



**IN THE EQUALITY COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

JUDGMENT

Reportable/Not Reportable

Case no: E02/2025

In the matter between:

CHOPHELIKHAYA SIMOTO

Complainant

and

KENILWORTH RACING (PTY) LTD

Respondent

Neutral citation: Chophelikhaya Simoto v Kenilworth Racing

Coram: MANGCU-LOCKWOOD J

Heard: 28 October 2025

Delivered: 4 December 2025

JUDGMENT

MANGCU-LOCKWOOD, J

A. INTRODUCTION

[1] The applicant, Mr Simoto, has brought an application in terms of the Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000 (‘the Act’) based on hate speech and unfair discrimination on the grounds of race. He seeks compensation in the amount of R5 million plus an order directing the Western Cape Gambling Licensing Board Authority to revoke the operating licence of the respondent. Although the respondent is cited as Cape Racing (Pty) Ltd, it is agreed that its proper description is Kenilworth Racing (Pty) Ltd.

[2] The catalyst for these proceedings is twofold. First, the respondent refused to grant the applicant access to its premises on which a container office is located. Second, the respondent displayed photographs of the applicant together with his name on the walls of its racecourses and in a WhatsApp group of its security guards.

[3] The applicant represented himself whilst the respondent was legally represented. At a directions hearing, the parties agreed that the matter should be dealt with by way of affidavits, and a full set of papers was delivered together with heads of argument from both sides. Mr Simoto addressed the court through the assistance of an interpreter, who interpreted between isiXhosa and English.

[4] At the hearing of the matter the applicant raised a preliminary issue relating to the inadequacy of documents supplied to him by the respondent upon request. It transpired that after the directions hearing the applicant delivered a subpoena for documents, and specifically a memorandum of incorporation of the respondent

(‘the memorandum’). After a document was provided to him, he was not satisfied on account of a lack of what he considered to be necessary signatures of the respondent’s directors. The respondent’s representatives explained in correspondence that there was no such requirement, and that, in any event, no other memorandum of the respondent exists apart from the one provided to him. The respondent’s legal representatives also disputed the relevance of the document to the proceedings, to which the applicant took exception.

[5] The discovery of documents is achieved in accordance with Rule 35 of the Uniform Rules of Court. For an applicant to successfully compel the production of documents, he bears the *onus* of satisfying the Court that the respondent is obliged to produce the document, including to satisfy the Court on a balance of probabilities that the document is relevant or not privileged.¹ Relevance is assessed with regard to what has been stated in the pleadings or affidavits.

[6] In this instance it is not immediately apparent what the relevance of the memorandum is to the proceedings because the issue relating to the memorandum did not arise from the papers. When I inquired from the applicant, he stated that his concern related to whether the deponent to the respondent’s answering affidavit had the requisite authority to depose to the affidavit or to represent the respondent. He needed the memorandum, he said, because his case is based on ‘that issue’. However, he admitted that none of this was raised in his papers, and that in his replying affidavit he admitted that the deponent, Ms Finch, was authorized to depose to the answering affidavit, and that the facts alleged in her affidavit are within her personal knowledge.

¹ *Centre for Child Law v The Governing Body of Hoërskool Fochville* [2015] ZASCA 155; 2016 (2) SA 121 (SCA) para 18.

[7] He explained that he had raised his need for the document at the directions hearing, which was only held after he had filed the founding and replying affidavits. This does not assist the applicant because a directions hearing is a judicial case management meeting, which is held to regulate the proceedings. It has no bearing on the merits of the case. A party is required to make out its case in its pleadings, so that its counterpart may know what case it is required to meet. This was highlighted at the directions hearing when the parties agreed for the matter to proceed by way of affidavits. Even in the correspondence between the parties where the applicant demanded the signed memorandum, he did not foreshadow this issue by specifying what his complaint was, especially when he was told by the respondent's representatives that the document had no relevance to his case.

[8] In any event the applicant does not, and cannot, deny that a signed version of the memorandum does not exist. He has been told this in correspondence by the respondent's legal representatives. In law, there is no requirement to produce documents which are incapable of production, or which do not exist.² Supposition or speculation about the existence of documents or tape recordings to compel production does not suffice.³ For these reasons, the preliminary point relating to the failure to produce documents is dismissed.

