
SOUTH AFRICA / JUDGMENT

Strydom v Black First Land First (11/2018EQJHB) [2019] ZAEQC 1 (6 May 2019)

[2019] ZAEQC 1

COURT

Equality Court

BEFORE

BC Molwana

CASE / FILE NUMBER

11/2018EQJHB

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IN THE EQUALITY COURT OF JOHANNESBURG HELD AT JOHANNESBURG

CASE NO: 11/2018 EQ JHB

In the matter between:

LUCY STRYDOM APPLICANT

AND

BLACK FIRST LAND FIRST FIRST

RESPONDENT

ANDILE MNGXITAMA SECOND

RESPONDENT

ZANELE LWANA THIRD

RESPONDENT

LINDSAY MAASDORP FOURTH

RESPONDENT

ZWELAKHE DUBASI SIXTH

RESPONDENT

THANDISWA YAPHI SEVENTH

RESPONDENT

INTRODUCTION

- 1.1 The matter appeared just before my learned brother Mr Sibanyoni, for direction hearing.
2. On the 12 March 2019 the matter was before me for further direction hearing.
3. The Attorney, for BLF, had withdrawn before Mr Sibanyoni, and they 1st to 7th Respondent appeared in person, and Mr Mngxitama, the 2nd Respondent argued on behalf of all the Respondents.
4. There was a commotion in court, which was led into the record by Mr Mngxitama, to the effect that the complainant husband, racially abused the 2nd to 7th Respondent on the Courts Corridor which they submitted had nothing to do with the Complainant. Adv. Mosikili for the Complainant confirmed the incident into the Record.
5. The Complainant is Lucy Strydom (Felix); the Complainant is of a Portuguese descendant but married to a White South African, Afrikaner but Strydom.
6. The parties during direction hearing submitted that they would follow a Motion Court Procedure. The parties were bound by their papers.

FACTS

- 2.1 The Complainant, was wrongly cited on their papers as the Applicant, instate of Complainant, the Court corrected that into the record.
- 2.2 The Complainant is assisted by SAHRC.
- 2.3 The Complainant in her founding affidavit submitted under oath to the effect that the Respondents uttered verbal utterances, and written statements especially by the First Respondent; against White South Africans, through its members in public.
- 2.4 The Complainant alleged that they construed a sequel of slogans constituting hate speech against White persons in South Africa.
- 2.5 She stated that the slogans emanated from the Apartheid Era. The slogans at play are:
 - (a) Kill the Farmer; Kill the Boer;This slogan became known as the late Peter Mokaba Slogan.
 - (b) Dubula lbunu, this slogan became known as Julius Malema slogan.
 - (c) One settler, One Bullet is alleged is the First Respondent's slogan.
 - (d) Land on Death, this too forms part of the First Respondent's slogan.
 - (e) The Applicant has canvassed particularly that both these slogans were Peter Mokaba, and Julius Malema's slogan which is alleged constitutes hate speech.

COMMON CAUSE

3.1 It is common cause that: The Respondent is Black First Land First; a Political Party registered in terms of Section 15 of the Electoral Commission Act of 1996; with its Headquarter at 602, Renaissance Centre, Gandhi Square Johannesburg.

3.2 The first to seventh Respondent are as cited on the Application.

3.3 This Court has Jurisdiction.

3.4 In terms of Section 20(1) of the promotion of Equality and prevention of unfair discrimination Act 2000 (The Equality Act). Any person acting in the public interest may institute legal proceedings, acting in the public interest; this is what Mrs Lucy Strydom has done.

4. RELIEF SOUGHT

4.1 The Complainant seek, an order from the court, to declare certain speeches, and written statement of BLF slogans, directed at White South African persons, declared as hate speech, on the basis of race.

4.2 The complainant seeks an order to obtain appropriate relief and for such court to make a pronouncement against BLF, constituting hates speech directed on people's race.

4.3 The complainant further seeks, an order to obtain appropriate relief, and for such to explicit pronouncement against BLF slogans, hate speech directed based on race.

4.4 An order directing 2nd to 7th Respondents to take immediate and meaningful step to:

- (a) Delete or remove posts made by the 1st Respondent using Land or Death within one week from date of the order.
- (b) That the First Respondent donate an amount of R150 000.
- (c) That the Respondents issue an unconditional apology on behalf of the 1st Respondent to South African for using slogans.

· One settler one bullet

· Land or Death

· That the apology provided to the South African Human Rights Commission for approval and published on the Commission Website.

