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**REPUBLIC OF SOUTH AFRICA**

**IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, JOHANNESBURG**

**CASE NO: EQ2/2017**

**REPORTABLE: YES**

**OF INTEREST TO OTHER JUDGES: YES**

**REVISED.**

In the matter between:

THE CHINESE ASSOCIATION, GAUTENG (TCA)	Complainant
And	
ALICE HENNING (also known as Alice Pretorius)	First Respondent
ANJA LOCK	Second Respondent
CYNTHIA JEANETTE LE ROUX (also known as Cynthia Maherry le Roux)	Third Respondent
DAVID CLIVE HORNE	Fourth Respondent
DAWN REEVE	Fifth Respondent
JOY TERMORSHUIZEN	Sixth Respondent
LANA BERGER	Seventh Respondent

MARIETTE VD LINDE DE KLERK	Eighth Respondent
REGINA RICHARDSON	Ninth Respondent
RYAN VAN DER WALT	Tenth Respondent
SHANA MARKRAM	Eleventh Respondent
TRACY TERINK	Twelfth Respondent

## **JUDGMENT**

### **MAKUME, J:**

#### **INTRODUCTION**

[1] The central issue before this Equality Court is whether the various statements posted via social media by the Respondents on the platforms of the Donkey Sanctuary and the Carte Blanche Facebook page constitute hate speech and therefore harmful against the persons of Chinese origin as contemplated in Section 10 of the Promotion of Equality and Prevention of Unfair Discrimination Act Number 52 of 2002 (The Equality Act).

#### **THE PARTIES**

[2] The complainant is the Chinese Association, Gauteng (TCA) a non-profit organisation with registered address at TCA Building 11 Commissioner Street, Johannesburg, Gauteng.

[3] The first Respondent is Alice Henning (also known as Alice Pretorius) an adult female residing at [...] W [...] Road, G [...] P [...], Germiston.

[4] The second Respondent is Anja Lock an adult female person residing at Better Life Homes, [...] V [...] 1 C [...] 1 [...] K [...] 1 Street, D [...] 1, Cape Town.

[5] The third Respondent is Cynthia Jeanette Le Roux (Also known as Cynthia Maherry Le Roux) an adult female person residing at Unit [...] V [...] 2 B [...] 1, 1 L [...] 1 L [...] 2 Street, M [...] 1, Johannesburg.

[6] The fourth Respondent is David Clive Horne an adult male person with business address at Flava Promotions 409 Albert Street Road, Salt River, Cape Town.

[7] The fifth Respondent is Dawn Reeve an adult female person employed at Glynwood hospital, 33 Harrison Street, Benoni.

[8] The sixth Respondent is Joy Termoshuizen an adult female person with place of employment at Sea Cape Rentals and Sales shop 2, Candlewood Centre, Victoria Avenue, Houtbay, Cape Town.

[9] The seventh Respondent is Lana Berger an adult female with place of employment being East Rand Chiropractic Clinic, 5 Jacobs Street, Jansen Park, Boksburg.

[10] The eighth Respondent is Mariette Van der Linde De Klerk an adult female person employed at Arcelor Mittal South Africa, Deltos Boulevard, Vanderbijl Park.

[11] The ninth Respondent is Regina Richardson as adult female of [...] L [...] 3 Avenue, G [...] 1, Durban.

[12] The tenth Respondent is Ryan Van der Walt an adult male person of number [...] K [...] 2 H [...], K [...] 3 Road, N [...], Randburg, Johannesburg.

[13] The eleventh Respondent is Shana Markram an adult female person of [...] G [...] 2 M [...] 2 D [...] 2 M [...] 3, Krugersdorp.

[14] The twelfth Respondent is Tracy Terink an adult female person presently employed in Mozambique and who at the launching of this application lived in South Africa at the following address S [...] Street, M [...] 4, L [...] 3 T [...], Limpopo.

### **BACKGROUND FACTS**

[15] In its constitution the complainant says that its objectives are:

- i) To provide and protect the physical economic, social, intellectual and educational welfare of the Chinese Community, in concert with all our fellow South African Citizens.
- ii) To protect all legitimate interests of the Chinese people in regard to the above.
- iii) To promote unity, harmony and goodwill amongst the Chinese in Gauteng and throughout Southern Africa, as we embrace the interests of all other fellow South African citizens.

[16] On the 28<sup>th</sup> January 2017 the Chinese worldwide celebrated the start of a new year. It is a cultural event which is open to all South Africans. On the 29<sup>th</sup> January 2017 Carte Blanche broadcast on television nationwide a programme on animal abuse and the trade of donkey skins.

[17] During or about January/February 2017 and at various dates and times the Respondents posted comments on the Facebook pages of the television show Carte Blanche as well as on the Facebook page of the Karoo Donkey Sanctuary.

[18] The impugned comments were posted by the various Respondents after they had viewed a documentary on televisions anchored by Carte Blanche in which is shown persons slaughtering donkeys in an inhuman manner.

### **THE IMPUGNED COMMENTS**

First Respondent (Alice Henning)

[19] During or about the end of January to early February 2017 the first Respondent posted comments on the Facebook page of the Karoo Donkey Sanctuary in which *inter alia* she stated the following:

“I agree, I also hate them and get so upset when people brag with their China Mall junk bargains. I refuse to support them they are not human.”

