

SOUTH AFRICA / JUDGMENT

UASA obo Maritz and Another v Ekurhuleni Metropolitan Municipality (JS 237/17; JS 238/17) [2022] ZALCJHB 285 (6 October 2022)

[2022] ZALCJHB 285

COURT

Labour Court Johannesburg

BEFORE

S. B. Radebe

CASE / FILE NUMBER

JS 237/17; JS 238/17

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FLYNOTES: UNFAIR DISCRIMINATION AND COMPARATORS Labour – Unfair discrimination – Alleged that comparators given higher rank and paid more because of race – Failed to prove that they perform the same or substantially the same work as comparators – Failed to show that the difference in remuneration was based on race – Employment Equity Act 55 of 1998, s 6.

IN THE LABOUR COURT OF SOUTH AFRICA,

JOHANNESBURG

Not Reportable

Case No: JS 237/17 & JS 238/17

In the matter between:

UASA OBO N. MARITZ AND J.L. BIERMAN

Applicant

and

EKURHULENI METROPOLITAN MUNICIPALITY

Respondent

Heard: 02 – 03 JUNE 2022, and 10 June 2022 and 13 June 2022[1]. This judgment was handed down electronically by circulation to the parties' representatives by email. The date for hand-down is deemed

to be on 06 OCTOBER 2022.)

Summary: Equal pay for work of similar value or substantially the same work-unfair discrimination claim-section 6(1) read with section 6(4) of the Employment Equity Act 55 of 1998 as amended-no proof that race is the reason for being paid less than the comparators-the claim is dismissed.

J U D G M E N T

RADEBE AJ

Introduction

- [1] The Applicants, who are both members of UASA referred identical claims to this Court based on section 6(1) and 6(4) of the Employment Equity Act^[2] (EEA), against their current employer, the Respondent. The two referrals were then consolidated by this Court and heard as one matter.
- [2] Both Applicants essentially charge that their claim is based on unfair discrimination, in that they have been unfairly discriminated against by the Respondent on the basis that they perform the same or substantially the same work or work of equal value that is directly or indirectly based on any one or more of the grounds listed in section 6(1) of the EEA, being race in their case. This is because as White people, they are paid less for work of similar value or substantially similar work that is performed by their respective comparators who are Black.

The relief sought

- [3] Both Applicants seek an identical order in the following terms:

3.1 Declaring that the Respondent unfairly discriminated against each of the within the meaning of section 5 and 6 of the EEA.

3.2 Directing the Respondent to pay each one of them the same remuneration and benefits as paid to each of the Applicant's comparators, who were Chief Superintendents.

3.3 An order compelling the Respondent to pay damages to each of the Applicants in terms of section 50(2) of the EEA, in the amount that is equal to the difference between the remuneration of each of the Applicants and that of their respective comparators from 01 August 2014 to the date of the finalization of this dispute, alternatively, an amount determined by this Court.

3.4 Costs of the suit.

The factual background

- [4] Mr. Maritz, one of the Applicants commenced employment on 08 February 1993 as a Traffic Inspector with the Benoni Municipality and was employed by the Respondent on or about 05 December 2000, following

the consolidation of municipalities to form the Respondent.

[5] On 14 July 2008, he was appointed to the post of Superintendent/ Major in terms of a settlement agreement between the parties.

[6] He claims that, even though he is currently appointed and occupying the position of Superintendent with the Respondent, at the Ekurhuleni Metropolitan Police Department (EMPD), his daily functions and

responsibilities in this position entail those of a Chief Superintendent and Unit Commander at the Social Crime Unit of the EMPD.

[7] Chief Superintendent Nomawethu Patience Mafa (Ms. Mafa), his comparator, was appointed as Unit Commander at the Benoni precinct, and according to Mr. Maritz, they have similar duties as Unit Commanders, but Mr. Maritz is being remunerated as a Superintendent, while Ms. Mafa was being remunerated as a Chief Superintendent.

[8] Mr. Maritz claims that he and Ms. Mafa have the same responsibilities, expertise, experience, and skills, and they both report to the same person, the Acting Director: Northern Region.

