IN THE EQUALITY COURT OF SOUTH AFRICA

(WESTERN CAPE DIVISION, CAPE TOWN)

CASE NO: EC 03/24

Reportable

In the matter between

AGREEMENT FUNEKA MAYONGO APPLICANT

AND

MARK **PREYER**

RESPONDENT

Date of Hearing : 25 November 2025

Date of Delivering : 09 December 2025

ORDER

FINDINGS AND ORDER

(a) Mark Preyer communicated the word Kaffir to Agreement Funeka Mayongo on 19 February 2024 at Mediclinic Cape Town in contravention of the prohibition of hate speech as envisaged in section 10(1) of the PEPUDA.

(b) Mark Preyer communicated the words poes, your mothers poes and fucking bitch to Agreement Funeka Mayongo in contravention of the prohibition of harassment as envisaged in section 11 of PEPUDA.

(c) Mark Preyer to pay the costs.

(d) Mark Preyer is ordered to pay the wasted costs occasioned by the postponement of 3 June 2025.

(e) The parties are to arrange, within 10 days of this order, with the Registrar of Thulare, J in respect of the date for the determination of an appropriate remedy.

JUDGMENT

THULARE J

[1] This is an opposed complaint of alleged racial discrimination and hate speech by the respondent (Preyer) directed at the complainant (Mayongo) in terms of the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (Act No. 4 of 2000) (PEPUDA). The complainant is a nurse in triage at Mediclinic Cape Town (the hospital), and the respondent presented as a patient on 19 February 2024 at around 17H00. It is what allegedly happened between them and was allegedly

said by the respondent to the complainant when only the two of them were behind a closed door in the room used as triage, that was the subject of the complaint. Whilst there was visual video footage, unsurprisingly because of the privacy laws of the country especially in a hospital and patient scenario, there was no audio capture of what happened in that room.

[2] The evidence from those working for as well as those who work at the hospital was that the hospital has two entrances, to wit, the main entrance and the emergency care entrance. Each entrance has its own receptionist. The main entrance is used by everyone else attending for general medical care with doctors whilst the emergency care entrance is closer to trauma units of which triage is one and is used for those who require emergency medical care. Triage is the first point of contact of a patient in the trauma unit with medical professionals, a sister and a doctor. The triage is used to determine the order of priority for those presented to the trauma unit. The triage methodology at the hospital is a process which placed those with serious injuries or medical conditions as priority. Triage involved assessing the patient's condition, pain level and consideration of vital signs to allocate a colour-coded priority with red for urgent, followed by orange and yellow. Much depended on the seriousness of the injuries or condition of the patient. For less serious cases, a trauma screening questionnaire was used, which was both a self-reported assessment by the patient and a general medical opinion by the nurse. The attending nurse asked the patient questions and noted their own observations on which their general opinion was based. The overall assessment was done by a total score, which was translated into the colours mentioned. Mayongo scored Preyer yellow. This was an indication that Preyer was not a priority patient and that there were other patients who required priority attention

before him. That standard assessment procedure included further patient details which were sourced from the patient, and a recording of the medical observations like vital signs, before the patient was seen by the doctor. Mayongo was busy with this process on Preyer, in triage, screening him and asking questions to complete the questionnaire when the alleged words were said to her by Preyer. None of the people from the hospital knew Preyer before that day.

[3] Nobulali Nkayi (Nkayi) was on duty that afternoon as a receptionist. Her attention was drawn to Preyer, who was at the time outside the emergency care entrance and trying to forcefully open the door. A person who presented at the door would ordinarily press a button which was situated next to the door to draw the attention of the receptionist to their presence and wish to enter the trauma unit area. The entry and exit in that area is managed through a locked door, which could be opened from the reception desk. Seeing that Preyer was forcefully trying to open the door, Nkayi unlocked the door and Preyer entered. She noted a minor wound on Preyer's foot. She took Preyer's personal details and opened a file for him. She then explained to Preyer that the trauma unit was busy and that he should join the other patients who were already in the waiting area. Preyer refused to accept that he had to wait for up to an hour or two. Preyer did not accept that he had to join the queue and wait his turn. He demanded immediate attention. He was aggressive and rude when he spoke to her. The behaviour of Preyer led to Nkayi approaching Mayongo when Mayongo left the consultation room and came to the waiting area to see the next patient. Mayongo spoke to Preyer and Nkayi saw when Mayongo led Preyer to the triage. From her reception desk, Nkayi could not hear what was said between Mayongo and Preyer inside the triage, but she could hear that Preyer was shouting. She saw when Mayongo left Preyer in the triage to call a senior

nurse. Mayongo was visibly upset and was crying when she left triage. She saw when the senior nurse, and later Dr Thomas attended Preyer. She also saw when Dr Thomas escorted Preyer out of the trauma unit.

