



REPUBLIC OF SOUTH AFRICA

FORM 3

NOTICE TO RESPONDENT REGARDING INSTITUTION OF PROCEEDINGS IN TERMS OF SECTION 20 OF THE PROMOTION OF EQUALITY AND PREVENTION OF UNFAIR DISCRIMINATION ACT, 2000 (ACT NO. 4 OF 2000)
[Regulation 6 (2)]

File No: EO4/2021

IN THE EQUALITY COURT HELD AT THE MAGISTRATE'S/HIGH COURT

Gauteng Local DivisionHELD AT JohannesburgIn the matter between: Julius S Malema

ID No./Date of Birth/Registration No.:

KennyComplainant
AndKunenePatrotic Alliance

2021-12-14

ID No./Date of Birth/Registration number:

NOTICE TO RESPONDENT

PART A: PARTICULARS OF RESPONDENT

Residential address:

11111 Towers, 2nd Floor
Nelson Mandela Square
Maude Street

Code ()

Residential telephone number:

Cellular telephone number:

Work address:

Same as above

Code ()

Postal address:

Code ()

Work telephone number:

Physical address (where documents can be served):

Code ()

PART B: PARTICULARS OF COMPLAINT

On 14/12/2021, the Complainant instituted proceedings in the above-mentioned court.
(Date)

The alleged complaint(s) against you is/are as follows:

See affidavit in support of a complaint
Marked 'A'

The Complainant is seeking the following assistance/relief:

See affidavit Marked 'A'

Copies of the following documentation are herewith attached for your information:

Copy Marked 'A'

PART C: INVITATION TO RESPONDENT TO RESPOND TO ALLEGATIONS AND TO SUBMIT INFORMATION

(A) You are hereby invited to -

- (i) respond to the complaint(s) mentioned in part B; and
- (ii) submit any information you wish to bring to the attention of the presiding officer, relating to your personal circumstances (e.g. your financial and socio-economic position). You may also indicate whether the matter in your opinion should be heard by the court or any other forum, stating reasons for your preference.

(b) The information must be in writing and in the form of an affidavit and must be submitted to the clerk of the above-mentioned court on or before

within 10 days on receipt thereof

(c) At the date referred to in paragraph (b) above, the matter will be referred to the presiding officer.

PART D: GENERAL INFORMATION

Your attention is drawn to the fact that the presiding officer may decide to refer the matter to an alternative forum (such as the Human Rights Commission, the Gender Commission etc.) in terms of section 20(5)(a) of the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (Act No. 4 of 2000), for a decision and that the alternative forum may refer the matter back to the equality court for finalisation. The clerk of the court will inform all the parties accordingly.

Signed at

Onb

this

14

day of

December

year *2021*

Clerk of the Equality Court

33

GRIFIER VAN DIE HOOGGEREGKHOE VAN SUID AFRIKA

GANTENG AFDELING JOHANNESBURG

2021-12-14

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA

SAUTENG LOCAL INKANTO JOHANNESBURG

PART E: RETURN OF SERVICE

I, certify that I have delivered a copy of the notice to personally.

Signed at this day of year

*Sheriff/.....

*Delete whichever is not applicable



EQ4/2021

**INSTITUTION OF PROCEEDINGS IN TERMS OF SECTION 20 OF THE PROMOTION OF EQUALITY
AND PREVENTION OF UNFAIR DISCRIMINATION ACT (ACT NO. 4 OF 2000)**
[Regulation 6 (1)]

- Note: 1. Affidavits of other persons or other documentary evidence in support of the matter must be attached.
2. Your attention is drawn to the fact that the equality court may refer the matter to an alternative forum. If the matter is referred back to the equality court the clerk will inform you accordingly.

[If the space provided is inadequate, submit information as an Annexure to this form and sign each page.]

PART A: PARTICULARS OF COMPLAINANT (to be completed if lodging complaint on own behalf)

Surname:	MALEMA				
Full names:	JULIUS SELLO				
ID. No./Date of birth:					
Residential address:	c/o Ian Levitt Attorneys, 12th Floor, The Leonardo, 75 Maude Street, Sandton				
					Code (2196)
Residential telephone number:	011 784 3310				
Cellular telephone number:	076 424 7888				
Work address:	c/o Ian Levitt Attorneys, 12th Floor, The Leonardo, 75 Maude Street, Sandton				
					Code (2196)
Work telephone number:	011 784 3310				
Fax number:	086 579 5368				
Physical address (where documents can be served):	c/o Ian Levitt Attorneys, 12th Floor, The Leonardo, 75 Maude Street, Sandton				
					Code (2196)
Preferred method in which the form is to be served:	Registered post	E-mail	Fax	Sheriff	Clerk
	☐	☒	☐	☐	☐

Correspondence contact details (In terms of above): angelike@ianlevitt.co.za

E-mail address: angelike@ianlevitt.co.za

Other relevant information (such as financial position, availability of transport, socio-economic status, if an interpreter will be needed and if special requirements are needed e.g. wheelchair access) which may assist the presiding officer to make a decision regarding the forum which must deal with the complaint in terms of the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (Act No. 4 of 2000):

N/A

PART B: PARTICULARS OF PERSON ACTING IN TERMS OF SECTION 20(1)(b) - (f) ON BEHALF OF ANOTHER PERSON/ASSOCIATION/BODY (Proof of capacity of person acting in terms of section 20(1)(b) - (f) to be attached)

Surname:	MALEMA				
Full names:	JULIUS SELLO				
ID. No./Date of birth:					
Capacity of person acting in terms of section 20 (1) (b) - (f):	President and Commander in Chief				
Registration number of corporate body:	N/A				
Residential address:	c/o Ian Levitt Attorneys, 12th Floor, The Leonardo, 75 Maude Street, Sandton				
	Code (2196)				
Residential telephone number:	011 784 3310				
Cellular telephone number:	076 424 7888				
Work address:	c/o Ian Levitt Attorneys, 12th Floor, The Leonardo, 75 Maude Street, Sandton				
	Code (2196)				
Work telephone number:	011 784 3310				
Fax number:	086 579 5368				
Physical address (where documents can be served):	c/o Ian Levitt Attorneys, 12th Floor, The Leonardo, 75 Maude Street, Sandton				
	Code (2196)				
Preferred method in which the form is to be served:	Registered post ☐	E-mail ☒	Fax ☐	Sheriff ☐	Clerk ☐
Correspondence contact details (In terms of above):	angelike@ianlevitt.co.za				
E-mail address:	angelike@ianlevitt.co.za				
Name(s) and address(es) of person(s) on whose behalf you are acting.	Economic Freedom Fighters 82 De Korte Street Johannesburg				
	Code (2000)				

PART C: PARTICULARS OF RESPONDENT(S) (The under mentioned particulars should be furnished in respect of each respondent.

Name of person(s)/organization(s) against whom/which proceedings are instituted:
Patriotic Alliance NPC (West Tower, 2nd Floor, Nelson Mandela Square, Maude Street,Gauteng, 2146)
Kenny Kunene (West Tower, 2nd Floor, Nelson Mandela Square, Maude Street,Gauteng, 2146)

ID. No./Date of birth/

Registration No.:

Residential address (if applicable):

Code ()

Residential telephone number:

Cellular telephone number:

Work/Business address:

Code ()

Work telephone number:

Fax number:

086 514 6280

Preferred method in which the form is to be served:

Registered post

E-mail



Fax



Sheriff



Clerk



Correspondence contact details (In terms of above):

vote@patrioticalliance.org.za

Physical address (where documents can be served):

West Tower, 2nd Floor, Nelson Mandela Square, Maude Street,Gauteng

Code (2146)

E-mail address:

vote@patrioticalliance.org.za

PART D: PARTICULARS OF PERSON APPEARING ON BEHALF OF COMPLAINANT

Full names and surname of person appearing on your behalf: (representative)

Ian Levitt Attorneys (12th Floor, The Leonardo, 75 Maude Street, Sandton)

ID. No./Date of birth:

Postal address of representative:

Code (2146)

Residential telephone number: 011 784 3310

Cellular telephone number: 076 424 7888

Fax number: 086 579 5368

E-mail address: angelike@ianlevitt.co.za

PART E: PARTICULARS OF COMPLAINT AND RELIEF SOUGHT

Nature of complaint: (Please give full details of the complaint, the date of the incident(s) and the particulars of possible witnesses. Also indicate which right has been violated and the reasons why you think such right was violated.)

See affidavit attached hereto

How has it affected you?

