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IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE DIVISION) **CASE NO: 1062/2001**

In the matter between:

WILMOT MANDLA CHAGI & 29 OTHERS	**PLAINTIFFS**
And	
SPECIAL INVESTIGATING UNIT	**1ST DEFENDANT**
M.E.C. FOR AGRICULTURE AND LAND AFFAIRS (EASTERN CAPE)	**2ND DEFENDANT**
DAILY DISPATCH MEDIA (PTY) LTD	**3RD DEFENDANT**

JUDGMENT

DAMBUZA AJ: -

[1] This is a claim for damages arising from alleged malicious prosecution and defamation of the plaintiffs by the defendants. Plaintiffs sue the Special Investigating Unit established in terms of Proclamation No R66 of 1998, published in Government Gazette No 22531 of 31 July 2001 (first defendant), the Member of the Executive Council for the Department of Agriculture and Land Affairs, Eastern Cape (second defendant) and the Daily Dispatch Media (PTY) LTD (third defendant). At the outset of these proceedings, I granted an order in terms of Rule 33(4) of the Rules of this Court that first defendant's plea of misjoinder because *of its* lack of *locus standi* and plaintiffs application to amend its replication be decided separately form the merits of the case. At this stage, the case is before me for determination on these issues.

[2] Plaintiffs' claim emanates from events that occurred during August 1998. All thirty plaintiffs are former employees of the erstwhile Transkei Agricultural Corporation (TRACOR), which was wound up during 1998. According to the

summons, plaintiffs were all employed by TRACOR in managerial positions. It appears that whilst plaintiffs were in the employ of TRACOR, they acquired motor vehicles through motor vehicle financing schemes available to them by virtue of their employment with TRACOR. In the summons, plaintiffs allege that on or about the 25 August 1998, first and second defendants instituted legal proceedings against plaintiffs before the Special Tribunal in East London under case no 342/98 in which they alleged that the plaintiffs stole or fraudulently misappropriated R3, 3 million from TRACOR and utilised such funds to settle outstanding balances owed by them to various finance institutions in respect of motor vehicles in plaintiffs' possession under the various motor vehicles schemes obtaining at TRACOR as at August 1998. The information contained in the founding papers of such proceedings was also published in the Daily Dispatch Newspaper.

[3] In Claim A of the summons, plaintiffs claim damages against the first defendant on the basis that the information contained in the founding papers in such legal proceedings was wrongful and defamatory of them. Although plaintiffs maintain that both the first and second defendant were the authors of the defamatory statements contained in the founding papers, plaintiffs' claim in this regard is only directed against the first respondent.

[4] In Claim B, plaintiffs allege that on the 24 August 1998, at a conference held in Bisho, the second defendant wrongfully told people attending the conference that, whilst TRACOR was under liquidation, plaintiffs misappropriated R3, 3 million belonging to TRACOR and settled their accounts with various finance institutions.

[5] Claim C is plaintiffs' claim against the first and second defendants for malicious prosecution of a civil claim against them. Plaintiffs allege that first and second defendants levelled false accusations against them on the 21 August 1998 and consequently obtained an interdict *pendente lite* before the Special Tribunal in East London. The interdict was then served on various banking institutions with which plaintiffs held bank accounts, leading to plaintiffs' bank accounts with the respective banks being frozen. Plaintiffs maintain that when first and second defendants brought the application for the interdict, they had no reasonable and probable cause for doing so. In March 2000, first and second defendant withdrew an action which they had instituted against plaintiffs, as a result of which the interdict also fell away. According to plaintiffs, first and second defendants' acts in this regard were insulting, injurious and humiliating to them.

[6] Claim D is against the third defendant for wrongfully publishing a defamatory article on the 25 August 1998, alleging that plaintiffs had misappropriated and abused funds belonging to TRACOR.

