

OFFICE OF THE CHIEF JUSTICE REPUBLIC OF SOUTH AFRICA

**IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL DIVISION, DURBAN**

CASE NUMBER: D3109/2021

In the matter between:

SOUTH AFRICAN FARMERS DEVELOPMENT ASSOCIATION APPLICANT

and

**ANNETTE STEYN MP
DEMOCRATIC ALLIANCE**

**FIRST RESPONDENT
SECOND RESPONDENT**

ORDER

1. The application is dismissed.
2. The applicant is to pay the costs of the application.

JUDGMENT

Judgment was handed down electronically by circulation to the parties' legal representatives by email. Date and time for hand down is deemed to be on 12 May 2021

Date Delivered: 12 May 2021

McIntosh AJ:

[1] This is an urgent application launched by the South African Farmers Development Association, a voluntary association with a constitution which conducts business from 170 Flanders Drive, Mount Edgecombe, KwaZulu-

Natal.

[2] The first respondent is Annette Steyn, an adult female, member of parliament whose place of employment is at the Parliament of the Republic of South Africa, 120 Plein Street, Cape Town, Western Cape.

[3] The Democratic Alliance, a political party, is cited as the second respondent, with its head office at 2nd Floor Theba Hoskin House, 16 Mill Street, Gardens, Cape Town, Western Cape.

Relief Sought

[4] The applicant sought rule *nisi* in the following terms:

- a) Interdicting the first and/or second respondents, including any person acting for and on behalf of the second respondent, from making or repeating allegations whether orally or in writing against the applicant of the same or similar nature to those contained on the second respondent's newsroom briefing published on 7 April 2021, annexed to the founding affidavit marked "F" and annexed hereto as "**X**", namely:
 - (i) that the applicant is a middle-man arrangement with the Department of Agriculture, Land Reform and Rural Development (DALRRD) and is not in any way beneficial to the livelihoods and wellbeing of farmers on the ground;
 - (ii) that the applicant is in an unconventional relationship with the DALRRD and/or minister Thoko Didiza;
 - (iii) that members of the Melmoth community including members of the Mtonjaneni community and/or the Isizwe Sakwa Dladla community are in an illegal partnership with the applicant;

- (iv) that the DALRRD and/or minister Thoko Didiza is in an illegal partnership with the applicant;
 - (v) that the applicant was appointed by the DALRRD and/or minister Thoko Didiza in a materially irregular manner and that the applicant has benefitted by the grant of One Hundred and Fifty- Eight Million Rand (R158,000,000.00).
- b) Interdicting the respondents from defaming and/or injuring the applicant in its dignity in any publication or in any broadcast in any form including but not limited to internet posts, articles, letters, media interviews, social media posts and the like which negatively reflect upon the applicant arising from or based on any of the allegations or statements, including of a similar nature, appearing from annexure "F" or as referred to in [4] above.
 - c) Directing the respondents within twenty-four (24) hours of the grant of this order to remove and to delete annexure "F" from the second respondent's website or from any other social media posts where the respondents have caused annexure "F" or any posting of a similar nature to be published.
 - d) Directing the first and second respondents within twenty-four **(24)** hours of grant of this order to retract the offending remarks in writing including by the publication of such a retraction on the second respondent's website, and by the delivery of a further written retraction to the applicant's attorneys of record.
 - e) Directing the first and second respondents to pay the costs of this application including the costs of two counsel where so employed.
 - f) Further and/or alternative relief.

[5] The urgent application was initially launched as a rule *nisi* with interim relief. After argument, in light of the all-encompassing interim relief sought by

the applicant, the applicant sought a final order on the same terms as the interim relief initially requested in the notice of motion.

[6] The applicant indicated that it would be instituting an action for defamation against the first and second respondents and part of the order sought would be to direct the applicant to institute the aforesaid action within 60 days of the granting of the interdict sought.

Submissions regarding Jurisdiction

[7] The issue of the court's jurisdiction was directly challenged by the respondents in their answering affidavit.

[8] In its founding affidavit, the applicant contends that the purpose of the application is to interdict and restrain from making defamatory statements regarding the applicant and to compel the respondents and to retract such defamatory statements already made against the applicant and which remain in the public domain.

[9] Further, in its founding affidavit, the applicant submits that the statements made by the respondents are all primarily directed at or for the attention of local communities within the Melmoth area. It is submitted by the applicant that the first respondent's statements are both defamatory and designed to incite animosity towards the applicant, particularly in Melmoth, which falls under the jurisdiction of this court.

[10] In the respondents' answering affidavit this respondent confirms that she is a member of parliament for the second respondent and is duly authorised to depose to the answering affidavit. The first respondent confirms that the second respondent is the main opposition party in parliament and that she is the current shadow minister for Agriculture, Forestry and Fisheries and served previously as deputy shadow minister for Rural Development and Land Reform. The first respondent states that she acts in her own interest and in the interests of members and voters with a mandate to disseminate information about public spending and to hold the government to account.

