

**IN THE ENFORCEMENT COMMITTEE OF THE FILM AND PUBLICATION
BOARD (FPB)**

Film and Publication Board (FPB)

Applicant

and

MzansiFun

1st Respondent

Themba Eamon Mahlangu

2nd Respondent

Case No: 016/2025/RD/KZN

Date of hearing: 10 March 2026

MEMBERS OF THE ENFORCEMENT COMMITTEE

Judge Thokozile Masipa - Chairperson

Ms Malini Maharaj - Member

Dr. Adv Nzumbululo Silas Siphuma - Member

OFFICE OF THE ENFORCEMENT COMMITTEE

Mpho Mooketsi - Registrar

LEGAL REPRESENTATION

For the Applicant

Ms N Baloyi

For the Respondent

(No Appearance)

DECISION

Judge Thokozile Masipa

INTRODUCTION

[1] This is a referral in terms of Rule 3 of the Rules of the Enforcement Committee.

[2] It is brought in terms of section 6B of the Films and Publications Act No 65 of 1996 as amended ("FP Act").

THE PARTIES

[3] The Applicant is the Film and Publication Board ("FPB"), a statutory body established in terms of section 3 of the Film and Publication Act 65 of 1996, as amended.

[4] It is a public entity responsible for the regulation, of the creation, production, possession and distribution of films, videos, games and certain publications.

[5] The First Respondent is MzansiFun, a legal entity, an online distributor of films. According to the Applicant, the physical address of the First Respondent is unknown to the Applicant, but presumably, is somewhere in South Africa.

[6] The second Respondent is Themba Eamon Mahlangu. He is described in the papers by the Applicant as an adult male responsible for the running of the affairs

of the first Respondent with the physical address unknown to the Applicant, and the email addresses being hostmasters@1and1.com and Themba.eamon@gmail.com

[7] However, he reportedly described himself as the developer of the website of first Respondent.

[8] There was, therefore, a concern whether the second Respondent was indeed cited correctly.

[9] In response to the concerns raised by the Enforcement Committee, the Applicant stated that during its investigation, it communicated with the Second Respondent as his name appeared on the website of the First Respondent as the contact person.

[10] Mr. Mahlangu denied that he was the owner of the First Respondent or that he represented the First Respondent in any way.

[11] In addition, he refused to disclose the name of the owner or founder of the First Respondent.

THE ALLEGED NON-COMPLIANCE

[12] The Applicant alleged that the Respondents failed to have the First Respondent registered as a distributor with the Applicant in terms of section 18(1)(a) of the FP Act.

[13] In addition, the Respondents allegedly failed to submit its films to the Applicant for classification as required by section 18(1)(b) of the FP Act.

THE RELIEF SOUGHT

[14] The Applicant stated that it did not seek to impose new obligations on the Respondents but merely sought an order compelling the Respondents to pay pre-determined penalties, as a result of the Respondents' failure to comply with obligations as set out in the FP Act. These penalties are prescribed in section 24A of the FP Act.

THE RESPONDENTS' RESPONSE

[15] There was no response from the Respondents. In addition, there was no appearance.

SERVICE

[16] A question arose whether there had been proper service on the Respondents. A document, purportedly proof of service, was annexed to the Applicant's papers. However, it was illegible and, as a result, the Enforcement Committee ("EC") requested counsel for the Applicant to provide a legible copy of proof of service. At the time of the writing of this judgment that document was still outstanding. However, in view of the approach, taken in this judgment, regarding the status of the Second Respondent, the issue of illegible documents has become of no practical relevance.

CONDONATION APPLICATION

The Application for a condonation of the late filing of the Notice of Referral

[17] The Applicant made a condonation application for the late filing of the Notice of Referral. The application was not opposed.

[18] For an application for condonation to be granted, the Applicant must show good cause.

[19] Good cause includes an explanation of the nature, reasons and extent of the delay, prejudice likely to be suffered by the Respondents if the application were to be granted, the Applicant's prospects of success in the main application, and whether or not it would be in the public interest if the application were to be granted.

DELAY

[20] The delay was caused by the fact that the Applicant is under resourced. This has negatively affected its performance to an extent that it, inter alia, is unable to meet its deadlines. (See the annexed judgment on condonation applications).

[21] In the present case, the EC was satisfied that the delay was caused by the shortage of Human Resources, something which is beyond the control of the Applicant. The Enforcement Committee raised a concern that this was a recurring problem, as reflected in most cases that were brought before it. There was, however, from a report that something was being done to prevent undue delays.

PREJUDICE

[22] The EC was also satisfied that no prejudice would be suffered by the Respondent if the application were to be granted. The Respondent would still be in business. All it needed to do was to comply with the provisions of the FP Act.

[23] On the other hand, refusing the application would cause prejudice to the Applicant and to the public that the FP seeks to protect.

PROSPECTS OF SUCCESS

[24] In the present case it is clear that the prospects of success for the Applicant in the main application are good. I say this because it has been established that the First Respondent is a distributor of films and that it is not registered as a distributor with the Applicant. There is also evidence that it failed to submit its films to the Applicant for classification.

[25] The second Respondent did not deny any of the allegations. He only stated that he could not take any responsibility for the conduct of the first Respondent as he was not the owner. With such formidable evidence against the first Respondent, therefore, not granting the application, might create a bad precedent, send the wrong message to the public and encourage lawlessness in the industry.

[26] In addition to the above, non-compliant distributors/exhibitors might be encouraged to continue flouting the law with impunity while consumers, especially children, would be left vulnerable and unprotected from unclassified and inappropriate material.