[7] In their pleas all the defendants deny liability for several reasons, which are not relevant at this stage. First and second defendants have also raised two points *in limine* to Claims A and B of the summons.

[8] In the first plea *in limine*, first defendant pleads that it has been wrongly joined as a party because it has no *locus standi* to deal with the issues in this case as such issues pertain to events that occurred prior to its existence. First defendant maintains

that it is a separate entity from its predecessor and is not liable for wrongs committed by its predecessor.

[9] In the second plea *in limine* second defendant pleads that plaintiffs issued their summons outside the period prescribed in section 2 (1) (c) of the Limitation of Legal Proceedings Act No 94 of 1970.

[10] Subsequent to first and second defendants filing their plea, plaintiffs filed a replication and thereafter a notice of intention to amend their summons and replication. Second defendant opposes a portion of the intended amendment on grounds which I will deal with at a later stage.

[11] Misjoinder and *Locus Standi*

To put first defendant's plea *in limine* in proper perspective, a background to the establishment of the first defendant is necessary. In March 1997, the State President, dissolved a Commission of Inquiry into matters relating to state property in the Province of the Eastern Cape, which had been established in terms of the Eastern Cape Notice No 10 of 1995 (commonly known as the Health Commission). He then, acting in terms of his powers under section 2(1) of the Special Investigating Units and Special Tribunals Act, Act No 74 of 1996, (the Act), by Proclamation R24 of 1997, established a Special Investigating Unit and a Special Tribunal in the place of the Heath Commission. According to the long title of the Act, the purpose of the Act is:

> "To provide for the establishment of Special Investigating Units for the purpose of investigating serious malpractices or maladministration in connection with the administration of State institutions, state assets and public

money as well as any conduct which may seriously harm the interests of the public, and for the establishment of Special Tribunals so as to adjudicate upon civil matters emanating from investigations by the Special Investigating Units and to provide for matters incidental thereto.

Section 2(1) of the Act empowers the State President, by proclamation in the *Gazzette*, to:

"(a) (i) establish a Special Investigating Unit in order to investigate the matter concerned;

(ii) refer the matter to an existing Special Investigating Unit for investigation; and

(b) establish one or more Special Tribunals to adjudicate upon justiciable disputes emanating from any investigation of any particular Special Investigating Unit:"

[12] Mr Justice Willem Heath was appointed to head the Special Investigating Unit in terms of section 3(1) of the Act. At the time of his appointment, section 3(1) of the Act (which has since been amended), required that a judge or acting judge be appointed as head of a Special Investigating Unit. The Special Investigating Unit became commonly known as the "Heath Unit".

[13] On the 30 June 1998, by Proclamation No 66 of 1998, the State President referred certain matters pertaining to the affairs of TRACOR for investigation by the Heath Unit and the Special Tribunal. The terms of reference instructed the Heath Unit to investigate any:

"a. serious maladministration in connection with the affairs of the corporation;

b. improper or unlawful conduct by the employees of the corporation;

c. unlawful appropriation or expenditure of public money or property;

d. unlawful, irregular or unapproved acquisitive act, transaction, measure or practice having bearing upon State property;

e. intentional or negligent loss of public money or damage to public property;

f. corruption in connection with the affairs of the corporation;

g. unlawful or improper conduct by any person, which has caused or may cause serious harm to the interests of the public or any category thereof, which has taken place between the 1 January 1981 and the date of publication of this proclamation".

[14] It appears to be common cause that it was subsequent to investigations conducted in terms of these instructions that the Heath Unit instituted the legal proceedings referred to in plaintiffs' summons.