[9] He and Ms. Mafa and other Unit Commanders work in the same department, the EMPD department in the same section, that of the Unit Commanders in Northern Region.

[10] His responsibilities and that of other Unit Commanders who were appointed as Chief Superintendents or who are acting as Chief Superintendents, include identical responsibilities relating to people, finances, vehicles, equipment, radios, and reputation of the EMPD.

[11] According to him, the skills and qualifications required are the same for all the heads of the different units in the EMPD. In addition, the physical, mental, and emotional effort required in order to perform the job is also the same for all the different units in the EMPD.

[12] All the different heads of different units in the EMPD have the same responsibilities, work, job, degree of accountability and degree of authority of a person performing the functions of a head of a unit, whether they are appointed as Superintendent of Chief Superintendent, but he is not remunerated as a Chief Superintendent. In this regard, he is being remunerated at R329 088 per annum, while Ms. Mafa is remunerated at R425 280 per annum, a difference of nearly R100 000

per annum.

[13] He has been employed as a Traffic Officer since 1993, while Ms. Mafa has been employed as a Traffic Officer since 1998 and therefore has five years more experience compared to Ms. Mafa. However, both he and Ms. Mafa are suitably qualified and obtained the minimum requirements to be appointed to the position of Chief Superintendent.

[14] The other Applicant, Mr. Bierman makes similar claims as Mr. Maritz.

- [15] He commenced training as a Traffic Officer during 1993 and took up employment with the Respondent on 01 August 1999.
- [16] He was appointed to the position of Superintendent/Major in terms of a settlement agreement on 14 July 2008, a position he currently holds, just like Mr. Maritz.
- [17] He claims that although he currently occupies the position of Superintendent at EMPD, his daily responsibilities are those of Chief Superintendent and Unit Commander at the overload unit of the EMPD.
- [18] He and Chief Superintendents Mkhwanazi, and H. Botha, his comparators are responsible for the same functions and duties as Unit Commanders at the Specialized Services Section, but he is being remunerated as a Superintendent, while Mr. Mkhwanazi and Mr. Botha are remunerated as Chief Superintendents.
- [19] He also earns the same remuneration as Mr. Maritz per annum, and the differences in remuneration between his remuneration and that of his comparators is also R100 000 per annum, respectively.
- [20] It is worth noting that Mr. Bierman does not make similar comparisons regarding remuneration when it comes to his other comparator, Mr. Botha.
- [21] He has been employed as a Traffic Officer since 1993, while Mr. Mkhwanazi has been employed as a Traffic Officer since 2002, meaning that he has nine years more experience than Mr. Mkhwanazi. However, he says they are both suitably qualified and meet the minimum requirements to be appointed to the position Chief Superintendent.

Summary of the evidence and arguments

Applicant's evidence and arguments

- [22] The Applicants relied on and called three witnesses in support of their case, namely: Mr. Bierman, Mr. Maritz, and Mr. Van Staden.

- [23] Mr. Bierman testified that:

23.1 he was appointed as a Superintendent in 2008, and still occupies this position, and that he was stationed at the speed unit, reporting to Mr. Botha, a Chief Superintendent in the Eastern Region.

23.2 Shortly thereafter, and following his appointment to the position of Superintendent, he was asked by a Mr. Mzolo to work in the overload unit, and as a result started to report to Mr. Mzolo.

23.3 At this point, he was also a Unit Commander of the overload unit, and when he became a Commander, his reporting lines changed, and he now reported to the Director: Specialized Services (Mr. Mzolo) and was now also responsible for weigh bridges in Ekurhuleni, and his functions and duties in this regard included checking trucks for overloading. His other duties included ensuring growth of the unit and recruitment of personnel, investigating complaints,

compliance with Council notices, signing timesheets, keeping personal files of the unit, and leave forms.

23.4 He is responsible for 20 employees who report directly to him.

23.5 He also testified that the above-mentioned functions are the same as those of a Chief Superintendent, and that Mr. Mkhwanazi, his comparator also reported to Mr. Mzolo, but Mkhwanazi was remunerated as a Chief Superintendent while Bierman was remunerated as a Commander.