Second Respondent (Anja Lock)

[20] On or about the 28<sup>th</sup> January 2017 and on the Facebook page of the television show Carte Blanche the second Respondent posted the following comment:

“Why don’t these Chinese get the fuck away from our country seriously go skin your own people leave our donkeys alone you mfs.”

Third Respondent (Cynthia Jeanette Le Roux)

[21] On or about the 2<sup>nd</sup> February 2017 the third Respondent posted a comment on the Facebook page of the television show Carte Blanche and stated:

“Can we stop these slant eyes freaks from coming into the country.”

Fourth Respondent (David Clive Horn)

[22] During or about the end of January to February 2017 the fourth Respondent posted a comment on the Facebook page of the television show Carte Blanche and said the following:

“Personally I say wipe them out I’d be the first to be there.”

Fifth Respondent (Dawn Reeves)

[23] On or about the end of 25<sup>th</sup> February 2017 the fifth Respondent posted a comment on the Facebook page of the television show Carte Blanche and stated the following:

“The Chinese are destroying the earth we have to retaliate; I don’t know how anyone can support the f#eing Chinaman they are rot of the earth.”

Sixth Respondent (Joy Termohuizen)

[24] During or about the end of January 2017 to early February 2017 the sixth Respondent posted a comment on the Facebook page of the television show Carte Blanche and said the following:

“Vile barbaric people. Is there a living thing left in China?”

Seventh Respondent (Lana Berger)

[25] During or about the end of January 2017 to early February 2017 the seventh Respondent posted a comment on the Facebook page of the Karoo Donkey Sanctuary in which she described Chinese people in the following words:

“They are the most disgusting things on this earth. I wish they would start wiping themselves out, this earth will be better off without them.”

Eighth Respondent (Mariette De Klerk)

[26] On or about the end of 31<sup>st</sup> January 2017 the eighth Respondent posted a comment on the Facebook page of the television show Carte Blanche in which she stated her views in respect of the Chinese people as follows:

“We need to get rid of Chinese in sa.... they not welcome, they steal our economy, dogs, Rhino and now donkeys. I think the same as the donkeys can be applied to dogs and our pets.”

Ninth Respondent (Regina Richards)

[27] On or about the 9<sup>th</sup> February 2017 the ninth Respondent posted a comment on the Facebook page of the Karoo Donkey Sanctuary in which she said the following:

“Nostradamus predicted the yellow people will take over evil, sick, ugly so called scum of the earth.”

Tenth Respondent (Ryan van der Walt)

[28] On or about the 29<sup>th</sup> January 2017 the tenth Respondent posted a comment on the Facebook page of the television show Carte Blanche in which he described his feelings towards Chinese people as follows:

“I think we should start killing their children for cure for the common babalaas, may be they will leave our animals alone.”

Eleventh Respondent (Shana Markram)

[29] On or about the 29<sup>th</sup> January 2017 the eleventh Respondent posted a comment on the Facebook page of the Karoo Donkey Sanctuary in which she stated her views about Chinese people in the following words:

“Why do we need the Chinese nation – should wipe them off the face of the earth, they are just killing everything in their path.”

Twelfth Respondent (Tracy Terink)

[30] On or about the 29<sup>th</sup> January 2017 the twelfth Respondent posted a comment on the Facebook page of the television show Carte Blanche in which she described Chinese people in the following words:

“The Chinese are despicable savages can’t even call them people. And the disgusting savages murdering these animals for money all deserve to die the painful death they inflict on these animals.”

[31] In this matter the complainant seeks the following relief in respect of each of Respondents:

31.1 declaring that the words they published constitute hate speech, harassment and unfair racial discrimination against Chinese people.

3.1.2 Interdicting and restraining them from expressing the same or similar words.

31.3 Directing them to:

31.3.1 publish an apology.

31.3.2 attend a human rights sensitisation course.

31.3.3 either perform certain community services or pay damages

31.3.4 paying a portion of Complaint’s legal costs.

## PROCEDURAL EVOLUTION OF THE MATTER AND PRELIMINARY PROCESSES BEFORE THIS COURT

[32] On receipt of the complaint and after attending to all administrative issues in terms of the Regulations this matter was placed before me for purposes of holding an enquiry in accordance with the provisions of Section 21 of the Equality Act. In the run-up to commencing with the enquiry itself I held a number of meetings with the parties aimed at complying with Section 4 of the Equality Act which section impresses upon all litigants and the Court that it is the aim of the Act that in adjudicating proceedings in terms of this act the principles to be applied are:

32.1 The expeditious and informal process which facilitates participation by the parties to the proceedings.

32.2 Access to justice to all persons.

32.3 The holding of proceedings in open court (Section 19 of the Equality Act).

[33] During the exchanges which took place in the various meetings a number of interlocutory applications were filed which I dealt with and made rulings thereon.

[34] The first attack on the proceedings was launched by the fourth Respondent David Clive Horne. The fourth Respondent who lives and is employed in Cape Town argued that this court sitting in Johannesburg does not have jurisdiction over him secondly he in his affidavit denies that he ever posted the impugned statements on the Facebook of Carte Blanche. I dismissed the application my judgment on that aspect is on record.

