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

EQUALITY CASE NUMBER: 16/2006

In the matter between:

NAVAMONEY JOUBERT:

Complainant

AND

GLEN ADRIAANSE

Respondent

JUDGEMENT

THE COMPLAINT

The complaint as set out on Form 2 may be summarized as follows:

1. The complaint is brought against the respondent, the chair of the Body Corporate of Rydal Mount.
2. The Complainant is a flat owner of Rydal Mount who complains that Telkom telephone lines were granted to other flat owners and that she was excluded on the basis that the other owners were Whites and that she is an Indian female.
3. She approached the court to compel the respondent to provide her with a Telkom telephone line and not to place any restrictions on Telkom in providing this service.
4. She particularly mentioned Dick Morton as being one of the recipients who has no restrictions placed on his application and whose line was subsequently installed.

FORMULATION OF THE COMPLAINT

Since the complainant avers discrimination on the fact that she is an Indian female, the complaint then falls to be dealt with as discrimination on the bases of race and gender.

THE PRE-TRIAL ISSUES

The respondent filed an opposing affidavit that was supported by two other affidavits, namely by Rashida Moosa and Isaac Ismael.

The thrust of these affidavits was that the alleged discrimination was denied.

Prior to the hearing it transpired that complainant was to call witnesses who no longer resided in Durban. Respondent indicated that he had three potential witnesses including, one Madurai Pillay who did not depose to an affidavit.

THE COMPLAINANTS EVIDENCE

Complainant testified on her own behalf to the following facts:

1. She conducted a letting business from her flat and this necessitated the installation of a telephone line.
2. There had previously been a communication system whereby all telephone calls were channelled through a central switchboard. This was discontinued when it was discovered that the switchboard was being operated without a license.
3. There then arose the need for an alternative telephone system. She became aware that other flat owners were being allocated Telkom lines and she then filed her own application.
4. When Telkom technicians called to effect the installation she was not present however, she testified that she learnt that the technicians were refused access into the building. At first she testified that the respondent banned them, then she subsequently changed this version to the effect that it was the respondent's mother, who was also a trustee, who instructed the security guard not to allow the technicians access.
5. She made the point that the others who received the Telkom lines were all White and some engaged in the same type of business she was involved in. This indicated to her that the trustees, particularly the chairperson actively wanted to prevent her from receiving her line and herein lay the perceived discrimination.
6. Complainant also called Richard Moortan. He testified that he and complainant were always on good terms and when he heard of her difficulties in obtaining a Telkom line, he offered to assist her as far as he could in his personal capacity and as a trustee.

7. At no stage was this offer taken up and he assumed that she had abandoned her application.
8. Thereafter she called her husband to testify. He confirmed the train of events that led to the present complaint.
9. In addition, he testified that he was never directly involved with the central issues around the complaint. Rather he was instrumental in bringing the unlicensed switchboard to the attention of the relevant authorities and for having this facility terminated. He added nothing material to the complaint.
10. There was an ancillary complaint relating to the complainant's name being placed on a notice board indicating that she was in arrears with her levy payments and she sought an order from the court to force the respondent to remove her name and in its place to place a written apology. The court finds that this aspect is unrelated to the main complaint and is a matter that ought to have been dealt with directly with the Board of Trustees.

THE RESPONDENT'S EVIDENCE

Initially, respondent indicated that he would call the three witnesses mentioned earlier and potentially also his wife. He abandoned all his witnesses and testified.

He testified as follows:

1. He had been the chairperson of the Body Corporate for a number of years and throughout he acted with the Board of Trustees as a collective and he never took decisions arbitrarily on his own. There were occasions relating to day to day issues to which individual trustees would make spontaneous decisions, however these would always be transmitted to the Board.
2. He denied all the allegations in the complaint and stated that there were one hundred and seventy flat owners who individually had the option of applying for Telkom lines without restrictions been placed on Telkom technicians.
3. During 2005 when the switchboard was closed, only two flat owners had direct telephone lines namely, Mr Moorton and a Mr McLean. These lines were allocated to them even before the closure of the switchboard and the Body Corporate had nothing to do with the installation.

THE COURT'S APPROACH

The court must follow the test for establishing discrimination as set out in Section 13 of the Equality Act. This section requires a complainant to present a credible complaint that fits in with the Acts definition of discrimination.

Discrimination is defined as “any act or omission, including a policy, law, rule, practice, condition or situation which directly or indirectly:

- [a] imposes burdens, obligations or disadvantage on; or
- [b] withholds benefits, opportunities or advantages on any person, on one or more of the grounds of discrimination”.

The court must therefore find that the complaint as outlined meets with this basic requirement and if so, the court must then find that either the discrimination did not take place or that there were reasonable grounds for it.

THE COURT'S FINDING

On the complainant's own version, the court makes the following findings:

1. Complainant's own witness, Moortan contradicted her evidence.
2. Her own evidence of Telkom being barred was based on hear say and if this was in fact so, she could have called on the assistance of Moortan that she did not do.
3. The only two other owners who had Telkom lines received these without any knowledge of or assistance from the respondent.
4. She acknowledged that Mrs Opperman, a White occupant also applied during 2005 for a Telkom line that Telkom refused without any intervention by the Body Corporate. Race therefore was not a consideration.
5. The inadequacies in the complaint therefore do not call for an answer from the respondent.

THE COURT'S FINDING

[A] ON THE MERITS

The complainant has failed to substantiate her complaint by way of evidence and has therefore failed to meet the requirements of Section 13 of the Act.

The court therefore dismisses her complaint as against the respondent in his personal capacity and even if it were brought against him in his representative capacity, it still does not have any merit.

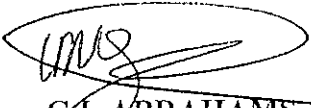
[B] ON COSTS

The court has a wide discretion in the award of costs.

The court is of the view that although the complaint failed, possibly through a misunderstanding of the requirements for success, the court does not find that complainant brought it in bad faith.

The court therefore orders that each party pays its own costs.

Dated at DURBAN on 14 MAY 2007.


G.L. ABRAHAMS

ADDITIONAL MAGISTRATE: DURBAN



EXPLANATION OF THE RIGHT TO APPEAL OR REVIEW THE DECISION OF THE COURT

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)*