

IN THE EQUALITY COURT FOR THE DISTRICT OF ROODEPOORT

(Held at Roodepoort)

CASE NO.: 03/2011

In the matter between:

AMBROSE GREGORRIO LALLU

Complainant

and

WILNA VAN STADEN

Defendant

JUDGMENT

[1] This matter was brought before the Equality Court on the 7th of August 2012.

[2] Respondent is called upon to face or answer to the following allegations or conduct:

[2.1] It is alleged that respondent harassed and uttered hate speech against the complainant and his family which resulted or forced the complainant and his family to leave or vacate their place of residence.

INTRODUCTION

[3]For a period of five years the complainant and the respondents were neighbours in a townhouse complex, Manhattan Park in the district of Roodepoort.

[4]The respondent's garden looked into the back garden and kitchen of the Unit occupied by the complainant and his family. As a result there were interaction between the members of the complainant's family and the respondent.

[5]The complainant describes himself as a transsexual, by which he means that he emotionally and psychologically identifies as a woman rather than as a man.

[6]The complainant's case is that over the period of approximately five years, the respondent targeted him, his family and his brother, on the basis of his sexual orientation.

[7]He was subjected to verbal abuse, public humiliation and the creation of a hostile and threatening environment in the complex. During this time petitions were created and circulated seeking the eviction of the complainant and his family as a result of this the life of the complainant and his family in the complex became intolerable and eventually they fled the complex.

[8]The complainant alleges that the respondent's conduct violated the promotion of equality and prevention of unfair discrimination Act of 2000 (Equality Act).

[9] Complainant alleges that these violations caused him to incur patrimonial loss (the cost of psychological counselling and moving to a new home) and general damages in respect of pain and suffering.

COMMON CAUSE FACTS

[10] The following facts were common cause between the parties:

[11] There was a poor relationship between the Lallu family and the respondent. This resulted in altercations between the two families and the police were called several times.

[12] The respondent knew about the complainant's sexual orientation.

[13] The respondent prepared and circulated a petition regarding the Lallu-family.

[14] Mr Lallu attempted to rectify the situation by taking it up with the Body Corporate in letters and phone calls.

Ambrose Greggorio Lallu

[15] His evidence is that his sexual orientation is transsexual.

[16] He feels more comfortable when dressed as a woman.

[17] Respondent talked to the other lady referring to complainant as "daai dingetjie".

[18] He also heard Respondent uttering the following words:

"Hoor daar sing dit alweer, ons weet mos nie wat ons is nie, ek voel jammer vir daar ma ek het gedink daar is net een van hulle maar nou is daar twee."

[19]In 2008 the respondent held a braai, at which male guests climbed on the wall in an attempt to intimidate the complainant.

[20]During this time, the complainant also heard the respondent discussing with her guests "what" the complainant is.

[21]During 2009, the complainant and his family learnt from other residents that the respondent was circulating a petition to have the Lulla-family evicted from Manhattan Park.

[22]This petition was never shown to the Lallu family and they were never given opportunity to respond to it.

[23]In 2010 Respondent and her daughter referred to the complainant as a boesman moffie.

[24]Complaints were made to the Body Corporate about the Lallus.

[25]It led to the Lallu's receiving a written warning, which was followed by a notice to evacuate.

[26]Lallus were never told of the identity of the complainants or the content of the complaint.

[27]As a result of the harassment and hate speech directed against the family by respondent, complainant and his family left Manhattan Park.

RAPHAEL LALLU

[28] Respondent used to make certain derogative comments when she was with people, which is very disturbing.

[29] He heard Respondent said she thought it was one but now they are two.

[30] Raphael learned of the existence of the petition to have the Lallus evicted, during the course of attempted to obtain a peace order against the respondent. He was never able to obtain a copy of the petition.

[31] In 2011 he discovered that there was a second petition being circulated. It sought the eviction of the Lallu family and the respondent was one of the residents involved in its circulation.

[32] Raphael understood the respondent's conduct as an attempt to target the complainant and himself on the basis of their sexual orientation.

[33] Raphael admitted that he had sworn at the respondent, but explained that he only ever did so under severe provocation.

[34] The family had been informed by Lerato, the chairperson of the Body Corporate that the letters which led to their eviction had not been sent under the authority of the Body Corporate. Nonetheless, it was these letters that caused the Lallus to leave the complex.

HAROLD LALLU

[35]He gave evidence that led to the eviction of the Lallus from the complex and the extent of financial damages suffered.

