

IN THE LABOUR COURT OF SOUTH AFRICA

HELD IN JOHANNESBURG

CASE NUMBER: JS 700/05

In the matter between:

DESIRÉ MARY POTGIETER

APPLICANT

AND

NATIONAL COMMISSIONER OF THE

SOUTH AFRICAN POLICE SERVICE

1ST RESPONDENT

THE MINISTER OF SAFETY

AND SECURITY

2ND RESPONDENT

JUDGMENT

MOLAHLEHI J

Introduction

[1] This is a claim in terms of the Employment Equity Act 55 of 1998 (the EEA) for unfair discrimination arising from the alleged sexual harassment or victimisation of the applicant by the respondent. The applicant claims compensation for the alleged unfair discrimination, equivalent to 24 (twenty) four months' salary and damages in the amount of R66089-84. In terms of the statement of claim the claim is based on the provisions sections 6 and 10 of the EEA.

[2] The sexual harassment complaint which is alleged to have taken place over a period of a year was perpetrated by constable Mafodi, an employee of the respondent. The severest of the sexual harassment incidences is according to

the applicant the one that occurred on the 1st November 2004 when Mafodi *“tried to kiss her.”*

- [3] The other complaint of the applicant is that she was after reporting the incident victimised and ridiculed by Captain Swanepoel. The accusation against Swanepoel is that he called the applicant “liefie”, “bitch” and “slut” on various occasions. This the applicant contended that it was contrary to the respondent’s own policy which required that sexual harassment should be handled with sensitivity and confidentially.
- [4] The applicant further contended that the sexual harassment and victimisation resulted in her having to incur financial costs related to medical and psychological treatment. In addition the applicant complained that:
- (i) Swanepoel did not handle the matter with the confidentiality required of him and also failed to report the incident to the Area Commissioner who was designated to deal with cases of this nature.
 - (ii) The respondent failed to immediately refer the applicant after the incident to a professional person for assistance.
 - (iii) The respondent failed to investigate the matter immediately after the incident.
 - (iv) The perpetrator, Mafodi was not immediately removed from the workplace after the incident.

Issues to be determined

[5] This Court is required in terms of the pre-trial minutes to determine the following issues:

“4.1 Whether the Applicant has been unfairly discriminated against by the Respondent, due to the alleged sexual harassment and / or victimised (in terms of s10 of the Employment Equity Act 55 of 1998).

4.2 Whether the Respondent failed to comply with the provisions of s6 of the Employment Equity Act 55 of 1998.

4.3 Whether the Applicant is entitled to compensation and, if so, the amount thereof.

4.4 Whether the Applicant is entitled to damages and, if so, the quantum thereof.

4.5 Whether the Respondent should be ordered to take proper steps against the perpetrator(s).

4.6 Whether the Respondent should be ordered to take steps to prevent the same alleged unfair discrimination or similar practice from occurring in the future in respect of other employees.”

Background facts

- [6] It is common cause that the applicant, Mrs Portgieter, the former data processing clerk of the respondent was sexually harassed by Mr Mafodi, another employee of the respondent. At the time of the sexual harassment incident the applicant was based at the Orange Farm police station. It is also common cause that Mr Mafodi was disciplined and fined R600, 00, half of which was suspended.
- [7] The disciplinary hearing of Mr Mafodi was chaired by Superintendent Coetzee who was at that time attached to the Vereeniging detective branch. He testified that he was responsible for chairing the disciplinary hearing and confirmed having imposed the above sanction after having regard to the guidelines on imposing a sanction as set out in the Guidelines: South African Police Service Discipline Regulations, 1996. (the disciplinary regulations)
- [8] Under the heading “*APPROPRIATE SANCTION*” the disciplinary regulations provide that the aims of a disciplinary sanction are “*rehabilitation, deterrence and retribution.*” The disciplinary regulations further provide that in assessing whether the relationship between the respondent and the affected employee has broken down because of misconduct the chairperson of the disciplinary hearing should apply the objectives as enunciated in the Labour Appeal Court decisions. The guidelines also recognise that in imposing a sanction a chairperson of a disciplinary hearing would exercise a value judgement taking into account the circumstances of a given case.

