



IN THE LABOUR COURT OF SOUTH AFRICA

HELD AT CAPE TOWN

CASE NO: C417/2024

In the matter between:

CITY OF CAPE TOWN

Applicant

and

STEPHANIE SIRMONGPONG N.O.

First Respondent

FARIDA ADAMS

Second Respondent

INDEPENDENT MUNICIPAL AND ALLIED

TRADE UNION (IMATU)

Third Respondent

TRACEY JONES

Fourth Respondent

Date of hearing: 5 November 2025

Date of delivery: 12 August 2026

Summary: Sexual harassment charges against Second Respondent an employee of Applicant– disciplinary enquiry chaired by external chairperson – Second Respondent found not guilty – review of finding in terms of Section 158(1)(8) of LRA. Second Respondent and complainant were both female The evidence was that Second Respondent, and others in the workplace, frequently hugged fellow employees and made various other gestures to indicate support and appreciation. The complainant, who had been the recipient of such conduct, complained that this conduct amounted to sexual harassment. Disciplinary chairperson found that it did not. No grounds for interfering with such decision on review. Contextually viewed, the conduct complained of was not of a sexual nature and could not be regarded as sexual harassment. Application for review dismissed, with no order as to costs.

JUDGMENT

A OOSTHUIZEN AJ

A INTRODUCTION

1. Second Respondent, Farida Adams, was employed by the Applicant as a Nursing Clinic Manager at Rocklands Clinic. A disciplinary hearing was convened against her to investigate allegations that she had sexually

harassed a staff member, Tracey Jones, over the period August 2022 to January 2023.

2. After evidence had been given by Ms Adams and Ms Jones, and certain other witnesses, First Respondent, who served as Disciplinary Chairperson, handed down a finding acquitting Ms Adams of the charges against her.
3. Applicant applies to this Court in terms of Section 58(1)(h) of the Labour Relations Act of 1995 (*“the LRA”*) seeking to review and set aside the First Respondent’s aforesaid findings. It is not disputed that this Court is empowered, in terms of Section 158(1)(h) of the LRA, to deal with the matter.
4. Section 158(1)(h) of the LRA creates a review, and not an appeal. I accept that the normal standard of review applies, and that I would have to be satisfied that the decision of First Respondent was one which no reasonable functionary could have reached, on the available material.

B. **SEXUAL HARASSMENT**

5. In **Reddy v University of Natal [1998] 1 BLLR 29 (LAC)** the Labour Appeal Court referred with apparent approval to the following extract from an article written by JG Mowatt, published in (1986) 7 ILJ 637:

“In its narrowest form, the author found, sexual harassment occurs when a women is expected to engage in sexual activity in order to

obtain or keep her employment, or obtain promotion or other favourable working conditions. The wider view is that any unwanted sexual behaviour or comment which has a negative effect on the recipient constitutes sexual harassment.”

6. A single act can constitute sexual harassment depending, always, on the nature thereof and on the relevant contextual considerations. This is illustrated by the judgment in **Shoprite Checkers (Pty) Ltd v JL & Others (2022) 43 ILJ 903 (LC)** where the Court accepted that the complainant, JL, had been slapped on the buttock by her manager who immediately afterwards giggled at what had occurred. The Arbitrator had analysed the evidence, and made a credibility finding against the manager based on certain of his actions immediately after the incident. In **Mokoena & Another v Garden Art (Pty) Ltd & Another [2008] 5 BLLR 428 (LC)** the Court, at **paras 46 and 47**, emphasised the fact that the conduct complained of must be of a sexual nature, and also held that a single incident of harassment may constitute sexual harassment if the recipient has made it clear that the behaviour is considered offensive, and the perpetrator should have known that the behaviour would be regarded as unacceptable. Whether all three of these are prerequisites in all cases of alleged sexual harassment need not be decided, for present purposes.

