

SOUTH AFRICA / JUDGMENT

Mokoditsoa and Others v Council for Medical Schemes and Others (23910/2022) [2025] ZAEQC 3 (10 February 2025)

[2025] ZAEQC 3

COURT

Equality Court

BEFORE

C Collis

CASE / FILE NUMBER

23910/2022

Source: saflii.org · Research copy typeset by Esheria. Not court-issued or certified.

Source record

IN

THE EQUALITY COURT OF SOUTH AFRICA

(GAUTENG

DIVISION, PRETORIA)

CASE

NO: 23910/2022

(1)

REPORTABLE: No

(2)

OF INTEREST TO OTHER JUDGES: No

(3)

REVISED: No

DATE:

10 February 2025

SIGNATURE:

In

the matter between:

ALFRED MOKODITOA
First
Complainant
ALIMAG PHARMACIES
(PTY) LTD
Second
Complainant
NTEBENG MOKODITOA
Third
Complainant
HUMPREY MOKODITOA
Fourth
Complainant
PHETOLO PHARMACY
(PTY) LTD
Fifth
Complainant
HASANI MMOLA
Sixth
Complainant
MPHALANE PHARMACY
(PTY) LTD
Seventh
Complainant
DONALD MASUBELELE
Eighth
Complainant
MOKHONDO PHARMACY
(PTY) LTD
Ninth
Complainant
AND
COUNCIL FOR MEDICAL
SCHEMES
First
Respondent
DISCOVERY HEALTH
MEDICAL SCHEME
Second
Respondent
BONITAS MEDICAL
SCHEME
Third
Respondent
MEDSCHEME
ADMINISTRATOR
Fourth
Respondent
HOSMED MEDICAL
SCHEME
Fifth

Respondent
THE SOUTH AFRICAN
POLICE SERVICES
MEDICAL
SCHEME (POLMED)

Sixth

Respondent
MEDICAL SCHEMES
(GEMS)

Seventh

Respondent
DR. BOJOSHI O.S.
MOLOABI

Eight

Respondent
THE MINISTER OF
HEALTH

Ninth

Respondent
THE MINISTER OF
PUBLIC SERVICES
AND ADMINISTRATION

Tenth

Respondent
MS ANITA DU TOIT

Eleventh

Respondent
GILDENHUYS MALATJI
INC

Twelve

Respondent

This

judgment is issued by the Judges whose names are reflected herein and is submitted electronically to the parties/their legal representatives by email. The judgment is further uploaded to the electronic file of this matter on CaseLines by the Senior Judge's secretary. The date of this judgment is deemed to be 10 February 2025.

RULING

COLLIS J

INTRODUCTION

1] In the present matter the Complainants approached the Equality Court for relief contending that they have been discriminated against on the basis of race.

2] In Manong[1] the Supreme Court formulated the role of the Equality Court as follows:

‘It is abundantly clear that the Equality Court was established in order to provide easy access to justice and to enable even the most disadvantaged individuals or communities to walk off the street, as it were, into the portals of the Equality Court to seek speedy redress against unfair discrimination, through less formal procedures.’

3] The Equality Court itself is established by section 16 of PEPUDA which states that every High Court “is an equality court for the area of its jurisdiction.” Section 23 of the Act provides for the High Court to sit in appeal against any decision of the Equality Court. The powers and functions of the Equality Court are restricted to those conferred upon it by PEPUDA.

4] The Act itself prohibits unfair discrimination on a number of identified grounds such as, amongst others, race, gender, sex, sexual orientation, disability or age (identified grounds). It allows a person who claims to be a victim of such discrimination to approach the Equality Court for relief.

5] In *Afriforum NPC v Nelson Mandela Foundation Trust and Others* it was held:

“[24] The Equality Court is a specialised court with expedited rules and an informal procedure. It applies different evidential thresholds to that of a high court.¹³ The object of the Equality Act is to make the Equality Court as accessible as possible. The formal, adversarial court process of other courts, which are often costly and potentially intimidating, have no place in the Equality Court. Proceedings may be instituted by any person acting in their own interest or any person acting on behalf of another who cannot act in their own name. The Regulations made under the Equality Act prescribe the procedures to be followed at an inquiry, and create an informal court system which places substance above form or technicality.”