[15] In 2001, the Constitutional Court in *South African Association of Personal Injury Lawyers v Heath and others* 2001(1) BCLR 77, declared Section 3(1) of the Act and Proclamation R24 appointing Heath as the head of the Heath Unit, invalid. Consequently, the State President, by Proclamation R118 of 2001 abolished the Heath Unit and established the first defendant with one William Andrew Hofmeyer as its head. On publication of Proclamation R118 on the 31 July 2001, the Heath Unit

ceased to exist and first defendant came into existence. Paragraph 4 of Proclamation R118 says:

"The terms of reference of the Special Investigating are to exercise or to perform the powers duties and functions assigned to or conferred upon a Special Investigating Unit by the said Act in respect of matters referred to it in terms of section 2(1)(a)(ii) of the said Act and to investigate as contemplated in the said Act any-

a) serious maladministration in connection with the affairs of any State institution;

b) improper or unlawful conduct by employees of any state institution;

c) unlawful appropriation or expenditure of public money or property;

d) unlawful, irregular or unapproved acquisitive act, transaction, measure or practice having a bearing upon State property:

e) intentional or negligent loss of public money or damage to public property;

f) corruption in connection with the affairs of any State institution; or

g) unlawful or improper conduct by any person which has caused or may cause serious harm to the interests of the public or any category thereof."

[16] Paragraph 5 of Proclamation R118, 2001, establishes a Special Tribunal.

[17] Paragraph 6 provides that:

"The Special Investigating Unit established under paragraph 2 of this Proclamation shall continue to investigate all matters which were referred to the Special Investigating Unit established by Proclamation R24 of 14 March 1997, including those matters referred to it by the old Proclamation and the Proclamations

mentioned in the Schedule. Any reference to paragraph 3 of the Proclamations set out in Schedule to "Proclamation NoR24 of March 1997" must be interpreted as a reference to this Proclamation."

[18] It was common cause during argument that the Heath Unit was no longer in existence on the 15 August 2001, when the proceedings under consideration were instituted.

[19] In the replication, plaintiffs' first response to the issue of first defendant's *locus standi*, is that the first defendant, upon its establishment, took over all the rights, liabilities and obligations of its predecessor, the Heath Unit. This contention is based on section 13(2) of the Act which provides that the provisions of the State Liability Act No 20 of 1957 shall apply to Special Investigating Units and that reference to the Minister in the State Liability Act shall be regarded as reference to the Head of the Unit for purposes of the Act. Mr *Tshiki*, who appeared on behalf of all plaintiffs, argued that under Section 13(2) of the Act, each Special Investigating Unit should be sued through its head in the same manner that a Department of State is sued through a Minister. He argued further that as there is no provision in the Act for appointment of a new head each time a Special Investigating Unit is established, then the liabilities of one Unit are extended to another, through the head.

[20] Against this argument, Mr du *Bruyn* submitted that first defendant was established as a completely New Unit which only took over the powers set out in paragraph 6 of Proclamation R118 of 2001. Such powers, so the argument went, do

not include assumption of liability for wrongful conduct or any other liability of the Heath Unit.

[21] Firstly, I do not agree with Mr *Tshiki's* interpretation of section 13(2) of the Act. The intention of the legislature for each Investigating Unit to be an independent legal entity appears clearly from section 13 (1) of the Act which provides that: -

" Any Special Investigating Unit shall be a juristic person".

In my view, for one to have a correct understanding of how the Legislature intended Special Investigating Units to operate, one needs to consider the subsections of section 13 together. Interpretation of only one subsection thereof out of context may lead to such distortion as demonstrated in Mr *Tshiki's* argument. When section 13(2) is considered against the background of section 13(1) it becomes clear it is within the context of each Special Investigating Unit, as a juristic person, that the position of a head thereof is compared to a Minister of a State Department. It can therefore not be correct that one Special Investigating Unit should be held liable for debts of another Unit. Even where a Special Investigating Unit is sued through its head, such procedure cannot be interpreted to extend liability of one Unit to another.