5.5 An order in terms of Section 21(2)(1) of the Equality Act recommending the IEC to review the 1st Respondent's eligibility as a Political Party, given the 1st Respondent's violent threats to White people

5.6 An order in terms of Section 21(2) of the Equality Act, directly the Court to submit the matter to the Director of Public Prosecutions, having jurisdiction, for a possible institution of criminal proceedings against the 1st Respondent in terms of the Common Law or relevant legislation.

6. THE LAW

6.1. The Constitution provides for Freedom of Expression.

6.2. Section 16 of the Constitution; states that everyone has the right to freedom of expression.

6.3. The right in Section 16 does not extend to:

- (a) Propaganda for war
- (b) Incitement of imminent violence
- (c) Advocacy of hatred that is based on race, ethnicity, gender or religion and that constitute incitement to cause harm.

6.4. The promotion of Equality and prevention of Unfair discrimination Act 4 of 2000 prohibit hate speech on Section 10.

6.5. The convention on prevention and punishment of crime fo Genocide (1948).

6.5.1 The Rome Statute (killing members of the Group)

6.5.2 The convention of the Elimination of all forms of Racial Discrimination (1965).

7. ARGUMENTS BY THE COMPLAINANT

7.1. Complainant submitted heads:

7.2. Whether the statements made by Respondents constitute hate speech; Counsel submitted that the Respondents admitted on their papers that they agree to Land or Death.

7.3. Dubula lbhunu, was declared hate speech, this is a Malema slogan.

7.4. The Complainant, submit that one settler one bullet, be declared hate speech.

7.5. They further submit that Land or Death, be declared that this is an ultimatum or a call for a revolution for the return of the land.

7.6. They submit that the Respondents were seen, heard and associating themselves to the slogan one settler one bullet, they further allege that one settler one bullet was sung by the members of the Respondent in Pretoria, on the 29th September 2017.

7.7. They further submitted that the Respondent cannot distance themselves from the chanting of one settler, one bullet.

7.8. They further submitted that the word settler is synonymous with White South African, as they became settlers in Africa from Europe and elsewhere, bringing with them, their language.

7.9. People were provoked by the utterances of the Respondents "as they were seen wearing T shirt with the words "fuck white people"

7.10. There are tweets by the Respondents on their tweeter handler and hashtag #, Land or Death; they submitted their both written and uttered word can be indeed to encourage Blacks to engage in sporadic violence against White South Africans.

7.11. Further referred the counts to Annexures ..LS... 1 4 and they further submitted that they can be availed to the court.

7.12. Counsel, submitted that on the Soweto Declaration, the Respondents declared that they shall fight side by side as comrade, sisters and brothers to get the land back.

8. RESPONDENTS REPLY (ARGUMENT)

8.1 In person 2nd Respondent on behalf of the entire Respondents.

8.2 The Court clarified that the Applicant or Complainant is Lucy Strydom and not SAHRC, and not their official. (Known as Matthew Du Plessis.)

8.3 There is no case of imminent violence by BLF or its member, section 16 referred to imminent violence.

8.4 On the case of De Klerk Foundation v Malema, the argued that the court found in favour of Malema.

8.5 The Respondent only admits the tweet that is attributed to Lindsay Maasdorp, as the 4th Respondent.

8.6 Respondent submitted that they had lodged complaints with SAHRC, relating to racism by Penny Sparrow 5/01/2016, by Hellen Zille 27/03/2017, and by FW De Klerk and Adrian Vlok 8/05/2017. The SAHRC, did not legally represent the 1st Respondent nor facilitate any intention to proceed in terms of Section 20(1)(d) or (F) of the Equality Act.

8.7 First Respondent is to participate on the general election in 2019, the complaint seek to prevent them from participating.

8.8 He submitted that a settler is a person who belongs to a group of people who were involved in enslaving blacks, attached the negotiated settlement of 1994; it felt the Blacks are still without land.

8.9 Further submitted that Section 25 legalised, historical land theft give legitimacy to colonialism, the 80% of the land is controlled by a few white families.

8.10 The person with an AK47 T shirt, having such wording, one settler, one bullet is not a member of the 1st respondent.

8.11 He further submitted that, the SA Jewish Board of Deputies v Masuku Equality Court found Masuku, guilty but Cosatu and Masuku appealed the Equality Court judgment. The Supreme Court of Appeal upheld the Appeal, and dismissed SAJBD complaint.

8.12 The Respondents further Submitted that they rejected almost all the Annexures L51, L52, but they admit that Land or Death is the slogan of the 1st Respondent.

8.13 The statement one settler, one bullet is accordingly protected by the right of freedom of expression in terms of Section 16 of the constitution.

8.14 They further submitted that Apartheid slogans one settler, one bullet kill the farmer, kill the Boers and Dubula ibhunu, are not inciting violence, hatred and against White South African.