7. The 2022 Code of Good Practice on the Prevention and Elimination of Harassment in the Workplace discusses, in Section 5.2 thereof, factors

relevant to establishing sexual harassment. Clauses 5.2.5 provides as follows:

“5.2.5 The unwanted conduct must be of a sexual nature and includes physical, verbal, or non-verbal conduct, whether expressed directly or indirectly. Conduct amounting to sexual harassment may include –

5.2.5.1 physical conduct of a sexual nature, ranging from touching, kissing,, to sexual assault and rape;

5.2.5.2 strip searching, including by a person of the same sex in the presence of the opposite sex, or with appropriate privacy;

5.2.5.3 following, watching, pursuing or accosting of an employee;

5.2.5.4 sexual attention, advances or proposals; or other behaviour, whether explicit or implicit, including suggestions, messages, advances, attention or proposals of a sexual nature;

5.2.5.5 implied or express threats of reprisal or actual reprisal to

comply with sexually oriented requests, advances, attention or proposals;

5.2.5.6 verbal conduct such as innuendos, suggestions, hints, sexual advances, comments with sexual overtones, sex-related jokes or insults, graphic comments about a person's body, inappropriate enquiries about a person's sex life, whistling of a sexual nature and the sending by electronic means or otherwise of sexually explicit text; or

5.2.5.7 non-verbal conduct such as unwelcome gestures, indecent exposure and the display or sending by electronic means or otherwise of sexually explicit pictures or objects."

8. What needs emphasis is the first sentence of the aforesaid Section 5.2.5 which states that the unwanted conduct must be of a sexual nature. Touching the obviously intimate parts of the complainant's body would clearly constitute such conduct, as illustrated by the award in **Pick n Pay Stores Ltd (1994) 3 (1) ARB 8.25.136; Sookunan v SA Post Office (2000) 21 ILJ 1923 (CCMA)**). Acts of sexual harassment can also consist of touching less obviously intimate parts of the complainant's body, but in such cases much will depend on surrounding and contextual factors, including what the offending employee intended when making physical

contact with the complainant. The act of hugging a fellow employee in the workplace serves to illustrate this. It might be a wholly innocent gesture on the occasion, for example, of the complainant's birthday or workplace promotion. It might, on the other hand, be a gesture made with far more sinister intent.

9. The words or act complained of must therefore always be considered in the light of all the surrounding circumstances. These will include, but not be limited to, the nature of the act of touching; what part of the complainant's body was involved; the manner in which the complainant reacted to the incident; the explanation advanced by the employee accused of harassment; the impact both parties make while giving their evidence before the Labour Court, commission, council or disciplinary enquiry; and whether there were any regularly occurring workplace habits, customs or traditions which either aggravate or lessen the seriousness of the particular incident.
10. The case presented against Ms Adams was that she had committed acts of sexual harassment falling into four categories, namely:
 - 10.1. That on a particular occasion Ms Adams had asked Ms Jones for a kiss. Ms Adams emphatically denied this allegation. I find nothing in the evidence suggesting that Ms Adams's denial of this charge should be rejected, and the Applicant's case against her has thus not been proved in respect of this charge;

- 10.2. That Ms Adams frequently hugged Applicant;
- 10.3. That on occasions she had made gestures indicating that she was blowing a kiss at Ms Jones, and advise advised Ms Jones that she was beautiful;
- 10.4. That on a particular occasion she had touched Ms Jones's buttock, and then ran from the room giggling to herself.

C. THE COMPLAINT RELATING TO HUGGING

11. Dealing, firstly, with the complaint regarding Ms Adams hugging Ms Jones, other employees at the Rocklands Clinic gave evidence at the disciplinary enquiry. The evidence of one of them, Ms Pearce, indicates that this was what can perhaps be described as a somewhat tactile workplace, where employees frequently hugged one another. Ms Pearce stated that this was normal workplace behaviour. Ms Adams was known to hug other employees, as a gesture of support and affection.
12. Her testimony corroborated that of Ms Adams, who admitted to hugging fellow employees with some regularity, but stated that this was intended as a gesture of support. Her evidence on this aspect was not shown, in cross-examination, to be improbable or untrustworthy. The facts placed before the disciplinary enquiry show that Ms Adams frequently hugged fellow employees, with no sexual or improper intention. Her conduct in hugging Ms Jones cannot be described as conduct of a sexual nature.