B. THE RELEVANT FACTS

[9] The respondent owns and operates racecourses at three sites across the Western Cape, namely Milnerton, Kenilworth and Durbanville. For some time, the

² *Hoërskool Fochville* para 18. *Democratic Alliance and Others v Mkhwebane and Another* (1370/2019) [2021] ZASCA 18; [2021] 2 All SA 337 (SCA); 2021 (3) SA 403 (SCA) (11 March 2021) para 40.

³ *Ibid.*

applicant was the president of the South African Grooms Association ('SAGA') which represents some of the grooms employed by trainers to tend to horses stabled at the properties of the respondent. It is not clear from the papers when his term as the president ended, but it is common cause that at all relevant times, he has been involved in organizing the affairs of some of the grooms.

[10] The container office mentioned earlier was allocated, initially by the predecessor of the respondent and subsequently by the respondent as its owner, for grooms to administer their affairs. The applicant had access to the container for purposes of attending to the administrative duties involving grooms. It is common cause that there is no formal agreement regulating the use of the container, and the papers indicate that its allocation to the grooms is based on the goodwill of the parties, since the respondent is also not the employer of the grooms.

[11] Towards the end of 2023, the applicant assisted the respondent in capturing the information of grooms so that the respondent could pay them a monthly stipend. For this task, the parties agreed that the applicant would be paid a monthly amount of R2000 for the months of November and December 2023. It appears from the papers that the applicant continued to have access to the premises of the respondent into the year of 2024. On 19 January 2024 the respondent engaged the services of a moving company to transport the container from its Kenilworth site to its Milnerton site.

[12] On 17 January 2024 the respondent received notification of the set down of arbitration proceedings relating to a matter between it and the applicant which had gone stale since 2021. The arbitration proceedings were set down for August 2024,

and until then, the applicant continued to have access into the container office at its premises in Milnerton.

[13] In brief, the arbitration proceedings concerned the lawfulness of the termination of a security services contract between the applicant and the respondent, which had commenced on 26 February 2017 and terminated on 13 May 2019. The award was decided in the respondent's favour and concluded that the contract was lawfully terminated.

[14] The respondent states that, although the applicant had no legal right, whether contractual or otherwise to use the container office in 2024, it allowed him to have access to the container and its premises pending the finalization of the arbitration proceedings, for the sake of peace. It was after receipt of the arbitration award dated 27 September 2024 that the respondent took steps to prevent the applicant from accessing its premises.

[15] Although the applicant sought to give contrary evidence from the bar, it is not disputed in the papers that the respondent displayed a total of seven A4-sized laminated posters, each containing two photographs of the applicant with his name, and that they were placed at the security checkpoints of each of the respondent's three sites. Four of the posters were posted at Milnerton, three at Kenilworth and one in Durbanville. At the Milnerton and Kenilworth sites, the posters were placed on the interior wall of the guard houses at access points. At the Durbanville site the poster was placed at what the parties refer to as the Silver Gate.

[16] Whilst it is common cause that the poster affixed to the wall at the Silver Gate of the Durbanville site was placed in an area inside the premises, it is

disputed that only trainers and grooms had access to the area. The applicant states that everybody, including the public coming to watch races as well as trainers who employ grooms, use the entrance where the posters were affixed. Although it appears the respondent accepts that members of the public do have access to the entrance, it seeks to minimize the amount of time that the public would have access to that entrance.

[17] To summarise the position as contained in the papers, the six posters posted at Milnerton and Kenilworth were all inside guard houses, completely out of view of the public or patrons. The one poster placed at the Silver Gate of Durbanville, although placed in an area inside the premises, was accessible to the public.

[18] Apart from the A4-sized posters on walls, the respondent also posted the same two photographs contained in the posters on the security guards' internal WhatsApp group. Whilst the applicant does not deny that the photographs were posted on a WhatsApp group of the security guards, he disputes that the information was private or not meant for public consumption. He states that, since WhatsApp is part of social media it cannot be internal because it can be forwarded to anyone in the world. In fact, one of the security guards belonging to the WhatsApp group had forwarded the message to him.

[19] In court the applicant added that the contents of the Whatsapp message had been posted on Facebook, although he only discovered that after delivery of the replying affidavit. He also claimed that he was told by people located in South Korea regarding the WhatsApp message. Whilst I note that the applicant has throughout disputed the closed and internal nature of the WhatsApp information, the information provided from the bar is nowhere mentioned in the papers,

including by a supplementary affidavit, to enable the respondent to respond. There was no proof provided thereof. I accordingly do not take into consideration for purposes of this judgment.