23.6 He also testified that Mr. Mkhwanazi was remunerated at a rate applicable to the Chief Superintendent purely because of his race, a Black person.

23.7 Mr. Mkhwanazi applied and was appointed as a Chief Superintendent and met the requirement for the position. This is why he was appointed, while Bierman did not make the cut.

23.8 In total, 15 Chief Superintendents were appointed, and of the 15, only one White person was appointed as a Chief Superintendent.

23.9 He is now part of the Taxi Task Team, reporting to Mr. Mkhwanazi, who is now a Director.

23.10 He raised his unhappiness about performing the duties and functions of a Chief Superintendent, while being remunerated at the level of a Superintendent, and his grievance was not resolved. This led him to refer a dispute to the Commission for Conciliation, Mediation and Arbitration (CCMA), which in turn ruled that they did not have jurisdiction.

[24] Mr. Maritz, testified that:

24.1 He was appointed as a Superintendent in 2008, after an arbitration award in his favour, and his duties involves social crime prevention, and reports to a Director of the unit.

24.2 He has one Inspector, and ten Constables who report to him.

24.3 He also testified that his core functions are similar to those performed by a Chief Superintendent.

24.4 Ms. Mafa, his comparator was promoted to the position of Chief Superintendent and sent to a different unit. However, shortly thereafter, she was promoted to Deputy Director.

24.5 When Ms. Mafa occupied the position of Chief Superintendent, she was remunerated at this level, while he was remunerated at the level of Superintendent, despite performing the same duties and functions as Ms. Mafa.

24.6 He also previously applied for the position of Chief Superintendent since 2008 but did not make it because of Broad-Based Black Economic Empowerment requirements (BBBEE).

24.7 When he was a Commander of a unit, Ms. Mafa reported directly to him.

24.8 He has acted in the position of Chief Superintendent in 2020 and paid the acting allowance.

24.9 In 2014, eight positions for Chief Superintendent were made available, and eight people applied, but only one White person, Ms. Penny Erlak was appointed.

[25] Mr. Johan van Staden, the Applicants' third witness testified that:

25.1 He has been an acting Director with the Respondent for 18 years. He knows the Applicants, as they previously reported to him.

25.2 Both Applicants currently occupy positions as Superintendents, and their functions and duties are the same as those of Chief Superintendent. This is because they perform operational functions such as planning, compile reports, visit offices to see to it that work is being done.

25.3 The Respondent has different units, and each unit has two Superintendents. However, he had no idea why the Superintendents

(including the Applicants) were also called Unit Commanders, as their roles were those of Superintendents.

25.4 He knows Mr. Mkhwanazi, as he reported to him, and is part of a special unit. Mr. Mkhwanazi's duties are the same as those of the Applicants, but there are differences, as Mr. Mkhwanazi, unlike the Applicants, attends more meetings, with the South African Police Services, and internal meetings.

[26] The Applicants' case in short boils down to the claims that it is common practice for the Respondent to require its employees to perform the duties of a Chief Superintendent without remunerating them for it.[3]

[27] They performed the same duties as those applicable to Chief Superintendents, who are their comparators, and are responsible for

the same duties as Unit Commanders in the specialized section.[4]

[28] The skills and qualifications required for the positions of Superintendent, and Chief Superintendent are similar for all the different heads of units within the EMPD.[5]

[29] The only reason why the Applicants are not remunerated at the level of Chief Superintendent, as their comparators when their comparators occupied the positions of Chief Superintendent is unfair discrimination based on race.[6]

[30] The Applicants therefore seek the relief mentioned above.