See affidavit attached hereto

Documents: Are there any documents to substantiate your complaint (e.g. pay slips, references, records of conversations) to substantiate your claim? (If so please attach.):

See affidavit attached hereto

Relief sought: (Please indicate what assistance you require. The court may make an interim order, declaratory order, an order for the payment of damages, an order that an unconditional apology be made etc.)

See affidavit attached hereto

PART F: PARTICULARS OF INSTITUTIONS/BODIES APPROACHED

Particulars of institutions/bodies previously approached in respect of the complaint:

See affidavit attached hereto

The response of the institutions/bodies mentioned above:

See affidavit attached hereto

Signed at Johannesburg this 13 day of December year 2021

Signature of Complainant/Representative of class of persons/institution/organisation

PART G: AFFIDAVIT

I certify that before administering the oath/affirmation, I asked the deponent the following questions and wrote down his/her answers in his/her presence:

(1) Do you know and understand the contents of the declaration?

Answer:

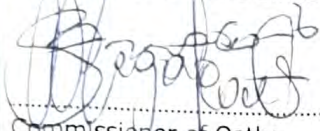
(2) Do you have any objection to taking the prescribed oath?

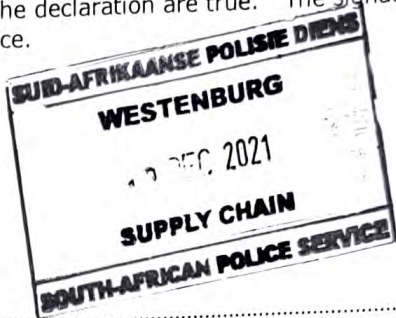
Answer:

(3) Do you consider the prescribed oath to be binding on your conscience?

Answer:

I certify that the deponent has acknowledged that he/she knows and understands the contents of this declaration. The deponent uttered the following words: "I swear that the contents of this declaration are true, so help me God."/" I truly affirm that the contents of the declaration are true." The signature/mark of the deponent was affixed to the declaration in my presence.


.....
Commissioner of Oaths



Full first names and surname
SEYAPH Q. M.
28 Ben Harro's Street
Westenburg
.....
.....

(Block letters)

Designation (rank) CONSTABLE Ex Officio Republic of South Africa

Business address 28 Ben Harro's Street Code.....

--- (Street address must be stated)

Date: 2021.12.13 Place: Westenburg SAPS

V

**IN THE EQUALITY COURT OF SOUTH AFRICA
HELD AT THE GAUTENG LOCAL DIVISION, JOHANNESBURG**

CASE NO.: EG4-2021

In the matter between:

JULIUS SELLO MALEMA

and

KENNY KUNENE

THE PATRIOTIC ALLIANCE

Complainant

First Respondent

Second Respondent



**AFFIDAVIT IN SUPPORT OF A COMPLAINT IN TERMS OF SECTION 20 OF THE
PROMOTION OF EQUALITY AND PREVENTION OF UNFAIR DISCRIMINATION
ACT, 4 OF 2000 ("PEPUDA")**

I, the undersigned,

JULIUS SELLO MALEMA

do hereby make oath and say that:

1. I am a Member of Parliament ("MP") and President and Commander-in-Chief of the Economic Freedom Fighters ("EFF"), a political party registered as such in terms of section 15 of the Electoral Commissions Act, 51 of 1996.
2. The facts herein contained are all within my person knowledge, save as it may appear otherwise from the context, and are both true and correct; and

JS

3. Where I make legal submissions, I do so on the advice of my legal representatives, which I accept.
4. This affidavit is submitted in support of proceedings instituted in the above Honourable Court in terms of section 20 of PEPUDA, as read with regulation 6(1) thereof.

PARTIES

5. I am the complainant in this matter.
6. The first respondent is Mr Kenny Kunene, the Deputy President of the second respondent.
7. The second respondent is the Patriotic Alliance, a political party registered in terms of section 15 of the Electoral Commissions Act, 51 of 1996.

NATURE OF THE COMPLAINT

8. This complaint emanates from the Respondents engaging in acts of hate speech as contemplated in section 10 of PEPUDA, read with the Constitutional Court's judgment in *Qwelane* whose relevant parts of the order reads:

"1 In respect of the confirmation application:

(a) The declaration of constitutional invalidity of section 10(1) of the Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000 (Equality Act) made by the Supreme Court of Appeal is confirmed in the terms set out in paragraph (b).

(b) It is declared that section 10(1) of the Equality Act is inconsistent with section 1(c) of the Constitution and section 16 of the Constitution and thus unconstitutional and invalid to the extent that it includes the word "hurtful" in the prohibition against hate speech.

JS

(c) The declaration of constitutional invalidity referred to in paragraph (b) takes effect from the date of this order, but its operation is suspended for 24 months to afford Parliament an opportunity to remedy the constitutional defect giving rise to constitutional invalidity.

(d) During the period of suspension of the order of constitutional invalidity, section 10 of the Equality Act will read as follows:

"(1) Subject to the proviso in section 12, no person may publish, propagate, advocate or communicate words that are based on one or more of the prohibited grounds, against any person, that could reasonably be construed to demonstrate a clear intention to be harmful or to incite harm and to promote or propagate hatred.

(2) Without prejudice to any remedies of a civil nature under this Act, the court may, in accordance with section 21(2)(n) and where appropriate, refer any case dealing with the publication, advocacy, propagation or communication of hate speech as contemplated in subsection (1), to the Director of Public Prosecutions having jurisdiction for the institution of criminal proceedings in terms of the common law or relevant legislation."

(e) The interim reading-in will fall away when the correction of the specified constitutional defect by Parliament comes into operation.

(f) Should Parliament fail to cure the defect within the period of suspension, the interim reading-in in paragraph (d) will become final."¹

[my emphasis]

9. We are still within the aforesaid 24 month period and Parliament has not yet remedied the constitutional defect, to the best of my knowledge.
10. Accordingly, the interim provision contained in paragraph (d) of the Constitutional Court's order is applicable, and it encapsulates the relevant legal threshold for me to meet in this complaint.
11. It is to this subject that I turn to below.

BACKGROUND FACTS AND COMPLAINT

12. The First Respondent, in his capacity as the Deputy President of the Second Respondent, held a television interview with eNCA hosted by one Mr Thulasizwe Simelane (**“Mr Simelane”**).

13. The following excerpt stems from that interview.

14. In welcoming the First Respondent to the interview, Mr Simelane said:

“Let us take the conversation broader then and bring in the Patriotic Alliance’s Deputy President Kenny Kunene, who joins me now to talk about his party’s role in the negotiations.”

15. In response thereto, the First Respondent said:

“Thank you very much for having me, and for having us as PA.”

16. Further, as will be shown in the excerpt below, the First Respondent said the following while communicating the impugned statement:

“So I am going to deal with this cockroach because we have given him time.”

17. I will discuss the offensive use of the word cockroach to refer to me further below. Instead, I submit that from the above excerpts, it is clear that Mr Kunene was speaking in his own personal capacity and on behalf of, for, and in the interests of the Patriotic Alliance.

18. This is unsurprising. The interview was given in the context of the local government elections, in which Mr Kunene and the Patriotic Alliance, had participated.

19. Mr Kunene was invited to comment on *"his party's role in the negotiations"*. The negotiations referred to are the coalition negotiations that were ongoing at the time for various parties, including the Patriotic Alliance, to form various coalitions to take over municipal governments around the country.

20. It is therefore clear that the First Respondent spoke both in his own capacity and on behalf of the Second Respondent.

21. The full transcript of the interview is marked annexure **"JM1"**.

22. During the course of that interview, the First Respondent went on to publish, propagate, advocate, and communicate hatred against me in the following terms:

"Once I am done, I am then going to deal with this little frog. Julius is just an irritating cockroach that now I must deal with publicly, and I will call you, I will call all the press, and I will begin to deal with this and show you that Julius, whatever he criticises he is. Julius is a criminal, and I am going to show South Africans the crimes that he is involved in, he has been involved in, and I am going to tell South Africans why I truly, the real truth why I left the EFF, because of this cockroach. So I am going to deal with this cockroach because we have given him time, we have given him respect, he has got his issues."

23. In response thereto, Mr Simelane stated, correctly so:

"Kenny Kunene, thank you for coming through. I do imagine that there will be a fair degree of controversy around your choice of words, particularly the word cockroach. I do imagine that given its potent and loaded history, you know it has previously raised a lot of conversation. But nevertheless, thank you for coming through and having the conversation with me here on eNCA."