[22] Secondly, the parameters within which each Special Investigating Unit exercises its authority are prescribed by the terms of reference by which each Unit is instructed. Section 2 (3) of the Act provides that: -

> " *The proclamation referred to in subsection (1) must set out terms of reference* of the Special Investigating Unit, and such particulars regarding the establishment of the Special Investigating Unit or the Special Tribunal as the President may deem necessary". (my emphasis)

[23] I am in agreement with Mr du *Bruyn's* contention that the exercise of the powers by the Unit has to be done strictly in accordance with its statutory authority whereby it was created. This is a well established principle of our law. In *Special Investigating Unit v Nadasen* 2002 (1) SA 605 (SCA) the court held that the first defendant (being the same first defendant in this case), had to exercise its powers strictly in accordance with the statutory authority by which it was created. In *Stafford v Special Investigating Unit* 1999 (2) SA 130, where plaintiff sought to hold the Heath Unit liable for alleged wrongdoings of the Heath Commission, subsequent to dissolution of the latter, Leach J held that if it was the clear intention of the Legislature that the rights, interests, obligations, investigative powers of the Heath Commission devolve upon the Heath Unit, it could have easily said so.

[24] There is no provision in the terms of reference contained in Proclamation R118 of 2001 which confers upon the defendant, power to assume responsibility for liabilities of the Heath Unit. The only reference to assumption of certain responsibilities of the Heath Unit by the first defendant, appears in paragraph 6 of the terms of reference where first defendant is authorised to:

> "continue to investigate all the matters which were referred to the Special Investigating Unit established by the old Proclamation NoR24 of 14 March 1997, including those matters referred to it by the old Proclamation and the Proclamations mentioned in the Schedule.

[25] Devolvement of liability of the old Heath Unit to the first defendant is not specifically provided for in Proclamation R118 of 2001. The first defendant, as a

creature of statute, cannot exercise more authority than conferred upon it by the terms of reference contained in Proclamation 118 of 2001.

[26] Mr *du Bruyn* submitted that I should not follow the judgement of the full bench of this Division in the case of *Twani v Special investigating Unit and another* (2001) JOL 9001 (E) in which the court held that the Special Investigating Unit established in terms of Proclamation 118 of2001 (first defendant) was liable to pay plaintiff's costs in respect of proceedings which had been unsuccessfully instituted against plaintiff by the Heath Unit before the Old Tribunal (i.e. Special Tribunal established under Proclamation R24 of 1997. The basis of Mr *du Bruyn's* submission was that in *Twani's* case, the issue of liability of the first defendant was not argued before the court. In *Twani*, the first defendant brought an application to be substituted in the place of the Heath Unit after the latter was dissolved, on the assumption that it possessed the necessary jurisdiction and undertook to abide by the decision of the court. The court granted the order of substitution. The application by the first defendant for its substitution case was based on an assumption that it was the *de jure* successor in title of the Heath Unit. The application was found by the court to be well founded in terms of section 12 (2) (c) and (e) of the Interpretation Act.

[27] About six months prior to the decision in *Twani*, a different Full Bench of this Division gave judgment in *Toto v Special Investigating Unit and Others* 2001 (1) SA 673 *(E)*. In *Toto*, the court had had to determine the validity of proceedings conducted before the Old Tribunal as a result of an agreement between first respondent (first defendant in these proceedings), the appellant and the state, that first defendant would bring proceedings against the appellant before the Special Tribunal. At the time of the

agreement, Proclamation R24 did not confer authority on the first defendant to bring proceedings before the Special Tribunal. The Court held that first defendant did not have *locus standi* to bring such proceedings. In his judgment, at 684 H, Leach J said:

> "At the time the proceedings in this matter commenced before the Special Tribunal, and when the agreement to place the record of the testimony at the Heath Commission before it was reached, the terms of reference of first respondent were those set out in Proc 24 of 1997 quoted above, viz the same terms of reference dealt with by the court in the *Konyn* case. Counsel therefore accepted that although first respondent had been given authority to investigate the appellant's acquisition of the farm, it had not enjoyed the necessary authority to institute proceedings before the Special Tribunal in respect thereof. However, notwithstanding such lack of authority, counsel for the first respondent submitted that proceedings before the Special Tribunal were still valid as the parties had agreed it should decide such dispute. In my opinion, for the reasons set out below, there is no merit in this argument.
>
> As I have said, the functions of the first respondent as defined in Proc 24 of 1997 were to investigate, enquire into and report to the President on various matters and, as a creature of statute, it could not confer upon itself a function it did not, in law, possess- *Minister of Public Works v Haffejee NO* 1996 (3) SA 745 (A) at 751. The first respondent therefore could not confer upon itself authority to agree with the appellant that it would bring proceedings before the Special Tribunal to determine the appellant's rights in the property he had purchased. Accordingly, in my view, as the Provisions of Proc 24 did not

confer authority upon the first respondent to bring proceedings before the Special Tribunal, it had no *locus standi* to bring such proceedings."

[28] The issue then becomes whether, in the light of the conflicting Full Bench decisions and the rest of the judicial precedent which conflicts with *Twani*, I am bound to follow the decision in *Twani*. In the light of the decisions in the cases that I referred to and the conflicting full bench decisions, it appears to me that the correct course in the circumstances would be to follow the decision in *Toto's* case.

[29] Lastly, Mr *Tshiki* argued that Proclamation R118 of 2001must be interpreted in terms of provisions of section 12 (2)(c) of the Interpretation Act of Act 33 of 1957 (the Interpretation Act) and Rule 14 of the Rules of this Court. His argument, based largely on section 2 (2) of the Interpretation Act, is that this case survives the repeal of Proclamation R24. Section 12 (2) (c) of the Interpretation Act provides that:

"(2) where a law repeals any other law, then unless the contrary intention appears:

the repeal shall not:-

(c) affect any right, privilege, obligation or liability acquired, accrued or, incurred under any law so repealed".

[30] The argument raised by Mr *Tshiki* was considered by the court in *Terblanche v The Special Investigating Unit and Others* (an unreported case of this Division under No 927/2002 delivered on the 17 December 2003), where the court had to decide whether the Special Tribunal established in terms of Proclamation R118 of 2001 had jurisdiction to consider a case which had been pending before the Old Tribunal at the

time of the repeal of Proclamation R24 of 1997. In his judgment, at 16 Jennett J remarked that:

> "whilst the argument is an attractive one I cannot agree therewith. In my view the survival of case no GP 7/99 beyond the repeal of Proclamation R24, 1997 and the adjudication of civil disputes therein by another Special Tribunal without the intervention of the Special Investigating Unit for which the Special Tribunal is established would result in the Special Tribunal concerned exercising jurisdiction which it does not have in terms of Act 74 of 1996 and which the new tribunal is not given in Proclamation R118, 2001".

[31] The learned judge in *Terblanche* held that the Special Tribunal established in terms of Proclamation R118, 2001 did not have powers to adjudicate on civil disputes pending before the old tribunal. The court held further that such disputes could be brought before the ordinary courts of the land, subject to any defences that the respondents might have. I am of the view that in this case, plaintiffs' right to sue the Heath Unit is only enforceable against persons liable in law in respect thereof. The fact that the first defendant has no jurisdiction to deal with plaintiffs' claim does not mean that plaintiffs had no other recourse. It remained open to the plaintiffs to sue the government, subject to defences available to it.

[32] The final position therefore is that although Proclamation 118 of 2001 empowers first defendant to " investigate all matters which were referred to the Special Investigating Unit established by Proclamation R24 of 14 March 1997", such authority did not make first defendant liable for acts of the Heath Unit.

[31] In the circumstances plaintiffs' Claim A against the first defendant has to fail.

[32] The proposed amendment

The application for amendment of plaintiffs' summons and replication was filed pursuant to second defendant's plea *in limine* that, when plaintiffs issued summons on 15 August 2001, plaintiffs' Claim B against second defendant, having arisen on the 25 August 1998, had already prescribed.