[35] The second challenge argued on the same day as the one on jurisdiction was an application by the eighth Respondent Mariette Van der Linde De Klerk. The eighth Respondent sought an order to strike out Annexures EMP1, EMP2, EMP3 and EMP4 which annexures are attached to the complainants replying affidavit.

[36] Those annexures originated from the eighth Respondent. The argument advanced was that such annexures were privileged and constituted inadmissible hearsay evidence. Secondly that the communications in the annexures were made in an attempt to settle the matter. Similarly, after listening to lengthy submissions on the striking out application I dismissed the application with costs my judgment is on record.

[37] I perhaps need to point out at this stage that at the Directive meeting it was brought to the court's attention that the complaint was not served on the third Respondent (Cynthia Jeanette Le Roux) and that the complainant is not pursuing the matter against her.

[38] This enquiry was set to commence on the 25<sup>th</sup> March 2019. It commenced with a flurry of other issues brought by the fourth, eighth and twelfth Respondents. Of all issues the main one was a point in *limine* raised by the twelfth Respondent to which other unrepresented Complainants who were not before court indicated their support. It is a point in *limine* based on the fact that the twelfth Respondent had earlier during October 2018 confessed to judgment in terms of Rule 31(1) of the Uniform Rules of the High Court.

[39] In the application twelfth Respondent maintained that this Court should issue an order in the terms as formulated in the confession to judgment in terms of Rule 31 without any evidence. The twelfth Respondent contended that the confession to judgment terminated the *lis* between the parties that is between the Complainant and the twelfth Respondent and by implication also between the complainant and all those Respondents who had likewise confessed to judgment. Similarly, in regard to that application I handed out a written judgment on the 26<sup>th</sup> March 2019 dismissing such application with costs. An application for leave to appeal that judgment was filed but has not been pursued with at this stage.

[40] Subsequently other concerns relating to late discovery as well as evidence by way of affidavit were raised by the parties to which I made the following ruling:

- a) The documents discovered by the Complainant in the supplementary discovery affidavit does not constitute new evidence and are not prejudicial to the fourth Respondent's conduct of the matter.
- b) In as far as it relates to the presentation of evidence in this enquiry this Court would adhere as far as possible to the provisions of Regulation 10(6) (7) (8) (9) and (10) of the Regulations.

[41] After having ruled as indicated above on the issues and concerns raised by Mr Hitchcock for the fourth Respondent it was now the turn of Counsel for the eighth Respondent. Adv Garvey had to be reminded during his long address that the issues raised by the eighth Respondent which require ruling on were the following:

- a) Application for leave to appeal the interlocutory finding against the eighth Respondent in respect of the striking out application.
- b) The Rule 14 and Rule 47 notices.
- c) Complaint by the eighth Respondent.
- d) Readiness of the enquiry for hearing.

[42] Mr Garvey's address was long and covered a wide spectrum of issues ranging from his client's constitutional rights to be treated equally and to the Court being required to deal with this enquiry as expeditiously as possible. The end result of that long address was in fact that the eighth Respondent was seeking a postponement of the hearing: I ruled against the eighth Respondent in the following manner:

- a) The enquiry should proceed immediately.
- b) The eighth Respondent is ordered to pay the wasted costs of the 26<sup>th</sup> March 2019 on a party and party scale which costs shall include the costs of two counsel.

### THE ENQUIRY

[43] After all the heckling that took place the hearing finally commenced. However, prior to such commencement it will be useful to record the status of the parties and their representation.

[44] The complainant in this matter is represented by Adv Faizel Ismail SC, Adv Kerry William, Kathleen Hardy and Ben Winks duly instructed by Namford Attorneys.

[45] The first, second and the sixth Respondent were duly served with the summons they did not enter appearance to oppose neither did they file any affidavit. They have also elected not to attend Court. Default judgment will be entered against

them at the conclusion of this enquiry together with appropriate relief. The complaint against the third Respondent is abandoned as there was no service on her.

[46] The fourth Respondent was originally represented by Mr Hitchcock who has been present in Court all along until October 2019, then by a Mr Barendse and finally by Adv Garvey. The eighth Respondent was a represented by Adv Garvey throughout the hearing.

[47] On the 1<sup>st</sup> November 2018 the fourth Respondent deposed to an affidavit in which he said the following:

- i) That he posted the impugned statement after watching the Carte Blanche show.
- ii) That he apologises to the Chinese community as it was never his intention to villify, embarrass or incite racial hatred towards the Chinese community.
- iii) That his comment was aimed at anyone irrespective of race, creed or nationality who propagates and or practices any form of cruelty to animals.
- iv) He denies that he made any Xenophobic or racist remarks about persons of Chinese origin.

[48] On the 12<sup>th</sup> March 2019 the fourth Respondent in his application challenging the jurisdiction of this Court filed another affidavit in which he said the following:

- i) That in preparation of the hearing of this matter he investigated his own Facebook page for the period 29<sup>th</sup> January 2017 to the 7<sup>th</sup> February 2017 being the date on which Carte Blanche aired its program.
- ii) As a result of such investigation he now swears under oath that he did not post any comment on the Carte Blanche Facebook page during the period mentioned above.

iii) That when he signed his answering affidavit to this complaint which affidavit is dated 14 November 2018 he believed that the Complainant's allegations were correct when in fact the truth is that he did not post the impugned statement.

iv) He now challenges the complainant to present evidence proving that he indeed did post the comment on Carte Blanche.

v) That Carte Blanche should be subpoenaed to present postings on its Facebook page for the aforementioned period which will then prove that he the fourth Respondent never posted the comments that is the subject of the complaint.

