



Republic of South Africa

**IN THE HIGH COURT OF SOUTH AFRICA
[WESTERN CAPE DIVISION, CAPE TOWN]**

Case No. 8589 /2015

In the matter between:

The Labia Theatre CC

Applicant

And

**South African Human Rights Commission
Respondent**

First

**Right2Know Campaign.
Respondent**

Second

**Palestinian Solidarity Campaign.
Respondent**

Third

AND

**IN THE EQUALITY COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

Case No: **EC11/2015**

In the matter between:

Palestinian Solidarity Campaign

Applicant

And

The Labia Theatre CC

First Respondent

South African Human Rights Commission

Second Respondent

Right2Know Campaign

Third Respondent

JUDGMENT: DELIVERED 26 MARCH 2021

LE GRANGE, J

Introduction:

[1] These are two different matters with the same parties. I have written one judgment as the factual matrix underpinning both are largely the same. In the first matter, ("the Review Application") the Applicant, ("Labia"), seeks the review and setting aside of the First Respondent's ("SAHRC") decision taken on 14 November 2014, upholding the Second and Third Respondents' ("R2K" and "PSC") complaint, and ordering Labia to screen the film 'the Roadmap to Apartheid' ("the film"). In the second matter, PSC has lodged a complaint in the Equality Court against Labia for refusing to screen the film.

Background:

[2] The salient facts underpinning both matters can be summarised as follows:
Labia is a small, privately funded, independent cinema. It receives no state funding. Its main source of income is generated by showing films on a weekly basis. It also offers private screening whereby companies, individuals or organisations can contract with it to lease the cinema to screen a production. Labia, describes itself as a cinema on the alternative circuit that mainly appeals to the more discerning viewer who enjoys its quality product and the charm of its old - world ambience.

[3] On 30 January 2012, Ludi Kraus ("Kraus") of Labia, received an email from Lynn Taylor "Taylor" on behalf of Workers' World Media Productions, expressing interest in booking the Labia for a special screening of a film, on 4 March 2012. Kraus is the person who would carefully select films that would appeal to Labia's patrons to ensure the commercial sustainability of the business.

[4] Taylor emailed Kraus to confirm a 2:30pm start time and requested that he invoiced the amount of R3 520 to the Palestinian Solidarity Campaign for payment. The film that the PSC wished to screen is a documentary that compares the circumstances of Palestinians to those of black South Africans during apartheid.

[5] The email by Taylor caused Kraus to research the film. According to Kraus, he then discovered that *'it is regarded as a highly controversial film'* and an anti-Zionist production that was not focused on South Africa as he had initially expected. He also learned that the proposed screening would serve as a high-profile launch of the *"Israel Apartheid Week"*.

[6] Fearing that the film would '*alienate and offend*' the Labia's patrons and harm the business, the Labia decided not to lease the cinema to the PSC.

[7] According to Labia, although it screens a wide array of independent films, it does not engage in political activity, as it refrains from screening films that may alienate or offend patrons, to keep its business alive. Labia also gave a statement to a newspaper, stating '*We were asked to release the film – which was pure propaganda – at the start of a week of Israel bashing and we do not get involved in politics.*'

[8] Kraus then decided not to send the invoice to the PSC and to inform Taylor of his decision not to lease the Labia theatre for the purpose of showing the film. On 13 February 2012, he telephoned Taylor, and ultimately spoke to Mr Martin Jansen ("Jansen"), a representative of the PSC, to whom he explained his decision. At that stage, Kraus was unaware that Jansen represented the PSC.

[9] Kraus's decision was not well received. PSC immediately called for a boycott of the Labia which included an organised demonstration on 13 April 2012 where Labia was accused of censorship. During the same period hostile public exchanges occurred between the PSC and pro-Israeli groups.

[10] A pro-Israel group also approached Krause during the same period to hire the Labia to show a different film which claims to explore the proliferation of anti-Israel

and anti-Semitic incidents in American universities. According to Kraus he refused to screen the film, '*Crossing the Line: The Intifada Comes to Campus*', for the same reasons as he rejected the '*Roadmap to Apartheid*'.

[11] The Second Respondent's ("R2K") representatives approached the Labia, in April 2012, and offered to mediate between the parties. The proposal advanced by R2K was that Labia show the '*Road to Apartheid*' film and then it (R2K) would arrange a balanced debate immediately afterwards between representatives of the PSC and a Jewish organisation.