[33] The basis of this special plea is section 2(1)(c) of the Limitation of Legal Proceedings (Provincial and Local Authorities) Act No 94 of 1970 which provides that no legal proceedings in respect of any debt shall be instituted against the Provincial or Local Government after the lapse of 24 months as from the day on which the debt became due.

[34] Plaintiffs' replication to second defendant's plea *in limine* is that during 1999, plaintiffs issued a summons for the same relief on the same grounds as the relief sought in these proceedings. The summons which was issued in the Transkei Division, was served on first and second defendants within the prescribed time limit of 24 months from the date on which the debts arose. During 2001, plaintiffs withdrew the action pursuant to objections raised by first and second defendants, one of which was that plaintiffs' particulars of claim were excipiable as the alleged defamation took place in East London. Thereafter plaintiffs instituted these proceedings on the 15 August 2001. Plaintiffs therefore maintain that the institution of

the proceedings, which were subsequently withdrawn, constituted full compliance with the provisions of Act 74 of 1970.

[35] The proposed amendment, which second defendant opposes, is one in which plaintiffs seek to add the words "in Umtata High Court" to indicate that the proceedings instituted in 1999 and which were later withdrawn, were instituted in the Mthatha High Court. The objection raised to the proposed amendment is on the basis that it is bad in law as it lacks allegations which would disclose a defence against the second defendant's special plea on the issue of prescription and would constitute an excipiable pleading.

[36] It was common cause during argument that the proceedings instituted by plaintiffs in the Transkei Division of the High Court in April 1999 were later withdrawn by the plaintiffs. It is on this basis that it was contended on behalf of the second defendant that prescription had not been interrupted and that when the proceedings were instituted again on the 15 August 2001, plaintiffs' Claim B had prescribed. The argument on behalf of second defendant that in terms of section 15(2) of the Prescription Act 68 of 1969 the interruption of prescription by institution of the proceedings in the Transkei Division lapsed and the running of prescription must be deemed not to have been interrupted at all.

[37] Section 15(2) of the Prescription Act 68 of 1969 provides that unless the debtor acknowledges liability, the interruption of prescription in terms of section 15(2) shall lapse, and the running of prescription shall not be deemed to have been

interrupted, if the creditor does not successfully prosecute his claim under the process in question to final judgement or if he does so prosecute his claim but abandons the judgment or the judgment is set aside.

[38] There is no allegation in the pleadings that second defendant acknowledged liability in respect of plaintiffs' claim at any stage. If that were the case, it was incumbent on plaintiffs to raise that in their pleadings. The proceedings instituted by plaintiffs in the Transkei Division were withdrawn and were not prosecuted to final judgment. I am in agreement with the submission by Mr *du Bruyn* that in this case prescription must be deemed not to have been suspended. In *Van der Merwe v Protea Assurance Co Ltd* 1982(1) SA 770 (ECD), plaintiff issued summons in the Magistarte's Court within the prescribed period and later withdrew the action in the Magistrates Court, only to re-institute proceedings in the High Court after the period of prescription had expired. The defendant raised the special plea of prescription and plaintiff replicated that the running of prescription was interrupted by the institution of the action the Magistrates Court. Defendant excepted to plaintiff's replication as being bad in law as, by virtue of section 15 (2) of the Prescription Act 68 of 1969, the running of prescription should be deemed not to have been interrupted at all. A full bench of this division held that, as the action instituted in the Magistrates Court had been withdrawn and not successfully prosecuted to final judgment, it did not serve to interrupt prescription The following remarks made by *Smallberger* J (as he then was) *at* 773 G-H:

"A plaintiff is, however, *dominis litis*, and therefore entitled to select a forum in which to sue. He would normally have ample time before prescription runs in which to investigate and consider the proper forum in which to do so. If he conducts

his case with sufficient diligence he is unlikely to find himself in the dilemma which might arise from choosing the wrong forum. He would normally only have himself to blame if he makes the wrong election. In the exceptional case in an action for damages for personal injuries, where a plaintiff's condition turns out to be worse than could reasonably have been foreseen initially, he is no worse off than a litigant who settles the claim, only to find out later that his damages are far greater than he originally anticipated."