[9] In relation to whether he was the appropriate person to have chaired the hearing Coetzee testified that had he been aware of the provision of the contents of the circular which was addressed to various levels of management by the national commissioner, dated 23rd January 2004, he would have recused himself from chairing the disciplinary hearing. He was cross examined extensively on the appropriateness of the sanction he imposed in relation the seriousness of the offence committed by Mafodi. He indicated that he could not recall whether he regarded the charge as serious because he no longer had his disciplinary hearing notes. The said circular reads as follows:

“3. Due to the sensitivity of sexual harassment cases, it is hereby directed that in cases where the victim is a female, at least the disciplinary officer or the presiding officer of such a case, must be a female.

4. Your attention is drawn to the provisions of circular 4/14/1 dated 2000-11-20, “Discipline: Responsibility of Commander.” The National Commissioner will hold commanders responsible to manage discipline. Any commander or officer who fails in his or her duty to properly deal with complaints of sexual harassment, will be held accountable by the National Commissioner.”

The circular went further to assure female employee support in as far as this issue is concerned and provided contact details of managers who could be contacted in a case where an employee may feel that her case has not been properly handled.

- [10] Coetzee further testified that he did not dismiss Mafodi because he did not believe that the relationship between him and the respondent had broken down as a result of the offence he had committed.
- [11] Inspector Koekemoer, testified that he and the applicant were friends who used to drink coffee together. He recalled the applicant coming into his office on 1st November 2004 and informing him what Mafodi had done to her. He advised her to report the matter to the branch commander and since then he never discussed the matter with any other person.
- [12] The third witness of the respondent Captain Swanepoel, testified that he was also a friend of the applicant at the time of the incident and when he heard about the incident he insisted that the applicant should give him a statement setting out what happened. He insisted on the statement because this was not the first time that she complained to him about sexual harassment by other members of the staff. One of the persons who had been accused of sexual harassment was a certain admin clerk, known as Boesak. According to him the applicant refused to make a statement about her allegations regarding Boesak. In this instance he again insisted that the applicant should make a statement because this was the only way that the matter could be investigated.
- [13] Swanepoel took the statement from the applicant on the 3rd November 2004, the same day that he heard about the incident involving Mafodi. As part of the investigation Koekemoer was also requested to make a statement. After taking these statements he informed Mafodi that he was being investigated for sexual

harassment. Mafodi refused to furnish a statement about his own accounts of what happened. After compiling the statements he handed the “*docket*” over to someone else.

[14] He conceded that it was reckless of the respondent not have suspended Mafodi who still came into contact with the applicant even after the incident. He also conceded having called her “*liefé*” but insisted that it was not done with any negative connotations. He used the word in a friendly and cordial way.

[15] The fourth witness of the respondent, Ms Buthelezi, who was appointed after the incident involving the applicant and designated to deal mainly with sexual harassment cases in the Vaal area of the workplaces of the respondent.

[16] In relation to the case of the applicant, Buthelezi testified that she received a report from the social worker which recommended that the applicant be transferred from Orange Farm to Meyerton. She accepted the recommendation of the social worker and transferred the applicant to Meyerton. She indicated that before receipt of the social worker’s report she was not aware of the incident of the sexual harassment.

[17] The social worker’s report also criticised the manner in which Swanepoel handled the matter. The report indicated that Swanepoel failed to keep the matter confidential after receiving the report from the applicant. For this reason a written warning was recommended and subsequently issued against Swanepoel.

