

COMBINED SUMMONS

**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG**

CASE NO.: 10538/16

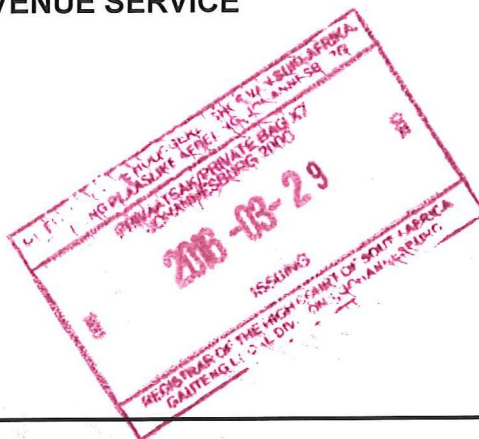
In the matter between:

**THOMAS SWABIHI MOYANE
JONAS MAKWAKWA
SOUTH AFRICAN REVENUE SERVICE**

**First Plaintiff
Second Plaintiff
Third Plaintiff**

and

**MAIL & GUARDIAN
CRAIG MCKUNE
SAM SOLE**



**First Defendant
Second Defendant
Third Defendant**

To the Sheriff or his Deputy:

INFORM **MAIL & GUARDIAN**, a newspaper company duly registered in terms of the laws of the Republic of South Africa with its *domicilium citandi et executandi* at Grosvenor Corner, 195 Jan Smuts Avenue, Rosebank, Johannesburg
(hereinafter called the *First Defendant*)

AND INFORM **CRAIG MCKUNE**, an adult male person, employed by the Mail and Guardian as a journalist, with his employment address situated at Grosvenor Corner, 195 Jan Smuts Avenue, Rosebank, Johannesburg, whose full and further particulars are unknown to the Plaintiffs.
(hereinafter called the *Second Defendant*)

AND INFORM **SAM SOLE**, an adult male person, employed by the Mail and Guardian as a journalist, with his employment address situated at Grosvenor Corner, 195 Jan Smuts Avenue, Rosebank, Johannesburg, whose full and further particulars are unknown to the Plaintiffs.

(hereinafter called the Third Defendant)

THAT **THOMAS SWABIHI MOYANE**, an adult male person, who is the Commissioner for the South African Revenue Service ("SARS"), and is suing herein in his personal and as well as in his representative capacity, with his offices situated at No. 299 Bronkhorst Street, Nieuw Muckleneuk, Pretoria.

(hereinafter called the First Plaintiff)

AND THAT **JONAS MAKWAKWA**, an adult male who is the Chief Officer: Business and Individual Taxes for SARS and is suing in his personal capacity and residing at 56 Justice Mohamed Street, Unit 2 Brooklyn, Pretoria.

(hereinafter called the Second Plaintiff)

AND THAT **SOUTH AFRICAN REVENUE SERVICE ("SARS")**, a juristic person established in terms of section 2 of the South African Revenue Service Act, 34 of 1997 ("Act") with its registered place of business or head office at No. 299 Bronkhorst Street, Nieuw Muckleneuk, Pretoria.

(hereinafter called the Third Plaintiff)

hereby institute action against the Defendants in which action the Plaintiffs claim relief on the grounds set out in the Particulars of Claim annexed hereto.

INFORM the Defendant(s) further that if the Defendant(s) dispute the claim and wish to defend the action, the Defendant(s) shall:-

- (i) within ten (10) days of the service upon the Defendant(s) of this Summons, file with the Registrar of this Court situated at Johannesburg, its notice of intention to defend;
- (ii) thereafter and within twenty (20) days after filing and serving notice of intention to defend as aforesaid, file with the Registrar and serve upon the Plaintiff(s) a Plea, Exception, Notice to strike out, with or without a Counterclaim.

INFORM the Defendant(s) further that if the Defendant(s) fail or fails to file and serve notice as aforesaid, Judgment as claimed may be given against the Defendant(s) without further notice to the Defendant(s), or if having filed and served such notice, the Defendant(s) fails to plead, except, make application to strike out or Counterclaim, Judgment may be given against the Defendant(s).

AND immediately thereafter serve on the Defendant(s) a copy of this Summons and return same to the Registrar with whatsoever you have done thereupon.

DATED AT JOHANNESBURG ON THIS THE 2⁹ DAY OF MARCH 2016.

**REGISTRAR OF THE HIGH COURT
JOHANNESBURG**



MASHIANE, MOODLEY & MONAMA INC.

