

**Defamation law protects good reputations, not bad. *Sunday Times* (South Africa).  
3 February 2008, written by Dario Milo.**

This week Judge Willie Seriti handed down a detailed judgment on whether the media may be interdicted in defamation matters. Notorious apartheid murderer Eugene de Kock had succeeded before Pretoria High Court Judge Willie Hartzenberg in November last year in an application for an interim interdict against Christi van der Westhuizen, the author of *White Power and the Rise and Fall of the National Party*, and publisher Zebra Press.

The interdict granted De Kock the broadest relief imaginable pending the return date, prohibiting Van der Westhuizen and Zebra from further printing and distributing the book, ordering that they reclaim all copies from distributors and pay the application costs.

Most staggering of all was that this draconian relief was sought and granted without the court hearing any argument from Van der Westhuizen or Zebra - an unprecedented use of the *ex parte* procedure in a defamation case.

The allegation about which De Kock complained was a quote from Leon Wessels, the former Deputy Minister of Law and Order: "The State Security Council ... would never, never have given permission for a police general to make a false statement under oath in court to cover up a death that happened during torture ... Another example would be Eugene de Kock, braaing meat and drinking for hours next to a corpse that they had set on fire ... I deny that this ever would have enjoyed the sanction of any security council, whether under PW or FW."

De Kock was convicted in 1996 of 82 criminal counts, including six murder counts, and sentenced to two life sentences. Judge Willem van der Merwe described him in his sentencing, in essence, as a cold-blooded calculating multiple murderer.

De Kock also confessed to all sorts of atrocities before the Truth and Reconciliation Committee's amnesty committee, including that he ordered the destruction of corpses by "dynamiting" them with explosives.

After receiving notice of the court order De Kock had obtained, Zebra decided to settle with him, resulting in the book being withdrawn and the offending quotation removed. But Van der Westhuizen elected to fight.

De Kock's first mistake in his ill-conceived application was fatal. Having brought an *ex parte* application, the onus was on him to observe the utmost good faith and disclose all material facts to the court.

All De Kock had told the court was that he was currently serving a life sentence for "crimes committed in the service of the previous government".

Judge Seriti berated De Kock for not disclosing in detail his criminal history to the court.

The findings of the sentencing judge, Judge Van der Merwe, were "relevant and crucial material" to his claim that his reputation was harmed by the book, as were the decisions of the TRC's amnesty committee.

Judge Seriti didn't let things end there.

In what is a major victory for freedom of the media, he went on to rule that, in any event, Van der Westhuizen had proved that the essence or sting of the Wessels quotation was true and in the public interest.

Judge Seriti said that the quotation implied that De Kock was a cold-blooded murderer who callously and with total disrespect denigrated and destroyed the bodies of people who had been murdered, and who was in these respects devoid of compassion and humanity.

Judge Seriti accepted that the thrust of the quotation was correct, given Judge Van der Merwe's sentencing of De Kock and the findings of the TRC's amnesty committee.

This finding sends a strong message to characters like De Kock with skeletons in their closets who shout "my good name!" in an empty courtroom in an attempt to stifle publication.

The media are entitled to rely on documents in the public domain to show the court that the applicant has a bad reputation in the same area of his life as that to which the publication relates.

The law of defamation protects good reputations, not bad ones. And in circumstances such as these, a court should tell an applicant like De Kock to go straight back to jail.