- [18] The other witness of the respondent Ms Van Tonder, who was part of circle of friends of the applicant, testified that the applicant had told her about the incident with Mafodi soon after it occurred.
- [19] Superintendent Tierdurg, who at the time was based at Sebokeng and acting branch commander for Orange Farm testified that after receiving the complaint from the applicant he reported the matter to the station commissioner who had already been informed about the incident and had appointed Swanepoel to investigate the matter.
- [20] The version of the applicant is that on 1st November 2006, at about 13H15, Mafodi came into her office and requested her to assist him with some work. After thanking her for the work done, he left but came back again for further assistance. When he came in the second time he pulled the applicant's head towards him and kissed her.
- [21] Immediately after this incident the applicant went to Koekemoer and told him about what Mafodi had done to her. At that stage the applicant was 5 (five) months pregnant. She testified that she then phoned her husband who could apparently pick up from her voice that something was wrong with her and as result enquired from her if there was something wrong. She told him that she would speak to him in the evening when she arrives at home.
- [22] The applicant further testified that she felt uncomfortable at the roll call the following morning because Mafodi was there and kept looking at her throughout the roll call. After the roll call she together with her husband who is

also a policeman went to see Superintendent Berg. She reported the incident to Berg who informed her that he would call Mafodi and speak to him.

[23] The applicant and her husband then approached Swanepoel and told him that they wished to open a case against Mafodi. At that stage Swanepoel was standing outside and smoking.

[24] After smoking Swanepoel called the applicant to an office to take her statement. There were other people in the office when the applicant gave her statement including a certain Nadia a friend of the applicant. The applicant complained that immediately after taking the statement from her, Swanepoel called her “liefie” and continued to do so even after she told him that if he did not stop she would open a sexual harassment case against him.

[25] Because of lack of progress the applicant repeatedly approached Swanepoel to find out what was happening. At one stage Swanepoel took offence to her enquiry and used bad language at her when she enquired about progress. She then approached Superintendent Reddy who seems not to have known about the matter. According to her Reddy enquired from her if she was not willing to withdraw the matter and soon thereafter she noticed a change in his attitude which she believed was because she declined to withdraw the complaint. He started loading her with work and would not sign her maternity leave form.

[26] The applicant testified that she was referred for professional assistance only after her husband’s intervention. She also testified that she had post traumatic

experience and the relationship with her husband changed arising out of this incident.

[27] During cross examination the applicant testified about other sexual harassment incidences which were perpetuated on her by the Mafodi and others. In this respect she testified that Mafodi would always whenever he met her in the corridor take her hand and kiss it.

[28] The other incident relate to a member of the public who after the applicant was transferred to Meyerton proposed that they should have an affair. She reported the matter to Inspector Barney who advised that the applicant should call her as soon as that person came to the police station. One day when this person brought her a chocolate, she phoned Barney to let her know that that person had arrived. Barney was unavailable.

[29] The second witness for the applicant was Ms Williams a clinical psychologist who assessed the impact of the sexual harassment by Mafodi on the applicant. She testified that a person who is exposed to trauma should as a general rule of practice be referred for professional assistance within 24 to 72 hours of the traumatic experience. She testified that in the case of the applicant she was referred only after the intervention by the husband and that was close to 3 (three) months later. She noticed during the sessions she had with the applicant that as a result of the incident involving Mafodi there was a social withdrawal on her part. She also found that the applicant was anxious, could not cope with her work and exhibited physical symptoms like headaches and stomach pains.

The symptoms could according to her have affected the child and the relationship with her husband.

[30] In her report Ms Williams states amongst other things that:

“The client was a victim of sexual harassment on the 1st of November 2004. She is now displaying symptoms of Post traumatic Stress Disorder with accompanying symptoms of Major Depression. These symptoms are impacting on her general social and occupational functioning.”

[31] When asked during cross examination why her report did not mention the words “*slut and bitch*” which the applicant had claimed were used against her, Williams testified that the applicant did mention these words during the interview with her. When asked further why these words were not mentioned in her report she indicated that her report was not a forensic report. She conceded during the cross examination that the report was helpful only for the purposes of these proceedings to the extent that it recorded what was reported to her by the applicant.