[49] The fifth Respondent who was represented at the Directives hearing by attorney Messrs Tina Tingers filed a confession to the Complainant's claim in terms of Rule 31(1) of the Rules of the High Court. Her affidavit in support of the confession is dated the 18<sup>th</sup> March 2019. In the affidavit the fifth Respondent admitted having posted the impugned comment on Facebook on the 25<sup>th</sup> January 2017.

[50] Fifth Respondent further admitted that the comments constitute unfair discrimination, hate speech as well as harassment against the Chinese community in South Africa. She tendered an apology and undertook never to express such comments ever again.

[51] The seventh Respondent Lana Berger was represented by Clarinder Krugel Attorneys. She filed two affidavits the first one in her own hand writing dated the 27<sup>th</sup> June 2017 and the second drafted by her attorneys dated the 21<sup>st</sup> March 2019. In both affidavits the seventh Respondent says that when she posted the comment she was deeply hurt and the comment was aimed at the people who were killing the donkeys brutally and not to Chinese people as a nation.

[52] Paragraphs 6,10 & 11 of her second affidavit reads as follows:

[6] The people depicted on the video perpetrating the abuse happened to be of Chinese descent or origin.

[10] At the time the “they” I referred to in the comment was directed solely at the people perpetrating the abuse against the animals and not against anyone else which is why I used the word “they” and not purposely referred to Chinese people in general

[11] I do understand now that it could be construed that I might have implied Chinese people and I apologise for that misconception.

[53] The eighth Respondent filed an answering affidavit dated the 13<sup>th</sup> November 2018 and denied having posted the impugned comment. She also says that she has been unable to establish who the author of the alleged comment was.

[54] The ninth Respondent Regina Richardson confessed to the complaint in a statement she signed on the 26<sup>th</sup> March 2019. She not only admitted being the author of the impugned statement but also admitted that such statement was in violation of the provisions of the Equality Act. The ninth Respondent also conceded that the comment was hurtful and harmful against Chinese people also that same was so understood and was read by a great number of people and Facebook users.

[55] The tenth Respondent Ryan Van der Walt confessed and admitted having posted the impugned comment at paragraph 5 of his affidavit the tenth Respondent says the following:

“I now realise and admit that the comment and the forum in which it was posted, was particularly hurtful in the light of the long history of unfair discrimination against Chinese people in South Africa under colonialism and apartheid. I also now realise that my comment that was posted especially when read with all the other posts and comments by different Facebook users on the particular day and time amounts to a violation of the above Act.”

[56] On the 23 November 2018 the tenth Respondent made a formal offer of settlement in terms of Rule 34 of the Uniform Rules of Court.

[57] On the 6<sup>th</sup> February 2019 the tenth Respondent filed a third affidavit in which he withdrew certain comments he had made in his earlier affidavit. He in this last affidavit confirms his confession and in a way pleads guilty to having posted the comments and confirms that it was aimed at the Chinese people. He reiterated his Rule 34 settlement offer.

[58] On the 1<sup>st</sup> February 2019 the eleventh Respondent Shana Markram filed a notice of settlement in terms of Rule 34 of the Rules of Court. In brief she admitted having posted the impugned comment on Facebook and agrees that such comment constitutes unfair discrimination and hate speech in terms of the Equality Act. Besides the Rule 34 settlement the eleventh Respondent also filed a confession in terms of Rule 31(1) and apologises for her deeds.

[59] The twelfth Respondent Tracy Terink filed an opposing affidavit dated the 12<sup>th</sup> June 2018 in the affidavit she admitted having posted the comments but denies that it was aimed at the Chinese people generally but only to those Chinese who were involved in slaughtering the donkeys as depicted in Carte Blanche page.

[60] On the 15<sup>th</sup> October 2018 the twelfth Respondent changed her mind and filed a confession in terms of Rule 31(1). In the confession she specifically withdrew the defence that she raised in her first affidavit. She now agrees that the Chinese people who would have read her comment were deeply hurt by the comments. Further that the comment was not only demeaning it was degrading and humiliating and intimidating towards Chinese people and made them feel unwelcomed and unsafe in South Africa in their own homes.

[61] Prior to delving into the oral and other evidence presented before me it became clear that there are before me three categories of Respondents they are:

- i) Defaulters: These are those Respondents who were properly served with the complaint and chose not to file notices to oppose or made any

appearance or filed any defences. Those Respondents are the first, second and sixth Respondents.

ii) The Confessors: (fifth, seventh, ninth, tenth, eleventh and twelfth Respondents) - These are those Respondents who having been duly served filed confessions in accordance with Rule 31 of the Uniform Rules and tendered apologies and proposed settlement. These are the Respondents who chose not to take any further part in the matter and await either acceptance of the settlement proposed or a court order which will take into consideration the settlement deliberations between the parties. The draft orders presented to me by Counsel for the Complainant to a large extent mirrors the final outcome in respect of each complaint. The fifth, seventh, ninth, tenth, eleventh and twelfth Respondents were all represented by legal Counsel.

iv) The Opposing Respondents: (fourth and eighth Respondents). The fourth and eighth Respondents are the only two remaining Respondents who have filed their defences as detailed in their answering affidavits. They were both represented by legal Counsel throughout the hearing except for a period when the fourth Respondent was represented by a Mr Hitchcock who is not a legally qualified person and Mr Barendse. It was only when the fourth Respondent chose to lead evidence orally that he briefed Adv Garvey to also act for him.