The Respondent's evidence and arguments

[31] The Respondent did not call any witnesses in support of its case. The Respondent argues that the only reason for the differentiation in remuneration between the Applicants and their comparators, as confirmed by Mr. van Staden, as well as by the Applicants under

cross-examination is the member's rank, Chief Superintendents are paid more than Superintendents.[7]

[32] Neither Mr. Bierman, nor Mr. Maritz presented any evidence in support of their claims that they performed the same or substantially the same work or work of equal value as their comparators. Their evidence instead, showed that there are many differences in the work they performed in 2017.[8]

[33] There is no evidence that the difference in remuneration paid to the Applicants who are Superintendents, and their comparators who were Chief Superintendents is based on the Applicants' race.[9]

[34] The Respondent does not rely on any ground of justification because the Applicants failed to prove that they perform the same or

substantially the same work as their comparators, and to show that the difference in remuneration is based on race.[10]

[35] It follows then that the Respondent does not attract an onus of proof to justify that such discrimination did not take place or is rational and not unfair or is otherwise justifiable.[11]

Survey of the applicable legal principles and evaluation

[36] Section 9 of the Constitution of the Republic of South Africa, 1996 (Constitution) guarantees everyone the right to equality, and

prohibits unfair discrimination, whether directly or indirectly on one or more of the listed grounds, including race, gender, sex,

pregnancy, marital status, ethnic or social origin, colour sexual orientation, age, disability, religion, conscience, belief, culture,

language, and birth. This section has been given breath in a few pieces of legislation and contexts, such as the Promotion of Equality

and Prevention of Unfair Discrimination Act[12]; the EEA, and section 187(1)(f) of the Labour Relations Act[13] (LRA).

[37] The Court in *Harksen v Lane NO And Others*[14] (Harksen) developed a two-pronged test in order to determine whether differentiation amounted to unfair discrimination, where reliance is

placed on the equality clause.[15] The Court stated the two-pronged test as follows:

“(a) Does the provision differentiate between people or categories of people? If so, does the differentiation bear a rational connection to a legitimate government purpose? If it does not then there is a violation of section 8(1). Even if it does bear a rational connection, it might nevertheless amount to discrimination.

(b) Does the differentiation amount to unfair discrimination? This requires a two stage analysis:

(i) Firstly, does the differentiation amount to “discrimination”? If it is on a specified ground, then discrimination will have been established. If it is not on a specified ground, then whether or not there is discrimination will depend upon whether, objectively, the ground is based on attributes and characteristics which have the potential to impair the fundamental human dignity of persons as human beings or to affect them adversely in a comparably serious manner.

(ii) If the differentiation amounts to “discrimination”, does it amount to “unfair discrimination”? If it has been found to have been on a specified ground, then unfairness will be presumed. If on an unspecified ground, unfairness will have to be established by the complainant. The test of unfairness focuses primarily on the impact of the discrimination on the complainant and others in his or her situation.

If, at the end of this stage of the enquiry, the differentiation is found not to be unfair, then there will be no violation of section 8(2).

(c) If the discrimination is found to be unfair then a determination will have to be made as to whether the provision can be justified under the limitations clause (section 33 of the interim Constitution).”[16]

[38] Section 6(1) of the of the EEA, which bears similar language to section 9 (3) of the Constitution provides as follows:

“No person may unfairly discriminate, directly or indirectly, against an employee, in any employment policy or practice, on one or more grounds, including race, gender, sex, pregnancy, marital status, family responsibility, ethnic or social origin, colour, sexual

orientation, age, disability, religion, HIV status, conscience, belief, political opinion, culture, language, birth or on any other arbitrary ground.”

[39] Whereas section 6(4) of the EEA provides as follows:

“A difference in terms and conditions of employment between employees of the same employer performing the same or substantially the same work or work of equal value that is directly or indirectly based on any one or more of the grounds listed in subsection (1), is unfair discrimination.”

[40] Since the Applicants rely on a listed ground of unfair discrimination (race) as opposed to an unlisted grounds of unfair discrimination (or on any other arbitrary ground), then in terms of Regulation 11(1) of the EEA Regulations the Respondent bears the onus to prove, on a balance of probabilities, that such discrimination did not take place as alleged, alternatively, is rational and not unfair, or is otherwise justifiable.[17]

[41] The Respondent does not concede that the work performed by the Applicants in their position as Superintendent is of equal value or similar or substantially similar to that performed by Chief Superintendents, and that the pay difference between these positions is attributed to racial discrimination. This matter then turns on whether the Applicants perform the same work or substantially similar work or work of similar value in comparison to their respective comparators? And whether there is racial pay discrimination?

