

**Judges give journos good news; Court decisions of late have celebrated the freedom to publish, but with freedom comes responsibility. *The Star* (South Africa), 12 February 12, 2008.  
Written by Dario Milo**

The past two weeks have been spectacular for freedom of the media. First, Judge Willie Seriti handed down his reasons for denying Eugene de Kock an interdict against the distribution of the book *White Power & the Rise and Fall of the National Party* by Christi van der Westhuizen.

Then acting judge Nazeer Cassim ruled that section 12 of the Divorce Act, which prohibits the publication of the majority of information that comes to light in divorce proceedings, was unconstitutional.

And finally ANC President Jacob Zuma announced that he would be withdrawing the bulk of his damages claims against the media. It is worth pausing to consider each of these developments in further detail.

The De Kock case illustrates that interdicts in defamation cases should only rarely be granted.

If interdicts are too easily awarded, many matters that the public has a right to be informed of will never see the light of day. In an historic judgment in May last year, the Supreme Court of Appeal found in favour of e.tv in its appeal against an interdict that required it to disclose to the state a copy of an intended documentary on the baby Jordan murder.

The court set a high threshold for persons seeking to interdict the media.

A proper application of the e.tv principle will have the result that very few interdicts for defamation should now succeed.

Those affected by defamatory publications should only be able to interdict the media if it is clear that no defence - such as truth and public interest - applies.

Otherwise, they will have to rest content with a claim for an apology or damages.

In another development in the defamation arena, Zuma issued a press release saying he was withdrawing the defamation component of his claims against various media houses.

He has load-shed his claims from about R63-million to R12-million.

The targets of Zuma's litigation read like a "who's who" of the South African media: Zapiro, *The Star*, David Bullard, the *Sunday Times*, *The Citizen*, the *Sunday World*, William Gumede, the *Sunday Independent*, *Rapport* and the *Rude Awakening* team of *Highveld Stereo*.

Zuma's reasons for taking this step, according to his press release, are that he realised as time went by that people "were not fooled by the propaganda against me", and that Polokwane confirmed this impression.

He also says that his cases were "never about the money" (though he continues to claim about R12-million as opposed to suing for an apology or correction). What this means is that Zuma's case is now one of insult - whether he felt insulted by the media coverage in circumstances where a reasonable person would also have felt insulted.

In defamation cases, the test is different: whether reasonable people would tend to think less of Zuma.

The courts will, however, still have to engage in a similar balancing act: between Zuma's dignity and the media's right, for example, to publish satirical commentary and cartoons about public figures. It is nevertheless good news that Zuma will no longer be proceeding with the bulk of his claims.

The third in the hat-trick was the Johannesburg High Court's declaration that section 12 of the Divorce Act was unconstitutional in the case between the Sunday Times and Claire Difford.

The Constitutional Court must now ultimately rule on the constitutionality of this provision.

The Divorce Act's prohibition on publication amounts to a near blanket ban on publication of all details that come to light in divorce proceedings.

The facts of the Difford case illustrate vividly how this provision, while ostensibly aimed at protecting privacy, uses a sledgehammer to crack a nut: the Difford case was not even a divorce action but a civil claim for alleged paternity fraud, apparently the first case of its kind in South Africa.

The Divorce Act technically prohibited a report of the case merely because some of the relief claimed was that the divorce order between the Diffords (obtained some 12 years ago) should be rescinded or amended.

But even if the Constitutional Court confirms Cassim's decision, this should not give the media free rein to publish all the salacious details of divorces between private or public figures.

It is not the role of the media to air the public's dirty laundry.

On the other hand, where a divorce case, or evidence led in the course of such proceedings, raises important issues of public interest, the media should not be subjected to criminal sanction for informing the public of facts that the public has a right to know.

While interdicts against speech such as those originally granted in the De Kock and Difford cases should now only be awarded where extreme circumstances apply, this should not excuse sloppy journalism.

The freedom to publish that is celebrated by these decisions cannot be wasted on stories that are badly researched.

The courts are increasingly trusting the media to get it right.

It is now up to our investigative journalists to show the public that this trust is not misplaced.