## ORAL EVIDENCE

[62] Ms Emma Georgina Sadlier is a non-practicing attorney and is the owner of a company called "The Digital Law." She has written books dealing with aspects of how social media has impacted on the proliferation of defamation and hate speech. One of the books is aptly titled "Do not film yourself having sex." The other book published by LexisNexis is titled "Communication Law."

[63] Mrs Sadler holds a master's degree in Information Technology and Media Communication Law from the London School of Economics. Before that she was employed in the Media Law Department at Webber Wentzel.

[64] In her work as a director of the company digital law she provides advice and consulting services to persons affected by social media. She identifies comments on social media whether it is revenge, phonography, defamation, hate speech, Crimen injuria or intellectual property infringement. She has been doing that since the year 2013 when she founded the firm. She collects evidence of such infringement via screenshots and try to get the content of the comment removed in order to stop the harm.

[65] Right at the end of her introductory remarks as set out above Adv Garvey for the eighth Respondent raised an objection or rather sought clarity as to whether Ms Sadler will be testifying as an expert witness seeing that no notice of such expert evidence had been served. This issue was hotly debated and I made a ruling that the witness shall continue to give evidence and a decision will be made later as to whether her evidence is that of an expert witness or not.

[66] Ms Sadler continued to tell the court that since she started her company she almost each day receives instructions from members of the public about content on social media and what that persons rights are. She told the Court that the day before she had received more than (twenty) 20 enquiries from potential clients.

[67] She explained that social media is platforms like Whatsup, Facebook, Twitter, Instagram and Youtube which enables conversation over the internet. Evidence which is tendered in matters where social media was used is gathered by her using screen shots. Ms Sadler explained how a screen shot is created by using her own Apple, iPhone. She presses two buttons simultaneously which then result in a picture being obtained of exactly what is on the screen at that time, that picture is then automatically saved into her gallery. She can then by using WhatsApp send that screen shot to whoever and if somebody sends her a screen shot via WhatsApp it also gets automatically saved in her gallery as well.

[68] She testified how she relies on screen shots in her business and told the court that on her current cell phone which she had been having for not long she presently has 4800 screen shots and on her older phone she has 3300 screen shots.

[69] Ms Sadlier personally transcribed the comments attributed to the fourth and eighth Respondents from her screen shot in compiling not only the letters to both Carte Blanche and to the Donkey Sanctuary. She also used the transcribed comment in drafting the complainants press release statement in February 2017. She had received the screen shot from her partner Liz Harrison with whom she worked at "The Digital Law."

[70] The evidence by Ms Sadlier proceeded on a stop-start rate due to the objections raised by Counsel for eighth Respondent the basis for such objection being that the evidence or part thereof was either hear say, opinion or expert evidence. These objections continued despite earlier agreement that such objection be dealt with at the conclusion of the evidence by the witness.

[71] Referring to the fourth Respondent Ms Sadlier told the court that from the activity log provided by the fourth Respondent it shows that the fourth Respondent commented on a photo on the Karoo Donkey Sanctuary Facebook.

[72] As regards the eighth Respondent Ms Sadlier testified that she personally transcribed the screen shot as it appears at page 554 of the trial bundle. Again Counsel for the eighth Respondent rose on an objection to the effect that the screen shot was sent to Ms Sadlier by someone and it therefore amounts to hearsay evidence. I noted the objection and directed the witness to continue with her testimony. When the witness produced a picture of a photograph of the eighth Respondent as it appears in her old cell phone, once more Counsel for the eighth Respondent objected and said that they do not admit the photograph as complainant did not comply with Rule 36(9) or (10) of the Uniform Rules.

[73] Ms Sadlier told the court that she took the photograph and sent it to the complainants. There was a further objection to this evidence as the eighth Respondent Counsel demanded that the original data be made available. Cross-

examination of this witness stood down till Friday the 29<sup>th</sup> March 2019 to enable Ms Sadlier to produce her old phone on which appears the photo gallery indicating the photos of the fourth Respondent and eighth Respondent.

[74] Cross-examination of Ms Sadlier by Counsel for the eighth Respondent commenced on the morning of the 29<sup>th</sup> March 2019 and was only concluded in October 2019 due to the intervening recess period as well as the incapacitation of the witness Ms Sadlier who went on maternity.

[75] She told the court that during her time at Webber Wetzel she dealt with print and visual media issues and when the digital era started gaining momentum a lot of matters started cropping up, victims slander social media. Her main reason for deciding to start her own business was because a lot of people who had been victims of social media insults who were feeling helpless needed her help and that could not be achieved within the constraint of a big corporate law firm.

[76] In her work as a founder member of the Digital Law she gives talks to people and also at schools explaining to her audience the legal framework in South Africa relating to social media and the right to freedom of expression. She explained that the legal framework she referred to concerned defamation, privacy, hate speech, Crimen injuria intellectual property, data protection, sexual offence, protection from harassment act and employment law.