[36]There was conflict between the Respondent and his family.

[37]He sent 3 letters to try and resolve this conflict.

[38]One letter was sent to the Body Corporate and two letters to the chair lady.

[39]Instead he received final warning sent on 8/11/2011 and notice to evacuate sent on 18/1/2012.

[40]As a result of this they were forced to leave.

[41]Pecuniary loss suffered by the family as a result included:

[41.1]A deposit of R13 500-00(thirteen thousand five hundred rand) to enter into a new lease.

[41.2]The hire of a truck to move the family's possession at a cost of R2000-00. (Two thousand rand)

WILNA VAN STADEN

[42]The respondent testified that she never called anyone a "moffie" and never said anything insulting to the complainant or his brother.

[43]The complainant and his brother and mother would regularly swear at her, entirely unprovoked

[44]She drew up a petition in 2009. However, the petition was not to have the Lallu's evicted. It was a petition aimed at persuading the Body Corporate of Manhattan Park to write a letter to the Lallu's to prevent them from swearing at her. She never did anything with this petition, but threw it away. She was advised by the Body Corporate to draw up this petition.

[44]She had nothing at all to do with 2011 petition.

[45]In January 2012 Ambrose Lallu threatened to throw pool acid and boiling water in the respondent's face.

[46]The respondent called the police to record the threat that had been made against her.

[47] Despite all of the problems that one had with the complainant and his family, the respondent never complainant to the Body Corporate.

LEANDRE BOTHA

[48]Ms Leandra Botha is a friend of the respondent and gave evidence as well. She had not witnessed any of the events giving rise to these proceedings.

[49]She conceded that she had nothing to say about any of the factual disputes between the parties.

[50]Her evidence was to the effect that she was a friend of the respondent.

[51] She testified that she is a homosexual and that respondent could not have been homophobic towards the complainant because, she has always been kind to Ms Botha, notwithstanding the fact that she (Ms Botha) is a lesbian.

SUSAN VAN STADEN

[52] She testified that she overheard the complainant's threat to throw pool acid in her mother's face.

[53] She gave evidence that braais were held frequently, most Saturdays, and many guests would be invited.

[54] The van Stadens could sometimes hear the Lallus through the kitchen wall but the Lallus could never hear the van Stadens.

[55] Her mother went with a dog which ran across the Lallu's grass.

[56] She could play music to the extent that neighbours could not hear it.

PROHIBITION OF HATE SPEECH

Section 10(1) of the Equality Act provides:

(1) Subject to the proviso in Section 12, no person may publish, propagate, advocate or communicate words based on one or more of the prohibited grounds, against any person, that could reasonably be construed to demonstrate a clear intention to:

- (a) be hurtful;
- (b) be harmful or to incite harm;

- (c) promote or propagate hatred.

PROHIBITION OF HARASSMENT

Section 11 of the Equality Act provides:

No person may subject any person to harassment.

Section 1 of the Equality Act defines harassment as follows:

“harassment” means unwanted conduct which is persistent or serious and demeans, humiliates or creates a hostile or intimidating environment or is calculated to induce submission by mutual or threatened adverse consequences and which is related to:

- (a) Sex, gender or sexual orientation; or
- (b) A person's membership or presumed membership of a group identified by one or more of the prohibited grounds or a characteristic associated with such group.”

[57] Respondent denies having called anyone a “moffie” and never said anything insulting to the complainant. Her evidence constitutes a bare denial of the complainant's case.

[58] Respondent admitted that a petition was drawn up by her in 2009 on the advice of the Body Corporate. She went door to door about same.

According to her, this petition was aimed at persuading the Body Corporate to write a letter to the Lallus to prevent them from swearing at her. Why persuade somebody who actually advised you to draw up a petition. For that matter, why a petition?

[59] The meaning of the word petition from Geddes and Grosset new edition English Dictionary is as follows:

[60] ``An entreaty; a written demand for government action, etc, signed by many``

According to concise oxford dictionary fourth edition, it means:

``asking, supplication, request; formal written supplication from one or more persons to sovereign etc``

[61] Respondent testified that there were other people complained about Lallus. These people were not mentioned by names.

[62] Respondent said she did not do anything about petition but threw it away. Why throw away a document which involves other people without their mandate. One can only do so if such a petition was drawn up by him/or her alone and that other signatories were just signing in solidarity. This version is improbable.

