

IN THE EQUALITY COURT FOR THE DISTRICT OF DURBAN

HELD AT DURBAN

CASE NO: 77/2005

In the matter between

S SEWSHANKER

COMPLAINANT

And

RYDALVALE PRIMARY SCHOOL

AND NINE OTHERS

RESPONDENTS

REASONS FOR RULINGS

TO: THE STATE ATTORNEY (KZN)
THIRD FLOOR
SANGRO HOUSE
417 SMITH STREET
DURBAN
(FIRST RESPONDENT'S ATTORNEY: FOR COLLECTION)

SIR/MADAM

KINDLY TAKE NOTICE THAT the Reasons for Judgment are filed,
subsequent to the Request dated 9 December 2005 and latterly to the
Application for Condonation granted on 20 January 2006.

INTRODUCTION

On 11 November 2005 when the matter came before me for the Directions Hearing, Ms Pillay who appeared on behalf of First Respondent and Mr Bedram, who appeared for the Second, Third and Fourth Respondents raised two Special Defences in limine.

These related to Jurisdiction and Res Judicata. Upon hearing argument and also responses that the court invited from Messrs Kader and Junkeepsad, the court dismissed both Special Defences.

The Directions Hearing was then consensually adjourned to 5 December 2005.

Prior to this date, Ms Pillay gave notice of an interlocutory Application in terms of Rule 19(5)(b) that purported to request the Reasons for the Court's Ruling on 11 November 2005.

This Notice was found to be irregular in that it was not provided for in the Equality Act or Regulations to the Act and the Court directed that if Reasons were being requested, this was to be done in accordance with the provisions of Rule 51 of the Magistrates Court Act that would have to be preceded by an Application for Condonation.

The latter Application was consented to on 20 January 2006, and I now furnish the Reasons envisaged by Rule 51.

REASONS

Ms Pillay and Mr Bedham argued in favour of the special defences raised whilst Mr Kader opposed the submissions and Mr Junkeepsad exercised more of a Watching Brief.

JURISDICTION

Ms Pillay argued firstly that section 2(c), with its emphasis on race, gender and disability, effectively ousted the present complaint that was not founded on any of these grounds.

The court found that the provisions of section 2(c), the Objects of the Act, are merely informative and do not assist the court either in interpreting the Act or in the adjudication process. The Objects should be read with the Preamble to the Act as these explain that segment further.

Ms Pillay, supported again by Mr Bedhram then moved that there were alternative avenues of relief open to the complainant, inter alia, internal procedures, governing body policy, departmental intervention and civil proceedings, that ought to have been exhausted.

The court, in this regard found that the complaint, untested by evidence as it is, on a prima facie level falls under the jurisdiction of this court, despite any other relief that is open to complainant. The court is respectful of the provisions of section 34 of the Constitution, that govern Access to Courts and the court will be slow to interfere with this constitutional right.

The civil court proceedings suggested in the alternative (supra) is also addressed. Section 5 of the Act provides, in brief, that where there is any conflict between this Act and any other Act (except the Constitution or any Act of Parliament amending this Act) the provisions of this Act must prevail.

Even if it can be said that the Magistrates Court Act could apply, its application cannot oust the application of this Act and cannot prevail against it.

The provisions of section 6 of the Act further frustrate the argument in favour of interpreting the provisions of section 2 as barring the complainant from accessing this court.

Section 6 reads:

“Neither the State nor any person may unfairly discriminate against any other person”

Since section 6 refers to “discriminate” regard must be had to the definition of “Discrimination” as defined in section 1, that in turn refers to the definition of “Prohibited Grounds” also in section.

The definition of the prohibited grounds, particularly under subsection (b) thereof, is sufficiently expansive to accommodate the present complaint. So for this reason too, the complaint is properly before this Court.

The special defence that this court is not clothed with jurisdiction must fail for these reasons.

RES JUDICATA

It appeared from the record that this complaint was earlier lodged with the Senior Magistrate at the Verulam Law Court who did not entertain it. This is noted by way of an endorsement on the complaint.

This court does not know the mind of that presiding officer as his reasons are not noted. In any event, this court has no power to review his decision, even if these were apparent.

The complaint was brought to the attention of this presiding officer in accordance with the provisions of section 20(3)(a) and it has been entertained on its own merits as prescribed under that section. This court is not bound by the first court's endorsement.

In any event, it clear that a formal hearing into the merits of the complaint has not been convened and these still stand to be adjudicated.

I also turn to Mr Bedhram's submission that the present address of complainant is not the address that appears on the earlier complaint and that the court should surmise duplicity on the complainant's part, with the distinct objective of having a second bite at the cherry, so to speak.

This submission does not find my favour for the following reasons:

- There is no evidence before me to arrive at the conclusion that the complainant is wilfully using an address of convenience. For any court to come to this conclusion it would have to make a finding on the basis of evidence before it.
- The complaint is made under oath and the court accepts the complainant's bona fides, until the contrary is proved.

For all these reasons, this special defence too, is dismissed.



G L ABRAHAMS: PRESIDING OFFICER

2 FEBRUARY 2006

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)*