[4] Mayongo was on duty as the nurse in triage doing a day shift that day and attended Preyer. Preyer was not a patient she called from the waiting area. Mayongo was called by the receptionist and requested to assist the patient in triage. Mayongo approached Preyer and introduced herself. She took Preyer into the triage room, for privacy as per the process. She could not and did not assess Preyer in the reception. She observed the wound on Preyers foot and concluded that it was not an emergency and priority case, and as such proceeded to subject Preyer to the further triage process of assessment. Amongst other clinical observations, the wound was not actively bleeding. She asked Preyer questions and was noting his answers down as part of her assessment. Whilst asking him questions, Preyer got angry and started swearing at her. It was a verbal attack full of obscenities. Preyer called her a bitch. He told her that she was not supposed to be a nurse, that she was a fucking bitch and that he was going to fuck her. Preyer called her kaffir, your poes and your mothers poes. Preyer asked if there was nobody else that could help him besides her. Because of the attack from Preyer Mayongo became distraught and started crying. Mayongo left the room hurt, upset and crying, and went to report to her superiors, who were Sisters Samuels, June Swan and Dr Thomas. The behaviour of Preyer caused him to be given only the necessary care and be escorted out of the hospital. Preyer was given first aid, and after he was given first aid he was escorted out of the hospital and directed to the other nearest medical facility for further attention. The incident embarrassed and hurt her. She was attacked and embarrassed in front of her colleagues and patients. It caused her

trauma, low self-esteem and affected her emotionally. It caused her to have doubts about herself and has made her to be emotional when she enters the hospital.

[5] Eurasia Samuels was a registered nurse working at the hospital for 23 years and served as the senior nurse responsible for triage. She worked with Mayongo since 2023 and with Dr Thomas since 2016. Samuels knew Mayongo as a soft-spoken, hardworking, resilient and skilled nurse in patient communication. Part of her duties included responding to junior nurses who required assistance during triage assessments. Samuels was walking towards the reception to make copies for a patient's folder when she heard aggressive language being used in the triage. She heard a loud voice, someone calling the triage nurse a fucking bitch. She then went into the triage room. She was in the triage when Preyer referred to Mayongo as a fucking bitch. She found Mayongo crying, very upset and visibly distressed. Mayongo requested her assistance. She then told Mayongo that she would take over and attend to the patient. Although the hospital staff, including Mayongo, were frequently subjected to verbal abuse by patients, she was surprised to see Mayongo in tears that day. At that time when she saw Mayongo in tears in the triage room, she was not yet aware but only became aware that Preyer had also allegedly called Mayongo a kaffir when Mayongo later reported this to Dr Thomas. Mayongo left to report on the matter to the attending doctor, Dr Thomas. The patient was Preyer. She explained to Preyer the procedure at triage. She did not personally hear the other insults that Mayongo mentioned to her, but Mayongo told her that amongst others, Preyer called her kaffir. The incident was reported to Dr Thomas who was the head of the emergency unit, as well as Sister Swan who was the supervisor in charge of the hospital. She was present when Dr Thomas and Sister Swan saw and spoke to Preyer. Due to Preyer's disruptive behaviour, he was

moved to a private room. Preyer admitted to swearing at Mayongo. Dr Thomas informed Preyer that the hospital did not tolerate verbal abuse of its staff members. Dr Thomas also advised Preyer that he could get further treatment at another hospital. Preyer insulted Dr Thomas, telling Dr Thomas to fuck off. Preyer's wound was cleaned and dressed, and he was escorted out of the emergency unit by security.