6] PEPUDA obliges an equality court in which proceedings are instituted to hold an inquiry in the manner prescribed in the regulations and to “determine whether unfair discrimination, hate speech or harassment . . . has taken place, as alleged” and nothing more.”

BACKGROUND

7] The present matter thus far has been littered with procedural challenges. Not only on the part on the Complainants, but also on the part of the Administration in its failure to assist and guide the Complainants regarding precisely with what the Act envisages.

8] Before this Court, the First Complainant complains that his medical aid membership was terminated by the acts or omissions of GEMS through the actions of the latter’s principal pffoce, Dr Stanley Moloabi.[2] Pursuant thereto, litigation ensued including appeals to the Council for Medical Schemes (CMS), which ordered for his medical aid membership to be restored.

9] In an attempt to obtain further legal redress, the complainants approached the Equality Court around May of 2022, in order to lodge a complaint of discrimination by the South African Medical Schemes. The complainants sought a wide ranging and far-reaching relief against a number of respondents.

10] At the time when the complaint was made, the officials at the Court were not appointed Clerks of the Equality Court. This fact only came to my attention much later when I engaged the Clerks of the Equality Court in respect of their failure to advise the Complainants adequately on the formulation of their complaint and procedure to be followed in terms of the Act.

11] Having gained knowledge of these omissions I first raised this issue with the Deputy Judge President and thereafter with the Judge President of this Division. Sometime thereafter the necessary steps were taken for the training and subsequent appointment of the relevant officials as Clerks of the Equality Court. This however took place much later after the Directions Hearing had taken place, and it was for this reason that I deemed it prudent at the time to correspond with the parties in order to canvass their views.

12] The respondents elected to respond to the Court's query and the Complainants elected not to file a response hereto. I shall later return to the responses so received.

THE ACT AND REGULATORY FRAMEWORK

13] Regulation 6(1) to 6(4) of the Regulations published under the Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000 ("the Regulations") provides as follows:

"6 Institution of proceedings"

- (1) A person, an association or a commission contemplated in section 20 of the Act, wishing to institute proceedings in terms of the Act, must notify the clerk of his or her intention to do so on a form which corresponds substantially with Form 2 of the Annexure.
- (2) The clerk must within seven days after receipt of the notice referred to in subregulation (1)-
 - (a) notify the respondent on a form which corresponds substantially with Form 3 of the Annexure that proceedings have been instituted against him or her; and
 - (b) invite the respondent, if he or she so wishes, to submit the information contemplated in paragraph C of Form 3 of the Annexure in writing within 10 days of the receipt of such notice.
- (3) The clerk must, within seven days after receipt of the response of the respondent contemplated in subregulation (2)(b), submit a copy thereof to the complainant.
- (4) The clerk must, within three days after the expiry of the period contemplated in subregulation (2)(b), refer the matter to a presiding officer, who must, within seven days after receiving the documentation relating to the matter, decide whether the matter is to be heard in the court or whether it should be referred to an alternative forum."

14] Section 19(1) of the Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000 (“the Equality Act”)

provides that:

“(1) Except as is otherwise provided in this Act, the provisions of the Magistrates' Courts Act, 1944 (Act 32 of 1944), and the Supreme Court Act, 1959 (Act 59 of 1959), and of the rules made thereunder as well as the rules made under the Rules Board for Courts of Law Act, 1985 (Act 107 of 1985), apply with the necessary changes required by the context to equality courts, in so far as these provisions relate to-

- (a) the appointment and functions of officers;
- (b) the issue and service of process;
- (c) the execution of judgments or orders;
- (d) the imposition of penalties for non-compliance with orders of court, for obstruction of execution of judgments or orders, and for contempt of court;
- (e) jurisdiction, subject to subsection (3),

and in so far as no other provision has been made in the regulations under section 30 of this Act.”