[42] Regulation 4 of the Employment Equity Regulations[18] (EEA Regulations) work of equal value means that the work performed by an employee:

“(1) is the same as the work of another employee of the same employer, if their work is identical or interchangeable;

(2) is substantially the same as the work of another employee employed by that employer, if the work performed by the employees is sufficiently similar that they can reasonably be considered to be performing the same job, even if their work is not identical or interchangeable;

(3) is of the same value as the work of another employee of the same employer in a different job, if their respective

occupations are accorded the same value in accordance with regulations 5 to 7.”

[43] EEA Regulation 6(1) provides that the assessment of whether work is of equal value is an objective process which considers the following criteria:

“(a) the responsibility demanded of the work, including responsibility for people, finances, and material;

(b) the skills, qualifications, including prior learning and experience required to perform the work, whether formal or informal;

(c) physical, mental, and emotional effort required to perform the work; and

(d) to the extent that it is relevant, the conditions under which work is performed, including physical environment,

psychological conditions, time when and geographic location where the work is performed.”

[44] During cross-examination, Mr. Bierman confirmed that his current appointment with the Respondent since 2008 is that of Superintendent. It follows then that his remuneration would be in line with his appointment and position of Superintendent, and he conceded during cross-examination that the job descriptions between of the position of Chief Superintendent, and that of Superintendent are what determines remuneration for each position.

- [45] He further made a bald claim that Mr. Mkhwanazi, his comparator was remunerated at a higher level and rate of Chief Superintendent, purely because of his race, being Black, while he (Mr. Bierman) was remunerated at a level and rate of Superintendent purely based on his race, being a White person, yet no evidence to this racial pay discrimination was presented.
- [46] The problem however, with his evidence, just like Mr. Maritz, is that it does not only contain internal contradictions, but is also not supported by the documentary evidence, and he also made concessions during his cross-examination that are fatal to his case.
- [47] When the job descriptions of Superintendent, and the job description of Superintendent were compared, and he was referred to the duties and functions of each position, he conceded that he did not perform all the duties of a Chief Superintendent, which contradicts his earlier evidence.
- [48] What further compounds matters is that, when one has regard to the job description forms for each position, it becomes clear as night and day that while the two positions may contain certain minor overlaps with regard to administrative functions applicable to all Metro Police Officers, they are graded at different grades.[19] For instance, Superintendents and others are listed as immediate subordinates to Chief Superintendents.[20] In addition, the reporting lines for both positions are different, a Chief Superintendent reports to a Deputy Director.[21] The Superintendents on the other hand report to Chief Superintendents as their immediate supervisors, and have different subordinates as compared to the Chief Superintendent.[22] These differences in the two positions alone present unique and insurmountable hurdles for the Applicants.
- [49] Mr. Bierman also conceded during cross-examination that there is no formal position within the Respondent titled Unit Commander, and that this is something certain of his colleagues seem to refer to each as.
- [50] What compounds matters even further for Mr. Bierman is that he conceded that the core functions between his day-to-day functions and duties and those of Mr. Mkhwanazi are different, and he had no idea what Mr. Mkhwanazi did in his job in any given week and does not know what Mkhwanazi's experience is before he joined the Respondent, then one wonders how he could then rely on Mkhwanazi as a comparator.
- [51] By the same token, Mr. Maritz's evidence suffers the same problems as that of Mr. Bierman, in that it does not only contain internal contradictions, but is also not supported by the documentary evidence, and he also made concessions during his cross-examination that are fatal to his case.
- [52] Firstly he conceded that he held his current position of Superintendent since 2008. He further conceded during his examination-in-chief that his qualifications and those of his comparator (Ms. Mafa) are different.