[6] Dr Grant Thomas is one of the two directors of the Emergency Centre in the hospital. He was on duty that afternoon and the alleged incident involving Mayongo and Preyer and the intervention of Samuels was reported to him. Mayongo approached Dr Thomas and amongst others reported that Preyer was rude to her and had called her a fucking bitch and a kaffir. Dr Preyer went to triage and caused Preyer to be brought into the clinical area and placed in bed 6, which was one of the beds which could be drawn close and provide some privacy. It was private cubicle. When he spoke to Preyer there, Swan and Samuels were present. He informed Preyer about the allegations made by Mayongo, including her being called kaffir and fucking bitch. Preyer did not deny the allegations made against him. This, according to Dr Thomas, meant that Preyer admitted having used the language he was accused of. Dr Thomas then informed Preyer that the use of the words were against Mayongos basic human rights and against the laws of the country, the hospital and the emergency centre practice and that the emergency centre had a strong stance against such behaviour and in that light affirmed its right to refusal of treatment. Dr Thomas explained the respective rights of patients and healthcare practitioners, referencing Batho Pele principles. In this, Dr Thomas was trying to de-escalate the situation. Preyer then told Dr Thomas to fuck off. Dr Thomas realized that his attempts to de-escalate was not possible.

[7] Dr Thomas offered Preyer basic emergency care. He instructed Samuels to dress Preyer's wound. Preyer refused the treatment offered, left bed 6 and walked to the main reception where he demanded to be seen by one of the hospital doctors. Dr Thomas, Swan and security followed him to the main reception area. The receptionist informed him that emergency care was provided in the emergency centre. Dr Thomas repeated to Preyer that he would be provided only with basic emergency care and provided him with the details of the nearest facilities that would be able to assist him. Preyer then called Dr Thomas a fucking racist. This was in front of the public in the main hospital reception area. Preyer then threatened to sue the hospital if he was not provided with basic emergency care. He was accompanied back to the emergency centre to bed 6 where he was provided basic emergency care by Samuels and provided with the details of the Christiaan Barnard Memorial Hospital (CBMH) and New Somerset Emergency Care units for further treatment. Preyer then left the emergency centre escorted by security. Dr Thomas indicated that he had never before encountered a patient who was so rude and arrogant, and further indicated that he was particularly disturbed by the racist remarks, given South Africa's history. Dr Thomas knew Mayongo very well, having worked with her for approximately 3 years before the incident.

[8] Nkosinathi Skitasi (Skitasi) was the security site supervisor on duty at the hospital that afternoon. A security officer who was directly involved in the matter, Sanele Qumba, no longer worked with them. It was Qumba who called Skitasi who was at the time in the main entrance reception area, to the emergency care unit area. This is where he met Preyer and Dr Thomas. Skitasi saw that Preyer had a minor cut which was not actively bleeding. Dr Thomas asked Skitasi to remove

Preyer from the premises. Dr Thomas told Skitasi that the reason for his instructions to remove the patient was that Preyer had been rude to a nurse and Dr Thomas himself. In the conversation, amongst others Dr Thomas told Skitasi that Preyer had sworn at a nurse, calling the nurse a fucking bitch. Skitasi himself heard when in his presence, Preyer told Dr Thomas to fuck off. Skitasi did not touch Preyer but asked Preyer to remove himself from the premises. Preyer insisted that security personnel physically touch him, but Skitasi told him that it was not in terms of their security procedures and protocols to lay a hand on him. This Preyer did whilst capturing footage of what was happening on his own mobile phone. Preyer ultimately walked out voluntarily and was not physically removed but was escorted out. As they moved to where Preyer had parked his motor bike, Preyer told Skitasi that he sought attention to the injury on his foot, which he, Preyer, had sustained a few days before that afternoon.

[9] Preyer's case was that he travelled on a motorcycle in traffic that afternoon when a vehicle reversed towards him. Whilst taking evasive action he dropped the motorcycle and, in the process, sustained an injury. It was a deep flesh open wound on his right shin. He was in extreme shock and pain. He was bleeding profusely. He quickly rode to the nearest hospital for emergency treatment, which was Mediclinic at Gardens. Upon arrival he attempted to open the entrance door, which the receptionist then opened for him. He entered the emergency clinic still bleeding profusely with blood dripping onto the floor as he walked in. He approached the receptionist who appeared disinterested as she was busy on the phone. She did not even look up but just informed him that he had to wait. The receptionist requested his personal information but did not inspect his wound. He became upset as he believed that his injury was serious and that insufficient attention was being given

to it. He expressed his unhappiness with the situation and the receptionist then called a triage nurse to check him in. He felt hostility towards him by staff probably because they thought he was rude although no swearing had yet occurred. He was thereafter directed to triage. When he entered the triage, the nurse looked up at him with an expression of naked hostility. He was informed in triage that administrative forms would first need to be completed. The nurse, very slowly, went through the administrative process of checking him in. She still had not even looked at his wound which was dripping blood onto the floor of the triage room. This further angered him as he felt that his wound should have been prioritized. He asked Mayongo how long it would take before she examined the wound, however, she continued completing documentation without responding.