[63] Respondent testified that complainant and his brother would swear at her without a reason. She called police but there is no evidence suggesting that the matter was taken further by her through the justice system. Instead complainant's brother Raphael Lallu is the one who attempted to obtain a peace order against the respondent. Is it because the petition was her only solution.

The recent pool acid threat she alleged it took place was never taken to court.

[64] Susan van Staden the daughter of the Respondent testified that braais were held at the Respondent's place and guests would be invited.

[65] She gave evidence that she would sometimes hear the Lallus through the kitchen wall but the Lallus could not hear the van Stadens. I find this to be improbable. If the van Stadens could hear the Lallus, it simple means the Lallus could also hear the van Standens.

[66]Susan van Staden alleged that the pool acid issue occurred two years.

Respondent on the other hand says that it occurred January 2012. Once again this version suggests that one of them does not tell the truth.

[67]Susan van Staden claimed to know nothing about the petition yet during cross-examination she conceded that Respondent mentioned a petition to her, but that she knew nothing about its contents or purpose. This is a clear indication of a witness who runs away from the truth.

[68]Respondent testified that there was one braai held yet her daughter said there were braais held and many guests would be invited.

[69]A letter dated 8/11/2011 by the Management of Body Corporate addressed to the Lallus states that numerous verbal and written complaints have been received. It states further that it is unacceptable to use foul language or swear at other tenants no matter what the dispute might be. It does not name these tenants.

[70]The second letter dated 18/1/2012 addressed to the Lallus gave them notice to evacuate by no later than the 29/02/2012.

What is contained in paragraphs 67 and 68 supra is consistent with the facts that petition circulated and submitted to the Body Corporate motivated the decision to have the Lallus evicted from Manhattan park.

[71]Respondent and her daughter contradicted each other. Respondent's version is full of improbabilities.

[72] Respondent was heard saying she thought it was one but now two.

[73] She was heard discussing with guests and her daughter about derogating comments. I find it probable that complainant and his brother heard respondent uttering degrading words mentioned above, since they were neighbours as described in paragraph 4 supra.

[74] This discussion and continued animosity mentioned in paragraph 73 supra led to the drafting of a petition which at the end resulted in eviction.

[75] The Lallus contend that the petition aimed at their eviction; was motivated by the complainant's sexual orientation and that was started and circulated by the respondent of her own accord. I find this version more probable than the respondent's version.

[76] The version by Raphael Lallu that he discovered a further petition being circulated which sought to evict them and that respondent was one of the residents involved is also probable.

[77] It was stated that the family was informed that Lerato, the chairperson of the body corporate informed them that the letters which led to eviction had not been sent under the authority of the body corporate. Nonetheless, it was these letters that caused the Lallus to leave the complex (which means the purpose was achieved)

[78] The utterance of the words as discussed above amount to hate speech, as defined supra.

[79] These utterances and conduct by Respondent also amount to harassment as defined in Section 1 of the equality Act.

RELIEF

[80] Paragraph 50; 51 and 52 of the founding affidavit sets out the appropriate relief sought by the complainant.

[81] The complainant seeks an order requiring the Respondent to pay the following amounts:

- i) R1800-00 Hospital Travel costs for attending psychological counselling.
- ii) 13 500 to enter into a new lease.
- iii) R2000-00 Truck hire, to move the contents.
- iv) R20 000-00 infringement and impairment of dignity.

[82] For the reasons as set out above this Court finds:

The utterances and conduct complained of as formulated in Form 2 Annexure AL I supported by affidavit to amount to hate speech and harassment.

[83] Respondent is ordered to pay the complainant the following amounts:

- i) R1800-00 (One thousand eight hundred rand) Costs of attending psychological counselling.
- ii) R13 500-00 (Thirteen thousand five hundred rand) to enter into a new lease.
- iii) R2000-00 (Two thousand rand) Truck hire to move the contents.
- iv) R10 000-00 (Ten thousand rand) General damages.

[84] These amounts must be paid within (6) six months from the date of this judgment.

[85]As the complainant in this matter has been assisted on a **pro bono** basis and has been acting in the public interest, and having had regard to the decision of Trustees for the **Time being of Biowatch Trust v Registrar Generic Resources and Others** 2009 JDR 0559 (CC), this Court is of the opinion no order as to costs would be an appropriate costs order under the circumstances.

DATED at ROODEPOORT on this the 28th day of September 2012



M J THOBELA
EQUALITY COURT MAGISTRATE: ROODEPOORT

