

Judge makes U-turn on State Security Agency judgment

By [Tania Broughton](#)

19 Oct 2022

Judge Molefe decides to make public her judgment suppressing Independent Newspapers report.



The Pretoria High Court judge who ruled against the publication of a report on a State Security Agency document has finally made her judgment public. Graphic: Lisa Nelson / GroundUp

- Judge Daisy Molefe has decided to make public her judgment suppressing an Independent Newspapers report on a leaked State Security Agency document.
- The judgment, handed down on 5 October, followed an application by the Minister for State Security who claimed the document, titled “US interest in ANC party dynamics”, was classified as secret.
- The SSA then said that the judgment itself was confidential.

A Pretoria High Court judge has apparently had a change of heart and this week made public a previously “confidential” judgment where she suppressed a newspaper report on a leaked State Security Agency (SSA) document.

[Read the judgment](#)

On 5 October, the Minister of State Security Zizi Kodwa obtained a final interdict from Judge Daisy Molefe against Independent Media, preventing publication of an article about a State Security Agency report. An SSA spokesperson told *GroundUp* then that Judge Molefe’s ruling “could not be made public by order of the court”.

Professor Anton Harber, executive director of the Campaign for Free Expression, took issue with this. On his Twitter account he said he had written to the judge to ask her to release the judgment. Late yesterday, he said he had received the judgment and said “it looks like she was just trying to hide an act of censorship, one she knew would be contentious”.

The judgment gives little insight into the intelligence report, with the judge saying only that she had taken a “judicial peek” at

it.

The application was initially brought by the minister against *Daily News* journalist Thabo Makwakwa and the company as an urgent interdict in December last year. The *Daily News* is part of Independent Newspapers, which is owned by Independent Media.



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Judge Molefe records that this was after the SSA received a text message from Makwakwa in December to which a copy of a report, classified as “secret”, was attached. The journalist posed questions about the report.

Later that month, the journalist sent whatsapp messages to Brian Dube, spokesperson for Minister Kodwa, and others, including the spokesperson for the Presidency and the US consulate, also asking questions in relation to the report.

When Makwakwa posted a tweet that was “sensitising readers about a big leak that was to be published”, the minister launched the urgent, *ex parte* (without notice to the other side) application and obtained an interim interdict barring publication in the interests of state security.

It was the finalisation of this interdict which was argued before Judge Molefe.

Judge Molefe said in her judgment that the report had been compiled in 2020 under the heading “US interest in ANC Party dynamics”.

She said the minister had argued that the report was classified as secret because it contained allegations regarding the interaction and the nature of the working relationship between the US and SSA, “the disclosure of which can disrupt the effective execution of information or operational planning”.

The minister argued that the report implicated “certain high profile South African politicians” and specifically dealt with the USA’s involvement in causing conflicts and instabilities in the ANC and which members of the ANC pose a threat to the US’s interest in South Africa. The disclosure, the minister argued, “may seriously compromise the peace and well-being of the people of South Africa as it may cause civil unrest, damage the diplomatic relationship between South Africa and the USA and endanger the lives of the persons mentioned in the report”.

Consequently, any unauthorised possession was unlawful and Makwakwa was not entitled to have it in his possession or publish or report on it, the minister argued. The minister said Makwakwa had already published an article on it, in spite of being aware of the interim interdict.



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Tania Broughton 22 Sep 2022



The journalist and Independent Media argued that the contents of the report did not justify any classification, that most of its contents were already in the public domain, and that it was evidence of an involvement by the SSA in ANC politics, said Judge Molefe. They said that the “language used in the report is disturbing as it appears that the SSA is issuing orders to the government to not only take steps regarding the factional dispute within the ANC but to promulgate legislation”.

Judge Molefe said the Protection of Information Act provided that after a document was classified as “secret”, possession by an unauthorised person was unlawful. She said it was common cause that Makwakwa was not an authorised person, and his continued possession of the report constituted a crime under the Act.

Judge Molefe said the report had been given to her at the hearing for her to determine if it could be described as “national security information”.

“Although Makwakwa is not a specialist or an expert to interrogate the report, in the answering affidavit he provided a detailed analysis and concluded that the report had nothing to do with state security and everything to do with the factional in-fighting within the ANC. His view is also that the SSA has no business getting involved in party political contest and that in the public interest, the report should be interrogated in the public domain in furtherance of transparency, accountability and responsiveness,” she said.

The judge said she had had a “judicial peek” at the SSA report and was satisfied that the minister had made out a case for a final interdict.

She interdicted Makwakwa and Independent Media from publishing the report or any part of it and ordered that they immediately return the document to the minister.

She ordered that Independent Media pay the costs of the application.

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