[10] It was at this point that he felt that he was deliberately mistreated. His feeling was that he was being racially prejudiced. He became angry at the nurse. The situation escalated to a point where she swore at her. He did not recall the full exchange leading up to the shouting. He admitted that in his state of shock and agitation, he shouted at Mayongo and called her a fucking bitch. He denied calling her kaffir. He was usually a calm person so he was not proud that he lost his temper. The combination of shock, pain, blood and a feeling of being discriminated against overcame him. He was certain that he never said anything racially offensive as this is one of his cardinal rules in life. Mayongo lied when she accused him of calling her a kaffir. He was increasingly frustrated by what he perceived as a lack of urgency from the hospital staff. His frustration carried over into his interaction with Mayongo. When he was taken from triage to the treatment room, Dr Thomas approached him with an attitude of extreme hostility. Dr Thomas had immediately taken the side of Mayongo and believed her allegation that he had

called her kaffir. Dr Thomas was not interested in his side of the story. Dr Thomas attitude compounded his perception that he was racially discriminated against. Dr Thomas told him that he, being Dr Thomas, would not be treating him, being Preyer. Dr Thomas asked him to leave the hospital. He felt at the time that there was an attempt to exploit him financially because he perceived himself as wealthy. He acknowledged that he had been rude to hospital staff that day but insisted that it was due to shock. He then rode his motorcycle across town to CBMH where he was treated for shock and injury which required 11 stitches. On admission at CBMH his blood pressure was measured at 170. His normal blood pressure was 120. The difference supported his case that he was in shock. There was no sound on the cctv footage but the body language of Mayongo was calm and at one point she was smiling. This footage was not consistent with someone who was traumatized. Swearing at someone, in shock and frustration under the circumstances, was not hate speech.

[11] Skitasi and Preyer had a casual discussion as Skitasi escorted Preyer out of the hospital building on to the parking lot where Preyers motorcycle was parked. The casual discussion included the statement by Preyer that he sustained the injury a few days before the day he attended the hospital to have the wound medically assessed. This statement was voluntarily made by Preyer to Skitasi. There was nothing of concern as regards the crucial context in which the statement was made. There was no indication of any coercion, promise, intimidation, threats or any other untoward factor which could affect the weight of the evidence or which diminished its credibility. There was nothing that adversely impacted on the statement, arising out of the circumstances under which it was made. Skitasi did not obtain this statement in an improper or unfair manner. Skitasi did not contradict

himself on the statement and there were no inconsistencies within the statement or in respect of any other part of the totality of his evidence. Skitasi was a reliable witness. The evidence of Skitasi on the statement of Preyer as regards the status of the wound was corroborated by Skitasis own observation of the injury, as well as the evidence of the receptionist and the medical staff at the hospital. The sum of the observation of the hospital witnesses was that it was a minor wound which was not bleeding and did not qualify as a serious injury which required priority attention that afternoon. The weight of the totality of the evidence makes the statement made by Preyer to Skitasi reliable and the statement points to the truth. Skitasi was not the only witness on the status of the wound. The admissibility and weight of the statement made by Preyer to Skitasi is critical, and seen against the totality of the evidence, established that Preyers evidence that he entered the emergency care unit at the hospital with a fresh wound that was bleeding was untrue. There was no coercion. Preyer acted voluntarily, out of some self-interest. No detriment to the administration of justice is apparent. In *Makhala & Another v S* (438/20) [2022] ZASCA 19; 2022 (1) SACR 485 (SCA); [2022] 2 All SA 367 (SCA) (18 February 2022) it was said at para 39:

> [39] In summation, then, whether under s 35(5) of the Constitution or at common law, the two statements were not obtained in violation of Luzuko Makhala's rights. The trial was not rendered unfair by the admission of the statements, nor was there anything done in securing the statements that constituted any material detriment to the administration of justice.

The SCA spoke in the context of a criminal matter, but the principles are equally applicable in an Equality Court.