D. THE BLOWING OF KISSES

13. Two of the other witnesses, Ms Serra and Ms Pasquali, confirmed that Adams would frequently, in order to thank a fellow employee for a task they had performed, make a kiss-blowing gesture towards that employee. The evidence of Ms Serra was that this is not, in the particular workplace, regarded as abnormal. After confirming that the gesture was one carried out by Ms Adams from time to time, she testified as follows:

"What I have seen Sister Adams do and I mean, I also do this sometimes because I am very expressive with my hands sir, if I did something for Sister maybe brought her coffee or something in regard, then she would, and this is exactly what she would do is dankie man, (makes kissing sound), like that you know, that is what I have seen her do on countless occasions with most of our staff."

14. Later on in her evidence, Ms Serra explained the manner in which these gestures were to be understood, as follows:

"So I can't specifically say kissing gesture but everyone has different gestures I would say, we are all women, most of the time in nursing, we have a complement of mostly women, so we tend to be a bit more relaxed about certain stuff. I would – I am going to speak about me now, I would go and hug my colleagues, I would go and kiss them on their cheek, depending on the situation. We would normally touch each other in certain ways that we know it is not meant to be sexual

or in our mind it is not intended to be sexual. So yes I can say that I have seen gestures, I can't say exactly that it is the same gesture that Sister Adams make but I have seen it from many managers that I have worked with that has done certain gestures to me per se to say thank you, where they would hug me maybe or say thank you to me and they would hug me, you know I have experienced that in my years, because I have been through a lot of managers as well."

15. When she testified, Ms Adams admitted to blowing kisses at Ms Jones from time to time, but the explanation she gave for this gesture was in line with the evidence given by Ms Serra. Viewed in context, the making of these gestures does not constitute conduct of a sexual nature, or fall within the definition in clause 5.3 of the Code, quoted above.

E. THE BUTTOCK TOUCHING INCIDENT

16. The last complaint was that, on an occasion in January 2023, an incident occurred at which Ms Adams had touched the buttocks of Ms Jones, while Ms Jones was standing at the office printer. Ms Jones testified that Ms Adams then exited the room, giggling.
17. Ms Adams conceded that there had been an occasion on which she had touched one of Ms Jones's buttocks. Her description was that this was not a grabbing or pinching incident. She also denied that she immediately thereafter left the room, giggling.

18. Ms Pearce was in the room at the time that the incident occurred, but did not see Ms Adams exiting the room running or giggling. Ms Adams also denied that she had acted in this fashion.

19. Ms Adams's evidence amounted to a denial that the particular gesture had been planned, or was sexually intended. The evidence amounts to a concession that her hand brushed against Ms Jones's buttock, but that she by no means planned or intended this to be a gesture with any sexual innuendo or connotation.

20. Other important circumstantial factors to be borne in mind are the following:

20.1. There is no evidence that, in the buttock-touching incident or in any of the other interactions that Ms Adams had with Ms Jones, Ms Adams harboured any feelings or intentions of a sexual nature towards Ms Jones;

20.2. Ms Jones was, immediately following the incident, uncertain as to who had touched their buttock and later that day addressed a WhatsApp message to Pearce, stating that she thought it was Pearce who had touched her in this fashion. This suggests that the contact was fleeting and barely noticeable, and militates against any suggestion that Ms Adams pinched or intentionally fondled Ms Jones in the buttock area.

20.3. There was also a wholly unexplained five month delay on the part of Ms Jones in reporting the incident to management, or lodging any grievance against Ms Adams through the Departmental Grievance Procedures.

21. In assessing the incident to determine whether an act of sexual harassment was perpetrated, there is a vast difference between Ms Adams fleetingly brushing the buttock area of Ms Jones without any sexual or other improper intention, and her pinching the buttock of Ms Jones and then giggling about what she had done, this being the version of Ms Jones. The facts demonstrate that what occurred falls into the former and not the latter category, and cannot, in my view, be said to constitute an act of sexual harassment.

F. FIRST RESPONDENT'S DECISION

22. Applicant further argued that a reading of the First Respondent's decision at the disciplinary enquiry demonstrates that such decision was inherently contradictory and illogical. First Respondent's decision reads as follows:

"After carefully considering all the evidence presented and the arguments made by both parties, I find the accused not guilty. The burden of probabilities lies with the initiator and she has failed to meet the burden in this case.