[77] Interestingly it was during that cross-examination that Ms Sadlier herself told the court that she was testifying not as an expert but as a factual witness. That statement has in a way disposed of the earlier objection raised by Counsel for the eighth Respondent.

[78] Ms Sadlier confirmed her earlier position of being a factual witness and not an expert witness when on a question about her knowledge of how evidence is gathered in respect of cases under the Protection of Harassment Act she replied that she does not litigate she only gives advice and refers her clients to the Magistrate's Court to get orders in terms of that Act. Her words were "The nitty gritty of the

Evidence Law and how data messages are obtained and presented that is not my domain.”

[79] In her analysis of the comments posted by the eighth Respondent on the Carte Blanche Facebook page, she confirmed that the comment does not call for extermination of the Chinese people but that it calls for the Chinese people to leave South Africa and that they are not welcome. In the book titled Communication Law she contributed a chapter dealing with case law and which is written for the interests of law students rather than the general public. In it she deals with current case law emanating from social media. As regards freedom of speech she concluded that she has assisted her former supervisor Attorneys David Milo in preparing papers in that regard.

[80] Adv Garvey for the eighth Respondent despite having raised an objection about Ms Sadlier’s evidence which he said was of an expert nature notwithstanding Ms Sadlier explanation to the contrary went on in cross-examination seeking to in a way discredit or confirm that indeed Ms Sadlier was testifying as an expert witness. Complainant’s Counsel had to stand up and clarify that the crux of the evidence of Ms Sadlier as a factual witness is firstly about the process of publication of the impugned statements attributed to the fourth and eighth Respondents and the integrity of the chain carried through. Secondly it is about the chronological exhaustive list of the statements as regards the fourth Respondent.

[81] Counsel for the eighth Respondent argued that he has the right to cross examine Ms Sadlier about her master’s degree dissertation because he wanted to test the basis on which she decided which of the many comments on Facebook were “more egregious” and deserved sanction and attention by this court. I ruled that it was not necessary for Ms Sadlier to produce to this court her dissertation presented for her master’s degree as such were irrelevant ultimately on whether Ms Sadlier was an expert witness or not. Secondly the decision on whether the impugned statements fall foul of Section 10 of the Equality Act lies with this court not with any witnesses.

[82] Despite my ruling Counsel for the eighth Respondent moved on in the same trajectory and questioned Ms Sadlier about her knowledge of the regulatory regime in the Republic of China as regards social media. This line of questioning resulted in numerous objections on relevancy of such questioning.

[83] It was only late in the day that Counsel for eighth Respondent commenced to delve into the factual evidence concerning this matter even then it started off on a scrappy note in which Counsel wanted to lay his hands on a document which is protected and privileged between attorney and client. He abandoned that stance when it became clear that MS Sadlier cannot be compelled to produce the copy of the instructions addressed to her by Complainant's attorney.

[84] A large part of the cross-examination was a repeat of what had been placed before me in evidence in chief. Ms Sadlier confirmed what she had told the court about how she and Liz Harrison went about to gather information on the impugned statements and then advised Complainant's attorneys of their findings and suggested a course of action.

[85] Ms Sadlier told the Court that the comment attributed to the eighth Respondent was typed by her on the press-release statement which she sent to the Chinese Association. She had received it via a screen shot sent to her by Liz Harrison who at that time worked with or for her. It was put to Ms Sadlier that the eighth Respondent will deny having posted such a comment on the Carte Blanche face book page. Ms Sadlier responded that she had herself seen and read the comments all the comments on the Carte Blanche Facebook page.

[86] Ms Sadlier conceded that the name that appears on a face book page is not necessarily proof of identification of the person who made the communication. She went on to explain the difference between a Face book page and a face book profile. She also told the Court about administrators being a person who manages a face book page.

[87] The Karoo Donkey Sanctuary Facebook page was managed by a guy called Johny. She does not know who manages the Carte Blanche face book page. The

duty of an administrator amongst others is that he/she would be in a position to delete comments posted on a face book page that he administers and would also be in a position to post contents, he is in a position to ban people from the group. Administrators have editorial control over the page, they decide what appears on the page. An Administrator is not able to see a comment before it goes onto a page. He only sees it once it is posted and only then can he exercise his power to remove it. It is impossible to pre-approve or pre-moderate.

[88] The witness was asked to explain what page moderation is. She said that it is moderating content on a page and it is also possible that an Administrator would exclude the inclusion of certain words for example swear and racist words. As regards comments that function is not available because the impugned comments in this matter where a reaction to the Carte Blanche programme that had been aired on television.

[89] The original Karoo Donkey Sanctuary post which attracted comments according to her is the one that appears on page 619 of the bundle it is headed "Why are Gangs Killing our Donkeys" and it is dated the 20<sup>th</sup> January 2017. It is worth to note that this was before Carte Blanche televising its programme. The comment by the fourth Respondent appears on the same page and it is dated 21<sup>st</sup> January 2017.

[90] The original Karoo Donkey Sanctuary post does not mention any particular race save that all it says is that it is believed that the 5000 donkey hides found on a plot in Benoni were destined for export by a syndicate to China. Ms Sadlier confirmed that the comment by the fourth Respondent Clive Horne was in reaction to the posting of the Karoo Donkey Sanctuary face book which in turn had been a link with the article published in the Mail and Guardian. She denied that what she testified about was hearsay and added that she took screen shots of exactly what she herself saw.