[20] The issue for determination is whether display of the posters of the applicant on the walls as described above and on the WhatsApp group constitutes hate speech and unfair discrimination based on race.

C. HATE SPEECH

[21] Hate speech is proscribed in terms of s 10(1) of the Act, and it now⁴ reads as follows:

‘Subject to the proviso in section 12, no person may publish, propagate, advocate or communicate words based on one or more of the prohibited grounds, against any person, that could reasonably be construed to demonstrate a clear intention to be harmful or to incite harm and to promote or propagate hatred.’

[22] When the prohibition of hate speech in s 10(1) is read with the proviso in s 12 of the Equality Act, it proscribes expression: (a) that constitutes publication, propagation or communication of words; (b) based on one or more of the prohibited grounds against any person; (c) that could reasonably be construed to demonstrate a clear intention to be harmful or to incite harm, and to promote or propagate hatred; and (d) provided that bona fide engagement in artistic creativity, academic and scientific enquiry, fair and accurate reporting in the public interest or publication of any information, is excluded.⁵

⁴ Prior to *Qwelane v South African Human Rights Commission and Another* [2021] ZACC 22 2021 (6) SA 579 (CC); 2022 (2) BCLR 129 (CC) para 1(d) of the order, s 10(1) proscribed the publication, propagation or communication of words based on a prohibited ground, that could reasonably be construed to demonstrate a clear intention to ‘be hurtful’.

⁵ See *Afriforum* para 36.

[23] As to ‘publication, propagation or communication of words’, the provision has been interpreted to include any expression of ideas, whether by word or conduct.⁶ Whilst ‘publish’, ‘propagate’ and ‘advocate’ require some form of public dissemination, ‘communicate’ is capable of both being public and private.⁷ To ‘communicate’ in terms of section 10(1) plainly requires transmission of words or information to a third party.⁸ The prohibition targets the ‘meaning behind the words, and not simply the words’.⁹

[24] On application of these considerations, I am satisfied that the posting of photographs with the name of the applicant, on WhatsApp and on property walls, whether accompanied by text or not, constitutes ‘publication’ and ‘communication’ of a message, within the meaning of s 10(1) of the Equality Act. The WhatsApp messages, even if they were posted in a closed group of security guards, qualify as ‘communication’ in terms of the provision.

[25] In order to constitute hate speech pursuant to s 10(1), the communication must be reasonably construed to demonstrate a clear intention to be harmful or to incite harm, and to promote or propagate hatred. The test in this regard is objective, and the question is whether a reasonable person in the circumstances surrounding the expression, would reasonably construe the words or conduct as demonstrating an intention to be harmful, incite harm or propagate hatred (“*the objective reasonable person test*”).¹⁰ The emphasis is on the effects of the hate speech, not

⁶ *Qwelane* para 113. *Afriforum NPC v Nelson Mandela Foundation Trust and Others* (371/2020) [2023] ZASCA 58; 2023 (4) SA 1 (SCA); [2023] 3 All SA 1 (SCA) (21 April 2023) para 34.

⁷ *Qwelane* para 115.

⁸ *Qwelane* para 116.

⁹ *Qwelane* para 115.

¹⁰ *Qwelane* paras 96-101; *Afriforum* para 42.

the intent.¹¹ But expressions that are merely hurtful or offensive are insufficient to constitute hate speech.¹²

[26] It is most convenient to resume with a consideration of how the WhatsApp messages are to be construed. It is common cause that the photographs posted there were accompanied by a written text message, which stated as follows:

“Team your guys should know this guy he used to deal with the grooms on site and his container is still on site he is not allowed on the premises anymore if he comes there management should be informed immediately.”

[27] It is not disputed that the purpose of the WhatsApp group is the dissemination of information relating to the affairs of security guards. In fact, the opening word of the above message, “*Team*”, supports the respondent’s version regarding who the intended recipients were, namely that this was communication addressed to its security team.

[28] Whilst I accept the applicant’s argument that the intended recipients could have forwarded the communication to persons outside the WhatsApp group, the express wording of the message indicates that it was addressed to the members of the group. If any person outside the group were to receive the message, it would be obvious from its contents that the message was not intended for them. They would immediately be aware that they are not expected to “*know this guy*”, as the message expects them to. They would also not have a duty to look out for the applicant and then to prevent him from accessing the premises. At most, they would know that the security team at the respondent’s premises had an instruction to prevent the applicant from accessing the premises.

¹¹ Qwelane para 100.

