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AI FRIEND & FOE: CASE LAW CITATION

There have been a few instances in our courts that highlight the negligent use of AI by legal practitioners. These signify the inherent risks and individual accountability for AI use.

The most recent is in a Johannesburg High Court matter, _Northbound Processing (Pty) Ltd v South African Diamond and Precious Metals Regulator and Others (2025/072038)_ [2025] ZAGPJHC 661 (30 June 2025).

This was not the first, also see _Mavundla v MEC: Department of Co-Operative Government and Traditional Affairs KwaZulu-Natal and Others (7940/2024P)_ [2025] ZAKZPHC 2; 2025 (3) SA 534 (KZP) (8 January 2025) and _Parker v Forsyth NNO and Others (1585/20)_ [2023] ZAGPRD 1 (29 June 2023).

Background

The Northbound Processing case was brought as an urgent application wherein the applicant sought an interim mandamus for the South African Diamond and Precious Metals Regulator (first respondent) to release the applicant's refining license. The complete judgment can be read at

https://www.saflii.org/za/cases/ZAGPJHC/2025/661.html .

It became apparent during the hearing that the applicant cited 2 cases in their filed heads of argument (heads) that did not exist. The judgment was granted in favour of the applicant, however the judge, correctly so, took issue with the use of non-existent case law in the applicant's heads.

The Issue

Heads of argument are a written summary of the legal argument (legal principles and basis) on which a litigant's representative relies upon to advance their client's case. Together with the oral argument at a hearing, the heads provide the judge with succinct details upon which a litigant's claim or defence is founded on and are used by a judge to arrive at a decision.

The South African litigation system is adversarial in nature i.e. the litigants build and present their cases before a judge, a neutral arbiter/umpire, which differs from an inquisitorial system in that the arbiter relies heavily on the investigation and presentation brought by litigants and may only in exceptional circumstances, put forward their own

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contribution on evidence presented. Accordingly, argument presented in court, orally or in writing is crucial and must be truthful and accurate.

The judgment deals specifically with the use of AI by legal practitioners when researching case law. The issue being not only that the case exists but also that the legal conclusions of a cited case are true and not fabricated.

Finding

Despite the applicant's legal representative explanation and apology for the blunder, the judge concluded that the matter be further investigated by the Legal Practice Council (LPC) with the view that an appropriate penalty will be imposed by the LPC based on their investigation.

The judgment and admonition may be perceived as harsh; however, the gravity and consequence of the "error" cannot be condoned as it could have undesirable repercussions for the administration of justice. At the core of the issue is the legal practitioner's negligence which contradicts their ethical duty of skill and care when carrying out a client's instruction and their duty to the court to act honestly and with integrity.

The standard which legal practitioners are held up to is congruent with the task of the court which invariably makes decisions that have adverse effects on either party and many others after that decision. Errors and lapses are frequently excused and condoned because legal practitioners are human too, but avoidable negligence such as in this case will not to be overlooked.

The Verdict

The perils of unverified AI case law is not unique to South African courts and has been confronted and admonished in international courts, see; _People of The State of New York v. Trump_, 1:23-cv-03773, (S.D.N.Y.), _Mata v. Avianca, Inc_., 1:22-cv-01461, (S.D.N.Y.), _Ayinde v London Borough of Haringey and Al-Haroun v Qatar National Bank_ [2025] EWHC 1383 (Admin).

Uncorroborated AI cases filed in legal proceedings are misuse of artificial intelligence and have serious implications for the administration of justice and public confidence in the justice system.

It is not unbecoming for a legal practitioner to use a suitable AI tool to research case law, however it is unethical and incorrect to not examine and confirm that research with other non-AI sources.

Ultimately and appropriately so, it is the actor that is held liable and not the tool. As legislation and legal principles of the use of AI develop, this will and ought to be the cornerstone for responsibility and culpability of the improper or negligent use of AI.

By **Adv. Sannah Pooe** 2025/07/16