- [53] Most importantly, and despite claiming earlier that he performs the same functions and duties as a Chief Superintendent, including those his comparator performed while she was a Chief Superintendent. During his evidence, he stated that he does not perform some of these functions, such as those related to funerals, power outages, school searches, and school training, and also does not deal with animals, and speed.
- [54] He further contradicted his earlier evidence-in-chief to the effect that he coordinates all regions while Ms. Mafa only coordinates one region. His tune changed under cross examination, when he conceded that Ms. Mafa manages the freeways unit, and also works at all regions, covering the North, South and Eastern region. In addition, he testified that he does not have the same number of people who report to him, as compared to Ms. Mafa, who has various regions reporting to her.
- [55] He also contradicted the evidence of Mr. Bierman with regard to a position titled Unit Commanders, as according to him, there is a such a position.
- [56] Mr. Van Staden, their third witness does not assist their case either. He pointed out with reference to the Job Description Form applicable to the position of Superintendent dated 9 December 2002 that Mr. Bierman is not responsible for duties and functions listed under clause 2.6 of section 2 (coordinating mentioned functions with SAPS and other Relevant Stakeholders),[23] and section 3, being Management of the Projection of Councillors and Employees to Safeguard Property and Employees of the Metro,[24] plus clause 4.4 (ensuring continued attendance by delegates of community policing forum), clause 4.9 (plan and coordinate execution of warrants), section 5 (execution of social crime prevention functions to ensure public safety service delivery),[25] and clause 7.1 of section 7 (recording of all domestic violence incidents).[26]
- [57] He further conceded during cross-examination that with regard to the Applicants, Ms. Mafa, and Mr. Mkhwanazi, they perform different functions and duties, but then turned around and contradicted himself by saying, these functions are more or less the same.
- [58] This Court has previously held that a bald claim that a distinction in remuneration constitutes an unfair discrimination is inadequate for the onus to shift to the employer to prove that the discrimination was fair.[27] In *South African Municipal Workers Union and another v Nelson Mandela Bay Municipality*,[28] it was held that:
- “In this case the disparate treatment would occur if it is established that the employer treated the complaining employee less favourably on the basis of sex or gender by placing her on a lower remuneration scale for performing the same or similar work as her male*

comparators. It was not controverted that the assistant directors in the Human Settlement Directorate are performing the same or similar work, some with added responsibilities. It was also not in dispute that there are salary disparities amongst these directors. What remains for the employee to demonstrate is that there is a causal nexus between the differentiation on the basis of her gender

or sex and the treatment accorded to her in respect of the grading of her post and the concomitant remuneration. In other words, that being female was a *sine qua non* for the less remuneration she earned...” (my emphasis)

[59] By the same token as in the above-mentioned SAMWU decision, I have to agree with the Respondent that the Applicants have failed to demonstrate that their race (being White) was a *sine qua non* for being paid less than their respective comparators. The evidence points to a different direction, stripped of all pretensions, the real issue seems to be that both the Applicants are simply unhappy that they have been applying for the position of Chief Superintendent

over a number of years and failed to make the cut because of BBBEE and employment equity requirements.

[60] There is also no merit to Mr. Maritz’s claims that since the amalgamation of municipalities into the current Ekurhuleni Metropolitan Municipality in year 2000, no White, abled person has been appointed to the position of Chief Superintendent at the EMPD. Their own evidence contradicted this claim during the proceedings when they pointed out that Mr. Botha was promoted to Chief Superintendent in 2020, and Ms. Penny Erlak were appointed to the position of Precinct Commanders, and that White and Black people were appointed to act in the position of Chief Superintendent by the Respondent. Mr. Maritz also acted in the position of Chief Superintendent for three months on three separate occasions in

Bronkhorstspuit.

[61] I am therefore inclined to agree with the Respondent that there is no evidence that the difference in remuneration paid to the Applicants who are Superintendents, and their comparators who were

Chief Superintendents is based on the Applicants’ race. On the contrary, the evidence points to the different positions, and functions and duties as reasons for the difference in pay.

[62] As a result, it follows that the Respondent does not need to rely on any ground of justification because the Applicants failed to prove that they perform the same or substantially the same work as their comparators, and to show that the difference in remuneration is based on race.

Conclusion

[63] In the premise, and based on the foregoing, in my view, the Applicants have failed to make a case to sustain a claim of unfair pay discrimination based on race in terms of section 6(1) read with 6(4) of the EEA.

