

# Technology & Communications



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SOUTH AFRICA

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## Summary of the POPIA case of *Munetsi v Madhuyu and Another*

The Western Cape High Court recently handed down a judgment that applied certain provisions of the Protection of Personal Information Act 4 of 2013 (POPIA). Mr Munetsi (the applicant), applied to the court seeking relief (a public apology) in light of Mr Madhuyu and another's (respondents) publication on social media platforms of the applicant's personal information which he alleged to be defamatory. The respondents published the applicant's mobile number on Facebook, together with a video. The video prompted the respondents' followers to contact the applicant, and thus resulted in a large volume of phone calls made to his number. The applicant claimed that such publication breached POPIA's provisions (without any reference to a particular clause), as well as his right to privacy.

Section 11 of POPIA provides that personal information may only be processed if:

- the data subject consents to the processing;
- the processing is necessary to carry out actions for the conclusion or performance of a contract to which the data subject is party;
- the processing complies with an obligation imposed by law on the responsible party;
- the processing protects a legitimate interest of the data subject;
- the processing is necessary for the proper performance of a public law duty by a public body; or
- the processing is necessary for pursuing the legitimate interests of the responsible party or of a third party to whom the information is supplied.

The court agreed with the applicant and found that:

- section 11(1) of POPIA stipulates that personal information may only be processed in specific circumstances, and none of those circumstances applied in this case; and
- by making the applicant's mobile number publicly available on social media, the respondents breached section 11 of POPIA.

The court ordered that the respondents remove any video or message containing the applicant's picture and mobile number from their social media platforms and an interdict prohibiting them from publishing the applicant's personal information without his consent in the future.

## Summary of the POPIA case of *Munetsi v Madhuyu and Another*

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### Competent remedy for a breach of POPIA

The court also noted that a public apology is not a competent remedy for a breach of POPIA. The recognised remedies are damages or an interdict. Therefore, the court did not grant the applicant's request for a public apology. Furthermore, the court found that the publication of the applicant's personal information to thousands of followers on social media platforms breached his common law right to privacy.

The decision by court highlights the importance of being cautious when publishing personal information to social media in a business capacity. POPIA does not apply to the processing of personal information in the course of a purely personal or household capacity. For example, this is where an individual would post content in a personal capacity under a personal account, and such individual would not be expected to abide by POPIA's provisions. This does not mean that such an individual may publish other data subject's personal information without obtaining consent for the publication. Affected individuals will have recourse under common law in the event that the post breaches the privacy of that individual. However, where a social media post is created in a business capacity, the business is required to adhere to POPIA's requirements, by seeking consent or relying on another ground of justification under section 11 for the publication of personal information.

The court in this case also clarified that an interdict is an appropriate remedy for a breach of POPIA. It is also an important precedent as public apologies are not construed as appropriate remedies for breaches of POPIA and responsible parties must consider the prospect of damages instead. An apology may, however, be considered as a form of mitigation in relation to a damages claim.

In light of the above, businesses as responsible parties in terms of POPIA should take care when publishing to their business social media accounts. Here are key tips for ensuring compliance with privacy laws such as POPIA:

1. Develop a social media policy and procedure which sets out guidelines for responsible social media use and protections for personal information.
2. Obtain informed consent for the publication of personal information. Individuals that will be featured on a business page must understand what information will be shared and used.
3. Provide clear privacy notices. When running a social media campaign, ensure that your privacy notices explain how personal information will be used.
4. If you use third party tools for marketing and publication, ensure that the tools are compliant with privacy laws such as POPIA and the General Data Protection Regulation (EU) 2016/679.
5. Be cautious with user-generated content. Ensure that you have obtained permissions to reshare user-generated content, especially if it contains personal information.
6. Restrict publication of personal information on publicly accessible social media platforms and ensure that personal information is only exchanged privately through direct messages.

**Tayyibah Suliman and Sadia Rizvi**

## OUR TEAM

For more information about our Technology & Communications sector and services in South Africa and Kenya, please contact:



### **Tayyibah Suliman**

Sector Head:  
Technology & Communications  
Director: Corporate & Commercial  
T +27 (0)11 562 1667  
E tayyibah.suliman@cdhlegal.com



### **Shem Otanga**

Partner | Kenya  
T +254 731 086 649  
+254 204 409 918  
+254 710 560 114  
E shem.otanga@cdhlegal.com



### **Njeri Wagacha**

Partner | Kenya  
T +254 731 086 649  
+254 204 409 918  
+254 710 560 114  
E njeri.wagacha@cdhlegal.com



### **Jerome Brink**

Director:  
Tax & Exchange Control  
T +27 (0)11 562 1484  
E jerome.brink@cdhlegal.com



### **Simone Dickson**

Consultant  
T +27 (0)11 562 1752  
E simone.dickson@cdhlegal.com



### **Emma Kingdom**

Consultant  
Corporate & Commercial  
T +27 (0)21 481 6330  
E emma.kingdom@cdhlegal.com



### **Izabella Gutlar-Balkovic**

Associate:  
Corporate & Commercial  
T +27 (0)11 562 1199  
E izabella.balkovic@cdhlegal.com



### **Rizichi Kashero-Ondego**

Associate | Kenya  
T +254 731 086 649  
+254 204 409 918  
+254 710 560 114  
E rizichi.kashero-ondego@cdhlegal.com



### **Sadia Rizvi**

Associate:  
Corporate & Commercial  
T +27 (0)11 562 1727  
E sadia.rizvi@cdhlegal.com



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**JOHANNESBURG**

1 Protea Place, Sandton, Johannesburg, 2196. Private Bag X40, Benmore, 2010, South Africa.

Dx 154 Randburg and Dx 42 Johannesburg.

T +27 (0)11 562 1000 F +27 (0)11 562 1111 E [jhb@cdhlegal.com](mailto:jhb@cdhlegal.com)

**CAPE TOWN**

11 Buitengracht Street, Cape Town, 8001. PO Box 695, Cape Town, 8000, South Africa. Dx 5 Cape Town.

T +27 (0)21 481 6300 F +27 (0)21 481 6388 E [ctn@cdhlegal.com](mailto:ctn@cdhlegal.com)

**NAIROBI**

Merchant Square, 3<sup>rd</sup> floor, Block D, Riverside Drive, Nairobi, Kenya. P.O. Box 22602-00505, Nairobi, Kenya.

T +254 731 086 649 | +254 204 409 918 | +254 710 560 114

E [cdhkenya@cdhlegal.com](mailto:cdhkenya@cdhlegal.com)

**STELLENBOSCH**

14 Louw Street, Stellenbosch Central, Stellenbosch, 7600.

T +27 (0)21 481 6400 E [cdh Stellenbosch@cdhlegal.com](mailto:cdh Stellenbosch@cdhlegal.com)

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