



# UNDERSTANDING STRATEGIC LITIGATION AGAINST PUBLIC PARTICIPATION LAW SUITS (SLAPP SUITS)

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## How to use this Fact Sheet?

This fact sheet is designed to provide activists with guidelines on a new phenomenon and tactic used to dissuade, silence and intimidate activists from carrying out their work. The factsheet is not intended to constitute legal advice, and activists are encouraged to seek legal advice from a legal profession if they are served with a lawsuit against them or their community. The factsheet is intended to assist activists as they navigate through the various acts of repression used mainly by corporate actors to stifle civil and political rights protected under most democracies.

## What is a SLAPP Suit?

A SLAPP Suit is a lawsuit that is intended to intimidate and silence critics who speak about an issue in the public interest, that may or may not directly affect them. The suit is intended to burden critics (usually activists) with the cost of a legal defence until they abandon their criticism or opposition. The lawsuit is usually meritless as they are only instituted with the intention of dissuading and discouraging the critics from exercising their right to express themselves of an opinion or a view. SLAPP Suits are generally considered an abuse of the court process and are designed to stifle free speech and public participation.

## Is there legal protection against SLAPP Suit?

Currently, there is no legislative protection against SLAPP Suits in the Africa region. There are a couple jurisdictions in the Global North that do provide some form of legislative protection against SLAPP Suits, while some are in the process of developing legislation in the form of Acts of Parliament and Directives. The lack of legislative protection makes it difficult for courts to identify and adjudicate SLAPP Suits in a just manner.

However, the South African Constitutional Court in ***Mineral Sands Resources (Pty) Ltd and Others v Redell and Others (CCT 66/21) [2022]*** recognised that SLAPP Suits exist in South Africa and can be defended as an abuse of court process.



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## What can you do if you are SLAPPED?

If you are served with legal documents in the form of a court application; summons; or letter of demand, there is no need to panic. Immediately approach a lawyer/attorney in your area to assist in defending you against the lawsuit. Please do not take time to seek legal assistance because court documents are time sensitive and therefore it is important to comply with all the time periods set out in the papers to file all your court papers on time. The court will decide on the merits of the lawsuit after all the court papers have been exchanged between the parties and filed in court.

## Did you know about the Anti-SLAPP Model law developed by the Centre for Applied Legal Studies?

The Centre for Applied Legal Studies developed a report intended to create awareness on SLAPP Suits. The model law extracted Anti-SLAPP legislation from jurisdictions in the Global North providing legislative protection against SLAPP Suits and developed a blueprint for South Africa and other jurisdictions to consider when passing legislation and policies protecting activists against SLAPP Suits and providing guidelines to court on how to adjudicate SLAPP cases in court.

The model law for the Protection from Strategic Litigation Against Public Participation is available here:

### SLAPP Check List

**Here is a check list to help you determine if you have been SLAPPED:**

- ✓ Is the legal action an abuse of court process?
- ✓ There is no violation of rights stated by the court process/in the court papers.
- ✓ The legal action seeks to achieve an improper end.
- ✓ The legal action is causing you a financial strain.
- ✓ The legal action is violating the right to freedom of expression.
- ✓ The legal action comes as a result of your exercising your right to express an opinion or view on a matter in the public interest.



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## Case Study

### **X Community Forum and Others v Y Mining Company**

A mining affected community and registered forum in the challenged an interdict granted against it by the High Court. The interdict was instituted by Y Mining Company who sought to obtain an overly broad interdict to prevent the Forum from protesting outside the premises of the Mine. The protest by the forum was over unfulfilled social and labour plans (SLP) by the mining company. In challenging the granting of the interdict, and in its defence, the forum argued that the interdict was Strategic Litigation Against Public Participation (SLAPP Suit) as it sought to silence, dissuade and prevent the forum from exercising their right to protest and express their concerns regarding the unfilled SLP obligations. Protest was the last resort as the engagement initiated by the leaders of the forum with the mining company had either failed or was unsuccessful. The forum also argued that the litigation against them was chilling because in the papers the mining company referred to specific individual names of community leaders who were strategically targeted by the mining company. This had the effect of sending a strong message to other members of the forum that the consequences of a protest would be litigation against them.

Unfortunately, the SLAPP defence raised by the Forum was not accepted by the court. The defence of a SLAPP suit was at the time new and had not been developed in South Africa, before the recognition of SLAPP suit as a form of abuse of court process in the Mineral Sands judgment.

Although the court did not find in their favour, the above case study reveals that the litigation against the forum amounted to a SLAPP Suit because:

- √ The litigation against the forum infringed on their right to protest
- √ The interdict sought meant to silence and prevent them from expressing legitimate concerns over the Mine's legal obligations
- √ It targeted individuals to send out a strong message and dissuade other members of the forum
- √ The interdict was overly broad and sought relief that was unsustainable as it sought to limit their right to protest



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