[91] The fourth Respondent himself sent or discovered his activity log and that is sufficient proof that he posted the comment in respect of the Karoo Donkey Sanctuary linked posting about Donkeys.

[92] Dealing with the eighth Respondent's comments she referred the Court to page 554 of the trial bundle and refers to the posting on the Carte Blanche face book page. The commentator has his or her profile picture next to the comment. It was the eighth Respondent and others who reacted to Carte Blanche all in all there were 191 responses and all of them were posted within one minute. The eighth Respondent's comment appears amongst the 191 comments.

[93] Due to time constraint and before cross-examination of Ms Sadlier could be finalise the matter was postponed sine die and resumed on the 2<sup>nd</sup> October 2019. Appearances were as before save that the fourth Respondent was now represented by a Mr Barendse. Counsel for the eighth Respondent raised an issue that it has come to his knowledge that all the Counsel who appear for the Complainant have not be enrolled in terms of the new Legal Practice Act and accordingly that they should not take part in the further proceedings or if they do then they are not entitled to any fees or costs present and past. I dismissed that application as being meritless and should be dealt with administratively.

[94] In her further evidence under cross-examination Ms Sadlier explained that after reading all the comments she picked up those which called for violence against Chinese people, their children and the Chinese Community as a whole and took screen shots thereof. It is comments that negatively impacted on the Chinese community.

[95] When she wrote to the Administrator of both Karoo Donkey Sanctuary and Carte Blanche the impugned comments were removed and deleted from their pages.

[96] The witness Ms Sadlier was referred to the two profile pictures that appear on the comment attributed to the eighth Respondent. It was specifically put to her that the profile picture dated the 5<sup>th</sup> February 2017 on page 554 differs from the profile picture at page 45 marked Annexure" A". She explained that the account owner in this instance Mariette De Klerk is the only one who could have changed it.

[97] It was put to Ms Sadlier in a rather unclear manner that the fact that there are two different screen shots is evidence that screen shots are capable of being

manipulated. Whilst Ms Sadlier agreed to that possibility she explained that it did not happen in the case of the eighth Respondent's screen shots. She explained that the time period taken to transmit the screen shots to her by Liz Harrison excludes that possibility. Eventually it was not clear whether eighth Respondent's version would be that her screen shots had been tampered with and manipulated. Ms Sadlier testified that as soon as a screen shot is manipulated it ceases to be a screen shot.

[98] In further cross-examination Ms Sadlier confirmed that the comments by the fourth Respondent was in fact in response to a posting on the Karoo Donkey Sanctuary page with the heading "Why are gangs killing our donkeys" and not in response to a posting on Carte Blanche face book page. It was put to Ms Sadlier that the fourth Respondent would testify that when he commented "wipe them out" he was referring to the gangs that were reported to be killing donkeys, the witness although having said that she thinks the fourth Respondent was referring to Chinese people now said that it will be the decision of the Court to say who fourth Respondent was referring to.

[99] The eighth Respondent Counsel whilst latching on the fourth Respondent's defence put it in an unclear manner that "the alleged comment by the eighth Respondent is not aimed at the donkey killings nor the donkey gangs and donkey skins being taken to mainland China because there was no reference to South Africans of Chinese descent but that the comment refers to the people who were the perpetrators of cruel acts to animals. At that stage Counsel for the Complainant stood up to seek clarity once more as to what would be the version of the eighth Respondent Adv Garvey did not give the court an outright clear answer to that and instead argued that he was putting to the witness an objective interpretation of the comments as opposed to the subjective interpretation used by Ms Sadlier.

[100] It was put to Ms Sadlier that Section 10 of the Equality Act does not protect nationality the witness said she has no knowledge about that.

[101] When asked if subsequent to the impugned comment whether Ms Sadlier has any knowledge of any violence that erupted involving Chinese people in South Africa either being assaulted or killed in particular as a result of the comment posted by the

eighth Respondent, the witness said that she has no such knowledge save that in one of the discussions one client told her that some people in her community had said their children were scared to go to school because of the amount of hate speech on social media and that at that time there was a big anti-Chinese sentiment.

[102] It was put to Ms Sadlier that the constitution guarantees freedom of expression except where such expression propagates war, incitement, violence, advocate hatred based on race, ethnicity, gender or religion. Mr Sadlier referred to the prohibition in Section 10 of the Equality Act and concluded that to say that a person is not welcome in his or her own country is hurtful.

[103] It was put to the witness that an expert witness will be called to provide evidence that the comment attributed to the eighth Respondent does not appear on the activity log of the eighth Respondent Ms Sadlier told the court that she could not answer that question as she was not an expert on activity logs.

[104] Mr Barendse for the fourth Respondent commenced his cross-examination with a long speech after introducing himself as a highly experienced commercial mediator with over 32 years of senior management experience. In his opening speech Mr Barendse told the Court that the Complainant has not proved its case against the fourth Respondent but also that his client has in no way whatsoever vilified or disrespected the Chinese people or their nation on any occasion at all. He continued and told the Court that his client's comment was only in the context of a Mail and Guardian press headline posted on the Kangaroo Donkey Sanctuary face book page by its owner Jonathan Sherwin focusing on the so called gangs killing of donkey s for the skins and was not directed at Chinese people.

[105] The cross-examination went all over the show re-traversing questions already put to the witness by Counsel for the eighth Respondent.