Costs

[64] It is now trite that costs in this Court do not follow the result, unlike the opposite position in the High Courts of South Africa. I therefore intend to follow the principles set out in *Zungu v Premier of the Province of KwaZulu-Natal*[29], as I am not convinced in the circumstances of this case, and with reference to the conduct of the parties that I should award costs.

[65] In the premise, the following order is made:

Order

1. The Applicants' claim is dismissed.
2. There is no order as to costs.

S. B. Radebe

Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicants:

Mr. Leon Pretorius (UASA Union Official)

Instructed by:

UASA

For the First Respondent: Adv Hilton. West

Instructed by:

Du Plessis Du Heus and Van Wyk Attorneys

[1] The Applicants filed their written closing arguments on 10 June 2022, and the Respondent filed its written closing arguments on 13 June 2022.

[2] No. 55 of 1998, as amended.

[3] Applicants' closing arguments p5 paras 34.

[4] Applicant's closing arguments p5 para 35 – 36.

[5] Supra note para 37.

[6] Applicants' closing arguments p5 paras 40 – 41.

- [7] Respondent's closing arguments p11 para 28.
- [8] Respondent's closing arguments p11 para 29.
- [9] Supra note para 30.
- [10] Respondent's closing arguments p15 para 45.
- [11] Respondent's closing argument p15 – 16 paras 46 – 47.
- [12] No. 4 of 2000.
- [13] No. 66 of 1995, as amended.
- [14] 1997(11) BCLR 1489 (CC).
- [15] This matter was decided under section 8 of the Interim Constitution. Section 9 of the Constitution of the Republic of South Africa, 1996 provides similarly as follows: "Equality
9. (1) Everyone is equal before the law and has the right to equal protection and benefit of the law. (2) Equality includes the full and equal enjoyment of all rights and freedoms. To promote the achievement of equality, legislative and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination may be taken.
- (3) The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language, and birth.
- (4) No person may unfairly discriminate directly or indirectly against anyone on one or more grounds in terms of subsection (3). National legislation must be enacted to prevent or prohibit unfair discrimination.
- (5) Discrimination on one or more of the grounds listed in subsection (3) is unfair unless it is established that the discrimination is fair."
- [15] This matter was decided under section 8 of the Interim Constitution. Section 9 of the Constitution of the Republic of South Africa, 1996 provides similarly as follows:
- "Equality*
9. (1) Everyone is equal before the law and has the right to equal protection and benefit of the law.
- (2) Equality includes the full and equal enjoyment of all rights and freedoms. To promote the achievement of equality, legislative and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination may be taken.

- (3) The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language, and birth.
- (4) No person may unfairly discriminate directly or indirectly against anyone on one or more grounds in terms of subsection (3). National legislation must be enacted to prevent or prohibit unfair discrimination.
- (5) Discrimination on one or more of the grounds listed in subsection (3) is unfair unless it is established that the discrimination is fair.”

[16] See: Harksen (Id fn 14) at para 53.

[17] Sun International Ltd v South African Commercial, Catering and Allied Workers Union obo Ramerafe and others [2019] 7 BLLR 733 (LC) at para 12.

[18] Employment Equity Regulations, Gazette No. 37873, 1 August 2014; see also Code of Good Practice On Equal Pay/Remuneration for Work of Equal Value, Gazette No. 38837, 1 June 2015, clauses 5.3 and 5.4.

[19] See Record p22 – 31 (Job Description Form – Chief Superintendent) and compare with Record p32 – 41 (Job Description Form – Superintendent).

[20] Record p22 section A.3.

[21] Record p22 section A.3.

[22] Record p32 section A.3.

[23] Record p61 section 2 clause 2.6.

[24] Record p61 section 3.

[25] Record p62 section 5.

[26] Supra note section 5.

[27] See: Mangena and others v Fila SA (Pty) Ltd and others [2009] 12 BLLR 1224 (LC) at para 7 (Mangena) and South African Municipal Workers Union and another v Nelson Mandela Bay Municipality

[2016] 2 BLLR 202 (LC) at paras 25 – 26 (SAMWU).

[28] SAMWU ibid at para 26.

[29] (2018) 39 ILJ 523 (CC) at para 22.

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Prepared on 11 October 2026 · Esheria