9. REPLY BY CONSEL COMPLAINT

9.1 The Respondent, were opportunistic, with the wording Land or Death, it is clear that they cannot refer to the Zulu King and the Blacks who own land e.g. The Bafokeng Nation of Rustenburg.

9.2 They give an ultimatum that should you not give back the land; you will die, clearly from Soweto Declaration, and their Public utterances.

10. ASSESSMENT OF THE EVIDENCE

10.1 The Court referred to the literal translation of the following words:

- (a) Boer is a descendent of any of Dutch or Huguenot colonist who settled in South Africa, hence the Court asked Counsel as to whether she is Mrs Strydom, a descendant of any of the Dutch people, the answer was found to be in the negative as she is of Portuguese descendent, but married to Mr Strydom (an Afrikaner).

10.2 The Respondent, have denied any association with one settler, one bullet (wording).

10.3 One settler, one bullet, is common knowledge known, as a PAN AFRICAN CONGRESS SLOGAN, and in obiter it cannot be imposed by the Complainant over the Respondents.

10.4 The Respondent rejected being associated with one settler, one bullet, or an AK47, photographed on the back of an unknown supporter.

10.5 The Respondent, have admitted that the word Land or Death is their slogan.

10.6 This Equality Court has to pronounce on it.

11. APPLICATION OF SECTION 10 (LAND OR DEATH)

11.1 That the words were published propagated advanced or commenced.

11.2 That the words are based on one or more of the prohibited ground

11.3 That the words were communicated to and against any person, which nonjuristic entity, or a group or a category of person as defined in the Act.

11.4 That the words could reasonably be consumed to demonstrate a clear intention.

11.5 That the words... so consumed should be directed towards, hurt, harm, incitement of harm, promotion of hatred or propagation of hatred.

11.6 There is evidence the word Land or Death, are specific words in question in this case were published propagated, advocate and communicated. It is submitted that there is also no dispute pertaining to the specific objectionable utterance and the fact that they were uttered at the Land of Soweto Declaration, and other particular events, and further admitted on the paper, and in court.

11.7 It is therefore important and significant to consider, and take into account who the complainant Lucy Strydom is? Whether it is reasonable that she falls within a racial group, and with reference to the context she live in perceived in South Africa, understand the relevant objectionable words. One cannot determine to the person who utters the words. One cannot determine the objective test with reference to the person who utters the words and the circumstances and environment within which he utters the words.

11.8 The hurt, harm and hatred relevant here is marginalisation of white people as a race, pressure on them as a group that is not acceptable treatment of them, different from others, racial discrimination against them, cries committed against them and in particular polarisation that still can result majority of the blacks being encouraged to attack the white people, it is discouraged, to their ideals of the New South Africa being threatened loss of life, being injured physically and ultimately economic loss to the county.

The COURT adopted the Motion Court Procedure at the request of the parties this prevented any of the parties to bring forward electronic evidence before Court. The parties were bound by their affidavits. In application no viva voce evidence is allowed. My learned brother Mr. Sibanyoni had already ruled to that effect.

12. THE RULING

1. No order is made regarding prayer (a), as it is a statement uttered by persons at gatherings of the respondent but cannot be ascribed to the Respondent.
2. The First Respondent's written statement, Land or Death, constitutes hate speech in that it is a statement that could reasonably be construed to incite harm against those that own land and are white people and is therefore based on the prohibited ground of race.
3. The First Respondent is ordered to remove the phrase Land or Death from its official T Shirt (members) website, and from its entire official document including, from the Soweto Declaration from a month from today 6 May 2019.
4. First Respondent is ordered to delete any Social Media post that it has made using hashtag# land or death with a month from 6 May 2019.
5. No order is made regarding prayer (F) of a donation.
6. The First Respondent is ordered to apologise unconditionally, in writing for having used Land or Death, the apology to be provided to the SAHRC within a month from 6 May 2019 and this apology is to be published on the SAHRC website.

7. The Office Bearers of the 1st Respondent namely 2nd Respondent to 7th Respondent are ordered to effect the granted orders granted by the court.
8. In relation to prayer (I), this Court does not have jurisdiction to pronounce on it. The Electoral court is the appropriate Court to deal with this prayer.
9. In relation to prayer (J), this Court orders that in terms of serious 21(2)(n) of the Equality Act; the clerk of the Equality submit the matter to the Director of Public Prosecutions having jurisdiction for a possible institution of criminal proceedings against the Respondent in terms of the common law.
10. Each party must pay its costs.

BC MOLWANA

MAGISTRATE

JOHANNESBURG CENTRAL MAGISTRATE COURT

DATED 06 May 2019

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Prepared on 9 October 2026 · Esheria