[12] Preyer knew that he was bringing a few days old wound into the hospital. He did not want to attend to a doctor on the ordinary course, which included an

appointment and/or waiting your turn. This explained why he did not use the main entrance, where in the absence of a specific doctor's appointment, waiting was unavoidable. It was a deliberate and calculated choice to go to the emergency care unit. Pressing a button did not fit into his plans. He entered with a bang. He forcefully attempted to open the door. This was calculated to start attention in an energetic and noticeable way. To draw attention, and to make his entry stand out from the start, his entry had to be dramatic and impressive, for his quest to be successful. To get his way, he had to start with a bang, never to slow down and make sure that his arrival was action packed. To maintain momentum, he made sure that his presence was forceful and not quiet or timid. It is not surprising that he demanded the extraordinary. Receptionists at health facilities do not assess injuries and do not provide medical attention.

[13] Preyer made it a big issue that Nkayi provided the service that receptionists do, of taking his personal details, but did not inspect the wound. Preyer deliberately created an objectively non-existent but self-created crisis. It yielded the desired results. The unexpected disorder caused by Preyer caused Nkayi a sudden period of intense fear. Although there was no real danger or apparent cause in sticking to due process, Preyer's conduct triggered a reaction that would expedite the stressful situation to end and to avoid a sense of impending doom or danger to continue. The situation was hard to manage on her own. To get help from the situation, which was hard to manage on her own, Nkayi called for the assistance of Mayongo to manage Preyer. To manage Preyer's dramatic presence, Mayongo caused Preyer to skip the queue. He did not have to join other patients in waiting for the just over an hour estimated waiting time, some of whom may have been priority cases over him.

[14] One does not need to be a medical practitioner to conclude that on a balance of probabilities, Preyer did not bleed profusely, and in fact, did not bleed at all. One only requires functional literacy of the complex human body, which basic education especially in the subject of Biology between grades 8 and 12 in the South African basic Education school programme provided. From that basic functional literacy about the body, one knows that the shin, in respect of blood, mainly has arteries, nerves and capillaries, which together with the muscles are responsible for the motor, sensory, electric and blood flow to and from the lower limb. The capillaries are tiny blood vessels that connect arteries and veins to deliver nutrients and oxygen to body cells. It is injury to the capillaries, nerves and the arteries which cause bleeding. Injury to the capillaries often lead to slow bleeding whose intensity is influenced by multiplicity of capillaries affected.

[15] Profuse bleeding normally follows injury to the nerves and arteries. Loss of blood, which may lead to failure of delivery of oxygen and nutrients to the vital organs can lead to death. Any active bleeding is potentially fatal, and depending on its intensity, makes out a case for priority. It is a notorious fact that hospitals in South Africa have generally separated admission into their facilities by putting in systems to immediately identify patients who attend for general medical care requirements from those requiring priority attention. This is the reason why the hospital had two entrances, to wit, a general medical care main entrance and a special emergency medical care unit with its own entrance. Because of the sensitivity and risks associated with emergency medical care for priority cases, it is not surprising that access there is strictly controlled, and one cannot just walk in.

[16] In South Africa medical practitioners, which includes nurses and doctors, and not receptionists even if they work in a hospital, take the Hippocratic Oath, which is a foundational ethical pledge which emphasized principles like the commitment to patient care. In its beneficence principle medical practitioners make a commitment to always act in the best interests of the patient. In its professionalism principle medical practitioners commit to uphold the integrity of the medical profession. The oath is a moral compass for medical practitioners and influences their ethics and practice. It ensures that health professionals display the highest standards of care and ethical conduct. Blood flowing, including on to the floor is a health risk for both practitioners, workers, patients and visitors. Profuse bleeding would be a health risk and from the triage system explained by the hospital, the immediate reaction of the health professionals would be to identify the source of the bleeding, control the bleeding, clean up the wound and stop the bleeding. This would be necessary to intervene in the risk of Preyer losing too much blood and dying.

[17] Preyer had a dirty injury in that it was not sustained within a medically controlled environment with sterilized tools by medical professionals. This means that there was an added risk of foreign objects, bacteria or even a blood clot entering his bloodstream. These risks would have immediately upon entry earned the colour red and, depending on the source of the bleeding, would most probably have caused Preyer to be taken directly to the private cubicle for Dr Thomas for attention as an urgent priority. On the facts, there was no reason why the hospital would have ignored Preyer with the risk of death and not attended to him as his case demanded, as he wanted this court to believe. It is a well-known fact that the

hospital is not a public one. It is a private hospital, which means it is funded by private medical insurance or direct payments by patients. As the evidence showed, there was another private hospital close by to which Preyer allegedly attended after leaving the premises. The hospitals compete for care. Preyer arrived in the afternoon when there were other patients waiting. The suggestion that for no reason, the hospital will disregard a profusely bleeding patient in a competitive market, with other patients watching, is simply a long shot. On the balance of probabilities, having accepted that it was an old wound, I also accept that it was not a grievous injury, it was not bleeding and the hospital correctly classified it as yellow and not requiring urgent attention.