[32] Dr Botha who at the time of the incident had been a general medical practitioner for over 10 (ten) years, testified that he treated the applicant for post traumatic experience associated with stress. He testified that the symptoms listed in his report were stress related. He could not however dispute that there maybe other cause that in addition to the incident of the 1st November 2004, may have contributed to the stress of the applicant. He indicated in this regard that he was never informed about the applicant being called names like “*slut and bitch.*” He

was also not informed about other incidences involving attempts at kissing the applicant.

[33] The other witness of the applicant was Ms Swart, an industrial psychologist. Her testimony was mainly around the symptoms that the applicant had arising from the sexual harassment on 1st November 2004. She testified that the applicant informed her during the debriefing secession that Mafodi had previously attempted to kiss her. She further indicated that the impact of this trauma could have been minimised had the respondent referred the applicant for assistance expeditiously. The other factors which she identified as aggravating was the fact that Mafodi was not removed from the workplace and the applicant had to confront him every day she was at work and the fact that the initiator of the disciplinary proceedings against Mafodi and the chairperson of the hearing were males. The trauma according to her would have been mitigated had Swanepoel referred the applicant the Employee Assistance Services (EAS).

[34] Williams conceded during cross examination that her report was based on the version she received from the applicant, she never interviewed Swanepoel or any of the affected members of staff. In a sense she conceded that her report was one sided in favour of the applicant. She further conceded that the applicant never mentioned to her that she was called names by others at the workplace. She also indicated that the conclusion about the child was based on what the applicant told her. She conceded during cross examination that because she did not test the reliability of the information given to her by the applicant her conclusion could have been based on incorrect facts.

- [35] The evidence of Mr Portgieter, the applicant's husband, is slightly different from that of the applicant. As indicated earlier the applicant testified that she told her husband that she would tell her what happened when she got home after work. The husband on the other hand testified that it was during the telephone conversation that the applicant told her that Mafodi had kissed her and that she would tell the details after work. He also testified that the applicant resigned from Meyerton where she was transferred to after the incident because one female clerk was encouraging her to have an affair with certain member of the public.
- [36] After her resignation the applicant obtained another employment where she worked for a short period and was thereafter retrenched resulting in financial difficulties for the family.
- [37] While the applicant complained about delay in the in processing the disciplinary hearing against Mafodi and lack of corporation, her husband testified that the same did not apply to him. He testified that he received cooperation every time he called to enquire about progress regarding the matter. He further testified in this regard that the disciplinary hearing which he sat in through out proceeded smoothly.
- [38] The husband could not recall being told about the applicant being called names and if she did what advice he could have given. Contrary to the version of the applicant the husband insisted that she did inform him about the other sexual

harassment incidences by Mafodi. He attributed failure to reporting the other incidences to fear of Swanepoel on the part of his wife.

Analysis of evidence and arguments

[39] It was argued on behalf of the applicant that the respondents did not comply with the provisions of the EEA in that:

- (i) There was no properly trained person available to deal with the complaint of the applicant.
- (ii) The witnesses of the respondents conceded that they did not have full knowledge of the contents of the sexual harassment policy.
- (iii) The perpetrator, Mafodi was not removed immediately after the incident was reported, resulting in failure to take the necessary step to address it.
- (iv) The sanction imposed by the chairperson of the disciplinary hearing was indicative that the respondents did not take sexual harassment seriously.

[40] It was further argued on behalf of the applicant that the intervention of Buthelezi which happened at the end of April was too late and came in when the damage had already occurred. The defence of the respondents in this regard is that Buthelezi was appointed during January and the information regarding her appointment was circulated widely and the question that therefore arose was why did the applicant not raise this with her soon thereafter.