24. The First Respondent deliberately chose to use the term "*cockroach*". It is not accidental that in a short interview lasting no longer than a few minutes, he repeated it at least three times.
25. It is also not accidental that in his further descriptions of me, and what he suggested I represent, and how I should be dealt with, the analogy continues: Mr Kunene compares me to a creature (vermin) that is sub-human and deserves sub-human treatment.
26. That is further underscored by the fact that Mr Kunene also referred to me as a "little frog". I highlight this for the following reasons:
- 26.1. First, it does not serve to take away from the true nature of his description and motivation of sub-human treatment of me. Mr Kunene's own words repeatedly emphasises that I am akin to vermin and deserve to be treated as such.
- 26.2. Second, even if it could be argued that the use of the phrase "little frog" has some impact on him calling me a "cockroach", which it does not, his use of that phrase only makes matters worse. Again, when attacking me personally, Mr Kunene compared me to an animal (i.e. something sub-human) deserving appropriate (sub-human) treatment.
27. On either score, Mr Kunene's words demonstrate that he violates section 10 of PEPUDA.
28. Things only get worse for Mr Kunene towards the end of the interview. As demonstrated above, Mr Kunene was challenged about the use of the term

"cockroach", and further informed of the controversy of its use. Notably Mr Simelane makes the further statement that Mr Kunene also knows this.

29. Be that as it may, the point is that after this, Mr Kunene did not apologise, nor did he withdraw his remarks. He could have easily done so when Mr Simelane challenged him on the use of the term. He kept quiet. He kept silent.
30. He did so because he was not sorry and could not be contrite. This is because his attack on me and the use of that term, especially, was deliberate and intentional.

ANALYSIS

31. The term cockroach was used to justify the inhumane treatment meted out on the Tutsis by the Hutus during the Rwandan genocide. The term became popularised and ingrained in the public sphere as prominent politicians used the term which was then flighted on various media channels and served as a basis for the crimes committed in that country.
32. BBC News reported on one Mr Leon Mugesera ("**Mr Mugesera**") who was jailed for propagating for the genocide of the Tutsis, an ethnic group which he referred to as "*cockroaches*" that must be exterminated (the article is marked "**JM2**").
33. Key to the foregoing is the fact that Mr Mugesera, of Hutu ethnicity, and those aligned to the agenda against the Tutsis used the term "*cockroach*" to also "other" the Tutsis as subhuman.
34. That is the context of the term in the political space. It has been widely condemned all over the world because of the severity of the genocide that

occurred in Rwanda, and as recognition of the fact that the use of such language should never be condoned.

35. I attach as annexures "JM3.1." to "JM3.2." being:

35.1. An article wherein the then South African Speaker of Parliament called me a similar term and withdrew it. Unlike Mr Kunene, then Speaker Baleka Mbete recognised the error of her ways.

35.2. An article reporting on the UN Human Rights Committee equating an article written by the UK right-wing media Katie Hopkins, who called migrants by that term, as being the same as propaganda for genocide (i.e. the same thing that happened in Rwanda).

36. In particular, I draw attention to the instance involving then Speaker Mbete. South Africa's polity is not immune to such instances but unlike with Mr Kunene, most of those who uttered the offensive term apologised for it. Mr Kunene has stubbornly refused to do so. This is why I now turn to the Courts.

37. The First Respondent, in deploying such a term, has done the same with me.

38. First, he has used the term to undermine my human dignity by referring to me as sub-human. This adversely affected my equal enjoyment of his rights and freedoms. (Even if we were the worst of political opponents, Mr Kunene's conduct can never qualify as protected speech).

39. This is because Mr Kunene's conduct was done in breach of section 10 of PEPUA (as read with the definition of "*prohibited grounds*").

JS

40. "Prohibited grounds" are defined as:

"'prohibited grounds' are-

- (a) race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth; or*
- (b) any other ground where discrimination based on that other ground-*
 - (i) causes or perpetuates systemic disadvantage;*
 - (ii) undermines human dignity; or*
 - (iii) adversely affects the equal enjoyment of a person's rights and freedoms in a serious manner that is comparable to discrimination on a ground in paragraph (a)."*

41. The magnitude of the First Respondent's speech is well understood in South Africa as revealed by at least one social media user who tweeted:

"I don't know if extreme violence brewing or what [sic]! Kenny calling Malema a cockroach and you know how it pan out in Rwanda [sic]. Guns are out and it looks like someone will be dismembered."

42. The tweet is marked annexure "JM4".

43. That this also follows a painful period of public violence in our country in July, that saw clashes of class and race on an unprecedented scale.

44. It is hardly a stretch of the imagination that the First Respondent used the term as a dog-whistle, such that I should be targeted for, *inter alia*, my tribal ethnicity and/or social origin and/or conscience and/or belief.

45. The Respondents' speech thus not only impugned my dignity as an "other" (sub-human, deserving of sub-human treatment) but propagated for violence against me (given that such vermin are usually "exterminated").

46. This he did on the sole basis of me being a political opponent and evidently based on my ethnicity.

47. It matters that the Respondents are my political opponents. It is equally important that the First Respondent is of a different ethnic grouping to me, to the best of my knowledge.

48. Over and above what is contained in this affidavit, the significance of this will be developed further in due course. The totality of all these factors renders the impugned statement as amounting to hate speech in terms of PEPUDA.

49. In support of the above, Mbowa, referencing other academic writings, wrote:

*"Slurs provide a means for expressing political phenomena. They are used to render particular groups of people as inferior, animalistic and subhuman (De Klerk, 2011; Rahman, 2015). Popa-Wyatt and Wyatt (2017) further recognise slurs as a form of hate speech."*²

50. It must be noted that given South Africa's own concerning history of tribalism, it is unfortunate that the Respondents would have chosen to perpetuate such statements within the Republic.

51. This is even worse, as I say above, when the country experienced the unprecedented public violence that was experienced earlier this year.

52. That is the context within which the impugned statement and this complaint must be understood.

LETTERS OF DEMAND

² S Mbowa *Exploring the Use of South African Ethnic and Racial Slurs on Social Media* International Journal of Critical Diversity Studies Vol. 3, No. 1, Troubling Seasons of Hate (June 2020), p55.

JS

- 57.5. an order interdicting and restraining the Respondents from publishing, propagating, advocating or communicating hate speech as defined in section 10 of PEPUDA;
- 57.6. an order directing the Registrar of this Honourable Court to within 30 days of the judgment prepare a dossier of the papers filed in this matter together with the copy of that judgment and submit a copy of the dossier to the Director of Public Prosecutions, Johannesburg, and another copy to the attorneys of record of the complainant whereafter the Director of Public Prosecutions, Johannesburg should determine whether the impugned statement warrant an institution of criminal proceedings for *crimen injuria*;
- 57.7. costs; and
- 57.8. further and/or alternative relief.



JULIUS SELLO MALEMA

I hereby certify that the deponent knows and understands the contents of this affidavit and that it is to the best of his knowledge both true and correct. This affidavit was signed and sworn to before me at Westenburg on this the 13 day of December 2021, and that the Regulations contained in Government Notice R.1258 of 21 July 1972, as amended, have been complied with.



JS

53. This conduct caused my attorneys to address separate letters to the Respondents. They are marked annexures "JM5" and "JM6" respectively.
54. The sum total of the letters was an invitation for the Respondents to retract the impugned statement. A deadline of when this must be done was set as 22 November 2021. Failing compliance, the Complainant reserved the right to exercise his rights as set out therein.
55. The demands were not met.
56. That has necessitated this complaint.

RELIEF SOUGHT

57. The complainant prays for the following relief:
- 57.1. that should the Respondents oppose the relief sought in this complaint, the matter be referred to an open court for hearing;
- 57.2. that the parties are afforded an opportunity to supplement their papers for purposes of the hearing;
- 57.3. a declaratory order that the impugned statement by the Respondents constitute hate speech as defined in section 10 of PEPUDA;
- 57.4. an order directing the Respondents to issue an unconditional public apology for the impugned statement, including a retraction of the statement itself;

JS

[Handwritten signature]

COMMISSIONER OF OATHS

Full names:

Address:

Capacity:



JS

START OF VIDEO FOOTAGE

[00:00]

PRESENTER: Welcome back. This is The Midday View here on ENCA. It is good to have you with us on this Wednesday afternoon.

Now let us talk coalition politics. Well in the last hour we have heard from the, we have heard that the IFP and the ANC have struck a deal in Kwa-Zulu Natal, breaking 21 hung municipalities, breaking the deadlock at least in many of those 21 hung municipalities.

10 Let us take the conversation broader then and bring in the Patriotic Alliance's Deputy President Kenny Kunene, who joins me now to talk about his party's role in the negotiations. So Kenny, let us start here. Yesterday one got the sense that you as Patriotic Alliance have become the spoilers inasfar as coalition negotiations are concerned. No one was happy with you.