[12] Following the negotiations between the PSC, the Labia and R2K, an agreement was reached to screen the film on 7 June 2012. This agreement was recorded in writing in May 2012 in an email from R2K to the PSC and the Labia. The May agreement between the PSC, R2K, and the Labia had the following conditions recorded:

12.1 There would be no charge for the venue and no charge at the door;

12.2 A public invitation would be designed saying '*[R2K] in collaboration with the PSC and the Labia, invite you to a screening of Roadmap to Apartheid.*';

12.3 The invitation would be circulated by all parties;

12.4 R2K would write to the Zionist Federation to invite their constituency to the screening and participate in a panel discussion after the screening;

12.5 No posters or banners would be displayed at the screening;

12.6 All parties would conduct themselves with dignity and show respect to and for others' right to express their views. Anyone who did not respect the authority of the Chairperson would be asked to leave the event.

12.7 The agreement also included the program for the screening, making arrangements for the panel discussion, and affording the Zionist Federation, the PSC and the audience an opportunity to comment.

[13] On 4 June 2012, the Zionist Federation sent a letter to R2K, declining the invitation to participate in the screening of the film.

[14] According to Krause, the participation of the Zionist Federation to participate in the debate was a precondition to the screening of the film.

[15] There is some dispute as to whether the screening of the film was dependent upon such condition. PSC and R2K have disputed the existence of such precedent condition. This particular factual dispute is however immaterial to the review proceedings. In the Equality Court proceedings, however, Labia holds the view that this factual dispute must be resolved in its favour, in accordance with ordinary principles regulating material disputes of fact in motion proceedings as the Labia is

the Respondent¹. The PSC took the view that the precedent condition amounts to an absurdity. According to the PSC, it did not agree to such a condition as it would grant unilateral power to those who are hostile to the film and to censorship.

[16] Kraus holds the firm view that in the absence of the Zionist Federation participation, the agreement between the parties had lapsed. Labia contacted R2K to confirm that as the agreement had lapsed, the screening of the film would not proceed. As a gesture of goodwill, Kraus offered that Labia would pay the reasonable costs of an alternative venue to screen the film.

[17] R2K however demanded that the Labia still screen the film in the absence of the proposed debate. Labia refused. Labia's stance was not well received and led to further public criticism, debate, and media attention.

[18] The PSC meanwhile managed to arrange to show the film at a different venue on 7 June 2012, as well as on multiple other occasions at different venues in Cape Town and ten further urban centres throughout South Africa as part of a "*National Film Tour*" of the film.

[19] According to Labia, the fact that the PSC managed to screen the film at multiple different venues in Cape Town illustrates that its refusal to screen the film had little impact on the PSC's freedom of expression, belief, conscience and opinion.

¹ In this regard see Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd 1984 (3) SA 623 (A).

Labia has also expressed the view that the media storm triggered by its refusal drew more public attention to it than the mere screening thereof would have.

South African Human Rights Commission ("SAHRC") proceedings:

[20] Turning to the SAHRC proceedings. In June 2012, the R2K and PSC laid separate complaints with SAHRC against Labia. They both asserted that Labia's unwillingness to screen the film violated sections 9, 15, 17, 18 and 19 of the Constitution.

[21] Labia was only informed in early December 2012 by the SAHRC of the PSC's complaint. Labia requested further information from the SAHRC on 11 December. According to Labia, there was no response to their request and submitted its answer to the complaint on 18 January 2013. The PSC submitted a reply on 29 January 2013.

[22] In June 2013, the SAHRC informed the parties that it was still finalising its finding. A draft report was prepared by the SAHRC's Western Cape provincial office on the complaints, for internal discussion only. It is common cause that the SAHRC sought a legal opinion on how the complaint ought to be decided and whether the SAHRC had jurisdiction to decide it. The opinion was given in December 2013 and advised that *"the appropriate forum in which this dispute ought to be adjudicated is in a court of law"* because *"it concerns the proper interpretation of a contract, rather than a violation of rights"*.

[23] The SAHRC published its finding on 20 December 2013. It concluded that the SAHRC *"is not able to further investigate the matter which essentially centres around the interpretation of terms of the contract which is best adjudicated upon by a court of law"*.

[24] On 14 November 2014, and almost a year later, the SAHRC informed Labia of the outcome of an appeal decision. According to Labia, the outcome of an internal appeal process caught them off guard as the SAHRC never notified it that an appeal had been lodged nor granted it an opportunity to make representations on the merits to the appeal tribunal.