15] Section 20(2) of the Equality Act provides that:

“(2) A person wishing to institute proceedings in terms of or under this Act must, in the prescribed manner, notify the clerk of the equality court of their intention to do so.” The provisions of Regulation 6(1) to 6(4) of the Regulations, section 19(1) and section 20(2) are peremptory. The complainants are required to institute proceedings in the prescribed manner. Furthermore, the rules of this Court apply in relation to the issue and service of process, except as otherwise provided for in the Equality Act.

16] In a number of decisions, it has been held that legal proceedings that have not been properly instituted and served, are null and void ab initio.

(See: *Mutebwa v Mutebwa* 2001 (2) SA 193 (TkH) at par [23]; *Dada v Dada* 1977

(2) SA 287 (T) at 288C – D)

17] Regulation 12 (1) and (2) of the Regulations further states that:

“(1) No court fees are payable in respect of the institution of proceedings in the court.

(2) Each party bears his or her own costs unless the presiding officer directs otherwise.”

DIRECTIONS HEARING

18] A directions hearing is conducted by a High Court in terms of regulation 10(5) of the Regulations relating to the promotion of equality and prevention of unfair discrimination[3] (“the Regulations”). The purpose of the directions hearing is to resolve matters of an administrative or procedural

nature in respect of the inquiry.[4]

19] At the directions hearing held on the 14th September 2022, the Respondents had indicated that the complainants failed to comply with section 20(2) of the Equality Act which states that “Any person wishing to instituting the proceedings in terms of or under this Act must, in the prescribed manner, notify the clerk of the Equality Court of their intention to do so.”

20] At the same hearing I indicated to the complainants that they have not specified on their Form 2 documents that they are taking either an oath or affirmation and that same would need to be rectified to have evidentiary value before this Court. At the same hearing it was also ruled that the First Complainant was not allowed to represent the 6th and 8th applicants on the Form 2 documents. As these complainants were absent during the proceedings. The matter proceeded in their absence and without any further participation on their part.

21] Form 2 promulgated in terms of the Regulations initiates proceedings in the Equality Court, while Form 3 ensures that the institution of

proceedings comes to the attention of the Respondents. It is only once a Respondent(s) have been served with a Form 3 will such

Respondent be permitted to file an Answering affidavit in answer to the complaint which he faces and it follows absent such service of the Form 3, that a Respondent would not be obliged to file an Answering Affidavit.

22] In *Investec Property Fund Limited v Viker X (Pty) Ltd and Another*,^[5] the Court held:

“[9]. At the outset let me say that I associate myself entirely with the following remarks by the court in the matter of Viljoen v Federated Trust Ltd, 1971 (1) SA 750 (O):

‘The Rules of Court, which constitute the procedural machinery of the Courts, are intended to expedite the business of the Courts. Consequently, they will be interpreted and applied in a spirit which will facilitate the work of the Courts and enable litigants to resolve their differences in as speedy and inexpensive a manner as possible’.

[10]. ‘It is a cornerstone of our legal system that a person is entitled to notice of legal proceedings against such person’. See *Steinberg v Cosmopolitan National Bank of Chicago*, 1973 (3) SA 885 (RA) at 892B – C.”

23] If proceedings thus have begun without due notice to the defendant, the subsequent proceedings are null and void, any judgment is of no force and effect and may be disregarded without the necessity of a formal order setting it aside. If a summons had not been served on a defendant, a subsequent judgment may be set aside in terms of rule 42(1)(a). Mere knowledge of issue of summons does not constitute service and cannot relieve a plaintiff of the obligation to follow the prescribed rules.”

24] The same sentiments expressed above in respect of action proceedings are applicable when it come to proceedings initiated in the Equality Court.

25] It is for this reason that at the Directions hearing so held, the following Directive was issued by the Court:

“25.1 The Clerk of the Equality Court is duly authorised to complete separate Form 3’s in respect of all the respondents by no later than 10 October 2022.

25.2 The duly completed Form 3’s are to be served upon all the Respondents by no later than 14 October 2022, and thereafter uploaded onto Caselines.

25.3 Pursuant thereto, the Respondents are to file their Reply/Answering Affidavits by no later than 11 November 2022.

25.4 The Complainants are directed to remove their Supplementary Affidavit from Caselines by no later than 16h00 on 16 September 2022.”

