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IN THE EQUALITY COURT OF SOUTH AFRICA
(HELD AT THE MAGISTRATE'S COURT IN
BLUE DOWNS, KUILS RIVER AT CAPE TOWN)

CASE NO.: 01/03

DATE:07/04/2004

Before Magistrate MM Dimbaza,
and two assessors
Wednesday, April 07, 2004

In the matter between;

N M
and

Applicant (Assisted by her Parents)

SHANNON FERREIRA

First Respondent

NAMEER FERREIRA

Second-Respondent

BYRON SHAW

Third Respondent

EDGEMEAD HIGH SCHOOL

Fourth Respondent

PROVINCIAL MINISTER FOR EDUCATION IN THE WESTERN CAPE

(c/o The State Attorney)

Fifth Respondent

ORDER

By agreement between the parties, IT IS ORDERED AS FOLLOWS:

1. The Provincial Minister for Education in the Western Cape is joined as the fifth respondent in this matter.
2. Applicant is given leave to amend her Notice of Motion by replacing the Notice of Motion dated 3 December 2003 with the amended Notice of Motion dated 19 March 2004.
3. It is recorded, that first, second and third respondents have tendered an unconditional apology to the applicant and her parents for the incident that occurred at the Edgemoor High School on 6 November 2003, in the following terms: "We, Shannon Ferreira, Nameer Ferreira and Byron Shaw, have tendered an unconditional apology to N M and her parents for the incident, during the course of which words were uttered that had racial overtones, which was in contravention of the promotion of Equality and Prevention of Unfair Discrimination Act. We understand that this incident was deeply hurtful to N and her family. It affronted her basic human dignity and sent out a signal that she was less worthy of respect than other pupils at Edgemoor High School. We sincerely regret this Incident and apologise unreservedly to N and her family."
4. It is further recorded that applicant and her parents have, accepted such apology.
5. Further, first respondent will make payment of R10 000-00 to the Imizamo Yethu Creche in Khayelitsha. The aforesaid amount will be paid at the rate of R 300.00 per month commencing on 1 May 2004,
6. First, second and third respondents are directed to attend a diversity and racial

sensitisation programme under the auspices of the Human Rights Commission. The Human Rights Commission will furnish the details of such programme to the first, second and third respondents within fourteen (14) days of the date of this Order and shall further certify that each of the first, second and third respondents have duly completed such programme.

7. Fourth respondent, without admission of liability, consents to an order in terms of prayer 9 of the amended Notice of Motion.

8. Depending on the outcome of the audit referred to in the aforementioned prayer 9, applicant and the Human Rights Commission reserve the right at any- further hearing of the matter, on reasonable notice to the fourth respondent, to seek an order as set forth in prayer 4 of the amended Notice of Motion.

9. In respect of the relief sought In prayer 10 of the amended Notice of Motion, the application of the applicant is postponed sine die and the applicant is given leave to re-enroll the application on one week's notice to the fifth respondent, for the purpose of obtaining an order as sought in prayer 10 of the amended Notice of Motion.

10. Each party shall bear his or her own costs in relation to these proceedings.

11. Save as aforesaid, there shall be no order as against any of the respondents.

BY ORDER

CLERK OF THE EQUALITY COURT, BLUE DOWNS

PLEASE NOTE: Any person who is dissatisfied by an order made by the Equality Court may appeal against such order in the required manner and time to either the High Court or the Supreme Court of Appeal, as the case may be. An appeal can also be made directly to the Constitutional Court. In terms of Regulation 19(1) any person wishing to appeal against any

order made by the court as contemplated in section 23(1} of the Act, must within 14 days of such order being made, deliver a notice of appeal to the clerk and to the complainant or the respondent as the case may be. (See Regulation 19 relating to the Promotion of Equality and Prevention of Unfair Discrimination Act 2000)

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and

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First Respondent

N AMEER FERREIRA

Second Respondent

BYRON SHAW

Third Respondent

EDGEMEAD HIGH SCHOOL

Fourth Respondent

WESTERN CAPE PROVINCIAL DEPARTMENT

OF EDUCATION

Fifth Respondent

AMENDED NOTICE OF MOTION

KINDLY TAKE NOTICE that application will be made on behalf of the above-named Applicant on 7 April 2004 at 09h00 or so soon thereafter as Counsel may be heard for an order in the following terms:

1. The Applicant's failure to comply with the time limits, forms and procedures prescribed by the Rules of Court is condoned, and the application is heard as a matter of urgency in terms

of the Rules of Court.

2. It is declared that the First, Second and Third Respondents' conduct and behaviour, on 6 November 2003, constituted;

2.1. unfair discrimination on the ground of race;

2.2. unfair discrimination, hate speech and harassment that is expressly prohibited in terms of Chapter 2 of the Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000 ('the Act'), and thereby constitutes a violation of sections 6 and 11 of Chapter 2 of the Act and a violation of sections 9 (equality), 10 (human dignity), 12 (freedom and security of the person), and 16 (freedom of expression) of the Constitution in that:

2.2.1 the First Respondent unfairly discriminated against the Applicant and indeed all black African people on the ground of race by disseminating an idea or ideas that propounds the racial inferiority of the Applicant and all black Africans, including incitement to, and participation in, a form of racial violence against the Applicant;

2.2.2 the First Respondent unfairly discriminated against the Applicant on the basis of her race by advocating or communicating words based on race that could reasonably be construed to demonstrate a clear intention to:

2.2.2.1 be hurtful;

2.2.2.2 be harmful or to incite harm;

2.2.2.3 promote or propagate hatred;

2.2.3 First, Second and Third Respondents subjected the Applicant to harassment and participated in racial (physical) violence against the Applicant;

2.2.4 First, Second and Third Respondents engaged in activities that are intended to promote, or have the effect of promoting exclusivity based on race;

3. The payment of damages by First Respondent to Applicant in respect of;

3.1 the financial loss, including future loss;

3.2 the impairment of dignity, pain and suffering;

3.3 the emotional and psychological suffering,

as a result of the unfair discrimination, hate speech, harassment and racial violence in question.