[25] According to Labia it subsequently discovered that the PSC had lodged an internal appeal against the SAHRC's initial decision and that the said decision had been overturned on appeal.

[26] The appeal tribunal found that Labia had breached the right to equality and recommended that Labia be ordered to screen the film, within three months.

The review:

[27] The application by Labia to review the SAHRC's appeal decision is unopposed and can be dealt with swiftly. It needs to be mentioned that the SAHRC and PSC initially opposed the review application but later withdrew their opposition. The basis

for the opposition was apparently premised on the view that the SAHRC's appeal decision is not "*administrative action*" which falls within the definition of the term in section 1 of PAJA,² because it has no "*direct external legal effect*".

[28] A cursory look at the SAHRC's constitutional powers and obligations, and common-sense dictates that the SAHRC's decisions must have external legal effect and be subject to judicial review under PAJA and or under the principles of natural justice and legality.

[29] Labia is now seeking a costs order against the PSC only. According to Labia, an agreement had been entered into whereby it will not seek a costs order against the SAHRC. The reason why Labia persists with its claim for a costs order against the PSC is based in main on the fact that their initial opposition was ill-conceived and unreasonable.

[30] On a conspectus of all the evidence, I am not convinced that justice and fairness demand that the PSC should be mulch with a costs order. Ultimately, it is the SAHRC's decision that is under review. The fact that Labia entered into an agreement with the SAHRC on costs does not necessarily absolve their initial approach to this matter. I am therefore of the view that in these particular circumstances an order that each party should pay its own costs, would be just and equitable.

² Promotion of Administrative Justice Act 3 of 2000.

[31] I am satisfied that the review application must succeed and that each party should pay its own costs.

[32] In the result the following order is made:

1. In terms of section 8(1)(c) of PAJA, the SAHRC's internal appeal decision is reviewed and set aside.
2. Each party to pay its own costs.

Labia' refusal to screen 'Roadmap to Apartheid':

[33] I now move to deal with Labia's refusal to screen the film and whether it constitutes unfair discrimination on the prohibited grounds as envisaged in the Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000 ('the Equality Act').

[34] On the facts of this case, there can be no doubt that Labia occupies a unique place in the cultural and political life of Cape Town, and has done so from the late 1960's. It is common cause that Labia had in the past often screened critically acclaimed foreign-language films for their importance to the art of cinema, which were commercially unattractive to the main-stream cinema chains as it may have been too controversial or banned by the censors. Moreover, the Labia is known to have shown films which have addressed themes and subjects on which strong differing opinions are being held in society. Labia has thus through its custom of showing alternative films established a distinctive audience profile.

[35] It is common cause that in 2011, and before the current events under discussion occurred, Labia was part of a film festival namely 'Daring Doccies Documentary Film Festival' which was advertised as 'Featuring a host of thought-provoking, hard-hitting and moving documentaries, most making their South African theatrical premiere'.

[36] In the complaint, the relief sought by PSC, was an order that Labia be ordered to screen the film in accordance the agreement negotiated with R2K, and that the screening take place whether or not the Zionist Federation or any other invited Zionist organisation or individuals accept the invitation to participate.

Submissions:

[37] In argument, counsel for the PSC, Mr M Bishop assisted by his Pupil, Mr P Wainwright, submitted that in determining whether there had been unfair discrimination as envisaged in the Equality Act, the primary focus should not be on the contractual nature of the complaint but on the conduct of Labia in relation to the intended screening of the film in March (the first intended screening) and June 2012 (the second intended screening).

[38] The further principal submissions made by Mr Bishop, can be summarised as follows: Labia cannot be permitted to hide behind an agreement to conceal an act of unfair discrimination on prohibited grounds as Labia's conduct displayed its true

motive which is a difference in conscience and belief with the PSC. According to Mr. Bishop the latter had been demonstrated by Kraus' statement that the film is '*pure propaganda*' and '*Israel bashing*'; furthermore, Labia's conduct, amounted to withholding a benefit on conscience and belief which negatively impacted on the PSC's rights and freedoms as guaranteed under the Constitution; accordingly, it was submitted that in agreeing to rent out its space for private screenings Labia is not permitted to unlawfully discriminate on prohibited grounds, to cancel an agreement, pick and choose who it wants to rent out its space and what should be shown in that privately rented space.