26] The Directions hearing was thereafter adjourned for compliance with the Directives issued by this Court.

27] The Directives so issued were intended to regularise to a certain extent the proceedings before me, and it was clear that the duly completed Form 3's are to be served upon all the Respondents by no later than 14 October 2022, and proof thereof uploaded onto Caselines. This Directive it should be mentioned was duly complied with by the Clerk.

28] Thereafter and pursuant to the Directive so issued by this Court, the complainants without leave of the Court or even notification to this Court proceeded to amend their Form 2 documents on 27 September 2022 and attached to these amended Form 2 documents a supplemented

founding affidavit dated 18 September 2022. This was annexed as an annexure. They thereafter uplifted from the electronic Caselines

profile of the matter the initial Form 2 and Founding Affidavit filed in support of their initial complaint. This too they did so without leave of the Court, or permission being sought from the Clerk of the Court. The initial founding affidavit is substantial, comprising 143 pages, excluding annexures, and 1,095 pages with annexures.

29] Notably the amended set of papers are materially different from the original ones in that that the new founding affidavit contains new allegations and the relief sought against the respondents and other persons was amplified and/or altered.

30] The complainants contend that they are entitled to file the new affidavit because the “proceedings have not yet commenced.”

31] This stance adopted by the complainants is simply wrong and further it was impermissible for them to remove from the electronic profile of the case the initial Form 2, together with the Founding Affidavit and annexures thereto. Having done so amounted to a tempering with a court file without permission having been sought and it is frowned upon by this Court.

32] As previously mentioned, service of the Form 3 as directed by this Court during the Directions Hearing, took place after some of the Respondents had already filed their Answering affidavits. Thus, they did so prior to the service of the Form 3 forms on them.

33] Notwithstanding that some of the Respondents had taken this procedural step to reply to the initial complaint (in the form of an Answering Affidavit), counsel for the complainants argued that there can be no prejudice to the Respondents as they now were aware of the case that they had to meet at the Equality Court as envisaged by the Form 2 affidavit filed with the Honourable Court on the 27th day of September 2022.. It was contended further that it cannot be argued that the complainants did something untoward or procedurally

wrong.

34] The Respondents however in turn each had raised the procedural point that in the absence of the Form 3 being served on them, this had the effect that the proceedings were not properly instituted. The Directives issued by this Court sought to regularise the proceedings before this Court and once service of the Form 3 had taken place, the parties would be given an opportunity to exercise their right to oppose.

35] On 22 May 2023, I gave a further direction to the respondents that whomever wished to take issue with the complainants' actions as aforesaid should submit their heads of argument to this Court by no later than 30 May 2023. Thereafter, a further Directions hearing was held on 5 June 2023.

ARGUMENTS ON BEHALF OF THE FIRST RESPONDENT

36] On behalf of the first respondent it was submitted that the removal of the original papers is irregular in the sense that it is not in accordance with the applicable rules and was done without the leave or permission of the above Court.

37] Further, that the replacement of the original papers effectively constitutes an abandonment of the initial proceedings in which the respondents, or some of them, had already reacted and deposed their answering affidavits. Therefore, the new papers signify the institution of new proceedings taking into account that there are new allegations, and the relief sought is amplified and altered therein. Otherwise the new papers are to be considered strictly pro non scripto.

38] In addition, the argument was advanced that the institution of the new proceedings does not comply with the provisions of the PEPUDA and applicable Regulations. More specifically section 20 (2) and (3) of PEPUDA read with Regulation 6 of the Promotion of Equality and Prevention of Unfair Discrimination ("the Regulations").

39] As the first respondent and some other respondents had already filed lengthy answering affidavits at a great cost given the allegations made in the original founding affidavit, if the new founding affidavit was to be allowed, the respondents would have to file yet the other answering affidavits at an even greater cost. Accordingly, the first respondent had argued that they will be seriously prejudiced if the new Notice of Motion, founding affidavit and annexures were to be allowed as part of the initial proceedings.

40] On the procedural point raised by the first respondent, I am of the view that there is merit in this point. Consequently, the complainants are to be ordered as I hereby do, to immediately upload the initial Form 2, original Founding Affidavit and original

annexures on the electronic profile of this case.