I do not know, maybe the ANC was. The DA is certainly unhappy, they are saying that you took everything and you said, you threw in your lot with the ANC, and then you had the EFF's leader Julius Malema had a lot to say. Let us start with first
20 things first. What exactly is your position, have you thrown in your lot with the ANC, and if so what are the conditions, or is it unconditional that you will support them everywhere?

MR KUNENE: Thank you very much for having me, and for having us as PA. We started our negotiations, in fact after elections, we said we will negotiate with anyone. We are not

JS

choosing who is best, who is a better devil, we will negotiate with everyone. We started negotiations with the Freedom Front Plus, we had unofficial dialogues, and then we then had a conversation with the Action SA. We had an official meeting where we discussed issues, and we met with the negotiators of the DA in the Western Cape, and they were very arrogant that they could not give the PA any mayor, because a mayor position is too powerful, therefore the DA deserved to take all the mayors. We disagreed.

10 Then we then met with the African National Congress, with their negotiating team lead by the TG, Paul Mashatile and the DSG Jessie Duarte. Our meeting, first meeting with the ANC was very cordial, very respectful. Our second meeting the same. Our third meeting which concluded our agreement, the same.

So the ANC did not come to the meeting as a big, with a big brother mentality. It came with an understanding that we have been voted by the citizens of the municipalities where they want us to assist them.

PRESENTER: Ja. ---

20 MR KUNENE: And they came in understanding that we also have conditions, and we are a political party, we are not a small party. We have made an impact, and they came with that spirit of let us work together for the services of our people.

PRESENTER: So it is done now? It is a done deal, in all the municipalities, 66 if you talk just local and metro, 70 if you

include district municipalities, in all of those, in all the context where there is such a situation, you will be supporting the candidates that the ANC puts up?

MR KUNENE: We are not just supporting the candidates that the ANC put up. The ANC is also supporting our candidates. I will, I will break it down for you very quickly. In, in, in Ekurhuleni we have negotiated that we should get one member of mayoral committee, one MMC position, which gives us then a department that we, we will then run.

10 In the City of Jo'burg we are negotiating two. In JB Marks it is concluded we will have two. In Emfuleni we will have one MMC. In West Rand we will have two MMC's. Sol Plaatjies we will have one, and then Mangahung we will have one. Then we have agreed that in Laingsburg we will take mayor. Indeed the ANC voted with us on Monday for our mayor, and on Monday it was the birthday of Patriotic Alliance, because we formed this party, we registered it on the 15th of November 2013.

Yesterday we voted with the ANC in Prince Albert for their mayor, and they are giving us a Deputy Mayor there. Today
20 in Beaufort West the ANC voted with us for our mayor in Beaufort West, and so we are proceeding. We will be voting with them, they will be voting with us.

PRESENTER: Ja.

MR KUNENE: We are expecting that in Bitou they will vote with us for a mayor, in Kou-Kamma they will vote with us for

JS

ENCA/The Midday View-ym
2021-11-18

5

agreed ...[intervenes].

PRESENTER: Right.

MR KUNENE: That the people did not give you the power, therefore they did not give us the power.

PRESENTER: To avoid running out of time, let me throw my questions at you very rapidly. What do you expect will be the consequences for you of working with the ANC? You and I know that you draw a lot of support in predominantly coloured communities in South Africa, right? And I do not think there is
10 any dispute on that matter.

And I think you and I also know the level of you know, grievance, that exists in some of the communities where you are, where you are strong. What will working with the ANC this way do to you inasfar as your constituencies are concerned?

MR KUNENE: We also have black constituencies.

PRESENTER: Yes.

MR KUNENE: We have got seats in Giyani, we, we, we ...[intervenes].

PRESENTER: No question about that.

20 MR KUNENE: We won Thokoza[?]. Our people trust the leadership. It is not about the party that we are working with. It is about what the PA is going to do for the people. Sitting on the opposition benches does not guarantee jobs opportunities for our people, service delivery for our people. You have to sit around that table of the mayoral committee for you to make decisions.

JS

ENCA/The Midday View-ym
2021-11-18

8

PRESENTER: Right.

MR KUNENE: Set up our governments, then I will deal with this little cockroach.

PRESENTER: Kenny Kunene, thank you for coming through. I do imagine that there will be a fair degree of controversy around your choice of words, particularly the word cockroach. I do imagine that given its potent and loaded history, you know it has previously raised a lot of conversation. But nevertheless, thank you for coming through and having the
10 conversation with me here on ENCA.

END OF VIDEO FOOTAGE

[10:35]

mayor, and we will run one municipality hundred percent as PA in Karoo Hoogland.

PRESENTER: Does it make sense though Kenny Kunene that you as the Patriotic Alliance, as impressive as your performance has been, but did not get an outright, either an outright win in any of these municipalities or end up as the biggest block supported by voters, but you end up running the municipality in the form of having a mayor. You were telling me earlier on that right now you have three mayors.

10 MR KUNENE: Yes.

PRESENTER: And I imagine that this is municipalities where the voting patrons did not show that the overwhelming majority, well not overwhelming, the biggest chunk of voters preferred you to be the people leading that municipality. Does it make sense?

MR KUNENE: It makes, it makes sense, because there is no winner. It does not make sense for, just for the DA or the ANC being the majority party to take mayor. The fact that the people did not vote yōū outright, that is where we are sitting around the
20 negotiation table.

You see, we approach negotiations on a R1 principle. Whether you have got 98 cents and I have got 2 cents, you cannot make that R1 without my 2 cents. Therefore when we get around the table, we are equal, and that is why we call our agreement with the ANC a power sharing agreement. So we, we

Canada deports Rwanda genocide suspect Leon Mugesera - BBC News

"JM2"

The 'gals' behind Samoa's first woman PM

How Bangladeshis are lured into slavery in Libya

"JM1"

Canada deports Rwanda genocide suspect Leon Mugesera

24 January 2012



| Mr Mugesera is accused of making a speech which helped incite the 1994 Rwandan genocide.

A Rwandan man has been deported from Canada to Kigali where he faces charges of helping to incite the 1994 genocide.

Leon Mugesera has been fighting deportation for 16 years with a series of appeals, even after the Canadian Supreme Court upheld the order in 2005.

"JM1"

ENCA - THE MIDDAY VIEW

VIDEO FOOTAGE

DATE: 2021-11-18

PA'S KENNY KUNENE TALKS ON COALITIONS

PRESENTER : MR THULSIZWE SIMELANE

GUEST: : MR KENNY KUNENE [PA]

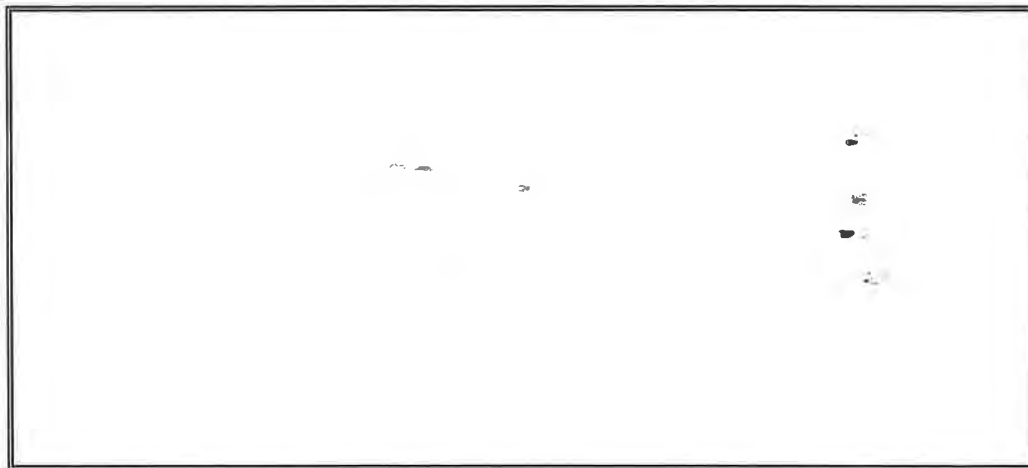
Mrs Yolanda Malan

80 Hamilton Avenue
Brakpan, 1541
079 892 9935
ymalan@absamail.co.za



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CERTIFICATE OF VERACITY

I, the undersigned, hereby certify that, *inasfar as it is audible*, the foregoing is a **VERBATIM** transcription from the soundtrack of proceedings, as was ordered to be transcribed by me, Mrs Yolanda Malan, and which had been recorded by digital recording equipment.