[39] Mr. J De Waal, SC assisted by Mr. L Kelly and Mr Alistair Price (a Pupil), appeared on behalf of Labia. The main submissions that were made on behalf of Labia can be summarised as follows: First, that Labia made two different decisions and that the PSC's relief sought in its notice of motion is solely directed at the second decision. In the first decision Labia refused to lease a cinema for a private screening of the film against payment of the applicable fee. In the second decision Labia refused to lease a cinema for a public screening as no valid contract came into existence between Labia and the PSC to screen the film; and even if it is found that such contract came into existence, there was a material mistake as to the identity of the party contracting with Labia. The contract entered into with R2K with regard to the second intended screening in June 2012 was subject to a precedent condition which needed to be fulfilled; and that R2K failed to fulfil the said condition and the contract lapsed. Secondly, PSC had failed to establish a *prima facie* case that Labia discriminated on the prohibited grounds or a comparable ground; Labia did not

differentiate between the PSC and a relevant comparator but that it treats all of them in the same manner. For the latter proposition, reliance was placed on the fact that Labia refused to screen a pro-Zionist film when it was approached by the pro-Zionist Group 18 to do so. Thirdly, if it is found that discrimination did take place, then it was not based on the PSC's belief or conscience but by Labia's aversion to screen highly politicised and divisive films promoting any political beliefs as it refused to screen Group 18's pro-Zionist film. Fourthly, if it is found that discrimination did take place on a prohibited ground then such discrimination was fair based on the following: the refusal had a minimal impact on the PSC's beliefs and opinion as the film was screened at multiple alternative venues in Cape Town and its surroundings; Labia did not show naked prejudice but refused to screen a highly divisive one-sided political film based in its own fundamental rights and interests to show films of its choice; Labia's refusal served a legitimate purpose as it refused to be subjugated against its will as an instrument for the PSC's political campaign; Labia took reasonable steps to address any disadvantages that may have arisen from its refusal and to accommodate diversity by agreeing to screen the film subject to R2K arranging a balanced debate afterwards; lastly, a finding that Labia owed a duty to make a contractual offer to show the film will have grave broader societal implications as it will obliterate a private cinema's freedom of expression, trade, conscience, thought, belief, opinion and freedom of contract.

The Issues:

[40] The substantive question in this case is whether Labia's conduct by not screening the film on two occasions, amounted to unlawful discrimination on the prohibited grounds of 'conscience and belief' or on a 'comparable ground', and if so whether such unlawful discrimination was fair or not.

[41] It is evident that the PSC, in its founding papers, largely formulated its complaint on the basis that Labia's conduct amounts to a breach of an agreement and that such conduct discriminates against those that holds a different belief. During argument however, Mr. Bishop mainly concentrated on the conduct of Labia and whether such conduct amounts to discrimination on a prohibited ground. According to Mr. Bishop, in the context of a complaint in terms of the Equality Act, the primary focus to determine whether there had been unfair discrimination must be the conduct of the parties and not so much the contractual terms that binds the parties, and that Labia cannot hide behind an agreement to conceal an act of unfair discrimination.

[42] Labia had a different view and contended that the matter must be decided on the second decision where a contractual relationship existed between Labia and R2K and where a precedent condition was not fulfil.

[43] There is substance in the argument advanced by Mr. Bishop. The Equality Act set out guiding principles that govern its application under section 4(2), and enjoins

this Court in the adjudication of any proceedings which are instituted in terms of or under the Act, to recognise and consider:

'(a) The existence of systemic discrimination and inequalities, particularly in respect of race, gender and disability in all spheres of life as a result of past and present unfair discrimination, brought about by colonialism, the apartheid system and patriarchy; and

(b) the need to take measures at all levels to eliminate such discrimination and inequalities.

[44] In the present instance, the primary focus must therefore be the conduct of Labia in relation to the first and second intended screenings and not so much on the contractual perspective, in order to determine whether there had been a withholding of benefits based on conscience and belief or a 'comparable ground' amounting to unfair discrimination. To view this case in a contractual context alone would amount to a superficial and mechanical approach. This in turn would undermine the foundational values and principles underlying the Equality Act. The contractual nature between the parties must as a result be contextualized as a marginal issue.

[43] To determine whether there had been discrimination, the starting point is section 1 of the Equality Act, which defines 'discrimination' as—

'any act or omission, including a policy, law, rule, practice, condition or situation which directly or indirectly-

(a) imposes burdens, obligations or disadvantage on; or

(b) withholds benefits, opportunities or advantages from, any person on one or more of the prohibited grounds;'

[44] The 'prohibited grounds' are defined in section 1 as:

'(a) race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language, birth and HIV/AIDS status; or
(b) any other ground where discrimination based on that other ground-
(i) causes or perpetuates systemic disadvantage;
(ii) undermines human dignity; or
(iii) adversely affects the equal enjoyment of a person's rights and freedoms in a serious manner that is comparable to discrimination on a ground in paragraph (a);'

[45] In terms of section 13(1) of the Equality Act, if the PSC makes out a prima facie case, then the Labia, as the respondent, 'must prove' that:

- 1.1. the discrimination did not take place; or
- 1.2. the conduct is not based on a prohibited ground.