4. it is declared that the conduct of the Fourth Respondent, through its principal, deputy-principal and senior management, in the immediate aftermath of the racially motivated assault on the Applicant by the First, Second and Third Respondents on 6 November 2003:

4.1 unfairly discriminated against the Applicant, her family and friends, and indeed all black African people on the ground of race;

4.2 unfairly discriminated against the Applicant, her family and friends, and indeed all black African people on the ground of cultural affiliation;

4.3 accordingly infringed the right to equality of the Applicant, her family friends, and indeed all black African people;

inasmuch as such conduct was:

(a) unempathetic, unsympathetic and inappropriate insofar as Applicant was not given the support, comfort and assistance that was to be expected of persons in the position of principal, deputy-principal and senior management of the Fourth Respondent in relation to a learner who had been the subject of a racially motivated assault at school;

(b) discriminatory, arbitrary and capricious insofar as no attempt was made to provide post-

traumatic counselling to either the Applicant or her family or friends;

(c) discriminatory, arbitrary and capricious insofar as the Fourth Respondent and its aforementioned officials consulted with the First and Second Respondents in the absence of the Applicant or her family and in fact refused to entertain reasonable requests from the Applicant and her family to be present at such consultation;

(d) hurtful and discriminatory insofar as the aforementioned officials displayed arrogant and insensitive behaviour toward the Applicant, her family and friends, the latter of whom attended at the school and attempted to provide the necessary support to the Applicant;

(e) discriminatory, arbitrary and capricious insofar as the Fourth Respondent and the aforementioned officials treated the Applicant as an aggressor and not as a victim, inter alia, by subjecting her to disciplinary proceedings;

(f) discriminatory, arbitrary and capricious insofar as the Fourth Respondent and the aforementioned officials, in general, by conducting themselves in a manner which made it impossible for the Applicant to continue as a learner at the school, thereby caused her to withdraw from the school.

5. Restraining the aforesaid unfair discriminatory practices of the Fourth Respondent and directing that specific steps be taken by the Fourth Respondent to stop the aforesaid practices.

6. An order declaring that the Fifth Respondent's failure to adopt a policy framework to effectively address race discrimination and to effect race integration at schools in the Western Cape itself amounts to unfair discrimination against learners and their families who are the subject of such discrimination, and accordingly amounts to an infringement of their right to equality.

7. An order for the implementation of special measures by the First, Second, Third, Fourth and Fifth Respondents (including counselling) to address the unfair discrimination, hate

speech, harassment and racial violence in question,

8. An order that the First, Second, Third and Fourth Respondents make an unconditional apology to the Applicant.

9. An order directing that the Fourth Respondent undergo an audit of all its policies or practices relating to race in accordance with the following steps:

9.1 a report compiled by a court-appointed independent third party and handed to the South African Human Rights Commission within two months of the date of the order;

9.2 the South African Human Rights Commission to respond to the Report within one month after receiving the report;

9.3 the Fourth Respondent to reply within one month after receiving the South African Human Rights Commission's response;

9.4 the matter may be set down for further hearing before the above Honourable Court by the South African Human Rights Commission within one month after receiving the reply.

10. An order that the Fifth Respondent adopt a policy framework to effectively address race discrimination and to effect race integration at schools in the Western Cape, more particularly by;

10.1 drawing up such a framework within two months of the date of this order and submitting same to the South African Human Rights Commission;

10.2 the South African Human Rights Commission shall respond to the framework within one month after receiving same;

10.3 the Fifth Respondent shall be entitled to reply to such response within one month after receiving same;

10.4 the matter may be set down for further hearing before the Honourable Court by the South African Human Rights Commission within one month after receiving the aforementioned reply.

11. The Respondents shall make regular progress reports to the above Honourable Court regarding the implementation of the Court's order.

12. Further and/or relief,

13. The Respondents, jointly and severally, are ordered to pay the costs of the application,

TAKE NOTICE FURTHER that the accompanying affidavit of N M will be used in support hereof.

TAKE NOTICE FURTHER that the Applicant has appointed the South African Human Rights Commission, 7th Floor ABSA Building, 132 Adderley Street, Cape Town as the address at which all notices and process will be accepted in these proceedings.

TAKE NOTICE FURTHER that if you intend opposing this application you are required to;

1. Notify Applicant's attorney in writing on or before 24 March 2004;
2. Appoint in such notification an address at which you will accept notice and service of all documents in these proceedings;
3. File an answering affidavit to the supporting affidavit annexed hereto, within seven days after you have given notice of your intention to oppose the application, if any;

If no such notice of opposition is received, this application will be made on 7 April 2004.

DATED AT CAPE TOWN THIS _____ DAY OF _____ .

SOUTH AFRICAN HUMAN RIGHTS COMMISSION

Per;

ASH RAF MAHOMED

On behalf of the Applicant 7th Floor, ABSA Building 132 Adderley Street Cape Town

To: THE CLERK OF THE EQUALITY COURT

Blue Downs, Kuils River CAPE TOWN

And to: THE WESTERN CAPE PROVINCIAL DEPARTMENT OF EDUCATION

, C/o The State Attorney Liberty Life Building 22 Long Street Cape Town

And to: DE ABREU & COHEN INC.

Attorneys for First, Second and Third Respondents Unit No. 20, Roeland Square Roeland
Street Cape Town

And to: HEUNIS & HEUNIS INC

Attorneys for Fourth Respondent Fax NO: (021)