

REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION JOHANNESBURG, SITTING AS THE
EQUALITY COURT)**

Case No: EQ10/2023

DELETE WHICHEVER IS NOT APPLICABLE
REPORTABLE: NO

OF INTEREST TO OTHER JUDGES: NO

REVISED

27.01.2025_____

DATE

SIGNATURE

IN THE MATTER BETWEEN:

TUNI ERENS MADIMABE

APPLICANT

AND

SINKISA CORNELIUS MOSITO

1st RESPONDENT

HELLEN DITSHWENE

2nd RESPONDENT

JUDGMENT

SIWENDU J

[1] This is an application brought in terms of the Promotion of Equality and Prevention of Unfair Discrimination Act No 4 of 2000 (Equality Act), assigned to this Court, sitting as the Equality Court (the Court).

[2] The complainant, is Mr Madimabe, (Mr Madimabe) as defined by the Equality Act. The first respondent, Mr Sinkisa Cornelius Mosito (Mr Mosito) is an attorney currently practising at Tlhaku Attorneys. He previously worked at Chitoo Naran Attorneys. The relevance of the change in Mr Mosito's employment will be apparent later in the judgment. Mr Masito filed an opposing affidavit seeking a dismissal of the complaint. The second respondent is Mrs Hellen Ditshwene also known as "Granny."

[3] Mr Madimabe appeared before the Court as an unrepresented litigant. The genesis of his complaint stems from the Mphe-Bophelo Bakery and Brick Community Project, a Co-operative initiated by Mr Madimabe, his wife and members of the community of Maile. The second respondent, occupied a part of the property, described as 64b Motseng Section Maile / Rooikraal, seemingly with the consent of Mr Madimabe and the community.

[4] A disagreement ensued between the second respondent and Mr Madimabe, and a section of the community about her right to occupy and operate the enterprise conducted on the property.

[5] Represented by Mr Mosito while then in the employ of Chitoo Naran Attorneys, on 2 December 2019, the second respondent applied and obtained an interim order before the Tlhabane court against Mr Madimabe in terms of the Protection from Harassment Act,¹ under Case No 469/2019. The interim order was made final after the return date on 27 the January 2020. The record of correspondence (including Mr Mosito's opposing affidavit) reveals that a written judgment in the matter was delivered on 15 May 2020.

¹ Act No 17 of 2011

[6] Mr Madimabe filed a complaint under the Equality Act and notified the Clerk of the Equality Court of his intention to institute proceedings against the respondents in the manner prescribed² by the Act. He alleged that:

- i. Mr Mosito assisted the second respondent to “rob us of our property”
- ii. The second respondent misrepresented that she was granted a legitimate right to occupy the property by the “BDO”
- iii. When challenged the respondents failed to provide details of the names of the person involved, hence the harassment order against him.

[7] In his replying affidavit dated 3 October 2023, he states that the respondents colluded to harass him using the Tlhabane Court to unfairly discriminate against him. His application to set the judgement aside on 7 March was never attended to.

[8] Section 21(1) of the Equality Act enjoins the Equality Court before which proceedings are instituted to hold an inquiry in the prescribed manner and determine whether unfair discrimination has taken place, as alleged.

[9] The Guiding Principles in Section 4(1) (a) and (b) of the Equality Act, and which state that:

"In the adjudication of any proceedings which are instituted in terms of or under this Act, the following principles should apply:

- (a) The expeditious and informal processing of cases, which facilitate participation by the parties to the proceedings.
- (b) access to justice to all persons in relevant judicial and other dispute resolution forums.

[10] In line with the Guiding Principles, after considering, the record of the complaint, the papers filed, and taking into account that Mr Madimabe was not legally represented in respect of the complaint, on 22 April 2024, the Court convened an inquiry with to ascertain nature of his complaint to determine

² Section 20 (2)

whether it raises an “equality” issue and or discrimination on the prohibited grounds defined in the Act.³, which to include:

[11] At the inquiry held on 22 April 2024, Mr Madimabe confirmed the allegation that they were “robbed” of their property. He repeated the centre of the complaint against Mr Mosito, namely that he assisted the second respondent “to rob us of our property” and advised them that she was given the “(Mphe-Bophelo project) “by the BOD which to date he has failed to give me their names.”

