IN THE EQUALITY COURT
AT THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NUMBER: 145324-2024

(1) REPORTABLE: YES / NO
(2) OF INTEREST TO OTHER JUDGES: YES/NO
(3) REVISED: ~~YES/NO~~

30/10/2024
DATE

[redacted]

In the matter between: -

EVELYN KEDIBONE MOKOBANE Applicant

and

GAUTENG DEPARTMENT OF EDUCATION Respondent

This Judgment was handed down electronically and by circulation to the parties' legal representatives by way of email and shall be uploaded on Caselines. The date for hand down is deemed to be on

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JUDGMENT

MALI J:

Introduction

[1] The applicant, Ms Mokobane, instituted a complaint in terms of the Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000 ("PEPUDA"). She alleges that the respondent unfairly discriminated against her following a sexual harassment complaint she lodged on 11 October 2022 against Mr Seabi, who was her manager at the relevant time.

[2] The first respondent is the government department that employed both the applicant and Mr Seabi. According to the applicant, Mr Seabi made sexual remarks and advances towards her, despite her having made it clear that such conduct was unwelcome.

[3] The applicant seeks the following relief.

3.1 An order directing the respondent to restart the disciplinary process afresh before an independent panel with expertise and knowledge in sexual harassment;

3.2 An order that consequent management be implemented against senior managers (the Director: Transformation and the Director: Labour Unit) who, she alleges, were biased, unethical and acted unconstitutionally;

3.3 An order that senior managers who ignored her numerous requests for transfer (the Director: Gauteng West District, Tshwane Region, and the Director: HR, Head Office) be held accountable;

3.4 An order that the respondent compensate the applicant for exposing her and her partner to major depression, for which they have undergone prolonged treatment.

[4] In essence, the applicant's complaint concerns her dissatisfaction with the manner in which the respondent handled the matter after she reported the alleged sexual harassment. In particular, she challenges the respondent's decision not to place Mr Seabi on precautionary suspension, which she contends allowed him to interfere with witnesses.

[5] Mr Seabi was not suspended. Instead, the employer conducted a preliminary investigation while he remained at work. The applicant alleges that this afforded him an opportunity to collude with another alleged victim. According to the applicant, a witness overheard their conversation and reported the matter to labour officials, but no action was taken. She contends that the employer's alleged bias and inconsistent treatment violated her rights and amounted to unfair discrimination.

The Point in Limine

[6] The respondent raised a point in limine, contending that the applicant's case arises from allegations that the respondent failed to properly investigate a sexual harassment complaint and to take appropriate disciplinary action against Mr Seabi. The respondent argues that these issues arise within the employment relationship and therefore fall within the ambit of labour law.

The Applicable Legal Framework

[7] Clause 7 of the Code of Good Practice on the Prevention and Elimination of Harassment in the Workplace, issued under the Employment Equity Act 55 of 1998 and gazetted on 18 March 2022 ("the Code"), is relevant.

[8] Section 5 of the Code provides that sexual harassment of an employee is a form of unfair discrimination and is prohibited on the grounds of sex, gender or sexual orientation. Same-sex harassment can amount to discrimination on the basis of sex, gender or sexual orientation, and gender-based harassment is likewise prohibited.

[9] Clause 7.3.1 of the Code provides that harassment on prohibited grounds which does not arise out of an employment policy or practice is prohibited by PEPUDA. While PEPUDA generally regulates harassment and discrimination **in society**, it also covers harassment and discrimination in the workplace or world of work under certain circumstances. This will be the case where:

9.1 the harassment occurs because of the conduct of somebody who is not an employer or employee — for example, the harassment of an employee by a client,

customer, independent contractor, an employee of a different business, or any other member of the public;

9.2 the harassment occurs within the world of work but outside the control of the employer — for example, while an employee is commuting on public transport;

9.3 a complaint of harassment is received from a client, customer or other member of the public that an employee has harassed them; and

9.4 the victim of harassment is a worker who falls outside the definition of an employee in the Labour Relations Act 66 of 1995 ("the LRA").

[10] Clause 7.4 of the Code requires that sexual harassment policies should substantially comply with the provisions of the Code and include, at a minimum, statements to the effect that:

10.1 sexual harassment is a form of unfair discrimination on the basis of sex and/or gender and/or sexual orientation, which infringes the rights of the complainant and constitutes a barrier to equity in the workplace;

10.2 sexual harassment in the workplace will not be permitted or condoned;

10.3 complainants in sexual harassment matters have the right to follow the procedures in the policy, and appropriate action must be taken by the employer;

10.4 it is a disciplinary offence to victimise or retaliate against an employee who, in good faith, lodges a grievance of sexual harassment.

[11] Section 7 of the Code provides for dispute resolution as follows:

"Should a complaint of alleged sexual harassment not be satisfactorily resolved by the internal procedures set out above, either party may, within 30 days of the dispute having arisen, refer the matter to the CCMA for conciliation in accordance with the provisions of section 135 of this Act. Should the dispute remain unresolved, either party may refer the dispute to the Labour Court within 30 days of receipt of the certificate issued by the commissioner in terms of section 135."