¹² Qwelane para 103.

[29] Another aspect indicated by the express wording of the message is the purpose of attaching the photographs. The message directs the attention of the recipients to the identity of the applicant with the opening wording: “*your guys should know this guy*”. This could only be a cross-reference to the photographs of the applicant which accompanied the message. This is the only reference in the message to the photographs, though indirect. It shows that the function of the photographs posted in the group was to provide a visual reference for the recipients regarding subject of the communication, namely the applicant.

[30] Another purpose of the message which is evident from its wording was to alert the recipients to the fact that the applicant was no longer permitted onto the respondent’s premises. The message conveyed a sense of seriousness about the applicant’s presence at the premises, as displayed by the instruction given to the recipients to immediately call management if they identified him on the premises. The reason for the prohibition was, however not disclosed. Given that the message was sent to security guards, it must be accepted that the issue related to the security of the property of the respondent. It is arguable that the message rendered the presence of the applicant at the respondent’s premises a trespass. The basis for this, however, was not provided to the recipients.

[31] Whether it can be concluded that the WhatsApp message demonstrates a clear intention to be harmful or to incite harm, and to promote or propagate hatred, within the meaning of s 10(1) is a matter of applying the objective reasonable person test referred to earlier. Although it is arguable that the implication of being a trespasser at the premises of the respondent may have negative connotations, it is a

far cry from exhibiting a clear intention to be harmful or to incite harm, and to promote or propagate hatred, within the meaning of s 10(1).

[32] In both the instance of the WhatsApp messages and the public display of the posters on the respondent's walls, the applicant has sought to establish such an intention by referring to the historical oppressive treatment of grooms, from as far back as 1994 and his involvement with the affairs of grooms. He does not rely on any specific incident or factual evidence to form a basis for a conclusion that the statements in question were intended to be harmful or insight harm or propagate hatred against him. That is, except for the cancellation of his company's security contract which he agrees has no relevance to these proceedings.

[33] Whilst it is correct that the imputation of being a trespasser may have been hurtful to him, especially after having had access to the premises over the years, there is no basis established here that the statements in question were intended to be harmful or to incite harm or propagate hatred against him within the meaning of the Act. At most, what has been established is that the respondent lacked the courtesy of communicating its intention to prevent access to its premises. However, as the case law indicates, expressions that are merely hurtful or offensive are insufficient to constitute hate speech.¹³ Rather, it appears that the respondent was driven by its decision to limit admission to its premises, in line with its exclusive property rights. However offensive its execution of that decision, it does not rise to hate speech as defined in the Act.

[34] In the case of the photographs displayed on the walls, the common cause evidence is that the photographs were not accompanied by any writing other than

¹³ *Qwelane* para 103.

the full names of the applicant. Here too, the objective test referred to above finds application, and the question is whether a reasonable person in the circumstances surrounding the communication, would reasonably construe the posting of the posters as demonstrating an intention to be harmful, incite harm or propagate hatred.

[35] The applicant states that his photographs were displayed as if he was a convict, or a ‘wanted person’ or a suspect. This is denied by the respondent as speculation. The respondent relies on the purpose of the communication already discussed in relation to the WhatsApp messages, namely to alert the security guards so that the applicant’s access to the premises could be prevented. Whilst the law emphasises that the effects of the communication must be given consideration above the intent of the message conveyed¹⁴, no other intention has been established by the evidence. And as I have already observed, the meaning of the communication conveyed by the WhatsApp text was to direct the attention of the security guards to look out for the applicant and to prevent his access to the premises. It would be anomalous to have a different purpose for displaying the same photographs posted in the WhatsApp group on the walls. There is no such suggestion made in any event. And it must be emphasized that the respondent’s reasoning or intention for displaying the photographs is also not disputed in the papers.

[36] On the other hand, the applicant’s imputed meaning is nowhere found on either the posters displayed on the walls, or in the WhatsApp messages. As I have already indicated, the most that can be said is that the applicant was not wanted at the premises. While I accept that that may be hurtful, it does not rise to the level

¹⁴ Qwelane para 100.

required of an intention to be harmful or to incite harm or propagate hatred against him.

[37] I also observe that the photographs themselves were neutral. There is nothing about them which might be viewed as derogatory or undignified. There is no basis to conclude that an objective reader would reasonably construe them to demonstrate a clear intention to be harmful or to incite hard and to promote or propagate hatred against Black people. There are also no coded or racist messages emerging from the posters or their context, and none was established by the applicant.

