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Our Ref: 150772
Writer's E-mail: rkudo@bvpg.co.za
Your ref:
Date: 24 August 2017

UNITED NATIONS

Office of the High Commissioner, Human Rights

By email: registry@ohchr.org

Attention: Karim Ghezraoui

Dear Sirs

MINERAL SANDS RESOURCES LTD / DAVIES, REDDELL & CLOETE

1. We act for Mineral Sands Resources Ltd (“**MSR**”), Mineral Commodities Ltd (“**MCL**”) and Zamile Qunya (“**Qunya**”).
2. Your letter to MSR, copied to MCL, dated 21 August 2017 refers (“**your letter**”).
3. Our instructions are to respond to your letter only to the extent that responding may serve a productive purpose. Our failure to deal with any allegation in your letter under reply must not be construed as an admission of the correctness thereof. The rights of MSR, MCL and Qunya to respond fully are reserved.
4. We request a copy of the “*information received*” which underlies your letter.

PARTNERS: IGOR VUKIC KEITH GETZ WAYNE FIELD CHRISTOPHER HESSIAN ROSS KUDO LEAH DARLEY DANIEL BRAUER
ADAM SNITCHER MICHELE STEINDL

SENIOR ASSOCIATES: JUSTIN ELSTOB

ASSOCIATES: ZOGHERIAH RONDGANGER KELLY MARTIN ZELEK SING

CONSULTANTS: ELIZABETH HACKING NICCI MATISONN PETER SLACK SADULLA KARJIKER DAVID JANKS

OFFICE MANAGERESS: NADJA LUBBE

FINANCIAL MANAGER: PHILIP OROLOWITZ

5. At the outset, it is necessary to mention the following. The action under case no. 7595/2017 is currently before the Western Cape Division of the High Court of South Africa (“**the action**”). As such, it is *sub judice*. It is not for MSR and Qunya to convince or explain to the United Nations the legitimacy of its claims in the action. MSR and Qunya must convince the Court. Only once the Court has pronounced on the action, and only if the Court were to dismiss the action, may the United Nations purport to investigate the conduct of MSR and Qunya.
6. That being said, we attach MSR and Qunya’s amended particulars of claim in the action. MSR and Qunya will engage with the United Nations on the merits of the action no further.
7. The allegation that the action is “*abusive*” and the implication that the action somehow could possibly contravene, *inter alia*, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment is denied (see the annexure to your letter). As is evident from the particulars of claim, MSR and Qunya are the subject of egregious defamatory statements. The defamation is far broader than a “*criticism of the company’s activities*”. MSR and Qunya are entitled to vindicate their rights to dignity and reputation in the face of such conduct.
8. The South African law of defamation is premised on the right to dignity. This is a right afforded to both natural and juristic persons under the South African Constitution. South African courts have held consistently that reputation is a key aspect of the right to dignity and that a party is entitled to vindicate damage to its reputation by way of an action for defamation.
9. Any suggestion that MSR and Qunya should not seek to protect their dignity and reputations because doing so may “*overwhelm the human and financial capacities*” of the so-called “*defenders*” is without substance. MSR and Qunya pursue a legitimate purpose by a legitimate process having taken legal advice. That the South African legal system may be cumbersome or costly cannot be attributed to MSR and Qunya. The action is not complex. In any event, Ms Davies and Ms Reddell hold themselves out as “*litigating for environmental justice*”. Furthermore, it is our understanding that Ms. Davies, Ms. Reddell and Ms Cloete are represented by their legal representatives *pro bono*.

10. The purpose of the action is not to stifle legitimate debate or to enrich MSR and Qunya. MSR and Qunya's considered view is that the statements that are subject matter of the action stray outside of the bounds of legitimate debate and constitute infringements of MSR and Qunya's rights to dignity. With this in mind, it will serve the purposes of MSR and Qunya were Ms Davies, Ms Reddell and Ms Cloete to publish prominently in South African newspapers a retraction of their defamatory statements together with an apology to the satisfaction of MSR and Qunya. This is consistent with the alternative relief sought by MSR and Qunya in the action. MSR and Qunya would be prepared to accept such a retraction and apology in settlement of the action. If Ms. Davies, Ms. Reddell and Ms Cloete are not prepared to accept this alternative relief, they must defend their statements in court.