[18] Preyer went to the hospital driven by a superiority complex. He approached the hospital with a feeling that he deserved privileges and special treatment. He thought that he was better than others and did not deserve to wait in the queue. His exaggerated feeling of being better than others caused him to act in a manner that could cause urgent attention to a general medical condition which did not require any emergency care. He acted in an arrogant, boastful and condescending manner to Nkayi. He was disdainful and bossy towards her. He exaggerated his injury and saw it and himself as dramatically superior to other patients. Whilst he was the patient and not an administrator or medical staff at the hospital, he wanted to control and dominate the situation and to dictate his medical care. Mayongo correctly handled him by removing him from the public spectacle to a secluded area. It is the exaggerated sense of being better than others that did not tolerate Mayongo, after removing him from the public glare to the private room of triage, subjecting him to the processes due to his condition.

[19] Preyer was encamped. He became dismissive of Mayongos opinion that his injury was not urgent and did not require being prioritized. His superiority complex did not allow him to accept due process. He did not see Mayongo as superior, as a medical professional in comparison to him as a lay person, when it came to a medical opinion. He expected his opinion on his medical condition to be recognized by Mayongo as superior to hers even if he was without any medical training. He was preoccupied with fantasies of his own brilliance. He believed he was superior to Mayongo and that Mayongo did not recognise that he was special. He looked down on Mayongo. She was not important. She was not a doctor. He expected her to again give him special favours and expected her to do what he wanted without questioning him or subjecting him to due process. He had to take advantage of her to get what he wanted.

[20] He had to triumph, and the best way he knew was to dominate and belittle Mayongo with obscenity, as a way of making fun of her and dismissing her opinion and replace it with the excessive opinion of himself and his self-worth, and to assert his status. His obscenity to Mayongo, in the world of Preyer's superiority, became an overcompensation for feelings of failure or inadequacy in the face of a firm but kind African nurse. During the assessment in triage in the face of attempts to undermine authority and skip the queue to see the doctor before other deserving patients, Preyer called Mayongo poes, called her mother's poes, called her a kaffir and called her a fucking bitch. This is what upset Mayongo, broke her and caused her to cry. Samuels and Nkayi heard the loud voice with which these insults were hurled but did not hear the exact words from outside. Samuels did not hear the other words, but when she went into the triage, she heard when Preyer called Mayongo fucking bitch. Mayongos evidence was substantially satisfactory in all

material respects and was corroborated by other evidence [*Stevens v S* [2005] 1 All SA 1 (SCA))at para 17]. *Stevens* was a criminal case but the principles are equally applicable to this matter as regards the approach to the evidence of a single witness. Samuels corroborated some of the obscene language used by Preyer. The other witnesses, Skitasi, Nkayi, and Dr Thomas including Samuels provided circumstantial evidence [*S v Deppe & Douman* (512/2012) [2013] ZASCA (7 March 2013)]. This case is also authority for the approach to the evidence of someone who lied like Preyer.

[21] Preyer is one of those who think that the world revolves around them. His conduct showed an exaggerated sense of importance and entitlement. He exploited the personal interplay with the hospital staff for his own gain and was demonstrably arrogant. He could not imagine himself being attended to by a nurse and expected a freeway directly to the doctor on duty in the emergency unit when his medical condition was not urgent. He was preoccupied with his power trip. Preyer has such a deep sense of self-importance that he lacked the ability to understand that he hurt Mayongo and did not care about her feelings and that of other hospital staff.