PUBLIC INTEREST

[27] Considering the Enforcement objective of the FP Act, which is to act as a watchdog for the public, there is no doubt that it is in the public interest that the condonation application should be granted.

FACTUAL BACKGROUND

[28] Mr. Rajesh Vishnu is a Compliance Officer and a Regional Coordinator of the Applicant. He deposed to an affidavit which set out the following:

- 28.1. On 6 December 2024, he conducted an online inspection on the website of the Respondents with the URL <https://www.mzansifun.com>.
- 28.2. During the course of the inspection he discovered that the Respondents were distributing/exhibiting and/or streaming various adult films/movies accessible to members of the public, in the Republic of South Africa. This they did without having been registered with the Applicant in terms of section 18(1)(a).
- 28.3. According to Mr. Vishnu, they also did not submit such films to the Applicant for classification, thus contravening section 18(1)(b) of the FP Act.
- 28.4. The online inspection by Mr. Vishnu further revealed that MZANSIFUN website was distributing/exhibiting and/or streaming these films/movies without displaying, clearly and conspicuously, the classification reference number, the age restriction, customer advice and any other condition that might have been imposed on the distribution as prescribed and in terms of the FPB rules and regulations.
- 28.5. The Compliance Office also checked the online APP for verification, and found that there were no records of registration by MZANSIFUN with the Applicant. This confirmed that the Respondents were in contravention of section 18(1)(a) of the FP Act.

EVIDENCE

[29] In support of its case, the Applicant submitted screenshots of various images from the website. Such images clearly depict sensitive material such as nudity and sexual activity.

DISCUSSION AND FACTUAL ANALYSIS

The Citation of the Second Respondent and Whether There Was Proper Service on the First Respondent

[30] The main question was whether the second Respondent was cited correctly as a party before the EC. This was an important question since he had told the Applicant that he was not the owner of the first Respondent. He stated that his role was only to develop the website but refused to give any details of the owner/distributor.

[31] The Applicant submitted that the circumstances of this case confirmed that Themba Eamon was the owner of the MzansiFun.

[32] An online search on the website of the first Respondent revealed the name of the second Respondent as the contact person. However, when the Applicant approached Mr. Mahlangu, he denied running the business of the first Respondent and stated that he was merely a developer of its website. He, therefore, could not take any responsibility for any of the alleged non compliances.

[33] A strange feature about this explanation is that Mr. Mahlangu could not explain why his name appeared on the website as a contact person, when his role had been that of a website developer, who had completed his role sometime before

the investigation. In addition, when requested, he refused to disclose the name of the owner or founder of the first Respondent.

[34] The Film and Publication Board plays a critical role in South Africa as the Content Regulatory Authority, particularly in the current digital era where media consumption has shifted from physical formats to online and streaming platforms.

[35] Since the FPB is focused on fighting the proliferation of harmful material online, including child pornography, which is punishable under the FP Act, it seems to me that refusing to assist the Applicant with information relating to a contravention of the FP Act, without a reason, is tantamount to obstructing a lawful investigation by a Regulatory Authority.

[36] Considering the nature of the role played by the FPB, which is, *inter alia*, to protect children from harm, it is disturbing and unacceptable that the 2nd Respondent should refuse to co-operate with the Applicant and get away with it.

[37] He has not said he cannot disclose the name of his client, because such disclosure is prohibited by the terms of a contract, for example. He simply refused to assist the Applicant and that's unacceptable, in my view.¹

[38] Having regard to the above, in my view, proper service on the Respondent was effected as the second Respondent received the papers.

¹ *Wightman t/a J W Construction v Headfour (Pty) Ltd and Another* [2008] ZASCA 6 para 13.

THE MERITS OF THE MAIN APPLICATION

[39] Although the Respondent knew about the proceedings, it failed to attend and oppose the main application. It failed to appear at its own peril.

[40] As there was no appearance for the Respondents, no evidence in rebuttal was presented, and no submissions were made on behalf of the Respondents. In the absence of any evidence or submissions by the Respondents, to the contrary, the evidence of the Applicant remains unchallenged.

[41] The screenshots before the Enforcement Committee confirm that the films distributed and exhibited by the Respondents are adult material displaying nudity and sexual material, and that this is done without the First Respondent being registered as distributor of films with the Applicant. In addition, there is evidence which has not been contradicted that the first Respondent failed to submit its films to the Applicant for classification in terms of the FP Act.

FINDING

[42] In the result, the Enforcement Committee makes the following finding:

- 42.1. The Respondents are found to have failed to comply with section 18(1)(a) of the FP Act in that the first Respondent distributed films without being registered with the Films and Publications Act.
- 42.2. The Respondents are found to have failed to comply with section 18(1)(a) of the Films and Publications Act in that the first Respondent failed to submit its films to the Applicant for classification.

ORDER

[43] Accordingly,

- 43.1. The Respondents shall pay an amount of R150 000 (One Hundred and Fifty Thousand Rand), as a fine, for failure of the first Respondent to register as a distributor of films with the Film and Publication Board.
- 43.2. the Respondents shall pay an amount of R500 000 (Five Hundred Thousand Rand), as a fine, for failure of the first Respondent to submit its films to the Film and Publication Board for classification.
- 43.3. The Respondents shall pay the costs of the proceedings.

TMMasipa

ENFORCEMENT COMMITTEE

Judge Thokozile Masipa – Chairperson

Ms Nalini Maharaj – Member

Dr. Adv Nzumbululo Silas Siphuma – Member

29/07/2026