11. We note that it is the intention of the United Nations to publish a report of its findings in relation to this matter. MSR, MCL and Qunya are entitled to have both sight of and an opportunity to comment on any report that concerns them. As such, kindly provide us with a draft of the report in good time prior to publication in order that MSR, MCL and Qunya may deal with it to the extent necessary.

12. The rights of MSR, MCL and Qunya are reserved.

Yours faithfully

BERNADT VUKIC POTASH & GETZ


per:

R KUDO

ORIGINAL

COMBINED SUMMONS



**IN THE HIGH COURT OF SOUTH AFRICA
WESTERN CAPE DIVISION, CAPE TOWN**

CASE NO: 7595/17

In the matter between:

MINERAL SANDS RESOURCES

First Plaintiff

PROPRIETARY LIMITED

ZAMILE QUNYA

Second Plaintiff

and

CHRISTINE REDDELL

First Defendant

TRACEY DAVIES

Second Defendant

DAVINE CLOETE

Third Defendant

To the Sheriff or his Deputy:

INFORM:



CHRISTINE REDDELL , an adult female attorney, with place of employment at the Centre for Environmental Rights, Second Floor, Springtime Studios, 1 Scott Road, Observatory, Cape Town, Western Cape

(hereinafter called "the First Defendant").

AND INFORM:

TRACEY DAVIES, an adult female attorney, with place of employment at the Centre for Environmental Rights, Second Floor, Springtime Studios, 1 Scott Road, Observatory, Cape Town, Western Cape (hereinafter called "the Second Defendant").

AND INFORM:

DAVINE CLOETE, an adult female activist, who resides at Beckett Square, Lutzville, Western Cape (hereinafter called "the Third Defendant").

THAT:

MINERAL SANDS RESOURCES PROPRIETARY LIMITED, a company with limited liability, duly registered and incorporated in the Republic of South Africa under registration number 2001/016755/07 with its registered office at 1st Floor, Block A, The Forum, Northbank Lane, Century City, Cape Town, Western Cape, with its principal place of business at Tormin Mine, Skaapvlei Road, Koekenaap, Western Cape (hereinafter called "the First Plaintiff"),

AND

ZAMILE QUNYA, an adult male director of the first plaintiff, who carries on business at 1st Floor, Block A, The Forum, Northbank Lane, Century City Cape Town, Western Cape (hereinafter called "the Second Plaintiff"),

hereby institute action against the Defendants in which action the Plaintiffs claim the relief on the grounds set out in the particulars annexed hereto as "A".

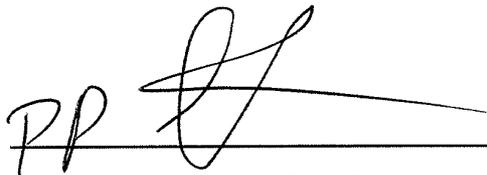
INFORM the Defendants further that if the Defendants dispute the claim and wish to defend the action, the Defendants shall : -

(i) Within ten (10) days of service upon the Defendants of this Summons file, with the Registrar of this Court at Room 1, 35 Keerom Street, Cape Town, 8005, Notice of the Defendant/s Intention to Defend and serve a copy thereof on the attorneys of the Plaintiffs which Notice shall give an address (not being a post office or *poste restante*) referred to in Rule 19(3) for the service upon the Defendant/s of all Notices and documents in the action.

(ii) Thereafter, and within 20 (Twenty) days after filing and serving Notice of Intention to Defend as aforesaid, file with the Registrar and serve upon the Plaintiffs a Plea/s, Exception, Notice to Strike out, with or without a counterclaim.

INFORM the Defendants further that if the Defendants fail to file and serve Notice as aforesaid, Judgment as claimed may be given against the Defendants without further notice to the Defendants or if having filed and served such Notice, the Defendants fail to plead, accept, make application to strike out or counter-claim, judgement may be given against the Defendants.

DATED at CAPE TOWN on this the 2nd day of MAY 2017.