The Applicant's Contentions

[12] The applicant contends that her complaint is not an ordinary labour dispute, but concerns systemic and institutional discrimination based on gender and the relative status or ranking of officials in the employ of the respondent, falling squarely within the ambit of sections 6 and 8 of PEPUDA.

[13] The applicant's cause of action, she submits, is rooted in the respondent's failure, refusal or disregard of constitutional rights and the law, its failure to follow prescribed due process, and an abuse of authority. She further relies on the obligation of the Member of the Executive Council ("the MEC") to intervene in terms of his or her mandate.

Jurisdiction and Section 20(3) of PEPUDA

[14] Section 20(3) of PEPUDA requires the presiding officer to determine whether the matter should be heard in the Equality Court or referred to "another appropriate institution, body, court, tribunal or other forum (hereafter referred to as an alternative forum) which, in the presiding officer's opinion, can deal more appropriately with the matter in terms of that alternative forum's powers and functions."

Analysis

[15] The threshold question is whether the conduct complaint constitutes discrimination on a ground recognized by PEPUDA and whether the Equality Court is the appropriate forum to grant the relief sought.

[16] The applicant's complaint, properly construed, is not that Mr Seabi's conduct itself constituted harassment occurring outside the employment relationship or outside the employer's control. Rather, the gravamen of her complaint is the manner in which the respondent, as her employer, responded to her internal grievance: the decision not to place Mr Seabi on precautionary suspension, the conduct of a preliminary investigation while he remained at work, the alleged failure to act on reports of witness interference, and the alleged bias and inconsistent treatment by senior managers.

[17] That conduct — the handling of an internal sexual harassment complaint and the decision whether and how to discipline an employee — arises squarely out of an employment policy and practice. It falls within the employment relationship and is governed by the Code and the Labour Relations Act. It is not the kind of harassment contemplated by clause 7.3.1 of the Code, which extends PEPUDA's reach to workplace harassment only in the limited circumstances there identified — none of which is present here.

[18] [To the extent the complaint may lie against the employer of both the applicant and Mr Seabi, the alleged discriminatory conduct, although framed as such, is essentially that Mr Seabi was not suspended or disciplined. That, on its own, shows the Court is concerned with a labour issue, not discrimination on a prohibited ground amenable to relief under PEPUDA. The fact that labour law provides for the resolution of disputes between employee and employer does not make it any less systemic and institutional discrimination based on gender and the relative status or ranking of officials in the employ of the respondent.

[19] The relief sought confirms this characterisation. The applicant seeks to restart a disciplinary process, implement "consequent management" against named managers, hold managers accountable for ignoring transfer requests, and receive compensation for depression. These are remedies that lie within the domain of labour law and the employment relationship. The Equality Court is not empowered to grant these remedies under PEPUDA, which aims to eliminate unfair discrimination and promote equality, not to supervise an employer's internal disciplinary and managerial decisions.

[20] The applicant's reliance on sections 6 and 8 of PEPUDA does not assist her. Section 6 prohibits unfair discrimination on the grounds listed in section 1, including sex and gender. Section 8 prohibits harassment on a prohibited ground. However, the conduct complained of — the employer's alleged failure to suspend, investigate properly, or discipline — does not, without more, constitute harassment or discrimination on a prohibited ground by the employer. The applicant's grievance is with the adequacy and fairness of the employer's response, which is a matter for the labour-law forum.

[21] The applicant's reliance on the MEC's obligation to intervene likewise does not establish a basis for Equality Court jurisdiction. Political or executive accountability is not a substitute for the statutory remedies available under the labour-law framework.

[22] The Code itself points to the appropriate forum. Section 7 of the Code provides that where a complaint of alleged sexual harassment is not satisfactorily resolved by internal procedures, either party may refer the matter to the CCMA for conciliation and, if unresolved, to the Labour Court. That is the forum contemplated by the legislature for disputes of this nature.

[23] It follows that the matter was not properly brought to the Equality Court because no discrimination on any identifiable ground supports any relief the Equality Court may grant.

Conclusion

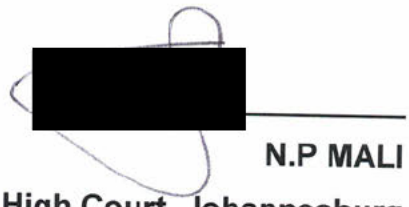
[24] The Equality Court therefore lacks jurisdiction to deal with the applicant's application and cannot grant the relief sought. For the reasons set out above, I do not have discretionary powers set out in section 20 (3) of PEPUDA. I cannot refer the matter to another appropriate forum. It is for the applicant to decide which course to take.

[25] Accordingly, the respondent's point in limine must be upheld.

Order

[26] I therefore make the following order:

1. The point in limine is upheld.
2. The application is dismissed.
3. The applicant is ordered to pay costs on Scale A.



N.P MALI

Judge of the High Court, Johannesburg

Representative

Counsel for Plaintiff:	Adv Madumise
Attorney for Applicant:	Huntley Attorneys Inc
Counsel for the Respondent:	L Kalashe
Attorney for Respondent:	The State Attorneys
Hearing Date:	20 February 2026
Delivery Date:	30 October 2026