



IN THE EQUALITY COURT FOR THE DISTRICT OF DURBAN
HELD AT DURBAN

CASE NO: 59/2005

In the matter between

C B GUMEDE

COMPLAINANT

And

P F MKHWANAZI

RESPONDENT

J U D G M E N T

TO: MR C B GUMEDE
2588 MTHIYANE AVENUE
LAMONTVILLE

AND TO: MS P F MKHWANAZI
2586 MTHIYANE AVENUE
LAMONTVILLE

INTRODUCTORY REMARKS

The complaint was first considered as a complaint to the Clerk of the Court dealing with applications to bind members of the public over to keep the peace, under section 384 of the Criminal Procedure Act 56 of 1955.

The presiding magistrate recommended that no further action be taken at that stage and the complaint was then lodged with the Clerk of the Equality Court.

The complaint was that on 8 July 2005 the Respondent Pearl Fikile Mkhwanazi, in the presence of the Area Councillor said that the complainant, Christopher Bongani Gumede was a homosexual. The complaint was that this was not the first time that this unwanted remark was directed at Complainant and was made before and repeated on other occasions after 8 July 2005, by others.

Complainant asked the court to make an order against the Respondent and to order her to make an unconditional apology.

COMPLAINANT'S EVIDENCE

The formal hearing commenced on 20 September 2005.

Mr Gumede testified and the complaint centred largely around the incident that led to the presence of the councillor. The background was that the councillor was asked to intervene in a dispute arising from the erection of shacks that the Gumede family had supposedly erected on land belonging to the Mkhwanazi family.

Mr Gumede testified that he was drinking beer when the councillor arrived and felt obliged to intervene in the discussion that took place because it involved the Gumede family, of which he was a part.

It was then that Respondent told him not to involve himself. He asserted that he had a right to intervene in a matter that concerned his family and it was then, he testified, that she uttered the words "keep quiet, you homosexual"

He testified further that:

- This reference had been made of him by others, including Respondent's boyfriend, who later apologised;
- He wanted Respondent to produce whatever evidence she had to substantiate this allegation;
- He was a married family man with children and felt hurt and embarrassed by these statements;
- These remarks circulated in the community and he wanted to put a stop to this.

Complainant also raised a number of other issues that the court merely mentions and were not relevant to this decision, *inter alia*,

That Respondent supposedly mentioned that he did not know to which family his mother belonged;

That she was happy that a number of his family members had died recently, as this allowed them to abolish the shacks the deceased had occupied.

As I have stated, these are irrelevant matters.

Complainant called a witness Miss Nonhlanhla Gumede, who corroborated his version of events, particularly on the following aspects:

That the councillor was present when the offending words were uttered; that the councillor did not want to involve himself in the dispute and the ensuing argument between the two families and left the scene; and in addition she stated that the Respondent also said that the Gumede family was starving.

At this stage the hearing was adjourned to 27 September 2005 to hear the Respondent's case.

RESPONDENT'S EVIDENCE

On 27 September 2005 Respondent denied that she uttered the offensive words. She admitted that there were unpleasant verbal exchanges between her and the Complainant, but that he had initiated the exchanges. She confirmed that when she first saw him on the day, at about 12h00, he had a glass of beer in his hand and that he was very argumentative.

Her version was that she did not insult him, rather, she pointed out to him that the cause of his irritation was that the Mkhwanazi family had sought the assistance of the area councillor to mediate in the portion of the land they laid claim to.

She stated that after the councillor had left and everyone had dispersed, she was surprised when the police arrived and accused her of using the offending words

Her next witness was Sicelo Phillip Mkhwanazi. He introduced further remarks Complainant is alleged to have made. Again, these are irrelevant to this enquiry. He stated that the Complainant became uncontrollable, to the extent that one of the elder Gumede mothers had to warn him to restrain himself.

He denied that Respondent had uttered the words complained of and stated that, if she had, the councillor would have heard them.

THE COURT'S DECISION

In the light of the various references that were made to the presence of councillor Shezi, the court court adjourned the further hearing indefinitely to enable Mr Ntombela to secure his attendance, as the court's witness.

FURTHER PROCEEDINGS ON 25 OCTOBER 2005.

Councillor Khuzimpi Raphael Shezi testified that his attendance at the scene on 8 July 2005 was merely to do acquaint himself with the complaint between the families and that he planned thereafter to call the parties to his office to discuss the matter there.

He testified that the Complainant initiated the quarrel between the two families "both families uttered bad words. Mr Gumede uttered stronger insults to the Mkhwanazi family who responded"

He testified that although he found the exchanges between the two families to be very distressing, at no stage did he hear Respondent utter the words the Complainant alleged.

He testified that Ma Gumede tried to calm the Gumede family and the Complainant in particular, who did not show any respect. He was embarrassed by all of this to the extent that he decided to leave, as he did not want to be seen to have caused the quarrelling.

THE COURT'S REASONING

Since all the parties to the complaint and their witnesses made particular reference to councillor Shezi, the court found it prudent to call him as a witness.

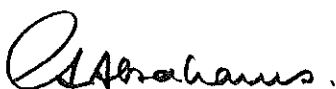
Up to that point the court did not have sufficient reliable evidence before it to make a fair decision,

Witness Shezi was the only independent witness to this incident who had no allegiance to either party and who testified without any favour to either side. The court accepts his evidence as being the truth.

The court must also mention that of all the other witnesses Miss Mkhwanazi also impressed the court as an honest witness, and it was only that the evidence of her witness Sicelo Mkhwanazi was at times contradictory and exaggerated that affected the reliability of her version of events.

THE COURT'S FINDING

The court finds that the words on which the complaint is based were never used on the day. The complaint is therefore dismissed.



G L ABRAHAMS: PRESIDING OFFICER



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)*