked that the State's main function is "that of government and its reputation or good name is not a frail thing connected with or attached to the actions of individuals who temporarily direct or manage some of many activities in which the government engages". Accordingly, the Court held that an Organ of State cannot sue for defamation, holding that the state's reputation is robust and not easily damaged by criticism of its activities.

THE COURT'S JUDGEMENT

In the present case, the Court emphasised that allowing organs of state to institute proceedings for defamation would interfere with the right to freedom of expression as enshrined in the Constitution.

The Application was dismissed, and the Applicants were ordered to pay the Respondent's costs.

CONCLUSION

The reasoning applied by the High Court in reaching its judgement emphasises the importance of freedom of expression in a constitutional democracy. While this judgement by no means implies that no legal consequences may arise where defamatory remarks are publicised that injures the reputation of an organ of state (such as a claim for actual damages), it does uphold the entrenched common law position that holding individuals or entities liable for defamation of organs of state would entail a drastic interference with the free expression of a State's subjects, opinions, and criticisms of the State.

Kindly contact the authors of this article on 011 568 8500 for more information.

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Charissa Kok
(Partner)



Henrique Greeff
(Candidate Attorney)