

SOUTH AFRICA / JUDGMENT

Mayongo v Preyer (EC03/2024) [2025] ZAEQC 5 (14 May 2025)

[2025] ZAEQC 5

COURT

Equality Court

BEFORE

DM Thulare

CASE / FILE NUMBER

EC03/2024

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Policy

IN THE EQUALITY COURT

OF SOUTH AFRICA

(WESTERN CAPE

DIVISION, CAPE TOWN)

CASE NO: EC03/2024

In the matter between

AGREENET

FUNEKA MAYONGO

COMPLAINANT

V

MARK

PREYER

RESPONDENT

Date Heard:

22 April 2025

Date Delivered:

14 May 2025

JUDGMENT

THULARE J

ORDER

1. The Respondent is ordered to pay all the costs, immediately taxable, occasioned by and of the viewing of the video footage, within 30 days of the bill being provided to him.
 2. The Respondent is ordered to pay all the costs, immediately taxable, occasioned by and of the 22 April 2025, within 30 days of the bill being provided to him.
 3. A warrant is authorized for the forthwith arrest of the Respondent, Mark R Preyer, known to be residing at 2[...] S[...] Crescent, Camps Bay, Cape Town.
 4. The matter is postponed to Tuesday, 03 June 2025 at 10:00 am on which day the matter may proceed in the absence of the Respondent.
- [1] This is an opposed application for payment of damages and a public apology as envisaged in the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (Act No. 4 of 2000). The respondent denied the allegations against him. The matter is partly heard. The applicant was legally represented whilst the respondent elected to conduct his own defence. The matter is in the inquiry stage of proceedings.
- [2] The complainant had already testified, and the evidence revealed that the area of the hospital which is the scene of the allegations, generally had audio-visual recordings of developments, and such audio-visual recordings in respect of the events of the disputed allegations existed. It was at the respondent's specific instance and request that the matter was postponed for the parties to view the audio-visual records and prepare a report, before the proceedings continued further where if needed, he would call for the presentation of the audio-visual records in his defence. The matter was postponed to 22 April 2025 and the parties agreed on a date in the interim to view the recordings.
- [3] The complainant has already testified. The allegations against the respondent include that the respondent presented to the hospital where the complainant served as a nurse, with an injury. The complainant attended to him in what is called the triage room. In that triage room, the respondent attacked the complainant, including calling her a kaffir. Another nurse had to replace the complainant because the complainant was upset, close to tears and visibly shaken. The other nurse entered the triage and witnessed the respondent's verbal attack on the complainant, including calling her a 'fucking bitch'. The other nurse took over attention to the respondent from the complainant. When the other nurse intervened, the respondent told that other nurse to 'fuck off' and called that other nurse a 'fucking racist' when she advised him that he would only be provided with basic emergency care and be referred to another facility because of his behavior. The respondent was provided with basic emergency care, provided with the details of an alternative medical centre and escorted by

security out of the medical facility.

- [4] The respondent did not attend the audio-visual viewing as arranged between the parties, allegedly sending his daughter to view it on his behalf. It seems that the recording had visuals and no audio, and this is the report that the court received at the date of further hearing. The respondent failed to appear in court on the date of further hearing. Instead, he sent an email where he indicated that he was in his home in Greece, and purported to give a version in his defence. The respondent had been duly served with the notice to appear in court, and had appeared on that date and all subsequent dates to which the matter was postponed until the date that the complainant testified. The respondent was not duly excused by the court from further attendance. He failed to remain in attendance and as of now, there is no lawful excuse for such failure, which seems to me to exist. In my view, from what the respondent has written in his email, he did not intend to return to court at all to answer the allegations. The rule of law demands that all people subject themselves to due process of how disputes are resolved, and accord some deference and respect to

court proceedings. This is one of those matters where, in defence of the rule of law, I am enjoined to issue a warrant for the

respondent's apprehension in order that he may be brought up to give evidence and to be dealt with according to law.

- [5] The respondent's conduct amounted to contempt of court. It seems to me that the conduct of the respondent, if not called out, has the intent to bring into disrepute the administration of justice [R v Dhlamini 1958]
- (4) SA 211 (N) at 213A-B]. There is no reasonable excuse for the respondent's failure to remain in attendance throughout the inquiry. In a country with a history such as ours, and the contemporary demand by the paradox of history that courts be the construction site of the fundamentals of a democratic and constitutional future, especially on matters of equality and alleged unfair discrimination, courts should not hesitate to hold persons to account in that as witnesses, they are compelled to testify as to what they know so that their evidence can be properly tested in a court of law [S v Maduna and Others 1978 (2) SA 777 (D) at 783H]. In Maduna the court cited Wigmore at 66, 3rd ed when he dealt with the duty to give evidence and said:

"This contribution is not to be regarded as a gratuity or as a courtesy or an ill-requited favour. It is a duty not to be grudged or evaded. Whoever is impelled to evade or resent it should retire from the society of organized and civilized communities and become a hermit. He who will live by society must let society live by him when it requires to."

- [6] South Africa is committed to address and uphold racial justice and reconciliation, and courts are custodians of that commitment. For these reasons the order is made.

DM THULARE

JUDGE OF THE HIGH COURT

Counsel for the Applicant : Adv. T Twalo SC

Adv. Z Mdana

Instructed by :

A P Mdanjelwa

Counsel for the Respondent: In person (Mr M Preyer)

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