[41] In support of the claim for damages Ms Kalountis for the applicant relied on the case of *Ntsabo v Real Security CC (2003) 24 ILJ 2341 (LC)*. In that case a female employee had resigned and claimed constructive dismissal arising from the complaint that she was sexually harassed and assaulted by another security guard who was her supervisor. The employer failed to take any disciplinary action against the supervisor despite receiving and being aware of the complaint. In the first instance the Court confirmed the power it had in terms of section 50(2) of the EEA to award (a) compensation and (b) damages in cases of discrimination. In dealing with the facts of the case the Court held that:

“For the purposes of the EEA, failure of the respondent to attend to the problem brings the whole issue within the bounds of discrimination. The nub of the complaint laid with the respondent involved sexual harassment. Its failure to attend to the matter is by definition as envisaged by s6 (3) read with s6 (1) of the EEA, discrimination based on sexual harassment.

The Court further held that as a result of the conduct of the perpetrator of the sexual harassment the employee underwent character change including fears of sleeping at night due to nightmares she had of being raped by a group of men including the perpetrator. In dealing with the failure of the employer to address the problem which the employee had raised with it the Court said:

“The failure of the respondent to attend to the complaints aggravated the situation. It seems to me that despite her initial condition (as described

above) dealing with the matter appropriately would have eased the situation and even have prevented the deterioration thereof.”

[42] In the present instance the applicant’s claim is founded in the EEA. Section 5 of the EEA imposes a duty on employers to take positive steps to ensure promotion of equal opportunities by eliminating unfair discrimination in any employment policies. Taking the principle of elimination of discrimination further section 6 the EEA deals with the prohibition of unfair discrimination and reads as follows:

“(1) No person may unfairly discriminate, directly or indirectly, against an employee, in any employment policy or practice, on one or more grounds, including race, gender, sex, pregnancy, marital status, family responsibility, ethnic or social origin, colour, sexual orientation, age, disability, religion, HIV status, conscience, belief, political opinion, culture, language and birth.

(2) ...

(3) Harassment of an employee is a form of unfair discrimination and is prohibited on any one, or a combination of grounds of unfair discrimination listed in subsection (1).

[43] The issue of sexual harassment is governed by section 6(3) of the EEA which explicitly states that harassment constitutes discrimination. Thus once it has been shown that there is discrimination on any of the grounds listed in section

6(1) then an unfair discrimination would have occurred. The Court has the power where it has been proven that unfair discrimination has occurred to make an order that is just and equitable in the circumstances and this may include payment of compensation by the employer to the affected employee, award of damages to the affected employee, or an order that the employer should take preventative steps to eliminate the discrimination. See *Rochelle le Roux et al Sexual Harassment in the Workplace* (LexiNeexis, Butterworths 2005) page 19.

[44] In *Mokoena & Another v Garden Art Ltd & Another* [2008] 5 BLLR 428 (LC), it was held that the employer became liable in terms of section 60 of the EEA where the alleged harassment had been brought to the attention of the employer and thereafter the employer failed to take proper steps to prevent such harassment in the future. The Court further held that where the employer had reacted to employee's report of sexual harassment by issuing a written warning, and where no further incidents had occurred, the employer was not liable in damages to the employees.

[45] Turning to the facts of the present case it is common cause that the applicant was sexually harassed by Mafodi, an employee of the respondent and this incident occurred at the workplace and during working hours. Mafodi was charged and found guilty of sexually harassing the applicant and the sanction of a fine which the applicant was clearly not happy with was imposed. Thus the issue that remains for determination concerns the liability of the respondent arising from the conduct of Mafodi.

[46] An employer will be held liable if it is shown in terms of section 60 of the EEA, that:

- (i) The sexual harassment conduct complained of was committed by another employee.
- (ii) It is sexual harassment constituting unfair discrimination.
- (iii) The sexual harassment took place at the workplace.
- (iv) The alleged sexual harassment was immediately brought to the attention of the employer.
- (v) The employer was aware of the incident of the sexual harassment.
- (vi) The employer has failed to consult all relevant parties, or take the necessary steps to eliminate the conduct or otherwise comply with the provisions of the EEA.
- (vii) The employer has failed to take all reasonable and practical measures to ensure that employees do not act in contravention of the EEA.