PA'S KENNY KUNENE TALKS ON COALITIONS

VIDEO FOOTAGE FROM:

ENCA -The Middy View

FEATURE DATE/S:

Case No: Not applicable

2021-11-18

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DATE RECEIVED:

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PLEASE NOTE:

1. *Good recording, thank you.*

Y Malan

Mrs Yolanda Malan

80 Hamilton Avenue
Brakpan, 1541
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"JM1"

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resembled pro-genocide propaganda, the United Nations has said.

In a strongly worded statement issued on Friday, the UN High Commission for Human Rights said tabloid “misinformation” about immigration was fed into a “nasty underbelly of racism” lurking beneath the migration issue.

“Under the guise of freedom of expression, [negative coverage is] being allowed to feed a vicious cycle of vilification, intolerance and politicization of migrants,” High Commissioner Zeid Ra’ad Al Hussein said in a statement.

“This is not only sapping compassion for the thousands of people fleeing conflict, human rights violations and economic deprivation who are drowning in the Mediterranean. The nasty underbelly of racism that is characterizing the migration debate in an increasing number of EU countries has skewed the EU response to the crisis ... and could sadly result in further massive loss of life.”

In its statement the Commission argued that Ms Hopkins's column, published in *The Sun* newspaper, used “language very similar to that employed by Rwanda’s Kangura newspaper and Radio Mille Collines during the run up to the 1994 genocide”.

The Commissioner noted that both Rwandan media organizations were later convicted by an international tribunal of public incitement to commit genocide.

He noted that the media in Nazi Germany “described people their masters wanted to eliminate as rats and cockroaches”, adding: “The Sun’s editors took an editorial decision to publish this article, and – if it is found to be

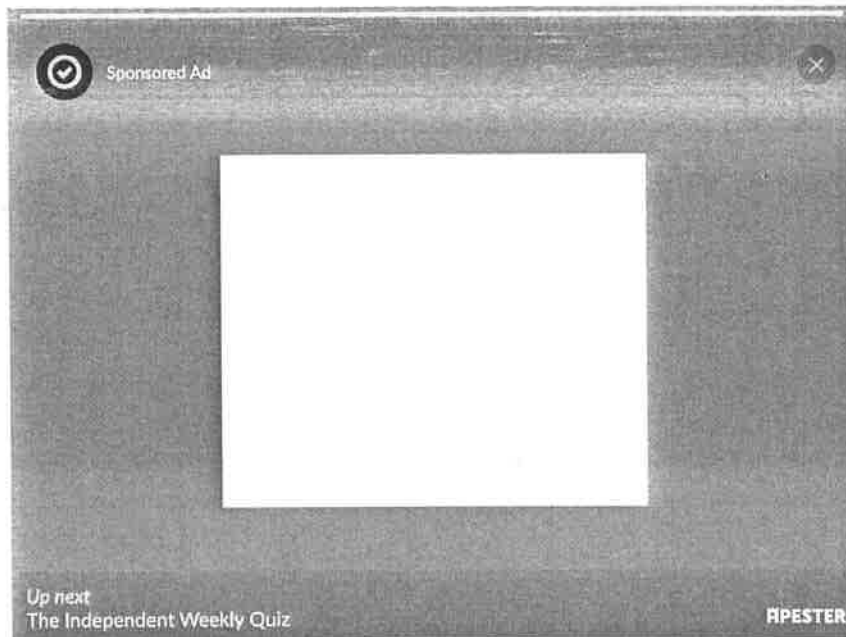
INDEPENDENT

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the EU's response to the Mediterranean crisis - and possibly increasing the death toll.



Ms Hopkins said in the column that she did not care if migrants died on their crossing of the Mediterranean, that they were like "cockroaches", "feral humans", and that gunboats should be dispatched to prevent further arrivals.

In pictures: Migrant boat disaster

Show all 10



ENCA/The Midday View-ym
2021-11-18

6

PRESENTER: Right.

MR KUNENE: That will impact positively on the people that have voted for you.

PRESENTER: Quick and final ...[intervenes].

MR KUNENE: So our people understand that we did this for them, not for us. I am not in counsel, the President is not in counsel.

PRESENTER: Quick in final question. Julius Malema says he really cannot, he cannot make sense of it. He cannot
10 wrap his head around it, you know working with a *pati ama bantiti* [?], former prisoners, and there is a lot conversation around that amongst some people. I have my view that you know, once you have served your due to society, it is what it is. But that is just my view, and I do not know how many people share it. What is your response to those who hold a view like Julius Malema, that you know this should preclude you from having any real say in the politics of this country?

MR KUNENE: I think it is pure bitterness and jealousy, and Julius has gone on to call us these names for a very long
20 time. We have really tried to be mature and not respond to him. But I will be responding to him. At the moment we are dealing with how are we servicing our people, putting together our governments with African National Congress. That is a very big agenda for the country.

Once I am done, I am then going to deal with this little

JS



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fiction, exaggeration or blatant xenophobia.

"History has shown us time and again the dangers of demonizing foreigners and minorities, and it is extraordinary and deeply shameful to see these types of tactics being used in a variety of countries, simply because racism and xenophobia are so easy to arouse in order to win votes or sell newspapers."

On Monday the Society of Black Lawyers reported *The Sun* newspaper to the Metropolitan Police over the column and called for it to be investigated under the 1986 Public Order Act's incident of racial hatred provision.

An online petition calling for Ms Hopkins to be sacked has reached nearly 300,000 people.



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"JM4"

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Aah Jolinkomo neo MDA @neo_mda

I don't know if extreme violence brewing or what! Kenny calling Malema a cockroach and you know how it pan out in Rwanda. Guns are out and it looks like someone will be dismembered. #COALITIONS #xenophobic #Loadshedding #PolokwaneMassacre Thixo!!! 🤔🤔

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1 JM5"

Ian Levitt

ATTORNEYS & CONVEYANCERS

Your Ref
Our Ref
Date

A CHARALAMBOUS/MAT2648
19 NOVEMBER 2021

Writer's Email : angelike@ianlevitt.co.za

THE PATRIOTIC ALLIANCE

ATTENTION: MR KENNY KUNENE

PER EMAIL: vote@patrioticalliance.org.za

"EXTREMELY URGENT"

"WITH PREJUDICE"

Dear Sir,

RE: DEFAMATORY STATEMENTS MADE AGAINST MR JULIUS MALEMA, MP, ON ENCA
INTERVIEW ON 18 NOVEMBER 2021

1. The above refers.
2. We confirm that we act on behalf of Mr Julius Malema, MP, the President and Commander-in-Chief of the Economic Freedom Fighters ("**our client**").
3. It has come to our client's attention that you have recently made defamatory statements regarding our client.
4. These defamatory statements were made by you, yesterday, and are now being repeated across various media platforms and the public-at-large, especially on social media. The reach of your defamatory statements is extensive and has caused and will continue to cause our client significant reputational damage.



Ian Levitt B.Com., LLB (Wits), HDip Tax Law (Wits), Michael Strauss BA Law (Stellenbosch) LLB (RAU),
ASSISTED BY: Jeanne B Strauss LLB.LLM, Cert in Medicine & Law (Cum Laude), Wikus Steyt LLB (UP), Sadiyah Samrod B.Com., LLB (UJ), Angelike Charalambous B.Com., LLB (UJ)

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PO Box 783244, Sandton, 2146 | Docex 54, Nelson Mandela Square

B-BBEE Status: Level 4

CONVEYANCER: IN ASSOCIATION WITH MICHELLE CHAVKIN ATTORNEYS

For service in terms of Rule 4A(1)(c) email copy to: info@ianlevitt.co.za

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7

frog. Julius is just an irritating cockroach that now I must deal with publically, and I will call you, I will call all the press, and I will begin to deal with this and show you that Julius, whatever he criticises he is. Julius is a criminal, and I am going to show South Africans the crimes that he is involved in, he has been involved in, and I am going to tell South Africans why I truly, the real truth why I left the EFF, because of this cockroach.

So I am going to deal with this cockroach because we have given him time, we have given him respect, he has got his
10 issues. He hates himself, now he hates everybody else. He also went for the TG of the ANC, he gets personal on politics. We have stood back, but now it is over.

PRESENTER: Alright Kenny ...[intervenes].

MR KUNENE: It ends rights now, and I am going to deal with him.

PRESENTER: Alright.

MR KUNENE: Whenever I meet him ...[INTERVENES].

PRESENTER: Ja.

MR KUNENE: He must tell me that I am a *bantiti* in my
20 face. But in the meantime I will be calling the media and I will be addressing all these issues publically.