41] In respect of the First Respondent and others who have since filed an Answering affidavit before service of the Form 3 form, in order to mitigate any prejudice that they may suffer, these respondents will be allowed an opportunity to file any supplementary affidavit pursuant to service of the Form 3 on them.

42] The complainants having uplifted the initial complaint and having amended it without leave of the Court, this after the Directions

Hearing was held, by so doing acted unprocedurally. Any amendment to their Form 2 can only be made with leave of this Court and only once granted can an amendment be effected. Absent such leave, it follows that the original Form 2, together with the original founding affidavit and annexures thereto, is what the complainants' case would be premised upon.

ARGUMENTS ON BEHALF OF THE SECOND RESPONDENT

43] The second respondent also denies that it was served with the Form 3, new Form 2, and new founding affidavit. It contends that these documents were simply uploaded to Caselines.

44] The Second Respondent ("DHMS") therefore seeks directions to regularise the proceedings before this Court in light of the Complainants having summarily and without complying with the Regulations or Uniform Rules of Court, removed their Form 2, notice of motion, and founding affidavit from Caselines, and have uploaded a new Form 2 and new founding affidavit to Caselines.

45] As this Court has already ruled that the Complainants should re-upload the original Form 2 together with the original Founding

Affidavit and annexures, this respondent would likewise be given an opportunity to file either a supplementary Answering Affidavit where one already exists or file its Answering Affidavit after this ruling.

ARGUMENTS ON BEHALF OF THE THIRD TO TWELVE RESPONDENTS

46] In respect of the above-mentioned respondents a similar argument was raised in relation to the non-service of the initial complaint and the subsequent unilateral removal of the complaint without permission.

47] In this regard the third respondent specifically asserts that:

“Bonitas has no record of having been served with a Form 3 subsequent to the 15 September 2022 directive. No Form 3 appears to have been served on Bonitas.”

48] As all of the remainder of the respondents have now been served with the Form 3 as directed by this Court, each one of them will be afforded an opportunity to file an Answering Affidavit to the initial Form 2 and the initial complaint.

49] The respondents having now been served with papers as directed by this Court when regularising the proceedings, the interest of justice will best be served when all parties are afforded an equal opportunity to present their respective cases and access to court.

50] Thus, to repeat, where service of the papers had taken place before an Answering Affidavit had been filed, such respondent(s) will now be given an opportunity to respond by way of filing of an Answering Affidavit, and where an Answering affidavit has already been filed before this Court's directive had been issued, such Respondent will be given an opportunity to file a Supplementary Affidavit and all of this will be done in relation to the initial complaint and not to an amended complaint which was pursued without leave of this Court.

51] The election made to file either an Answering Affidavit or a Supplementary Affidavit will have to be done by the date stipulated

in this ruling.

52] The Minister of Health being the Ninth Respondent had raised a point in limine i.e. that the complainants are not asking for any relief against the Minister of Health.

53] On behalf of the complainants it was submitted that certainly relief is sought as against the Ninth Respondent as the Minister has a constitutional mandate to oversee CMS which is a statutory body established by the Medical Schemes Act (131 of 1998) to provide

regulatory supervision of private health financing through medical schemes.

54] As the governance of the Council is vested in a board appointed by the Minister of Health, consisting of a Non-executive Chairman,

Deputy Chairman and 13 members, the conduct of CMS places the Minister at the epicentre of its conduct.

55] It is for this reason that the argument by the complainant that no relief is sought as against the Minister of Health was rejected by this court.

56] As regards the point so raised by the Ninth Respondent, I am of the view would best be dealt with during the hearing and should stand over for such hearing.

57] The Minister of Public Service and Administration is cited herein as the Tenth Respondent and had raised the point of misjoinder. In this regard counsel for the Complainants had argued that this point is without merit as the respondent in terms of Section 195

[1] of the Constitution is enjoined to ensure that public institutions be governed by the democratic values and principles enshrined in our Constitution. Further, that public administration must be broadly representative of the South African people, with employment and personnel management practices based on ability, objectivity, fairness, and the need to redress the imbalances of the past to achieve broad representation.