[47] It has already been established that Mafodi, committed a sexual harassment on the applicant, was found guilty and fined R600, 00, half of which was suspended. Therefore the remaining part of the enquiry is to determine:

- (i) Whether or not the harassment was reported to the respondent, and

- (ii) Did the respondent consult with all relevant parties and take the necessary steps to eliminate the alleged sexual harassment by Mafodi and comply with the provisions of this EEA.

[48] In as far as the reporting of the incident of the 1st November 2004 is concerned, there is some dispute of fact as to whether it was Swanepoel persuaded the applicant to make a statement regarding the incident or it was the applicant who initiated the reporting process on her own. In my view nothing much turns on this issue as what is common cause is that the incident was reported to the respondent. The respondent was thus aware of the incident.

[49] The complaint of the applicant is not, as I understand it, that the respondent did not consult with the affected parties or take the necessary steps, but that the liability of the respondent arose out of failure by the respondent to do the following: (a) the respondent delayed in dealing with the complaint; (b) her report or complaint was not kept confidential; (c) Mafodi was not removed from the workplace after the incident and (d) that Swanepoel called her names which had sexual connotations, (e) the sanction imposed on Mafodi was too lenient and (f) she was not timeously referred for assistance.

[50] It is not clear nor was there evidence to the effect that the complaint concerning the delay was because the applicant wanted to see Mafodi removed from the workplace pending the disciplinary hearing or for the disciplinary hearing to have happened immediately. What is very clear and was not disputed is that the relevant parties were consulted and statements taken from them including that

of the husband of the applicant. Even if it could be concluded that there was a delay in finalising the disciplinary hearing it cannot, in my view, be said that the delay was in the circumstances unreasonable or that it was due to some ulterior motive on the part of the respondent.

[51] The complaint regarding the sanction imposed on Mafodi, does not assist the case of the applicant. I agree with Mr Moshwana for the respondent that the issue of the sanction imposed by the chairperson of the disciplinary hearing is irrelevant, this not being a review or appeal. The rights of the applicant did not depend on whether Mafodi was dismissed or not, she would still have had the right to claim even if the employment relationship with Mafodi was terminated. The evidence of what transpired at the disciplinary hearing was not presented before this court. It is also important in this regard to note that the testimony of Coetzee is that in determining the sanction he took into account the guidelines as provided for in the disciplinary regulations.

[52] It is common cause that Mafodi was never suspended and that the applicant was upon her request transferred to Meyerton. The applicant complains that she was harassed and this time by a member of the public who wanted to have an affair with her. The version of her husband was that it was one of the employees of the respondent who was persuading her to have an affair with that member of the public.

[53] The issue of the transfer is related to the issue of the failure to suspend or remove Mafodi after the incident. It may well have been prudent for Mafodi to

have been suspended or removed from the workplace and may be transferred to another workplace, however there is no general rule that suspension or removal from the workplace is automatic in every sexual harassment complaint. In my view the nature and extend of the sexual harassment may indicate whether suspension or removal from the workplace of the perpetrator was a necessary step which the employer ought to have taken. The other incidences were on the version of the applicant never reported to the employer and therefore the respondent cannot be faulted for not taking appropriate steps to deal with the complaints.

[54] It is clear that the applicant was immediately transferred to Meyerton as soon as she made the request. The transfer was effected even before the completion of the relevant transfer documentation. This, in my view, does explain the reason for the complication that arose when the maternity leave forms were to be signed by those in authority. I do not believe that the difficulty that arose in relation to the signing of the maternity leave had anything to do with the sexual harassment complaint.

[55] In as far as the issue regarding failure by Swanepoel to keep the information confidentially, it is clear from the evidence before this Court that the applicant did not report such to the respondent. The respondent became aware of the complaint through the social worker's report. After receipt of the report the respondent confronted Swanepoel with the allegations against him and as stated the disciplinary action taken against him was that of issuing him a final written warning. This will be in line with recommendation of the Social Worker.