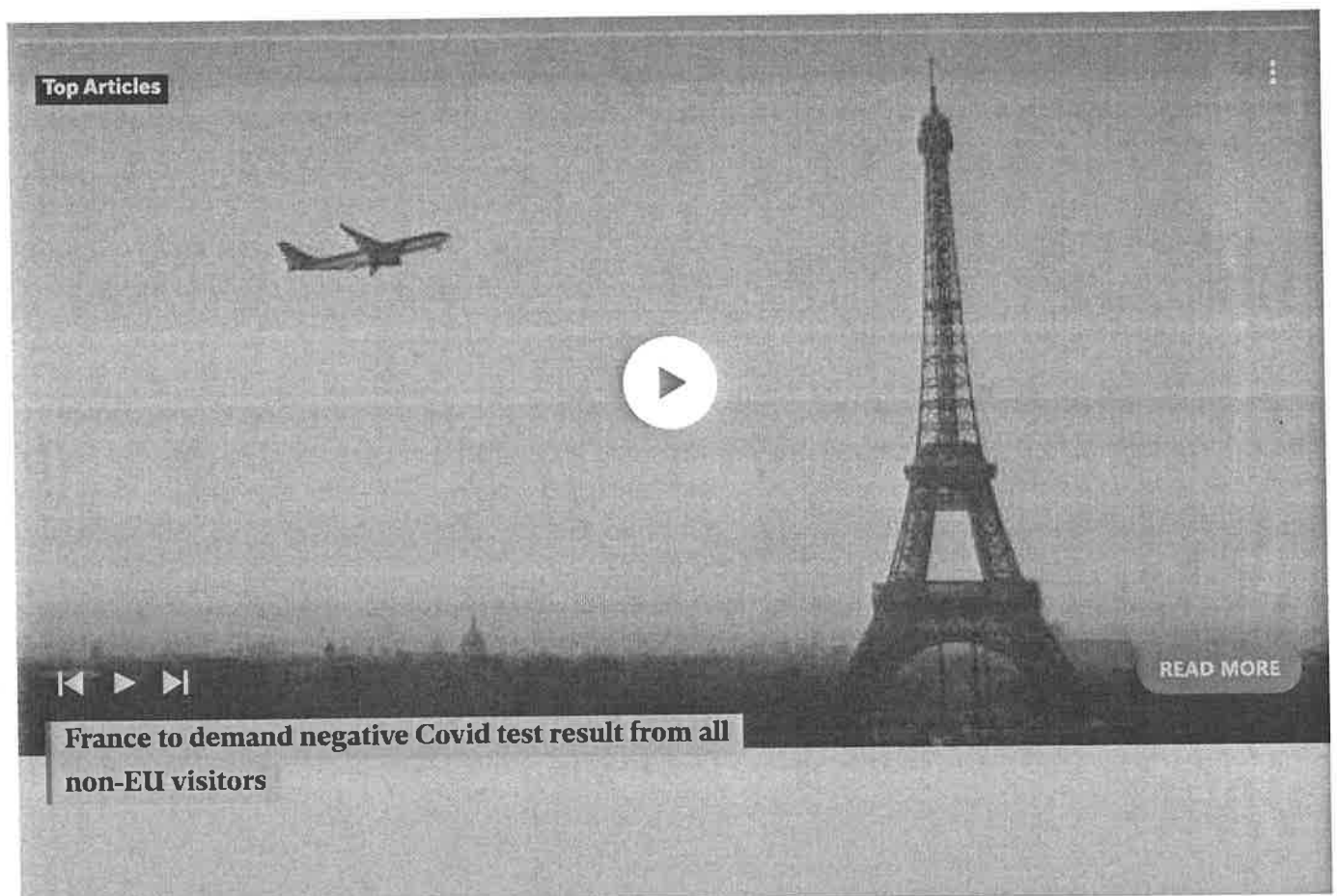
PRESENTER: Ja.

MR KUNENE: After we have done what our people have voted for us to do, and that will be just before December. We just want to conclude all our coalitions ...[intervenes].

JS



The High Commissioner criticised “almost all” of the UK’s tabloid newspaper for fabricating stories about immigrants.



“Asylum seekers and migrants have, day after day, for years on end, been linked to rape, murder, diseases such as HIV and TB, theft, and almost every conceivable crime and misdemeanour imaginable in front-page articles and two-page spreads, in cartoons, editorials, even on the sports pages of almost all the UK’s national tabloid newspapers,” Mr Al Hussein said.

“Many of these stories have been grossly distorted and some have been outright fabrications. Elsewhere in Europe, as well as in other countries, there has been a similar process of demonization taking place, but usually led by extremist political parties or demagogues rather than extremist media.”



"JM2"

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South Africa Speaker sorry for calling lawmaker 'cockroach'



Economic Freedom Fighters leader Julius Malema speaks after he was ordered out of Parliament during President Jacob Zuma's State of the Nation address in Cape Town February 12, 2015. REUTERS/Mike Hutchings

February 18, 2015

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JOHANNESBURG (Reuters) - South Africa's parliamentary Speaker Baleka Mbete said on Wednesday she was sorry for calling a firebrand opposition lawmaker a "cockroach" in the aftermath of a chaotic State Of The Nation address

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MEMBERS OF THE FARMER ECONOMIC FREEDOM FIGHTERS (EFF)

repeatedly interrupted Zuma's speech at the opening of parliament on Thursday to challenge him about graft allegations. A visibly angered Mbete, a member of Zuma's African National Congress (ANC), ordered the EFF lawmakers, led by rebel former ANC youth leader Julius Malema, to be thrown out of parliament, prompting a brawl between the EFF and police. Two days later, Mbete told an ANC rally that Malema was a "cockroach" and that Zuma's speech was a "beautiful opportunity" to "deal with those irritants". "I withdraw my remarks unreservedly. I apologize unconditionally, to South Africans, to Parliament and Honorable Julius Malema for any hurt or harm I may have caused," Mbete said in a statement. In parliament follow-up sessions this week, opposition lawmakers have heavily criticized Zuma for his failure to address allegations of graft and for South Africa's struggling economy and chronic power shortages. Zuma is due to respond on Thursday.

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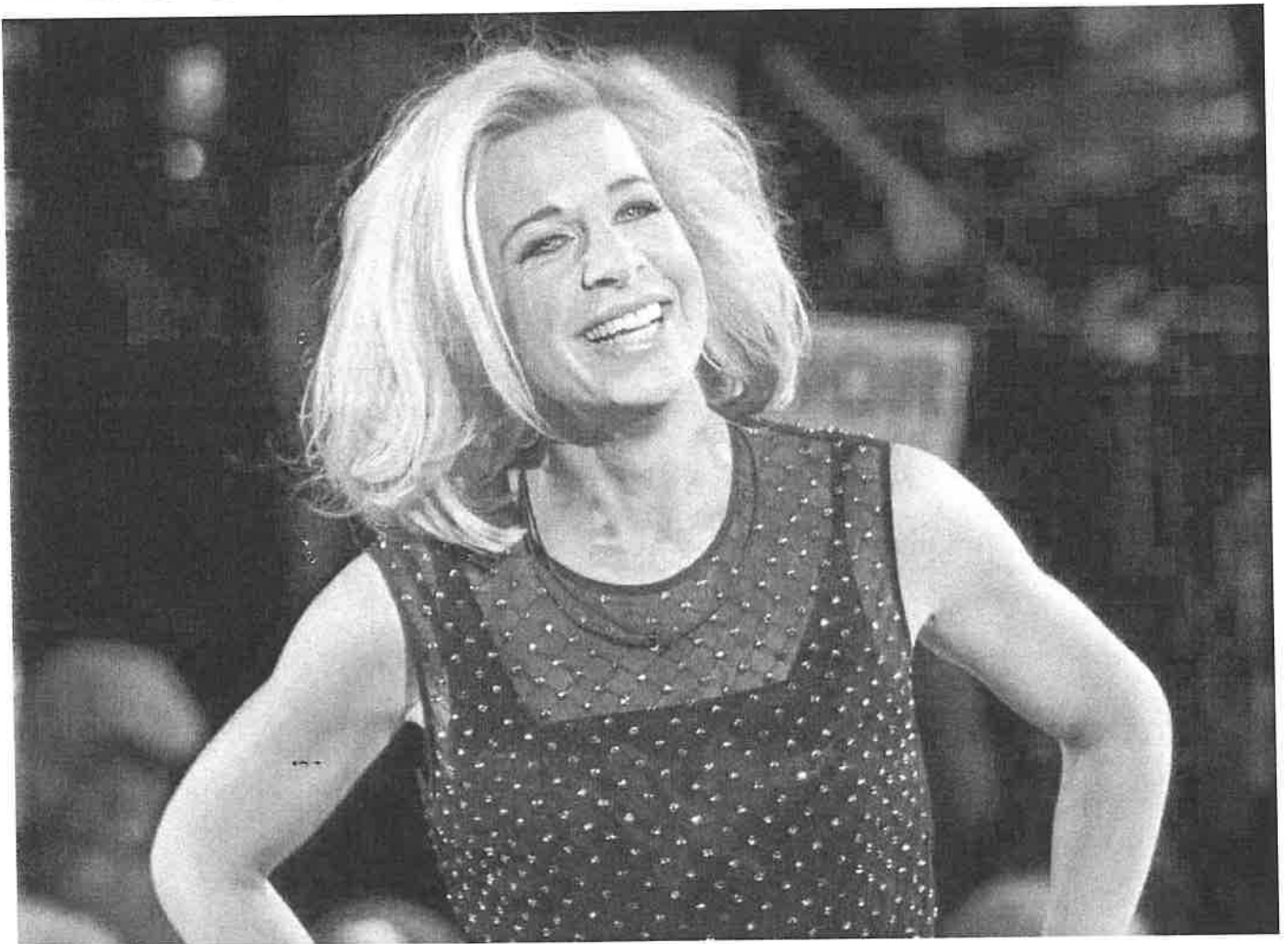
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News > UK > UK Politics