[46] The importance of the 'prohibited grounds' is located in section 13(2): If it is found that the discrimination took place on a prohibited ground, then it is presumed to be unfair, unless, Labia as the respondent '*proves that the discrimination is fair*'. Fairness is determined with regard to the factors listed in section 14(2) of the Equality Act which include '*(a) [t]he context; (b) the factors referred to in subsection (3); and (c) whether the discrimination reasonably and justifiably differentiates*

between persons according to objectively determinable criteria, intrinsic to the activity concerned.

[47] The terms 'conscience' and 'belief' as prohibited grounds of discrimination are listed in Section 9(3) of the Constitution³ and section 1 of the Equality Act. These terms are however not defined in the Equality Act. The Academic writers⁴ have suggested that these terms are necessarily distinct from but also overlap with religion. Further, it has been suggested that 'Discrimination on the grounds of conscience or belief would involve acts or practices that violate a person's deeply held values.'⁵

[48] Black's Legal Dictionary defines conscience in the following terms: *1. A moral sense of right or wrong especially a moral sense apply to one's own judgement and actions. 2. In law, the moral rule that requires justice and honest dealings between persons.*

³ Under the heading "Equality", the section states:

9. (1) Everyone is equal before the law and has the right to equal protection and benefit of the law.

(2) Equality includes the full and equal enjoyment of all rights and freedoms. To promote the achievement of equality, legislative and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination may be taken.

(3) The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.

(4) No person may unfairly discriminate directly or indirectly against anyone on one or more grounds in terms of subsection (3). National legislation must be enacted to prevent or prohibit unfair discrimination.

(5) Discrimination on one or more of the grounds listed in subsection (3) is unfair unless it is established that the discrimination is fair.

⁴ South African Constitutional Law: Bill of Rights, Cheadle *et al*/2019.

⁵ Ibid.

[49] The Shorter Oxford English Dictionary identifies one meaning of conscience as: *a moral sense of right or wrong; a sense of responsibility felt for private or public actions, motives, et cetera; the faculty of principle that leads to the approval of right thought or action and condemnation of wrong. It also describes belief in the following terms: 1. Trust, confidence; faith . . . 2. Mental acceptance of a statement, fact, doctrine, thing, etc., as true or existing . . . 3. The thing believed; a proposition or set of propositions held to be true; a religion; an opinion or persuasion.*

[50] The Zimbabwean Supreme Court had the opportunity to examine the meaning of 'conscience' as it appears in section 19 of the Zimbabwean Constitution and held that freedom of conscience was 'intended to encompass and protect systems of belief which were not centred on a deity or were not religiously motivated, but were founded on personal morality'.⁶

[51] According to the PSC it approached Labia with its rich history of screening alternative films, with a documentary that compares the circumstances of Palestinians to those of black South Africans during apartheid.

[52] On the facts before me, it is evident that the PSC holds the genuine and reasonable belief that Palestinian people are *'being subject to illegal Israeli*

⁶ In re Chikweche 1995 (4) SA 284 (ZS) at 290H-I.

occupation’ and it aims ‘*to educate the public about the nature of the state of Israel as an apartheid state*’. In my view, the PSC’s genuine beliefs must therefore fall within the prohibited grounds of the terms ‘conscience’ or ‘belief’ as envisaged by the Equality Act.

[54] Labia gave many reasons for not following through with the first screening but among the many reasons given, Labia contended that it does not ‘*screen overtly political or controversial films*’. Labia also cited ‘business considerations’ as a reason for not screening the film.

[53] At the second intended screening, Labia did not follow its general policy and agreed to screen the film. Labia conceded that its general policy and its business considerations were not relevant, as this film was in a ‘*different category*’ and that it was ‘*the subject of an agreement*’. However Krause who at all time represented Labia stated that the film is ‘*pure propaganda*’ and ‘*Israel bashing*’.