The employee showed that she is now aware that the practices she had for showing appreciation to staff can be regarded as inappropriate. Her testimony and those of all witnesses show that gestures the accused used were signs of appreciation.

The employee to adhere to the City Policy and stop current practices in the work place."

23. It would have been far more helpful if First Respondent had elaborated on the findings made and dealt specifically with the four categories of harassment which featured in the charges against Ms Adams. Furthermore, the finding should have set out in greater detail the process of reasoning followed by First Respondent. Allegations of workplace sexual harassment are serious allegations, and the disciplinary chair should endeavour to deal with such allegations as comprehensively as possible.

24. The brevity of the decision does not, however, indicate that it is irrational or unreasonable to the extent that it should be set aside on review. The specific criticism raised by Applicant is that the first paragraph of the decision amounts to a finding of not guilty, whereas the second paragraph seems to suggest that Ms Adams was guilty of not adhering to the relevant workplace sexual harassment policies and that this equates to a finding that Ms Adams was guilty of transgressing the policies. That contradiction, Applicant argued, renders the decision reviewable.

25. The by now well-established principles relating to the interpretation of documents applies, in my view, to the interpretation of court orders, labour relations tribunals and other adjudicative bodies. They apply also in interpreting decisions made in disciplinary proceedings. The following *dictum* of the Constitutional Court in **SOS Support Public Broadcasting Coalition & Others v SABC 2019 (1) SA 370 (CC)** at **para 31** cogently sets out the approach to be adopted:

“Court orders are intended to provide effective relief and must be capable of achieving their intended purpose. That must be the starting point in interpreting a court order. The well-established principles governing the interpretation of a court order were expounded in Firestone and more recently endorsed in Eke:

“The starting point is to determine the manifest purpose of the order. In interpreting a judgment or order, the court’s intention is to be ascertained primarily from the language of the judgment or order in accordance with the usual well-known rules relating to the interpretation of documents. As in the case of a document, the judgment or order and the court’s reasons for giving it must be read as a whole in order to ascertain its intention’.”

26. One of the principles of interpretation is that sections of the document should not be interpreted in isolation. The document should be read as a whole, and an attempt must be made to interpret each of the component parts in consistency with the rest of the document.

27. If that approach is followed, then the decision is perfectly capable of a sensible interpretation. The first paragraph contains a finding that Ms Adams is not guilty of the various disciplinary transgressions with which she was charged. The second paragraph is intended as no more than an indication that Ms Adams should, in future, be more acutely aware of the fact that non-sexual gestures and conduct in the workplace might be incorrectly interpreted by the recipient of such gestures or conduct, and that she should moderate her behaviour accordingly. This interpretation properly places the entire award in context. The advice, given *obiter* in the second and third paragraphs of the award, does not detract from or contradict what is set out in the first paragraph of the decision.

G. CONCLUSION

28. For all of the reasons set out above, I am not persuaded that the decision is one which no reasonable functionary could have reached, and the application for review must be dismissed.
29. The discretion given to the Labour Court by Section 162(1) of the LRA is a wide one. The Labour Court is not obliged to follow the rule which prevails in the courts of civil jurisdiction that a successful party is generally entitled to costs. In exercising that discretion I bear in mind, firstly, that Applicant has a duty to actively prevent workplace harassment. That duty also encompasses seeking a review of disciplinary decisions which Applicant genuinely and honestly believes are not reasonably made. In approaching

the Court in this matter, Applicant was doing no more than discharging that duty.

30. Secondly, it cannot be suggested that the application for review was frivolously brought. Counsel for both parties raised meritorious arguments, and the issues dealt with in this judgment required careful thought and analysis.

31. Given these circumstances, I deem it appropriate to make no order as to costs.

32. The application is accordingly dismissed. There is no order as to costs.



AC OOSTHUIZEN A.J.

Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicant: Advocate Hermann Nieuwoudt

Instructed by: Cluver Markotter Inc.

For the Respondents: Advocate Coen De Kock

Instructed by: Bagraims Attorneys