

IN THE EQUALITY COURT OF SOUTH AFRICA
HELD AT PORT SHEPSTONE

IN THE MATTER BETWEEN:

ZANELE MAQUDULELA

Applicant

and

EVA ANNELISE GOTZ

Respondent

J U D G M E N T

The complainant is Zanele Maqudulela an adult female employed at ABSA (AIMS) and resident at 9423 Mophiring Street, Orlando East.

The Respondent is Evan Annelise Gotz also an adult female and resident in Margate.

The entire complaint arises out of a telephone conversation which allegedly took place inter parties on 20 March 2008 where some vulgar and racial words were said by respondent against complainant in her cause of employment.

Complainant states *viva voce* that she was told she is incapable due to the fact that she is black and that all black people are. As a result of such words, she suffered injuries to her dignitas and fama.

The testimony of Lyn Howel however, cannot take the issue any further, other than that complainant was deeply hurt as a result of this.

The respondent however, denies ever talking to the applicant.

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EVALUATION:

The evidence of the complaint is corroborated by the recordings of the conversation inter partes. The complainant could not have picked up on respondent to falsely implicate her. The applicant does not deal with clients directly but they are referred to her only when needs arise. There is a duty uberrima fides between applicant and her employer and to falsely implicate people like *in casu*, will clearly breach on such duty.

Applicant has exhibited a good witness to Court. There was no such instance where she tried to add things that were not said. To her version, she sustained her story even in cross-examination.

The respondent however never impressed the court at all. She contradicted herself throughout her testimony. She only answered the questions that she preferred. Her explanation of the existence of numbers of AIMS on her list of made calls on the day in question is inconsistent with the truth.

FINDING:

On the basis of the above facts, I find that the conversation did take place between applicant and respondent.

THE LAW:

Section 9(4) of Act 108 of 1996 states:

"No person may unfairly discriminate directly or indirectly against anyone on one ground or more grounds in terms of sub-section (3)"

The grounds in sub-section 3 *inter alia* includes race, colour, sex etc.

In case, applicant avers discrimination on the basis of race which in itself, is a listed ground as per Section 9(4) *supra*.

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BURDEN OF PROOF:

The complainant is saddled with the duty in terms of Section 13(1) Act 4 of 2000 (Pepuda) to make a *prima facie* case of discrimination, (a) and (b) of Section 13(1) of Pepuda supra makes out the reverse onus on the respondent of relevance *in casu* will be sub-section (1) a which states, the respondent must prove to Court that the discrimination has not taken place.

On the *viva voce* evidence of the parties before me, I am satisfied that a *prima facie* case of discrimination has been made by complainant and further, that respondent has failed to discharge the onus based on her as per the Act. The question is whether discrimination *in casu* impaired or was likely to impair human dignity. This is a very important test for unfairness in constitutional equality jurisprudence.

At heart of the prohibition of unfair discrimination lies a recognition that the purpose of our constitutional and democratic order is the establishment of a society in which all human beings are awarded equal dignity and respect regardless of their membership of particular groups. The achievement of such a society in the context of our deeply egalitarian past will not be easy, but that is the goal of the constitution should not be forgotten or overlooked.

Egan v Canada 1995 29 CRR held, "Equality, as that concept is enshrined as a fundamental right, means nothing if it does not represent a commitment to respect each person's equal worth as a human being, regardless of individual differences. Equality means that our society cannot tolerate legislative distinctions that threaten certain people as second class citizens, that demean them, treat them as less capable for no good reason, or that otherwise offend fundamental human dignity.

The Supreme Court of Canada in Canada 1999 170 DLR 4th 1(SCC) held.

Human dignity means that an individual or group feels self respect and self worth. It is concerned with physical and psychological integrity and empowerment.

Human dignity is harmed by unfair treatment premised upon personal traits or circumstances which do not relate to individual needs, capacities, or merits.

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It is enhanced by laws which are sensitive to the needs, capacities and merits of different individuals taking into account the context of their differences.

When individuals and groups are marginalized, ignored or devalued and enhanced when laws recognize the place of all individuals and groups within the Canadian society.

The attorney for complainant referred me to the Hugo decision which turns to answer the unfairness of the discrimination. "ad par 41". The prohibition of unfair discrimination lies a recognition that the purpose for our new constitutional and democratic order is the establishment of a society in which all human beings will be accorded equal dignity and respect regardless of their membership of particular groups.

I am therefore finding that complainant is entitled to a relief and orders the following:

(a) Respondent to –

- 1 Pay an amount of R20 000.00 to the complainant;
- 2 Costs of this action, including travelling;
- 3 Interest thereon a *tempora morae*

(b) To publicly apologise in the Local News Papers about her conduct towards Zanele Magudulela – South Coast Herald and The Fever by not later than 22/10/2009.


MR K M MOLEELE
ADD MAGISTRATE
14 October 2009

MAGISTRATE
PRIVATE BAG X 845
2009-12-14
PORT SHEPSTONE 4240
LANDDROS