[12] The record filed showed that on 28 May 2021, Mr Madimabe wrote to Chitoo Naran attorneys, demanding information pertaining to details of instruction given to the attorneys by the second respondent.

[13] On 4 June 2021, Chitoo Naran Attorneys reiterated that the dispute about the second respondent’s right to occupy the was ventilated at the hearing of the Harassment Case the previous year. They refused further engagements with him.

[14] Mr Madimabe turned to the Legal Practice Council (LPC) and lodged a complaint against Mr Mosito. On 26 July 2022, the Investigation Committee of Legal Practice Council dismissed the complaint and found that there was no misconduct or unprofessional conduct in terms of Section 37.1 of the Legal Practice Act 28 of 2014 read with Rule 40 by Mr Mosito and informed him of the outcome.

[15] At the inquiry held on 22 April 2024, the details of the discrimination and or equality complaint remained elusive, and the nature of the discrimination or equality issue raised unclear. Importantly, Mr Madimabe confirmed that he:

- i. appealed the decision Investigation Committee of the LPC. However, there were no documents indicating an outcome had been made.

³ “.... the full and equal enjoyment of rights and freedoms as contemplated in the Constitution and includes *de jure* and *de facto* equality and also equality in terms of outcome.”

- ii there were no documents on record pertaining to the appeal of the Protection Order obtained against him.

[16] It appeared a *prima facie* case in terms of the Equality Act he had not made out. Since Mr Madimabe was an unrepresented litigant, the Court informed him that based on information before it, his remedy may well lie in an appeal against the decision of the Magistrate to set aside the protection. However, it made no determination or order to this effect, but instead directed him to:

- i. Approach the Magistrate's Court to ascertain whether it had a record in respect of the protection order against him.
- ii. Obtain information about the allegations of a deprivation of the land issue.
- iii. Seek Legal Aid assistance so that an Equality Case if any, could be mounted on his behalf and thereafter.
- iv. File the information referred to with this Court's Registrar after which a final order will issue.

[16] Instead of complying with the direction by the Court, Mr Madimabe filed a complaint and a voluminous bundle of documents with the office of the Deputy Judge President (DJP) of the Division.

[17] In accordance with the Regulations, the presiding judge should decide whether the matter is to be heard in the Equality Court or an alternative tribunal. This judgment is confined to the information supporting the complaint under the Equality Act.

[18] On 28 November 2024, the Court reconvened the inquiry, heard representations from Mr Madimabe. The nature of the complaint has not changed. Instead, the additional documents filed on record reveal that:

- i. He was represented by one Ms Matshidiso Kole the harassment case.
- ii. On 27 November 2020, he served a notice to appeal the protection order and judgement by the Tlhabane court on the respondent.
- iii. The decision to appeal the finding of the investigation committee of the LPC in respect of the alleged unprofessional conduct against Mr Mosito was pending.
- iv. He approached the South African Human Rights Commission to lay a complaint about the property.
- v. In addition, he requested the of assistance from the Royal Bafokeng Administration.
- vi. He also lodged a complaint with Tribal Court of the local area, alleging that several people who are members of the community committed fraud and or a misrepresentation regarding the property involving the second respondent.
- vii. The Tribal Court declined to deal with allegations of fraud against certain individuals, recommending he lays a criminal charge against them with the local police.
- viii. He laid a charge of fraud against a several people who are members of the community with the South African Police Services (SAPS).
- ix. Lodged a complaint against the court the Office of Protector. There is a threat of a defamation application against him.

[19] The purpose of the Equality Act is to prevent direct or indirect discrimination of any person on prohibited grounds listed Section 1 (1) (a) and (b). The facts in Mr Madimabe's complaint do not raise an equality and or discrimination issue or conduct on the prohibited grounds. There are other remedies available to him in law to address the second respondent's occupation of the property other than a complaint to this Court.

[20] In the result, I make the following order:

a. The application is dismissed with no order as to costs.

NTY SIWENDU
JUDGE OF THE HIGH COURT
GAUTENG DIVISION,
JOHANEESBURG

This Judgment is handed down electronically by circulation to the Applicants' Legal Representative and the Respondent by email, publication on Case Lines. The date for the handing down is deemed 28 January 2025

Date of appearance: 28 November 2024

Date Judgment delivered: 27 January 2025

Appearances:

For the Applicant: In person

For Respondents: Appearance not required by the Court