[54] In the present instance, the argument by Labia that it does not screen overtly political or controversial films that may alienate or cause offence to its patrons is seriously at odds with the objective facts. In fact, on the contrary, Labia describes itself as a cinema on the alternative circuit that mainly appeals to the more discerning viewer. Moreover, it is a well-known fact that Labia often screen controversial critically acclaimed foreign- language films for their importance to the

art of cinema. Some of these films may also have been banned or censored in the counties of origin. Furthermore, before the current events occurred, Labia was part of a film festival in 2011 namely; 'Daring Doccies Documentary Film Festival' which was advertised as 'Featuring a host of thought-provoking, hard-hitting and moving documentaries'. Most of these documentary films made their theatrical premiere in South Africa.

[56] From, the abovementioned it is clear that Labia, at the time, was in the business of offering its services by hiring out its cinema to screen films that are thought-provoking, hard-hitting and controversial to the general public. The screening of the film could therefore not have been any different as the PSC was willing to pay the agreed amount for the rental of the venue at the first attended screening.

[57] Despite the later agreement in respect of the second screening, Labia made it very clear by way of Krause that the film is 'pure propaganda' and 'Israel Bashing'. From the latter is evident that Labia's true motive for not screening the film has to do with its difference with the PSC's conscience and belief. Here, in my view, the fact that Labia did not want to screen the film of the pro-Zionist Group 18, does not detract from its true motive or their business model of hiring out its cinemas.

[58] It need to be mentioned that Labia's rights to freedom of thought, conscience and religion and freedom of expression as guaranteed in terms of s 15 of the

Constitution⁷ are also engaged by this case. However, it is now well established in our law that private persons can attract a duty to make contractual offers where a refusal to do so would be unfairly discriminatory. For example, an employer cannot refuse to employ someone because they are HIV positive.⁸ A hairdresser cannot refuse to cut a black person's hair.⁹ And a baker cannot refuse to sell a cake to someone because he is gay.¹⁰ Since a service is offered to the general public in all these instances, that service cannot be withheld on grounds that amount to unfair discrimination.

[59] Having considered all the evidence, and despite Labia's protestation that they did not discriminate against the PSC, the conduct of Labia clearly amounts to discrimination on a prohibited ground and is presumed to be unfair as envisaged in s 13 (2) of the Equality Act.

[60] Labia has contended that that if unfair discrimination had been established based on the PSC's beliefs or conscience, that same was fair having regard to the factors as set out in s 14(2) and (3) of the Equality Act. Labia has raised a number of factors wherein it expressed the view that its discrimination was fair. Without

⁷ S 15. Freedom of religion, belief and opinion-(1) Everyone has the right to freedom of conscience, religion, thought, belief and opinion.

⁸ Hoffmann v South African Airways 2001 (1) SA 1 (CC).

⁹ Kollapen v Du Preez [2005] ZAEQC 1 (29 March 2005).

¹⁰ Lee v Ashers Baking Company Ltd & Others [2018] UKSC 49 (10 October 2018) para 55.

dealing with each of the factors raised by Labia, I remain unconvinced that the sum total of factors raised by Labia supports a conclusion that its discrimination towards the PSC was fair.

[61] The conflict between Palestine and Israel is infamous and notoriously controversial. It is not uncommon that people easily find themselves on one side or on the other. This creates antagonism. The PSC is legitimacy acting on behalf of the people of Palestine, and to advance a view that hopes, one day, to reduce their oppression. The PSC, firmly believes that historically, the Palestinians have suffered patterns of disadvantage. The conduct of the Labia in this matter does not ease that burden but actually perpetuates this pattern.

[62] In fact, Labia did not only refuse to show the film twice, but also gave statements to the media attacking the documentary. The comments made by the Labia to the press demonstrate the underlying nature of the discrimination. It is clear that the nature and extent of the discrimination against the belief and conscience held by the PSC and as presented in the film cannot be underestimated.

[63] For all these stated reasons I am satisfied that the Applicant's application must succeed.

[64] In the result the following order is made:

1. The Labia Theatre is hereby ordered to screen the Film, 'Roadmap to Apartheid' in accordance with the conditions as recorded in paragraphs [12.2] to [12.7] above, and that such screening shall take place whether or not the Zionist Federation or any other invited Zionist organisation or individuals accept the invitation to participate.
2. The Palestine Solidarity Campaign, shall pay Labia Theatre the necessary rental fees associated with the leasing of a cinema for the screening of the film.
3. Labia must screen the film within 60 days of this order.
4. Labia is to pay the costs of this application such costs to include the costs occasioned by the employment of two counsel.

LE GRANGE J