[38] In *Qwelane*¹⁵, the Constitutional Court had regard to the meaning of the word ‘harmful’ as contained in s 10(1) and concluded that it encompasses emotional and psychological harm that severely undermines the dignity of the targeted group as well as physical harm. The Court had regard to *SAHRC v Khumalo*¹⁶, where three types of harm were referred to as being envisaged in the provision, as follows:

*“First, “the reaction of persons who read the utterances and who are inclined to share those views and be encouraged by them to also shun, denigrate and abuse the target group”. Second, the type of harm experienced by the target group which includes “demoralisation and physiological hurt” and “the harm caused from responding in kind thereby creating a spiral of invective back and forth”. And third, “harm to the social cohesion in South African society” which can undermine our nation building project.”*¹⁷

[39] What must be emphasised is that the harm envisaged must derive from membership of the target group. This brings me to another necessary requirement of hate speech s 10(1), which the applicant has failed to meet, namely that it must

¹⁵ At para 154.

¹⁶ *South African Human Rights Commission v Khumalo* 2019 (1) SA 289 (GJ) paras 95 - 97.

¹⁷ *Ibid.*

be based on one or more of the prohibited grounds against any person. Prohibited grounds are defined in the Act as follows:

“'prohibited grounds' are-

- (a) race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language, birth and HIV/AIDS status; or
- (b) any other ground where discrimination based on that other ground-
 - (i) causes or perpetuates systemic disadvantage;
 - (ii) undermines human dignity; or
 - (iii) adversely affects the equal enjoyment of a person's rights and freedoms in a serious manner that is comparable to discrimination on a ground in paragraph (a)”

[40] In his papers the applicant did not rely on any of these grounds for his claim based on hate speech. Even in the proceedings before me, the applicant’s argument in this regard went no higher than to claim that people may possibly view him as a criminal when they view the posters. Upon the court seeking clarity from him, the applicant was candid enough to admit that there have been no such conclusions as yet, and that it is a mere possibility which he foresees. That is a far cry from establishing a ground based on one or more of the prohibited grounds. It is in this regard that the respondent states the applicant’s claim is based on presumptions without evidence.

[41] In court, the applicant sought to rely on what may be termed an unlisted or analogous ground to the specific prohibited grounds set out in paragraph (a) above, specifically paragraph (b)(i), which provides for “*any other ground where discrimination based on that other ground causes or perpetuates systemic disadvantage*”. Not only was this not foreshadowed in his papers, but even when he did raise it, he was unable to substantiate it, save to refer again to the claim that people may possibly view him as a criminal when they view the communication. It has already been held in an employment context necessitating a clean criminal

record that being a convict in itself does not qualify as an unlisted ground of discrimination.¹⁸ However, I am willing to accept that, depending on the context, to be unjustly viewed as a possible convict or suspect may well cause or perpetuate systemic disadvantage, and have a negative effect on human dignity and the equal enjoyment of rights and freedoms justifying recognition as a ground of discrimination.

[42] The problem in this case is that this whole issue is based on conjecture. As I have already mentioned, the applicant himself admits that, despite his allegations of the far-reaching extent of the communication, there have been no conclusions that he is a convict or a suspect. It is quite clearly his own subjective view. As I have indicated, the applicable test is objective. It has accordingly not been established that there was hate speech in this case, whether based on a prohibited ground or a ground analogous to a prohibited ground.

D. UNFAIR DISCRIMINATION

[43] Section 7 of PEPUDA provides, in relevant part, as follows:

“Subject to section 6, no person may unfairly discriminate against any person on the ground of race including --

(a) The dissemination of any propaganda or idea, which propounds the racial superiority or inferiority of any person, including incitement to, or participation in, any form of racial violence.

(b) The engagement in any activity which is intended to promote, or has the effect of promoting, exclusivity based on race.

(c) The exclusion of persons of a particular race group under any rule

¹⁸ *Vass v South African Police Services* (C 747/2009) [2013] ZALCCT 27 (22 August 2013).

practice that appears to be legitimate, but which is actually aimed at maintaining exclusive control by a particular group.”

[44] In *Rustenberg Platinum Mine v SAEWA (obo Bester) and Others*¹⁹ the Constitutional Court held that the test to determine whether the use of words is racist is objective, and is whether a reasonable, objective and informed person, on hearing the words, would perceive them to be racist or derogatory.