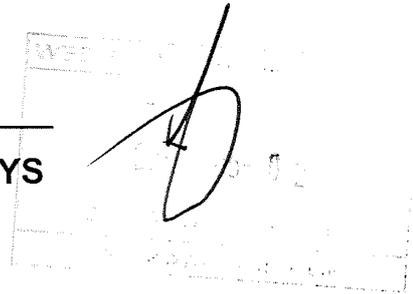
BERNADT VUKIC POTASH & GETZ ATTORNEYS
PLAINTIFFS' ATTORNEYS

11th floor, 1 Thibault Square

Cape Town

Tel: (021) 405 3800

(Ref: RK/mk/150772)



TO: THE REGISTRAR
HIGH COURT
CAPE TOWN

AND TO: CHRISTINE REDDELL
First Defendant
Centre for Environmental Rights
Second Floor, Springtime Studios
1 Scott Road
Observatory

AND TO: TRACEY DAVIES
Second Defendant
Centre for Environmental Rights
Second Floor, Springtime Studios
1 Scott Road
Observatory

AND TO: DAVINE CLOETE

Third Defendant

Beckett Square

Lutzville

ANNEXURE A

PARTICULARS OF CLAIM AS AMENDED

1. The first plaintiff is **MINERAL SANDS RESOURCES PROPRIETARY LIMITED**, a company with limited liability, duly registered and incorporated in the Republic of South Africa under registration number 2001/016755/07 with its registered office at 1st Floor, Block A, The Forum, Northbank Lane, Century City, Cape Town, Western Cape, with its principal place of business at Tormin Mine, Skaapvlei Road, Koekenaap, Western Cape.
2. The second plaintiff is **ZAMILE QUNYA**, an adult male director of the first plaintiff, who carries on business at 1st Floor, Block A, The Forum, Northbank Lane, Century City Cape Town, Western Cape.
3. At all material times hereto:
 - 3.1 the first plaintiff was involved in the exploration and development of major mineral sands projects in South Africa, being the Tormin Mineral Sands Project and the Xolobeni Mineral Sands Project; and
 - 3.2 the second plaintiff has been a director of the first plaintiff.

4. The first defendant is **CHRISTINE REDDELL**, an adult female attorney, with place of employment at the Centre for Environmental Rights, Second Floor, Springtime Studios, 1 Scott Road, Observatory, Cape Town, Western Cape.
5. The second defendant is **TRACEY DAVIES**, an adult female attorney, with place of employment at the Centre for Environmental Rights, Second Floor, Springtime Studios, 1 Scott Road, Observatory, Cape Town, Western Cape.
6. The third defendant is **DAVINE CLOETE**, an adult female activist, who resides at Beckett Square, Lutzville, Western Cape.
7. At all material times hereto:
 - 7.1 the defendants were engaged by the University of Cape Town (“UCT”) to present lectures at UCT’s 2017 edition of its annual Summer School Programme (“Summer School”). As indicated on the Summer School website, <http://www.summerschool.uct.ac.za>, the objective of Summer School is to provide “*lectures and short courses for the general public*”;
 - 7.2 during the course of Summer School, on 25 January 2017, and at the Kramer Law School, UCT, Rondebosch, the defendants presented lectures as part of a series of lectures entitled “*Mining the Wild and the West Coast: ‘Development’ at what cost?*” (“the lecture series”).
8. The lecture series was introduced at the outset by Michelle Pressend (“Pressend”). Pressend introduced the lecture series by stating, *inter alia*, that “...*today we are*

going to focus on the Tormin Mine, which is the Australian Mining Company...” and “... the same Australian mining company, Mineral Commodities Limited, has another arm of their company called Mineral Sands Resources...”, viz the first plaintiff.

CLAIM 1

9. On 25 January 2017, and as part of the lecture series, the first and second defendants, jointly presented a lecture with slide show presentation, at UCT in Rondebosch, Cape Town.
10. During the course of the lecture, and while discussing the operations at the first plaintiff's Tormin Mine, the first defendant stated that:

“If we could just focus on one of the biggest environmental problems, which is the cliff collapse. And the case of that is really through illegal action. So we are talking about a mining operation that changed their, Glenn referred to it as their modus operandi, and their design. So they applied for one thing, they did assessments, for one thing and then what they did was something entirely different – and that is unlawful. They should have got a new permit. They should have applied for amendments. And they did all of these changes to their process pretty much from the get go, without those authorisations in place and that’s what caused this devastating cliff collapse, and with the other environmental problems associated with it.” (underlining supplied)