Katie Hopkins' migrant 'cockroaches' column resembles pro-genocide propaganda, says the UN

UN High Commissioner says tabloid coverage of immigration is causing direct loss of life in the Mediterranean

Jon Stone • Friday 24 April 2015 16:02 •  Comments



Katie Hopkins makes a living out of courting controversy (Ian Gavan/ Getty Images)



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"JM2"

He faces charges in Rwanda of inciting genocide and crimes against humanity stemming from an incendiary anti-Tutsi speech he gave in 1992.

Mr Mugesera maintains that the speech was taken out of context.

He has previously said that he fears torture or death if deported.

Mr Mugesera's lawyers had asked for extra time for the UN Committee Against Torture to investigate whether he would be at risk of persecution if sent back to Rwanda.

But the Quebec Superior Court dismissed his final appeal on Monday.

"I am not aware of any outstanding court issues... we will remove him as quickly as legally possible," a Canadian federal government official told Reuters.

Mr Mugesera was then taken to an airport in Montreal by Canadian border-services agents, local media reported.

Rwandan Foreign Minister Louise Mushikiwabo later wrote on Twitter that he had left on a plane bound for Kigali.

'Cockroaches'

The current Rwandan government has welcomed the court's decision.

In the 1992 speech Mr Mugesera, then a member of Rwanda's ruling Hutu party the MRND, allegedly told more than 1,000 party members that they should kill Tutsis and dump their bodies in the river.

He referred to Tutsis as cockroaches, and said they should be exterminated.

Many observers of the Rwandan genocide say the speech directly influenced the mass killings that ensued two years later, in which between 800,000 and one million Tutsis and moderate Hutus died.

More on this story

Canadian order to deport Rwandan

28 June 2005

Timeline: Rwanda

JS

5. These defamatory statements were originally made in a television interview given by you on the news channel, ENCA, yesterday, Thursday, 19 November 2021 at approximately 13h40.
6. Such defamatory statements include, but are not limited to:
 - 5.1. *"...this little frog, Julius is just an irritating cockroach.."*
 - 5.2. *"...Julius is a criminal.."*
 - 5.3. *"...I am going to show South Africans the crimes that he is involved in..."*
 - 5.4. *"...I left the EFF because of this cockroach..."*
 - 5.5. *"...I am going to deal with this cockroach..."*
 - 5.6. *"...I will deal with this little cockroach..."*
7. The interview can be viewed at the following link: [WATCH | PA's Kenny Kunene talks on coalitions | eNCA](#)
8. Your defamatory statements are meant to impugn the integrity and good name of our client by suggesting, alternatively implying, that:
 - 8.1. He is a criminal;
 - 8.2. He is sub-human, with the further purpose and/or intent of dehumanising to him;
 - 8.3. He is harmful to others and is vermin.
9. We record that in your interview:

JS

- 9.1. Your defamatory statements were presented as statements and/or conclusions of fact;
 - 9.2. To the extent that any evidence could be presented to support your claims, none was offered (understandably, because none exists); and
 - 9.3. Even if there was some factual basis to your statement, which there is not, your repeated use of particular phrases which have the purpose or effect of characterising our client as being sub-human, demonstrates your *animus injuriandi* and/or intention to defame and/or *mala fides*.
10. Your defamatory statements and/or conduct are vexatious, misplaced, spurious, and untrue.
11. We are furthermore instructed that:
 - 11.1. Your making these defamatory statements is done deliberately to exact political revenge on our client and the EFF in your capacity as the Chairperson of the Patriotic Alliance.
 - 11.2. Your desire to exact political revenge is related to the recent Local Government Elections in which you and our client were political rivals. In other words, your intention or purpose was to score political points by deliberately impugning our client's character.
 - 11.3. The defamatory statements were also made in retaliation against our client for labelling you a "convict". Insofar as our client labelled you a convict, we do not intend to remind you of your criminal convictions which are not only a statement of fact but a matter of public record.
12. It is clear that your conduct is motivated by your extreme animus towards our client in his personal capacity, as well as your desire to cause the EFF and Mr Malema maximum political damage (and which has the effect of further damaging their reputations).

JS

13. In light of the above, we hereby demand that:

13.1. you retract the statements made against our client;

13.2. your retraction is to take the form of a public statement in which you, *inter alia*:

13.2.1. apologise to our client for the allegations made; and

13.2.2. you retract the statements made against our client on account of them being untrue and defamatory of our client;

13.2.3. your retraction is immediate and that you accept the hurtful, damaging, defamatory, and unlawful effect it has had on our client and the EFF.

13.3. the public statement is to be shared by you on all your social media accounts, including but not limited to Facebook, Twitter, and Instagram;

13.4. the public statement is to be issued as a press statement in your name. To that end:

13.4.1. it must be sent by you to all media houses with which you have conducted interviews; and

13.4.2. the EFF will also distribute your public statement via its Communications Department to all the media houses whose contact details it possess.

13.5. R 1,000,000-00 (one million Rand) as a *solatium* payment flowing from your defamatory statements and conduct, which will be donated to, *inter alia*, the victims of the crimes you have been convicted for.

14. At this stage, we wish to advise you that:

- 17.2. Criminal charges for committing, *inter alia*, the act of *crimen injuria* for the chosen terminology used against him, including but not limited to intimidation and incitement.
18. We further record that if/when proceedings are brought against you and/or the Patriotic Alliance, our client intends to recover costs against one or both of you to be paid on the scale between attorney-and-client.
19. We hasten to add that given South Africa's own concerning history of tribalism, it is unfortunate that you would have chosen to perpetuate such within the Republic by conducting yourself as you have. This is even worse when the country experienced the unprecedented public violence that was experienced earlier this year.
20. We hope, on behalf of our client, that you will accept the terms of the demand set out above and comply therewith. As a political leader, you should accept accountability of the negative consequences caused by your conduct.
21. Should you fail to do so, and to avoid any doubt, please be advised that unless the demand in para 13 above is given effect to by close of business (17h00) on Monday, 22 November 2021, we hold instructions to institute further legal action against you and/or the Patriotic Alliance as set out above.
22. Be guided accordingly. All our client's rights remain reserved.

Yours faithfully,

IAN LEVITT ATTORNEYS
PER: A CHARALAMBOUS

SENT ELECTRONICALLY AND THEREFORE UNSIGNED

JS

Angelike Charalambous

From: Angelike Charalambous
Sent: Friday, 19 November 2021 17:42
To: vote@patrioticalliance.org.za
Subject: FW: RE: DEFAMATORY STATEMENTS MADE AGAINST MR JULIUS MALEMA, MP, ON ENCA INTERVIEW ON 18 NOVEMBER 2021
Attachments: Letter to Patriotic Alliance - 19.11.2021.pdf; Letter to Kunene - 19.11.2021.pdf
Importance: High

Attention: President of the Patriotic Alliance - Mr Gayton Mckenzie

Dear Sir,

RE: DEFAMATORY STATEMENTS MADE AGAINST MR JULIUS MALEMA, MP, ON ENCA INTERVIEW ON 18 NOVEMBER 2021

Please see attached hereto "*extremely urgent*" correspondence for your attention.