[11] The respondents specifically deny that it was proper to launch these proceedings in the Durban High Court. The first respondent states that she is a member of parliament residing and working in Cape Town and the second respondent is a political party with its head office and principal place of business in Cape Town. Furthermore, the publication complained of occurred on the second respondent's website which is hosted in Cape Town.

[12] In the applicant's replying affidavit, various submissions are made regarding the respondents' challenge to the court's jurisdiction. The applicant states in reply that the Durban High Court has jurisdiction "by virtue of where and to whom the respondents' statements were made, together with where the applicant suffered its damages and the respondents' national presence."

[13] The applicant goes on to state, "It is true that this Honourable Court will best understand issues arising in Melmoth since its jurisdiction includes Melmoth. This is the very reason why the address of the defendants is not the only basis upon which to found jurisdiction. This application, which arises in KwaZulu-Natal, is best dealt with by this division. There is nothing untoward about the applicant making these allegations."

[14] The applicant replies to the respondents' submissions on jurisdiction in its replying affidavit. More specifically, the applicant states:

'108. The applicant quite clearly sets out that this Honourable Court has jurisdiction by virtue of where and to whom the respondents' statements were made, together with where the applicant suffered its damages and the second respondent's national presence.

109. The applicant annexes an article to its founding affidavit in which it is reported that the first respondent addressed Me/moth community members in Me/moth.

110. The applicant is not 'forum shopping'. It is set out in the founding affidavit the reason that it believes that this Honourable Court has jurisdiction over the matter.

111. It is true that this Honourable Court will best understand issues arising in Me/moth, since its jurisdiction includes Me/moth. This is the very reason why the address of

the defendants is not the only basis upon which to found jurisdiction. This application, which arises in KwaZulu-Natal, is best dealt with by this division. There is nothing untoward about the applicant making these allegations.'

[15] Due to the nature of the proceedings, the parties made submissions on the numerous aspects pertaining to the application, including urgency and the relief sought. After argument was concluded, the parties submitted a combined bundle of authorities upon which they relied.

[16] Due to the queries raised by the court regarding the Durban High Court's jurisdiction to hear the matter, the parties made brief written submissions on 10 May 2021.

[17] It would appear that the submissions made by the applicant regarding Melmoth falling within the Durban High Court's jurisdiction are correct. The situation is a little confusing in that Melmoth falls within the Magisterial District of Mthonjaneni. The first schedule of the Supreme Court Act 59 of 1959 lists the various courts and areas of jurisdiction. Under the KwaZulu-Natal High Court, Durban, various magisterial districts are listed but that list does not include Mthonjaneni. The aforesaid schedule does include Entonjaneni which appears to be an error. For the purposes of this judgment, the parties agree the Durban High Court's does have jurisdiction over Melmoth.

Jurisdiction of the Durban High Court

[18] Section 21 of the Superior Courts Act 2013 states the following:

'21 Persons over whom and matters in relation to which Divisions have jurisdiction

(1) A Division has jurisdiction over all persons residing or being in, and in relation to all causes arising and all offences triable within, its area of jurisdiction and all other matters of which it may according to law take cognisance, and has the power-

(a) to hear and determine appeals from all Magistrates' Courts

within its area of jurisdiction;

(b) to review the proceedings of all such courts;

(c) in its discretion, and at the instance of any interested person, to enquire into and determine any existing, future or contingent right or obligation, notwithstanding that such person cannot claim any relief consequential upon the determination.

(2) A Division also has jurisdiction over any person residing or being outside its area of jurisdiction who is joined as a party to any cause in relation to which such court has jurisdiction or who in terms of a third party notice becomes a party to such a cause, if the said person resides or is within the area of jurisdiction of any other Division.

(3) Subject to section 28 and the powers granted under section 4 of the Admiralty Jurisdiction Regulation Act, 1983 (Act 105 of 1983), any Division may issue an order for attachment of property to confirm jurisdiction.'

[19] The applicant has not placed sufficient facts before the court to show that the Durban High Court has the jurisdiction to grant the orders sought by the applicant.

[20] The relief sought by the applicant is to interdict the first respondent who lives and works in Cape Town. The relief sought by the applicant against the second respondent necessitates the second respondent taking certain steps in relation to the second respondent's website, which is hosted in Cape Town.

[21] The further submission by the applicant that the first respondent is a member of the National Assembly, which is a public body which represents the entire country, and on that basis the Durban High Court has jurisdiction over her actions, is without any persuasive authority.

[22] The applicant also submitted that since the offending article is "on the internet", the Durban High Court has jurisdiction. There are no averments in the applicant's affidavits that justify this conclusion, particularly when the relief sought by the applicant is analysed

[23] In the premises, despite hearing argument on the numerous issues raised in the urgent application papers it is not necessary for this court to adjudicate those

issues. The Durban High Court does not have jurisdiction to adjudicate this application and it is dismissed.

Costs

[24] The applicant is ordered to pay the costs of the application.

MCINTOSH AJ

CASE INFORMATION

APPEARANCES

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Date of Hearing:

29 April 2021

Date of written submissions:

6 May 2021 and 11 May 2021

Date of Judgment :

12 May 2021