

IN THE EQUALITY COURT FOR THE DISTRICT OF DURBAN

HELD AT DURBAN

CASE NO: 40/05

In the matter between

MRS F M MDLADLA

COMPLAINANT

And

MR ERIC SMITH

RESPONDENT

J U D G M E N T

TO: MRS F MDLADLA
(FOR COLLECTION)

AND TO: MR ERIC SMITH
(FOR COLLECTION)

INTRODUCTION

Mrs Mdladla lodged a complaint against Mr Smith relating to a certain incident that took place on 2 May 2005 at her house. She alleged that Mr Smith came to her door to complain about the noise coming from her section and in the process is alleged to have said:

“Fikile, you are a Kaffir Bitch. You must go and stay in Umlazi with the other kaffirs like you”

THE EVIDENCE FOR COMPLAINANT.

Apart from her own evidence complainant called three witnesses, Rachel de Fleurs, Rashida Canthitoo and Nokulunga Shezi.

Apart from Rachel de Fleurs, the material aspects of the witnesses' evidence was that they were seated in complainant's lounge at approximately 8h30 in the morning, talking when the respondent came to the front door and uttered the offending words. All three lived in the house and Rachel lived in a room behind the house.

Complainant testified that they were merely talking and did not wilfully want to disturb respondent. She also testified that respondent, who is a professional musician, frequently played music loudly, about which she also protested.

Witness de Fleur's evidence was that she had just returned from her night duty when she heard a man's voice shouting, swearing and chasing children. She found complainant who was very overcome with emotion and who was not well. It was then that she was told about what had occurred earlier and at a later stage she said she spoke to respondent about this incident.

In her evidence she explained about a number of other incidents that took place between respondent and themselves particularly that respondent looked for every opportunity to summon the police.

RESPONDENT'S EVIDENCE

Respondent gave his evidence and called no further witnesses. He testified that he and the complainant's family lived separately in a semi-detached house. He explained the layout of the two sections and that the walls were very thin and that this allowed the sounds from complainant's section to disturb him. He also mentioned various other incidents that had taken place over the years that had resulted in an unfriendly atmosphere.

This was apparent to the court.

He testified that he did not use the offensive words on 2 May 2005, rather he said "Lower your fucking pitch" and he said this from his room and at no stage did he approach complainant's section.

HOW THE COURT LOOKS AT THE EVIDENCE.

The court accepts the evidence of complainant and witnesses Rashida and Nokulunga. The court rejects the evidence of the witness Rachel. She very clearly was not present when the incident took place and her evidence related to issues that were not relevant to the complaint.

Respondent clearly admits to using the word, "fucking". He explained that he was tired and had played at an engagement until early that morning and did not use the other words.

The court finds that the offending words were used as alleged by complainant and that her complaint succeeds and the respondent is guilty of using Hate Speech.

JUDGMENT

The Equality court is not a criminal court, but it can refer matters to the criminal court and it may impose harsh sentences. The court must take steps to ensure that Hate Speech is not used and to take serious action when this does happen.

I have considered that the respondent was found guilty in regard to the same incident in the criminal court and that he was sentenced to an extremely heavy fine. It will therefore unfair for this court also to impose a similar sentence.

SENTENCE

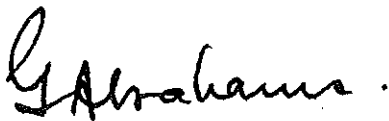
The court's sentence is that the respondent makes a written apology to the complainant, to the satisfaction of the court and that no further damages be paid to complainant, as she has claimed for. Had the criminal court not imposed such a heavy fine, this court would have considered awarding damages.

The apology must be an unconditional apology for the hurtful and harmful words that were used and must withdraw the words and undertake not to use these again. Respondent is to sign this document before the Clerk of the Equality Court.

This apology must be shown to the clerk of the Equality Court who must be satisfied with it, before the respondent is allowed to leave the court building today.

This is the court's order.

DATED AT DURBAN ON 3 January 2006

A handwritten signature in black ink, appearing to read 'G L Abrahams'.

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)*