

# High Court recognises abuse in Slapp suit

By [Odette Geldenhuys](#)

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A recent High Court judgment confirmed the importance of public dialogue and debate in a healthy democracy. It did so by, for the first time in South Africa, recognising the Slapp defence. Slapp stands for Strategic Litigation Against Public Participation; and it refers to meritless or exaggerated lawsuits intended to intimidate civil society advocates, human rights defenders, journalists, academics, and individuals as well as organisations acting in the public interest.



Image source: Getty Images

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With the help of Webber Wentzel's Pro Bono team, three environmental attorneys and three environmental activists mounted a new defence in the defamation cases brought against them by an Australian mining company and its South African companies.

Community activists Davine Cloete, Mzamo Dlamini and John Clarke, and environmental attorneys Christine Reddell, Tracey Davies and Cormac Cullinan responded to the separate defamation claims against them, which total R14.5 million in damages claimed. They plead that these cases individually and collectively were nothing more than an abuse of the legal process to achieve an improper end, namely, to stop them from expressing their views and criticisms of the manner in which the company conducts its operations. They also plead that the actions were brought for the ulterior purpose of discouraging, censoring, intimidating, and silencing not only them but also members of civil society, the public and the media from expressing public criticism of the companies.

Deputy Judge President Patricia Goliath agreed with the defendants that the defamation actions were an abuse of court process and a violation of the constitutional right to freedom of expression, making them typical Slapp actions.



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Significantly, in terms of jurisprudence and the development of the common law, the judgment found in favour of public debate and dialogue and spotlighted the importance of corporate accountability in South Africa.

In this case, the environmental attorneys and activists participated in the public discourse about the impact of mining on the environment, and specifically these companies' mining operations. They expressed criticism and certain opinions in books, radio interviews and public lectures on separate occasions.

Webber Wentzel's Pro Bono team was assisted in this matter by counsel Geoff Budlender SC, Steven Budlender SC and Sha'ista Kazee. The Centre of Environmental Right added that, without this legal backing, the Slapp suits would probably have had the intended effect of silencing critical voices in our robust democracy.

## ABOUT THE AUTHOR

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