11. The reference to “a mining operation” was a reference to the first plaintiff and its operation at the Tormin Mine.

12. The reference to “*a mining operation*” was understood by participants at the lecture to be a reference to the first plaintiff. The first plaintiff’s Tormin Mine was the focus of the lecture and the lecture series. The first defendant had made previous references to the first plaintiff in the course of the lecture and was engaged in a narrative describing the alleged conduct of the first plaintiff at the Tormin Mine.
13. The abovementioned words, in the context of the lecture and the lecture series, are wrongful and defamatory of the first plaintiff in that they were intended, and understood by participants of the lecture, to mean that the first plaintiff goes about its operations in an unlawful and deceitful manner that causes great environmental damage.
14. As a result of the defamation, the first plaintiff has been damaged in its reputation and has suffered damages in the sum of R250 000,00.
- 14A. In the alternative to paragraph 14, and in the event that it is held that the first plaintiff, as a trading corporation, is not entitled to general damages, it seeks an order directing publication by the first defendant within ten days of both a retraction of the defamatory matter and an apology to be placed in a prominent position in each of the *Cape Times* and *Sunday Times* newspapers.

CLAIM 2

15. The plaintiffs repeat the contents of paragraph 9 above.

16. During the course of the lecture, and while discussing the operations at the first plaintiff's Tormin Mine, the second defendant stated that:

“They have armed guards on site and they have, on occasion, been extremely violent...”

We now have a situation where this company operates and continues to operate in circumstances where it is in breach of multiple environmental laws, mining laws, municipal by-laws as well as planning laws. They don't have planning authorisation to conduct the operation... and the regulatory system that is supposed to stop this from happening is just completely absent... we have a situation where a very predatory and ruthless company has taken advantage of our regulatory system... because of the combination of regulatory confusion, regulatory ineffectiveness, political corruption and the extraordinary tactics of this outrageous company it's left to people like us... to actually apply, try and enforce the law.” (underlining supplied)

17. The reference to “*this company*” was a reference to the first plaintiff and its operation at the Tormin Mine.
18. The reference to “*this company*” was understood by participants at the lecture to be a reference to the first plaintiff. The first plaintiff's Tormin Mine was the focus of the lecture and the lecture series. The second defendant had made previous references to the first plaintiff in the course of the lecture and was engaged in a narrative describing the alleged conduct of the first plaintiff at the Tormin Mine.

19. The abovementioned words, in the context of the lecture and the lecture series, are wrongful and defamatory of the first plaintiff in that they were intended and understood by participants of the lecture to mean that the first plaintiff goes about its operations in an unlawful manner, engaging in aggressive, predatory, devious, calculating, corrupt and violent behaviour.
20. As a result of the defamation, the first plaintiff has been damaged in its reputation and has suffered damages in the sum of R250 000,00.
- 20A. In the alternative to paragraph 20, and in the event that it is held that the first plaintiff, as a trading corporation, is not entitled to general damages, it seeks an order directing publication by the second defendant within ten days of both a retraction of the defamatory matter and an apology to be placed in a prominent position in each of the *Cape Times* and *Sunday Times* newspapers.

CLAIM 3

21. On or about 25 January 2017, the third defendant presented a lecture at UCT in Rondebosch, Cape Town, as part of the lecture series.
22. In the course of the lecture, and while discussing the operations at the first plaintiff's Tormin Mine, the third defendant stated that:

“The people who were involved in this whole application from the community were people who received money from the MSR mine to mislead the community... What had happened here is that some of the

police are employed as security at the MSR mine... I wanted this film to be shown in the community so that the people can see that because of the bribery at the mine therefore some people in the community were misleading other people in the community..." (underlining supplied)

23. The references to "MSR Mine" and "the mine" were understood by participants at the lecture to be references to the first plaintiff. The first plaintiff's Tormin Mine was the focus of the lecture and the lecture series. The third defendant had made previous references to the first plaintiff in the course of the lecture and was engaged in a narrative describing the alleged conduct of the first plaintiff at the Tormin Mine.
24. The abovementioned words, in the context of the lecture and the lecture series, are wrongful and defamatory of the first plaintiff in that they were intended, and understood by participants of the lecture, to mean that the first plaintiff is guilty of bribing members of the local community in order to mask the true nature of its operation.
25. As a result of the defamation, the first plaintiff has been damaged in its reputation and has suffered damages in the sum of R250 000.00.
- 25A. In the alternative to paragraph 25 and in the event that it is held that the first plaintiff, as a trading corporation, is not entitled to general damages, it seeks an order directing publication by the third defendant within ten days of both a retraction of the defamatory matter and an apology to be placed in a prominent position in each of the *Cape Times* and *Sunday Times* newspapers.