[22] Preyer also lacked the capacity to accept the views of others and was upset by criticism. This explains why when he was confronted with his unacceptable behaviour, he told both Samuels and Dr Thomas to fuck off. Whilst the hospital, from Nkayi to Dr Thomas, tried to do everything in their power to accommodate Preyer, Preyer used and abused them. He wanted a one-sided affair, where he was in authority, including on medical opinions, at the hospital where he was admitted

as a patient. Dr Thomas had none of that and protected both the staff and the hospital. Dr Thomas set firm boundaries when he realised that there was nothing they could say or do to change Preyer. In clear terms Dr Thomas told Preyer that his conduct could not be tolerated. Dr Thomas remained calm and neutral even when he was emotionally pricked by being told that he was a racist and to fuck off. He absorbed Preyer's manipulation and maintained control, which neutralized Preyer's drama. Preyer was unhappy and disappointed when Dr Thomas did not yield to his attitude and did not give him the special favour of being seen by Dr Thomas ahead of other patients, which Preyer thought he deserved. His desire was not fulfilled and he was troubled. He called Dr Thomas a racist and threatened to sue the hospital. Ultimately, Preyer got what was due to him, which was basic medical care provided by a nurse and he left the hospital.

[23] Preyer was impatient with Nkayi, Mayongo and Samuels, and the three provided him with some special treatment. He was angry at Mayongo and Dr Thomas when they did not give him special recognition and priority medical treatment. He felt slighted. He reacted to both Mayongo and Dr Thomas with contempt when his exaggerated medical condition was exposed and his quest for priority care failed. It seems to me that racists have a fragile ego. Where their flaws are exposed, they blame their victims to maintain their image and to avoid shame. Preyer, in his defence before this court, created a distorted reality and tried to shift the blame to the hospital staff, from Nkayi, through Mayongo and Samuels up to Dr Thomas. According to his version, he was right, including on the state of his injury, and all, including the medical practitioners, were wrong. On his version for inexplicable reasons, in the presence of other patients, the hospital staff, including its medical practitioners, refused to treat him beyond the basic care he required.

Preyer's version is on a balance of probabilities false. It is what in English law is called a cock and bull story [*Rice v Connolly* [1966] 2 All ER 649]. Preyer asserts a right to lie, in his defence.

[24] Section 10(1) of PEPUDA (the Act) reads as follows:

Prohibition of hate speech

(1) 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.

Section 11 reads:

Prohibition of harassment

No person may subject any person to harassment.

In *South African Human Rights Commission obo South African Jewish Board of Deputies v Masuku and Another* 2022 (2) SA 1 (CC) it was established that the test to evaluate what was said, was an objective one [para 122]. To determine whether the words were hate speech required a court to consider whether the words, heard in their proper context by a reasonable person, would lead that person to conclude that they were based on a prohibited ground and intended to incite harm or propagate hatred. At para 144 the court said:

What this means is that, whilst the determination as to whether the words are likely to be harmful and propagate hatred, and thus constitute hate speech, falls within the exclusive aegis of a court, evidence that shines a light on the context of those words may be of assistance to that court in conducting this exercise.

When a White person called an African person a kaffir, it propounds the racial superiority of the White and the inferiority of the African. I find that a reasonable person would regard Preyer calling Mayongo a kaffir was a remark based on the prohibited ground of race and intended to incite harm and propagate hatred and in contravention of section 10(1) of the Act.

[25] The gratuitous use of the words poes directed to Mayongo and her mother in the mother's absence, and the use of the word fucking bitch on Mayongo were meant to and in fact demeaned and humiliated her. They were meant to create a hostile and intimidating environment for an African as a victim of White supremacy. It constituted harassment as envisaged in section 11 of the Act [*Afriforum NPC v Neslon Mandela Foundation Trust and Others* 2023 (4) SA 1 (SCA).

[26] When a matter is postponed in the Equality Court, there is an implied order for the parties to attend the further hearing of the matter. A party who anticipated missing a further date of hearing has a duty to apply for postponement before the next date of set down. The application must include cogent reasons. A party should never assume that on its mere say the court would grant a postponement but must ensure that the other party is advised, and if that application is opposed, the disputed postponement may of its own be set down for determination. Preyer set out what happened and what was to happen in the email to the Secretary on the morning of the hearing on 22 April 2025. His attitude undermined the case against him. This court has already ordered that he pay the wasted costs of 22 April. His attorneys at the time sought a postponement of 3 June 2025 and tendered the costs.

Although I am satisfied that Preyers attitude to the proceedings on 22 April 2025 was contemptuous, in the light of his being ordered to pay the wasted costs, in my view the matter should be left there. For these I make the findings and the orders.

DM THULARE

JUDGE OF THE HIGH COURT