58] Similarly, this point of misjoinder would best be dealt with at the hearing and should not be dealt with at the Directions hearing stage. This way, all parties to the proceedings will be afforded an opportunity to address this Court and even present evidence where necessary in support of its preliminary point. This way all issues can be properly ventilated.

FAILURE BY THE CLERK OF COURT TO HOLD AN APPOINTMENT AT THE TIME WHEN THE CURRENT PROCEEDINGS WERE INITIATED.

59] Before concluding one other issue raises a concern. As mentioned, during the course of my engagement with the Clerk of the Equality

Court it was brought to my attention that at the time when the proceedings in casu commenced, the Clerk did not hold an appointment

as is required in terms of the Act.

60] Having been appraised of this fact, I first raised the issue with the leadership of this Court, and thereafter steps were taken to rectify this omission.

61] The Clerk of the Equality Court plays an essential administrative role. Of importance in this regard is the appointment and designation of the Clerk of the Equality Court in terms Section 17 of PEPUDA read with Regulation 3 (1) thereof. The section reads as follows:

“1(a) Subject subsection and the laws governing the public service, the Director-General of the Department may, for every equality court, appoint or designate one or more officers in the Department, or may appoint one or more persons in the prescribed manner and on the prescribed conditions, as clerks of the equality court, who must generally assist the court to which they are attached in the performing of its functions and who must perform the functions as prescribed.

(b) If a clerk of an equality court is for any reason unable to act as such or if no clerk has been appointed or designated for any equality court under paragraph (a), the presiding officer concerned may, despite subsection, designate any competent officer in the Department to act as clerk for as long as the said clerk is unable to act or until a clerk is appointed or designated under paragraph (a), as the case may be.” (My emphasis)

62] Sections 17 (2) and 31 emphasise that the Clerks of the Equality Court must undergo training in order to perform their functions. The Regulations, notably Regulation 2, 3 and 4, merely outline the administrative process and requirements for the appointment of Clerks of the Equality Court.

63] From the above, also taking into account the legislative provisions and regulatory framework, it is clear that the appointed or designated clerks perform the administrative functions in assisting the equality courts to perform their core functions. These functions are amplified in the Regulations to include the following:

- (a) upon receipt of the notification contemplated in regulation 6(1), open a file and number the matter with a consecutive number of the year;
- (b) keep a register in which he or she records –
 - (i) the particulars of the parties involved in each matter;
 - (ii) the number of the matter referred to in paragraph (a);
 - (iii) the relief requested;
 - (iv) the date and the outcome of the inquiry;
 - (v) the outcome of an appeal or review, if applicable; and
 - (vi) the particulars of the alternative forum to which the matter was referred, the date of referral and the outcome of the matter if applicable;
- (c) mark every document received afterwards with such number as assigned to the specific matter;
- (d) file any documentation received on the appropriate file;
- (e) assist to the best of his or her ability a person who is illiterate or disabled with the completion of any document relating to the proceedings in the court;
- (f) if a person instituting proceedings is not represented or assisted –
 - (i) inform the person of his or her right to representation; 6
 - (ii) inform the person of the assistance available to him or her by constitutional institutions or other non-governmental organisations;
 - (iii) inform and explain to that person his or her rights and remedies in terms of the Act to the best of his or her ability;
 - (iv) assist a person further by reading or explaining any documentation to him or her; and
 - (v) explain the process and procedures relating to the attendance of witnesses;
- (g) perform the duties assigned to him or her in terms of these regulations;

- (h) subpoena a witness to attend the inquiry at the request of a party or by direction of the court;
- (i) inform a witness that he or she is entitled to witness fees and ensure that a witness is assisted in this regard where necessary; and
- (j) perform the duties of the clerk of a civil court insofar as it is necessary to give effect to the provisions of the Act.”[6]

64] Section 17 (1) (b) states that in the event that the clerk of the court is not appointed nor designated, the presiding officer may designate any officer even if such officer had not undergone training as contemplated in terms of Section 31 of PEPUDA.