CLAIM 4

26. The plaintiffs repeat the allegations of paragraph 21 above.
27. The third defendant's lecture was accompanied by slides and photographs including, *inter alia*, a photograph of the second plaintiff, a copy of which is annexed hereto, marked "POC.1".
28. During the course of her lecture, the third defendant pointed to the photograph (POC.1) and stated:

"...and you can see this guy. This is the biggest problem, because this is the biggest liar... This is the biggest liar because he is from Xolobeni. He is misleading the community and he is the guy who goes into Koekenaap and sits at the Shebeens and some of the leaders there, they believe in this guy because there is a lot of bribes involved and that's why they mislead the communities." (underlining supplied)

29. The reference to "this guy" was a reference to the second plaintiff and was understood by participants at the lecture to be a reference to the second plaintiff by virtue of the fact that the third defendant pointed to a picture of the second plaintiff (POC. 1) while stating the aforesaid.
30. The abovementioned words, in the context of the lecture and the lecture series, are wrongful and defamatory of the second plaintiff in that they were intended and understood by participants of the lecture to mean that the second plaintiff is

dishonest, untruthful and is involved in corrupt activities including the bribery of community members.

31. As a result of the defamation, the second plaintiff has been damaged in his reputation and has suffered damages in the sum of R500 000,00.

WHEREFORE

In respect of claim 1, the first plaintiff claims against the first defendant:

- a) Payment of damages in the amount of R250 000,00;
- b) In the alternative to prayer (a) above, an order directing publication by the first defendant within ten days of both a retraction of the defamatory matter and an apology to be placed in a prominent position in each of the *Cape Times* and *Sunday Times* newspapers;
- c) Interest on the aforesaid amount at the legally prescribed rate of interest from date of judgment to date of payment;
- d) Costs of suit; and
- e) Further and / or alternative relief.

In respect of claim 2, the first plaintiff claims against the second defendant:

- f) Payment of damages in the amount of R250 000,00;

- g) In the alternative to prayer (f) above, an order directing publication by the second defendant within ten days of both a retraction of the defamatory matter and an apology to be placed in a prominent position in each of the *Cape Times* and *Sunday Times* newspapers;
- h) Interest on the aforesaid amount at the legally prescribed rate of interest from date of judgment to date of payment;
- i) Costs of suit; and
- j) Further and / or alternative relief.

In respect of claim 3, the first plaintiff claims against the third defendant:

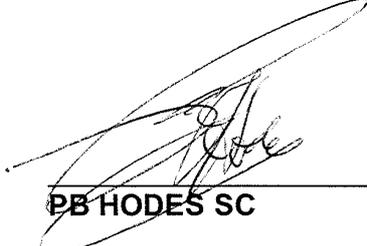
- k) Payment of damages in the amount of R250 000,00;
- l) In the alternative to prayer (k) above, an order directing publication by the third defendant within ten days of both a retraction of the defamatory matter and an apology to be placed in a prominent position in each of the *Cape Times* and *Sunday Times* newspapers.
- m) Interest on the aforesaid amount at the legally prescribed rate of interest from date of judgment to date of payment;
- n) Costs of suit; and
- o) Further and / or alternative relief.

In respect of claim 4, the second plaintiff claims against the third defendant:

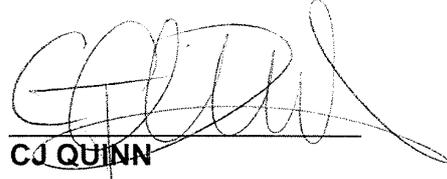
- p) Payment of damages in the amount of R500 000,00;
- q) Interest on the aforesaid amount at the legally prescribed rate of interest from date of judgment to date of payment;
- r) Costs of suit; and
- s) Further and / or alternative relief.

DATED at CAPE TOWN on this the

day of **AUGUST 2017**



PB HODES SC

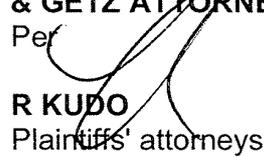


CJ QUINN

Plaintiffs' counsel

**BERNADT VUKIC POTASH
& GETZ ATTORNEYS**

Per



R KUDO
Plaintiffs' attorneys
11th floor

No. 1 Thibault Square
CAPE TOWN
Tel: (021) 405 3800
(Ref: Mr R Kudo/mk/150772)

TO: **THE REGISTRAR**
High Court
CAPE TOWN

AND TO: **THE ABOVENAMED DEFENDANTS**

“POC.1”