- [56] The distinction between the present case and that of *Ntsabo* is that in that case, Pillay J found that it was common cause that the employer failed to implement a policy related to harassment or have plans in that regard. In other words the respondent in that case failed to take any step to address the complaint despite it being aware of its existence. The liability for damages suffered by the employee flew from the sexual harassment itself and the failure by the employer to take reasonable steps to deal with the employee's complaint.
- [57] Whilst I accept that Swanepoel may have not been properly trained in dealing with a case of this nature, his conduct fell within an area where he ought to have known that that which he did was wrong or exposed the respondent to a risk. The step taken against him for his wrong doing was, in my view, an appropriate step taken to address the problem.
- [58] In as far as the contention of the applicant that Mafodi should have been suspended, it seems to me that the respondent never applied its mind to this issue. It is already indicated somewhere in this judgment that suspension of an employee is not automatic on the allegation of sexual harassment. The approach to adopt in dealing with suspension is well set out in the respondent's disciplinary regulations. Clause 22 (c) (vii) provides that suspension will be implemented in cases of serious misconduct and for the purposes of conducting an investigation. Sub-clause (x) requires that rules of natural justice should be complied with before an employee is- temporarily transferred, or suspended from duty.

[59] In essence the contention of the applicant is that the respondent has failed to implement its own disciplinary code. This includes the complaint about the disciplinary hearing being chaired by a male instead of a female person. Except for the complaint about the sanction been too lenient, there is no evidence to show what prejudice the applicant suffered as a result of the disciplinary hearing been chaired by a male person. In any event the circular (dated 23 January 2004) which the applicant sought to make out her case in relation to this issue does not advance her case because the circular does not make it mandatory for all sexual harassment cases involving females to be chaired by a female. It is provided in that circular that because of the sensitivity of sexual harassment cases, in cases where the victim of sexual harassment is a female, “*at least (my underlining) the disciplinary officer or presiding officer of such case, must also be a female.*”

[60] There is authority in our law that disciplinary codes, including those set out in collective agreements, are guidelines that should generally be followed unless there are valid reasons for failing to do so. In general the Courts have adopted a holistic approach in dealing with this issue and have emphasised that the guiding principle should be whether the principles of justice are being upheld. See *Khula Enterprise Finance Ltd V Madinane & Others* (2004) 4 BLLR 366 (LC), *Highveld District Council v CCMA & Others* (2002) 12 BLLR 1158 (LAC) and *SA Tourism Board v CCMA & Others* (2003) 9 BLLR 916 (LC).

Other incidences of sexual harassment

[61] There is no evidence that the respondent was informed or aware of other alleged incidences of sexual harassment perpetrated by Mafodi on the applicant other than that of the 1st November 2004. In general the evidence of the applicant was highly unsatisfactory in as far as the other incidences of sexual harassment were concerned.

[62] I could not understand in what way the respondent could be faulted for the complaint about the harassment by a member of the public. The applicant reported this complaint to her senior who advised that she should call her as soon as that person arrived. On the day when the person arrived the senior was not in her office. The applicant's husband's version is that it was one of the employees who persuaded the applicant to have an affair with the member of the public. Therefore the respondent never received a complaint about the staff member who was persuading (my underlining) the applicant to have an affair with the member of the public.

[63] In the light of the above, I am of the view that the applicant's application stand to be dismissed. However, I do not believe that costs should in circumstances of this case follow the results.

[64] In the circumstances, I make the following order:

- (i) The application is dismissed;
- (ii) There is no order as to costs; and

- (iii) I do not deem it necessary in the circumstances of this case to order the respondent to take further steps to address the complaint of sexual harassment.

Molahlehi J

Date of Hearing : 22 May 2008

Date of Judgment : 10 October 2008.

Appearances

For the Applicant : Ms N Kaulantis of Koulountic Inc

For the Respondent: Mr GN Moshwana of Moshwana Attorneys