[45] However, the context in which the words or phrase is used is determinative.²⁰ Phrases that appear neutral or innocuous may carry an entirely different meaning when viewed in context.²¹ Such an approach takes cognisance of the substantive-equality demands that flow from the Constitution, and takes into account of how words perpetuate and contribute towards systematic disadvantage and inequalities.²²

[46] On this aspect, the applicant’s main issue is that the respondent has never dealt in a similar manner with white people in a similar situation. In response, the respondent has made reference to specific incidents where it restricted and banned access to similarly situated white people. One was a white individual who, with the intervention of a court order, is now only permitted to use its facilities to export horses. Another instance relates to several racehorse owners, some of whom are white, who are prevented from using the respondent’s facilities due to unruly behaviour they exhibited at a race meeting in KwaZulu-Natal.

¹⁹ *Rustenberg Platinum Mine v SAEWA (obo Bester) and Others* 2018 (5) SA 78 (CC) at [28].

²⁰ *Rustenberg Platinum Mine v SAEWA (obo Bester) and Others* 2018 (5) SA 78 (CC) at [28].

²¹ *Rustenberg Platinum Mine v SAEWA (obo Bester) and Others*; *SARS v CCMA* 2017 (1) SA 549 (CC) at [86]; *Qwelane v SAHRC* 2021 (6) SA 579 (CC) at [86].

²² *Qwelane v SAHRC* 2021 (6) SA 579 (CC) at [86].

[47] Whilst this evidence is not disputed in the papers, there is no evidence that those individuals had their photographs displayed in the manner done here against the applicant. The question is whether that difference in approach amounts to racial discrimination. The first point against such a conclusion is the fact that the latter group identified by the respondent includes people who are not white. A conclusion can therefore be drawn that the respondent previously dealt with black people whose conduct it deemed unruly, but it did not display their photographs.

[48] But even if it is true that the respondent has never displayed photographs of white people in a similar manner as it has done here, that does not amount to unfair discrimination based on race. The test remains an objective test which requires an enquiry as to whether a reasonable, objective and informed person, on seeing the communication and having knowledge of the prevention of access of the applicant, would perceive that conduct to be racist or derogatory. There is no basis established to reach such a conclusion.

[49] Regarding the act of preventing access, the evidence establishes that a white individual has been prevented from accessing the premises of the respondent. Although there is no evidence regarding the details of how that occurred, it is not disputed. On consideration of all this information I am of the view that an objective, reasonable person would not perceive that conduct to be racist or derogatory. I accept that the applicant may have felt disrespected and his feelings disregarded, and as already stated, that the respondent was less than courteous in its conduct. However, that does not rise to racist behaviour.

[50] As I have already mentioned, the only respect in which the applicant sought to link the conduct of the respondent to discrimination based on race was in regard

to the termination of his security services contract. However, as I have indicated, an independent arbitrator concluded that the termination was lawfully effected. Secondly, it is not disputed that the applicant's company was replaced by a 100% black-owned security service provider, with more experience in the industry than the applicant's company.

[51] As regards the applicant's attempt to connect the display of his photographs to the history of the treatment of the grooms, my observation is that, while grooms are an historically disenfranchised group and predominantly Black, the applicant does not seek to represent them in these proceedings and has expressly disavowed any connection between this case and his previous involvement with their affairs. In any event, no such connection has been established by the facts of this case.

[52] I note that the applicant is offended by the fact that his photographs were displayed without his permission. In this regard, he has made reference to the Protection of Personal Information Act 4 of 2013 ('POPIA Act'), although there is no specific reference to any provisions there. At the very least, in order for this court to have jurisdiction for such a claim, the applicant must first and foremost comply with the requirements of the PEPUDA Act. The applicant has failed to meet the necessary requirements for a case based on hate speech and unfair discrimination.

E. ORDER

[53] For all these reasons, the claim based on hate speech and unfair discrimination must fail. There is furthermore no reason why costs should not follow the result, since the respondent has successfully defended the claim.

[54] In the circumstances, the following order is made:

- a. The applicant's case is dismissed.
- b. The applicant is to pay the Costs of the respondent including the costs of counsel, based on scale B.

N. MANGCU-LOCKWOOD
Judge of the High Court

Appearances		
For the complainant	:	C. Simoto (in person)
For the respondents	:	U. Naidoo
Instructed by	:	T. Baker, Cliffe Dekker Hofmeyr Inc. C. Moser, Cliffe Dekker Hofmeyr