ANGELIKE CHARALAMBOUS
ATTORNEY



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11 JM6 11

Ian Levitt

ATTORNEYS & CONVEYANCERS

Your Ref
Our Ref
Date

A CHARALAMBOUS//MAT2648
18 NOVEMBER 2021

Writer's Email : angelike@ianlevitt.co.za

THE PATRIOTIC ALLIANCE

ATTENTION: MR GAYTON MCKENZIE

PER EMAIL: vote@patrioticalliance.org.za

"EXTREMELY URGENT"

"WITH PREJUDICE"

Dear Sir,

RE: DEFAMATORY STATEMENTS MADE AGAINST MR JULIUS MALEMA, MP, ON ENCA
INTERVIEW ON 18 NOVEMBER 2021

1. The above refers.
2. We confirm that we act on behalf of Mr Julius Malema, MP, the President and Commander-in-Chief of the Economic Freedom Fighters ("our client").
3. This letter is addressed to you in your capacity as President of the Patriotic Alliance, and on its behalf.
4. Attached hereto as annexure "A", is a letter sent to the Chairperson of the Patriotic Alliance, Mr Kenny Kunene, regarding certain defamatory statements made by him against our client on various media platforms. The details of those statements are contained in the annexure which we specifically incorporate herein by reference thereto.



Ian Levitt B.Com., LLB (Wits), HDip Tax Law (Wits), Michael Strauss BA Law (Stellenbosch) LLB (RAU),
ASSISTED BY: Jeanne B Strauss LLB,LLM, Cert in Medicine & Law (Cum Laude), Wikus Steyt LLB (UP), Sadiyah Samrod B.Com., LLB (UJ), Angelike Charalambous B.Com., LLB (UJ)

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B-BBEE Status: Level 4

CONVEYANCER: IN ASSOCIATION WITH MICHELLE CHAVKIN ATTORNEYS

For service in terms of Rule 4A(1)(c) email copy to: info@ianlevitt.co.za

JS

5. The interview can be viewed at the following link: [WATCH | PA's Kenny Kunene talks on coalitions | eNCA](#)
6. You will note that at the time the defamatory statements were made, Mr Kunene was clearly identified as the Patriotic Alliance Deputy President. You will also note that Mr Kunene was wearing the regalia of the party.
7. In other words, when Mr Kunene committed his acts of defamation, he was acting in the Patriotic Alliance's interests.
8. To this end, we have informed Mr Kunene that should he not apologise to our client according to the terms and conditions set out in paragraph 13 of annexure "A", that our client reserves its rights to sue the Patriotic Alliance on a joint and several basis.
9. This letter is addressed to you to make the additional demand that:
 - 8.1. you distance yourself from, and as a party retract, the statements made against our client by the Patriotic Alliance Chairperson;
 - 8.2. your distancing and retraction is to take the form of a public statement in which you, *inter alia*:
 - 8.2.1. apologise to our client for the allegations made; and
 - 8.2.2. you retract the statements made against our client on account of them being untrue and defamatory of our client;
 - 8.2.3. your retraction is immediate and that you accept the hurtful, damaging, defamatory, and unlawful effect it has had on our client and the EFF.
 - 8.3. the public statement is to be shared by you on all your social media accounts, including but not limited to Facebook, Twitter, and Instagram;

JS

- 8.4. the public statement is to be issued as a press statement in your name. To that end:
- 8.4.1. it must be sent by you to all media houses with which you have conducted interviews;
and
- 8.4.2. the EFF will also distribute your public statement via its Communications Department to all the media houses whose contact details it possess.
- 8.5. R 1,000,000-00 (one million Rand) as a *solatium* payment flowing from your party's defamatory statements and conduct, which our client intends to donate.
9. We are furthermore instructed that Mr Kunene's conduct was and is intended to gain maximum political advantage for the Patriotic Alliance by deliberately impugning our client's character.
10. It is clear that Mr Kunene's conduct was and is motivated by extreme animus towards our client in his personal capacity, as well as his common cause desire with you to cause the EFF and Mr Malema maximum political damage (and which has the effect of further damaging their reputations).
11. At this stage, we wish to advise you further that:
- 11.1.1. Our client reserves his right to lay appropriate complaints with the Independent Electoral Commission against the Patriotic Alliance for conduct that is a breach of, *inter alia*, the Electoral Act, 73 of 1998, and, the Electoral Code; and/or
- 11.1.2. Our client reserves his right to bring proceedings against the Patriotic Alliance before the Electoral Court.
12. As stated in annexure "A", Mr Kunene repeatedly used the term "cockroach" when referring to our client. This was done repeatedly and framed in a way that our client would be "dealt with".

JS

13. We draw your attention to the fact that the term cockroach was used as a form of political speech to justify the inhumane treatment meted out on Tutsis by Hutus during the Rwandan genocide. The term became popularised and ingrained in the public sphere as prominent politicians used the term which was then flighted on various media channels and served as a basis for the crimes committed in that country.
14. As such, we further advise the Patriotic Alliance that if it does not accede to our demands as set out in this letter, we further reserve our client's rights to bring proceedings in respect of:
- 14.1. Hate speech and/or discrimination as defined in Promotion of Equality and Prevention of Unfair Discrimination Act, 4 of 2000, and/or the Constitution and/or the common law;
- 14.2. Criminal charges for committing, *inter alia*, the act of *crimen injuria* for the chosen terminology used against our client, including but not limited to intimidation and incitement.
15. We further record that if/when proceedings are brought, our client intends to recover costs to be paid on the scale between attorney-and-client.
16. We hasten to add that given South Africa's own concerning history of tribalism, it is unfortunate that your party would have chosen to perpetuate such within the Republic by national office bearers conducting themselves as yours have. This is even worse when the country experienced the unprecedented public violence that was experienced earlier this year.
17. We hope, on behalf of our client, that you will accept the terms of the demand set out above and comply therewith. As a political leader, your party should accept accountability of the negative consequences caused by Mr Kunene's conduct.
18. Should you fail to do so, and to avoid any doubt, please be advised that unless the demand in para 8 above is given effect to by **close of business (17h00) on Monday, 22**

JS

14.1. During the interview in which you made your defamatory statements, you appeared to wear the regalia of your political party. To the extent that you conducted the interview in your ex officio capacity in respect of the Patriotic Alliance, we expressly reserve our client's rights to:

14.1.1. Sue you and the Patriotic Alliance on a joint and several basis, should litigation become necessary; and/or

14.1.2. Lay appropriate complaints with the Independent Electoral Commission for your conduct which is a breach of, *inter alia*, the Electoral Act, 73 of 1998, and, the Electoral Code; and/or

14.1.3. Bring proceedings against both you and the Patriotic Alliance before the Electoral Court.

15. Furthermore, we also record that you repeatedly used the term "cockroach" when referring to our client. You did so repeatedly. You also spoke of "dealing with" (read as getting rid of) our client whom you had referred to as a cockroach.

16. The term cockroach was used to justify the inhumane treatment meted out on Tutsis by Hutus during the Rwandan genocide. The term became popularised and ingrained in the public sphere as prominent politicians used the term which was then flighted on various media channels and served as a basis for the crimes committed in that country.

17. As such, we further advise you that if you do not accede to our demands as set out in this letter, we further reserve our client's rights to bring proceedings against you and/or the Patriotic Alliance in respect of:

17.1. Hate speech and/or discrimination as defined in Promotion of Equality and Prevention of Unfair Discrimination Act, 4 of 2000, and/or the Constitution and/or the common law;

SS

November 2021, we hold instructions to institute further legal action against you and/or the Patriotic Alliance as set out above.

19. Be guided accordingly. All our client's rights remain reserved.

Yours faithfully,

IAN LEVITT ATTORNEYS
PER: A CHARALAMBOUS

SENT ELECTRONICALLY AND THEREFORE UNSIGNED

55

Angelike Charalambous

From: Angelike Charalambous
Sent: Friday, 19 November 2021 17:42
To: vote@patrioticalliance.org.za
Subject: FW: RE: DEFAMATORY STATEMENTS MADE AGAINST MR JULIUS MALEMA, MP, ON ENCA INTERVIEW ON 18 NOVEMBER 2021
Attachments: Letter to Patriotic Alliance - 19.11.2021.pdf; Letter to Kunene - 19.11.2021.pdf
Importance: High

Attention: President of the Patriotic Alliance - Mr Gayton Mckenzie

Dear Sir,

RE: DEFAMATORY STATEMENTS MADE AGAINST MR JULIUS MALEMA, MP, ON ENCA INTERVIEW ON 18 NOVEMBER 2021

Please see attached hereto "*extremely urgent*" correspondence for your attention.

ANGELIKE CHARALAMBOUS
ATTORNEY



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