

Protests grow over defamation suits against environmentalists

Civil groups are joining forces to defend what they say is an attack on free speech.

[Ciaran Ryan](#) / 24 April 2019 00:21



Lawsuits can keep activists out of commission by forcing them to focus on the court case, but often backfire by drawing even more attention to an issue – as Australian mining company MRC is discovering. Picture: Shutterstock

Environmental activists are headed to court next month in a bitter defamation suit brought last year by Australian mining company MRC, which is planning to mine titanium sands at Xolobeni on the Wild Coast.

The case involving three of the six environmentalists who are being sued for defamation by MRC and its CEO Mark Caruso is a curtain raiser to the main hearing and is intended to discover documents the environmentalists say they need to properly defend themselves.

Other environmental and civil groups are rallying around the environmentalists, claiming the court actions are nothing but ‘Slapp’ suits (Strategic Litigations Against Public Participation) intended to silence legitimate criticism of the company and its environmental practices.

“Around the world, Slapp suits are used by companies, particularly in the mining and energy sectors, to intimidate environmental defenders, in an effort to suppress debate about the

negative impacts of their operations on local communities and in relation to environmental degradation,” says Leanne Govindsamy, head of corporate accountability and transparency at the Centre for Environmental Rights (CER). Two of CER’s attorneys have been sued by MRC and Caruso for defamation over criticisms made of MRC’s environmental practices.

Read: [Defamation suits fly over mining controversies](#)

Earlier this month CER and several other civil bodies – including groundWork, Earthjustice and Human Rights Watch – released a report highlighting threats against activists in the form of harassment, intimidation, violence and the use of Slapp suits.

“Judging from the response to the report, including the response to the report’s findings around the Slapp suits brought by MRC, the company is likely to find itself facing a wall of opposition from other civil society groups which resist the notion of censorship over issues that are in the public interest,” says Govindsamy.

Activists harassed

The Human Rights Defenders report says activists are frequently harassed by companies seeking court orders to prevent protests, filing vexatious lawsuits and seeking financial penalties. Slapp suits are a growing trend around the world, prompting calls for anti-Slapp legislation such as exists in some US states.

MRC does not enter this contest with a clean slate. Its subsidiary Mineral Sands Resources was fined R1.25 million for environmental transgressions at its Tormin operations on the west coast, a fine many consider woefully inadequate relative to the damage caused.

The chances of getting rich off defamation suits in SA are not good, reckons human rights lawyer advocate Mark Oppenheimer. The top award for defamation in SA was R50 000 plus costs to former head of the Independent Police Investigation Directorate Robert McBride, who successfully sued The Citizen in 2011 over its claims that he was an unrepentant murderer for the Magoo Bar bombings in Durban in the 1980s. This [award](#) was the result of several articles in The Citizen that the Constitutional Court found to be malicious and defamatory.

One of those being sued by MRC and Caruso is environmental lawyer Cormac Cullinan. Both Cullinan and Caruso were on a Cape Talk radio show discussing the Xolobeni mining story, when Cullinan suggested that pro-mining representatives of the local community had been bought off, and that forged names were used in support of the pro-mining lobby.

Diversions tactic

“Caruso had the opportunity to defend his position on the radio show, but chose instead to bring a lawsuit,” says Cullinan. “One of the effects of these cases is to keep you out of commission while you spend time defending a court case. My statements were fair comment and I don’t think MRC’s case has any merit.”

What seems to have irked environmentalists in relation to MRC is the visit last week by mining minister Gwede Mantashe to its Tormin operations in the Western Cape. In a letter

to the minister, CER executive director Melissa Fourie wrote: “Attempts to silence criticism and debate on matters of public interest are the most egregious forms of attack on constitutional rights and undermine not only the rights of those who are sued but undermines constitutional freedoms, which are central to democracy and civil society’s ability to advance transparency and accountability.”

One of the defendants in a separate case brought by MRC is social worker John GI Clarke, who denies defaming the company, but also appears to have doubled down on his criticism of MRC and Caruso. He faces 19 claims totalling more than R5.5 million, a figure that seems to keep growing each time he opens his mouth. But Clarke shows no signs of going anywhere quietly.

He has been highly critical of the way MRC and Caruso went about trying to secure mining rights in Xolobeni, apparently against the wishes of many people living in the area.

