

SOUTH AFRICA / JUDGMENT

Magubane v Smith (01/2006)

[2006] ZAEQC 5 (3 March 2006)

[2006] ZAEQC 5**COURT**

Equality Court

BEFORE

G L Abrahams

CASE / FILE NUMBER

01/2006

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IN THE EQUALITY COURT FOR THE DISTRICT OF DURBAN

HELD AT DURBAN

CASE NO: 01/2006

DATE:03/03/2006

In the matter between

T P MAGUBANE..... COMPLAINANT

And

S SMITH.....RESPONDENT

JUDGMENT

TO:MS T P MAGUBANE

(FOR COLLECTION)

AND TO:MR S SMITH

INTRODUCTION

Ms Magubane lodged a complaint wherein she stated that on 1 December 2005 at approximately 19:45 whilst she was outside flat 71 Respondent addressed her in the following way: "Kaffir what are you looking at"

The court then proceeded with a complaint wherein the Respondent was called to court to answer to a complaint of Hate Speech.

THE EVIDENCE FOR COMPLAINANT.

Apart from her own evidence complainant called two witnesses, Ruth Miller and Daniel D'Abbadie.

Complainant testified that it was on 30 November 2005 that the incident took place. Whilst she was in her flat she heard what sounded like people shouting and a crashing noise. This caused her to go out of her flat to investigate this noise.

She realised that the noise came from flat number 71, a flat immediately below her flat, and as she walked down the stairs she saw the door was open and that is when she saw the Respondent who shouted the offensive words to her.

She testified that she was shocked as they had never spoken to each other before. She continued down the stairs to confront him but he then closed the door.

Her witness Mrs Miller, who was standing on the balcony asked her why she was being insulted and she replied that she did not know. The following day she went to the police to report the incident.

Her evidence was that the words directed at her shocked her as she is twice Respondent's age, she said nothing to him that merited this response and she felt humiliated and threatened by these words.

Her further evidence was that a few days later he approached her at her flat and threatened to shoot her, hence her approach to the court for protection.

Ruth Miller testified that on the date and time whilst she was on her balcony, before retiring to bed she too heard Respondent shouting

inside his flat and she heard him addressing Complainant as a "Fucking Kaffir"

She then approached Complainant who she described as being "grey in the face" and spoke to her. They lived next to each other. She too made a statement to the police.

Daniel D'Abbadie testified that he supplies bread to the residents in the flat. On the evening on which the complaint arose he was outside flat number 73 when he heard a commotion and he heard the Respondent use the words, "fucking Kaffir-He was not certain to whom these words were addressed at the time and it was only on the following morning when he approached Complainant to take her bread order that he mentioned what he had heard and Complainant then told him that these words were directed at her.

RESPONDENT'S EVIDENCE

Respondent testified and called two other witnesses. He testified that on 30 November 2005, whilst he was in his mother's flat, that he and his fiancée share with her, whilst the front door was open he and his fiancée were arguing about a personal issue that arose. In the course of this argument he had occasion to say to her "Which black man said this to you?"

He did not see the Complainant at his door at any stage. He also testified that Complainant did not get on well with white people.

He denied using the words attributed to him and stated that he would never use these words. He respected black people and his regimental

sergeant-major was a black man.

It was put to him under cross-examination that he was troublesome and frequently argued with his family and on occasion assaulted his mother. He stated that he was stressed and was indeed so on the night complained of.

His fiancée Ms Jodie Duma and his mother Rita Smith also testified on his behalf.

Their evidence materially supported his version of events. Both testified that Respondents was indeed a person who often raised his voice and was given to bouts of bad temper.

HOW THE COURT LOOKS AT THE EVIDENCE.

The court accepts the evidence of complainant and witnesses Miller and D'Abbadie and the court rejects the evidence of the Respondent and his witnesses.

Respondent, Ms Duma and his mother were all poor witnesses and his explanation as to the events, as supported by his witnesses is highly implausible, it appears to be a version that was tailored to contradict Complainant's version, point for point.

Respondent highlighted Complainant's confusion as whether the complaint arose: on 30 November 2005 or on 1 December 2005 and suggested that this impacted negatively on her credibility and the reliability of her version of events. The court is satisfied that, but for this inconsistency, the event did take place and the Complainant's version is accepted over that put forward by Respondent.

The court finds that the offending words were used as alleged by complainant and that her complaint succeeds and the respondent is guilty of using Hate Speech.

The Equality court is not a criminal court, but it can refer matters to the criminal court and it may impose harsh sentences. The court must take steps to ensure that Hate Speech is not used and to take serious action when this does happen.

I have considered the Respondent's personal and financial position as outlined by him and the court will not impose an award of damages against him, as indeed it may.

SENTENCE

The court's sentence is that the respondent makes a written apology to the complainant, to the satisfaction of the court within seven days of this order.

The apology must be an unconditional apology for the hurtful and harmful words that were used and he must withdraw the words and undertake not to use these again. Respondent is to sign this document before the Clerk of the Equality Court.

This apology must be shown to the clerk of the Equality Court who must be satisfied with it.

Should these conditions not be complied with, within the stipulated time, then the court will direct the Clerk of the court to refer the file to the Director of Public Prosecutions to institute criminal proceedings. This is the court's order.

DATED AT DURBAN ON 3 MARCH 2006

G L ABRAHAMS: PRESIDING OFFICER

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