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Ref: Mr. Maphakela/aic/SAR2-0036

ANNEXURE

PARTICULARS OF CLAIM

1. The First Plaintiff is **THOMAS SWABIHI MOYANE**, an adult male person, who is the Commissioner for the South African Revenue Service (“SARS”), and is suing herein in his personal and as well as in his representative capacity, with his offices situated at No. 299 Bronkhorst Street, Nieuw Muckleneuk, Pretoria.
2. The Second Plaintiff is **JONAS MAKWAKWA**, an adult male who is the Chief Officer: Business and Individual Taxes for SARS and is suing in his personal capacity and residing at 56 Justice Mohamed street, Unit 2 Brooklyn, Pretoria.
3. The Third Plaintiff is the **SOUTH AFRICAN REVENUE SERVICE (“SARS”)**, a juristic person established in terms of section 2 of the South African Revenue Service Act, 34 of 1997 (“Act”), with its registered place of business or head office at No. 299 Bronkhorst Street, Nieuw Muckleneuk, Pretoria.
4. In terms of the provisions of Section 9 (1)(b) of the Act, as the Commissioner, the First Plaintiff takes all decisions in the exercise by

SARS of its powers and these powers include the institution and defence of legal proceedings, amongst others.

5. The First Defendant is **MAIL & GUARDIAN**, a newspaper company duly registered in terms of the laws of Republic of South Africa, with its *domicilium citandi et executandi* at Grosvenor Corner, 195 Jan Smuts Avenue, Rosebank, Johannesburg.
6. The Second Defendant is **CRAIG MCKUNE**, an adult male person, employed by the Mail and Guardian as a journalist, with his employment address situated at Grosvenor Corner, 195 Jan Smuts Avenue, Rosebank, Johannesburg, whose full and further particulars are unknown to the Plaintiffs.
7. The Third Defendant is **SAM SOLE**, an adult male person, employed by the Mail and Guardian as a journalist, with his employment address situated at Grosvenor Corner, 195 Jan Smuts Avenue, Rosebank, Johannesburg, whose full and further particulars are unknown to the plaintiffs.
8. The Second and Third Defendants were at all material times acting within the course and scope of their employment with the First Defendant.

9. The whole cause of action arose within the jurisdiction of the above Honourable Court and or alternatively the First Defendant conducts its business within the jurisdiction of the above Honourable Court.

CLAIM A – DEFAMATION

10. On or about 19 February 2016, an article titled **“SARS WARS: MOYANE’S EMPIRE STRIKES BACK”**, was published in the Mail & Guardian newspaper. A copy of the article is attached hereto marked annexure **“A”**.
11. The said newspaper (**“A”**) is widely distributed in South Africa and widely read by the general public.
12. The aforesaid article wrongfully and maliciously, with injurious intent, stated of the Plaintiffs that:
 - 12.1 The restructuring is a deliberate attempt by the First Plaintiff’s “new guard” to give themselves undue influence over settlement negotiations running into billions of rands.
 - 12.2 The First Plaintiff wants to farm out the large business centre’s function to smaller regional centres in a process that seems

alarminglly similar to the way in which the SAPS destroyed capacity and skills by closing special units.

- 12.3 The First Plaintiff has targeted senior managers seen to have been loyal to Gordhan during his term as the Minister and as SARS' Commissioner by suspending them.
 - 12.4 Under the First Plaintiff, "SARS" face has been designed to bring it to heel to stop potential enforcement action targeting "ANC interests, Zuma's Nkandla upgrades and his friends, the Gupta family".
 - 12.5 The First Plaintiff, through restructuring, is side-lining experienced employees in favour of little experienced employees close to the Second Plaintiff.
 - 12.6 The Second Plaintiff's "hatchet man" had harassed tax payers.
 - 12.7 The Second Plaintiff frustrated the ends of justice in a failed prosecution.
13. The Defendants were aware or reasonably ought to have known that the aforesaid allegations as contained in this letter were false,

defamatory and injurious to the First, Second and/or the Third Plaintiffs.

14. Furthermore, the allegations published as aforesaid, in the context of the article, were wrongful and defamatory of the Plaintiffs in that they were intended and were understood by readers of the newspaper to mean that the First and Second Plaintiffs are dishonest, lack leadership, settling political scores, in breach of Tax Administration Act and they were unprofessional in the following respect:

14.1 That the First Plaintiff is restructuring SARS in a mala fide manner in that he deliberately wants to use it for his own undue influence.

14.2 That the First Plaintiff is destroying SARS in the same way in which the SAPS destroyed capacity and skills by closing special units.

14.3 That the First Plaintiff is unprofessional and factional in his performance of duties and functions in that he targeted senior managers loyal to Minister Gordhan by suspending them and subjecting them to disciplinary enquiries.

