



BEEN THERE, SEEN IT, DONE IT. Leader of the Good party and Public Works and Infrastructure Minister Patricia de Lille leaves the High Court in Johannesburg yesterday. Picture: Tracy Lee Stark

DA ‘need not apologise’

PHONE CALLS: PARTY PROTECTED BY FREEDOM OF SPEECH CLAUSE – CLAIM

» **‘Fired’ member De Lille says the party will find it difficult to convince the court.**

Simnikiwe Hlatshaneni

Was it defamatory to say a person was “fired”, whether that was true or not?

That seemed to be at the centre of the Democratic Alliance’s (DA) argument against being forced to apologise to former DA member Patricia de Lille by the Electoral Commission for saying she was fired from the party.

The matter was heard at the High Court in Johannesburg during the DA’s challenge of the commission ordering that the party apologise for stating during election campaign phone calls that it fired De Lille for being involved

in wrongdoing in the City of Cape Town.

These statements formed part of a script read out in automated phone calls directed at potential voters in the run-up to the May 8 elections. The DA felt it did not have to apologise for that because they were protected by the freedom of speech clause in the constitution and that the message constituted fair comment.

“There’s nothing wrong, immoral or improper with saying someone has been fired,” argued DA’s senior counsel Ismail Jamie.

While the three presiding officers grilled Jamie for explanations on how the words “we fired [De Lille]” could be interpreted as fair comment, he argued the stipulations on the Electoral Act on what parties could say during an election were “draconian” and lamented that such an “innocuous” word as “fired”

could render one liable for civil or criminal liability.

Jamie went on to compare the utterance to a similar campaign message stating that former president Jacob Zuma had stolen government funds to build his Nkandla home. That, he argued was a far worse scenario for which the same commission found no wrongdoing.

Speaking during recess, De Lille said it was still early days to make an assessment of the strength of the DA’s argument, but pointed out that the party would have a difficult time arguing that fair comment need not be fact.

“I think the court also made a point between fact and comment – is it a fact, can they produce the evidence whether they, in fact, fired me,” she said. “And that is where they are lying – they say no, it was comment, and the court is asking but is it a fact?”

The Electoral Commission of SA (IEC) – first respondent – was opposing it along with the Good party and the ANC who were the second and third respondents.

Also in dispute during proceedings was whether the commission acted within its powers when it ordered the DA to apologise to De Lille. In the DA’s heads of argument, the party contends that state functionaries, no matter how well-intentioned, may only do what the law empowers them to do.

“On April 15, 2019, the first respondent [‘the commission’], claimed for itself the power to decide whether political speech is true or not,” was how the party phrased it, “and to enforce its decision on pain of up to a decade’s imprisonment – all without recourse to a court and with very little due process.

“The commission has never, to the applicant’s knowledge, claimed such a power before.”

Judgement was reserved. –simnikiweh@citizen.co.za

There’s nothing wrong, immoral or improper here