[39] The circumstances of this are similar to *Van der Merwe's* case. Plaintiffs withdrew their action from the Transkei Division in 2001. It seems to me that when plaintiffs withdrew their claim from the Transkei Division, they were already out of time for re-institution of proceedings arising out of the same facts, against the second defendant, in any other forum. The cause of action in respect of Claim B arose on the 25 August 1998 and the two year period within which they had to institute proceedings against second defendant lapsed in August 2000. Their claim therefore immediately became prescribed on its withdrawal form the Transkei Division as plaintiffs had not prosecuted it to final judgment.

[40] The proposed amendment would, indeed, not disclose a defence to the plea of prescription and would be excipiable. The application can therefore not succeed.

[41] Mr *du Bruyn* argued that both the application for amendment and Claim B of plaintiffs' summons be dismissed. Mr *Tshiki* submitted that I should only give a ruling on the application for amendment; that being the issue set down for hearing. I find no reason why I should not deal with both the application for amendment and the

plea of prescription at this stage. During argument both counsel made submissions *on* the plea *in limine* itself. Argument on the proposed amendment was inextricably linked to the plea of prescription itself. My view is that it is inevitable that I make findings, as I have done, on the submissions made by both parties on the point *in limine*. In any event an objection to a proposed amendment is but one of the procedural devices that can be used to raise the defence of prescription. See *Cordier v Cordier* 1984 (4) SA 524 (C). I am satisfied, on the facts which form the basis of Claim B (as amplified in the replication in its original form and as it would be after amendment), that when proceedings were instituted in this case, Claim B of plaintiffs' claims against second defendant had definitely prescribed. Therefore, second defendant's plea of prescription has to succeed.

In the result I make the following order:

1 Claim A of plaintiffs' summons is dismissed;

2 Claim B of plaintiffs' summons is dismissed;

3 Costs of the hearing are awarded against the plaintiffs jointly and severally; one paying, the others to be absolved.

Dambuza

N.DAMBUZA

ACTING JUDGE OF THE HIGH COURT

CASE NO: 1062/2001

IN THE HIGH COURT OF SOUTH AFRICA

(EASTERN CAPE DIVISION)

GRAHAMSTOWN 28th APRIL 2005

BEFORE THE HONOURABLE MS. JUSTICE DAMBUZA (ACTING JUDGE)

IN THE MATTER BETWEEN:

WILMOT MANDLA CHAGI & 29 OTHERS	**PLAINTIFFS**
AND	
SPECIAL INVESTIGATING UNIT	**FIRST DEFENDANT**
M.E.C. FOR AGRICULTURE AND LAND AFFAIRS (EASTERN CAPE)	**SECOND DEFENDANT**
DAILY DISPATCH MEDIA (PTY) LTD	**THIRD DEFENDANT**

Having on the 22nd November 2004 heard Mr. Tshiki, Attorney for the Plaintiffs and Adv. De Bruyn (S.C.) and Adv. Pienaar, Counsels for the First and Second Defendants and having read the documents filed of record

THE COURT RESERVED JUDGMENT;

THEREAFTER ON THIS DAY;

IT IS ORDERED:

1. THAT Claim A of Plaintiffs' summons be and is hereby dismissed.

2. THAT Claim B of Plaintiffs' summons be and is hereby dismissed.

3. THAT the costs of the hearing be and are hereby awarded against the Plaintiffs jointly and severally, one paying, the others to be absolved.

BY ORDER OF COURT

N. NGQENZI

COURT REGISTRAR

WHITESIDES