“All I have simply done is what social workers are obliged to do, in terms of our professional code of practice,” says Clarke.

Doubling down

“As part of the discovery process I have given Caruso’s lawyers enough evidence, without disclosing my confidantes of course, to cause him even more anxiety. That perhaps explains why [they are] now doubling down on me by increasing the quantum of damages Caruso is claiming. He started with seven claims totalling R2.25 million, then doubled that to 18 claims totalling R5 million and then again, adding another 10% on that by suing me for statements I made in another recent article,” Clarke told Moneyweb.

In Caruso’s affidavit before the Cape High Court, he lists the 19 instances of alleged defamation by Clarke. One of them is an interview Clarke gave to the Daily Maverick in which he is claimed to implicate MRC in the murder of Pondoland community activist Sikhosiphi ‘Bazooka’ Rhadebe in 2016 – a claim which, it must be said, MRC has always denied and Clarke says he never made.

The offending sentence could with a stretch be interpreted this way, but is so grammatically mangled as to make hardly any sense at all.

Caruso supplies the passage that he says defamed him:

“‘The key issue is whether human rights trump mining rights,’ said John Clarke, a social worker and Daily Maverick contributor, who has been working closely with the community. The area, which was the site of the Pondoland revolt, is fiercely resistant to being told from the outside what to do,” said Clarke, and after MRC continues to try for a mining licence the killing of Rhadebe he said it shows it’s trying to increase the pressure on those in its way.”

For this sentence, MRC and Caruso are claiming R500 000 from Clarke. In reply, Clarke says the offending sentence is not a direct quote and makes no logical or grammatical sense. It must be read in the broader context of growing hostility between pro and anti-mining activists in the area.

Rhadebe's killing was a tragedy that gutted the local community, especially as the killers were never found.

Mining licence 'supported' by the dead?

Clarke also claimed that some of the local residents' signatures presented by MRC in support of its mining licence showing "prior, free and informed consent" were forged and included many who had died. Clarke added that Caruso had attempted to hide this fact. Caruso's affidavit says this statement wrongly suggests criminality on his part. For this statement by Clarke, Caruso is claiming another R500 000. There are 17 other claims against Clarke alone.

MRC and Caruso are also claiming R1 million from community activist Mzamo Dlamini, R1 million from Cullinan and R250 000 each from CER lawyers Christine Redell and Tracey Davies, and community activist Davine Cloete. The CER lawyers were sued for comments they made during a presentation at the University of Cape Town claiming poor environmental practices by the company's Tormin project. All are defending the claims.

Are Slapp suits effective in silencing criticism? Govindsamy says they are intended to promote self-censorship and place a huge financial burden on those forced to defend them. "However, civil society organisations in South Africa are committed to defending the right to freedom of expression, particularly around issues which are in the public interest and we are committed to ensuring that activists are not silenced through the use of Slapp suits, especially bearing in mind the integral role which freedom of expression has played in our nascent democracy."

The 'Streisand effect'

Slapp suits very often backfire on the plaintiffs by rallying support for the defendants. This is known as the 'Streisand effect', where attempts to silence free speech end up drawing even more attention to the issue. It is named after US performer Barbara Streisand's attempts to have a picture of her house removed from a public collection of California coastal images. Her attempt to avoid public scrutiny had the opposite effect once it became known.

There is a push for anti-Slapp legislation in several US states, making it easier for judges to dismiss cases deemed to be attempts to silence criticism. The most frequent targets for these suits are civil society and environmental groups, and the press.

Former finance minister Trevor Manuel has reportedly filed a suit against the Economic Freedom Fighters (EFF) for claiming the appointment of Sars Commissioner Edward Kieswetter was irregular. Manuel was part of the recruitment selection panel, and the EFF claimed he was related to Kieswetter and that the two had close business ties. Manuel demanded a retraction, calling the claims racist and libellous. The EFF appears to be sticking to its guns, saying it will defend any action brought by Manuel.

Many worthy stories are buried without having to go this far. PR agencies are sometimes able to do it with charm offensives. Sometimes all it takes is a phone call. In the opening section of *Gangster State*, author Pieter-Louis Myburgh recalls receiving a phone call from

Ace Magashule, ANC secretary-general and the subject of the book, trying to fish for information on what Myburgh was planning to write about. That didn't stop Myburgh, but it did stop a Free State reporter who received a similar call, says Myburgh.

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