65] The omission of an appointment of the Clerk was also brought to the attention of the parties calling for their input. Not all parties made input but the gist of what was relayed to this Court is that the proceedings should continue as if the Clerk had indeed been duly appointed a Clerk of the Equality Court at the time when the proceedings commenced. The position has since been rectified, and the Clerk now holds an appointment as a Clerk of the Equality Court. I am in agreement with the sentiments expressed by some of the parties as this is in line with the tenor of the PEPUDA Act and its attendant Regulations which envisages informal Court proceedings and places substance above form and technicality.

COSTS

66] In relation to costs all parties before Court sought costs against one another on the procedural points raised pursuant to the

Directions hearing being held.

67] Given the nature of a Directions Hearing and the ultimate ruling herein made by this Court, in the exercise of my discretion I am of the view that the most prudent order as to costs at this stage, is to reserve the issue of costs.

ORDER:

68] In the result the following order is made:

68.1 The Complainants are directed to upload the original Form 2 dated 23 April 2022, onto Caselines on or before 24 February 2025;

68.2 The Complainants are directed to upload the original founding affidavit onto Caselines on or before 24 February 2025;

68.3 The Complainants are directed to remove the new Form 2 from Caselines on or before 24 February 2025;

68.4 The Complainants are directed to remove the new founding affidavit dated 18 September 2022 from Caselines on or before 24 February 2025;

68.5 The Clerk of the Equality Court is directed to upload proof of service of Form 3 on all the Respondents by no later than 24 February 2025.

68.6 Following the uploading of the initial Form 2, all the respondents before Court are permitted if they elect to do so, to file either a Supplementary Answering Affidavit or an Answering Affidavit as the case may be by no later than 10 March 2025.

68.6 The complainants must file their replying affidavits to the affidavits filed in terms of paragraph 64.5 above, to the extent necessary, within 15 days of delivery of the said answering affidavits;

68.7 In order to regulate the further conduct of these proceedings, the parties are to present themselves for a virtual Case Management meeting on 15 April 2025 at 17h00.

68.8 Costs reserved.

C COLLIS

PRESIDING OFFICER

EQUALITY COURT

GAUTENG DIVISION, PRETORIA

APPEARANCES

Counsel for the 1st, 3rd, 6th and 8th Complainants: Adv. M. Kufa Adv.M. Tshivhashe Instructed by Machaba Attorneys Counsel for the First Respondent: Adv. D.E. Matlatle Instructed By: Diale Magashoa Attorneys Counsel for the Second Respondent: Adv. K. Tsatsawane SC Adv. C. Avidion Instructed By: Knowles Husain Lindsay Inc. Counsel for the 3rd, 7th, 8th, 11th and 12th Respondents: Adv. E. Kromhout Adv. K. Moloisane Instructed By: GMI Attorneys Counsel for the 9th Respondent: Adv.M.D. Mohlamonyane SC Instructed By: Office of The State Attorney, Pretoria Counsel for the 10th Respondent: Adv. J. Mnisi Instructed By: Office of The State Attorney, Pretoria Date of Hearing: 22 May 2023, 5 June 2023, September 2023 and 18 August 2023

Judgment

Reserved: 18 August 2023 Date of Judgment: 10 February 2025

[1] Manong and Associates (Pty) Ltd v Department of Roads and Transport, Eastern Cape and Others [2009] ZASCA 50; 2009 (6) SA 589 (SCA);

[2009] 3 All SA 528 (SCA) para 53.

[2] Sections 9(3) and 27 of the Constitution Act 108 of 1996.

[3] Regulations relating to the promotion of equality and prevention of unfair discrimination GNR. 764 of 13 June 2003.

[4] Regulation 10(5)(a) of the Regulations.

[5] Investec Property Fund Limited v Viker X (Pty) Limited and Another

[2016] ZAGP JHC 108.

[6] 1 Regulation 5 of the Regulations published in Government Notice R. 764 of 13 June 2003 (Government Gazette No. 25065).

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.saflii.org/za/cases/ZAEQC/2025/3.html>

CASE PAGE <https://chat.esheria.ai/case-law/south-africa/mokoditoa-and-others-v-council-unknown-topic-aeqc-2025>

Prepared on 11 October 2026 · Esheria