- 14.4 That the First Plaintiff lacks leadership in that he has allowed SARS to be designed to stop any possible enforcement action against the ruling party's interest including its President.
- 14.5 That the Second Plaintiff has breached Tax Administration Act by harassing the taxpayers.
- 14.6 That the Second Plaintiff frustrated the ends of justice in a failed prosecution of a tax payer.
15. Further to the above, the allegations are also false and Defamatory of the Plaintiffs in that they imputed and were intended by the Defendants to impute, and were understood by the persons to whom they were distributed to impute that the Plaintiffs consistently, over a period of time, failed to uphold the professional standards which SARS is required to uphold in terms of its statutory mandate and thereby guilty of unconscionable, factional and oppressive conduct unworthy of a reputable state institution such as the Third Plaintiff.
16. The said allegations were made with an intention to defame the First and Second Plaintiffs, and injure their dignity and reputation as well as that of the Third Plaintiff.

17. The said allegations were made by the Defendants with full knowledge of their wrongfulness.
18. Notwithstanding their falsehood and injurious nature, the Defendants nevertheless published the allegations which indeed harmed the reputation and good name of the First, Second and/or Third Plaintiff.
19. As a result of the defamation thereof and the injurious nature of the allegations, the Plaintiffs' dignity and reputation have been damaged.
20. The First Plaintiff as a natural person, both in his personal and representative capacity, has suffered damages in the sum of R1 million.
21. The Second Plaintiff as a natural person, in his personal capacity, has suffered damages in the sum of R1 million.
22. The Third Plaintiff as a juristic person, with the statutory and constitutional responsibility to collect tax revenue on behalf of the State, has suffered severe reputational damage which impugned on its statutory obligation.
23. The Third Plaintiff has suffered damage in the sum of R2 million.

24. The amounts claimed are a globular figure and cannot be easily quantified.

CLAIM B – DECLARATORY ORDER

25. In publishing the said article (“A”), Defendants violated section 67(3) of TAA which states that in the event of the disclosure of SARS confidential information or taxpayer information contrary to this chapter, the person to whom it was so disclosed may not in any manner disclose, publish or make it known to any other person who is not a SARS official.

26. In breaching the aforesaid provision, the Defendants disclosed information about Mpisi Trading 74 and Shawn Mpisane who are tax payers as such, inter alia:

26.1 That Mpisi Trading 74 run by Taiwan-born South African Jen-Chih Robert Huang countered a SARS assessment by claiming it had been harassed by SARS;

26.2 That the Second Plaintiff met a taxpayer, Mpisi Trading 74 and instructed SARS officials to hand him all cases related to Huang;

26.3 That Durban businessperson Shawn Mpisane in 2013 faced tax fraud charges;

26.4 That the First and Second Plaintiffs are said to have met with a tax payer (Old Mutual) for a settlement.

27. The disclosure of taxpayers information by the Defendants without prior authorisation by SARS was in contravention of section 67(3) of the TAA and therefore unlawful.

WHEREFORE, Plaintiffs pray for a judgment against the Defendants as follows:

(a) Declaratory orders:

(i) it is declared that the Defendants' publication of taxpayers' confidential information in the 19th of February 2016 Mail and Guardian newspaper, in the article titled **"SARS WARS: MOYANE'S EMPIRE STRIKES BACK"** is unlawful;

(ii) it is declared that the defendants have breached Chapter 6, section 67 of the Tax Administration Act by publishing the article **"SARS WARS: MOYANE'S EMPIRE STRIKES BACK"** in the mail and Guardian of 19 February 2016.

(b) Damages:

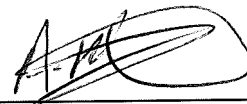
- (i) the Defendants are ordered to pay to the First Plaintiff the sum of R1 million a *tempore morae*;
- (ii) the Defendants are ordered to pay to the Second Plaintiff the sum of R1 million a *tempore morae*;
- (iii) the Defendants are ordered to pay to the Third Plaintiff the sum of R2 million a *tempore morae*;

Alternative to (iii) above;

- (iv) the defendants are ordered to issue an apology to the Third Plaintiff and publish it in the national newspaper at its own costs. The apology must be published in the same manner of visibility as the publication, taking into account headlines, pictures and captions;
- (v) interest on the aforesaid sums in (i), (ii) and (iii) at the prescribed rate of interest;

- (vi) Costs of suit against the Defendants, the one paying the other to be absolved;
- (vii) Further and/or alternative relief.

DATED AT SANDTON THIS 29 DAY OF MARCH 2016



W R Mokhari SC

A M Mthembu

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