[106] The next witness called by the Complainant was Professor Yoon Jung Park a Korean American and a founding member and Executive Director of Chinese in Africa. Her evidence was tendered by way of affidavit as far back as November 2018 and because the eighth Respondent did not indicate whether they will accept that

proposal Complainant had to fly the witness to be in court from the United States of America.

[107] Her evidence covered her research about Chinese immigrants and their hardships in places like the Free State where a law had been passed in 1891 prohibiting all Asians from residing therein. That law remained in the statute books until the late 1970. She also covered interviews that she carried out with Chinese people who related to her about their being targeted by corrupt government officials for bribes as well as being targeted by criminals.

[108] Cross-examination of this witness by eighth Respondent's Counsel did not elicit anything of relevance to the issues before me. Counsel for the eighth Respondent asked the following question:

Garvey: So I just want to ask you are you aware of any act or admission which or practice by the eighth Respondent which brought about a condition or situation which either imposed burdens to the Complainant?

Ms Park: As I understand that all of the Respondents in the case made statements on face book relating to the case at hand. I do not know specifics of those and my witness statements had nothing to do with specifics of the eighth Respondent or any of the other Respondents.

[109] Despite the witness having given that answer Counsel persisted with that line of questioning wanting to know if the witness knows whether the Complainant suffered any harm or prejudices as a result of the impugned statement. Needless to say Professor Park repeated that she does not know anything about the specifics of the eighth Respondent. She added seemingly annoyed by that line of questioning that she had already answered that question three times.

[110] Mr Henry Yon Wing was the next witness for the Complainant. He had also submitted an affidavit which he confirmed under oath before me prior to a lengthy cross-examination. Mr Wing testified that he is a second generation South Africa

Chinese having been born in South Africa in the year 1945. His parents hailed from the Province of Guandong in South East China.

[111] Mr Wing who is a qualified and retired Pharmacist is a member of the Complainant (TCA). He testified that upon reading the comments posted by the Respondents on face book page as well as on the Karoo Donkey Sanctuary he became extremely despondent. The comments caused him deep hurt and helplessness, he thought that many white people have never stopped seeing Chinese people as inferior and as foreigners despite the advent of democracy in 1994.

[112] He proceeded to testify that the comments by the Respondents made him feel a deep sense of anger. The negative emotions that he had experienced during the apartheid years welled up within him. The memories of the injustices and injuries inflicted on Chinese people and other people of colour through white supremacy and hatred once again came to the fore. He concluded that he was angry when he realised that white people still felt that they could make the sort of deeply damaging, hateful and racist comments in the new democratic South Africa.

[113] He attended a meeting of the TCA on the 18<sup>th</sup> February 2017 at which meeting a decision was taken to institute legal proceedings against the Respondents. This was to defend the human dignity and a sense of nationality by the Chinese community.

[114] Answering questions in cross-examination Mr Wing told the Court that it was his wife who brought to his attention the comments posted on face book by the Respondents. He read them and all of them contained anti-Chinese comments. It was then put to Mr Wing by Counsel for the eighth Respondent as follows:

Mr Garvey: Now having regard now that we clarified the issue of the correct alleged comment by the eighth Respondent in the circumstances of the matter and the context of this matter I am putting it to you that this has never been referenced to the Chinese community of Gauteng represented by the Complainant.

Mr Wing: Sorry it was directed at the Chinese community.

[115] In answer to one of the other questions Mr Wing repeated that the comment by the eighth Respondent was derogatory and quite harmful and offensive to the Chinese community.

[116] This line of questioning by Counsel clearly demonstrates that the eighth Respondent implies that it was her comment but that it was never directed at the Chinese community of Gauteng.

[117] Mr Wing recalled that the eighth Respondent had posted on face book the words to the effect that Chinese people were unwanted in the Republic of South Africa. Mr Wing conceded that the comments may also have been directed at the people who were responsible for killing the donkeys and yet some were directed in general to the Chinese people.

[118] In conclusion Mr Wing told the court in answer to a question by Counsel for the eighth Respondent that he is not aware of any violence or physical harm that the Chinese people suffered as a result of the eighth Respondent's comments.

[119] In answering question from the court Mr Wing told the court about his experience with White people in the early days when as a young man he and his family lived in Fietas near what is now Braamfontein. He told the court that white people always gave him an impression that they were not welcome and that they were outsiders.

[120] The next witness was Ms Melanie Yap a South African born Chinese. She is the author of a book called "Colour Confusion and Concession – The History of the Chinese in South Africa"

[121] Ms Yap told the Court that she does not know the eighth Respondent and that nowhere in her book does she make any reference to the eighth Respondent nor

does she in her affidavit before Court make any reference to the statement posted by the eighth Respondent on face book.

[122] Ms Yap testified further that she only became aware of the impugned comments about six months ago from the time she testified. It was brought to her attention when she was given the Court papers. She told the Court that she is not aware of any harm or violence having befallen Chinese people as a result of those statements.

[123] The next witness was Mr Erwin Ming Pon. He testified and was cross-examined at length for a period of seven days. Mr Pon was born in South Africa. He is the chairperson of the TCA (Complainant). His grand-parents were both teachers at Chinese schools in Pretoria and Johannesburg in the late 1930's after having fled the wars in China. His grandmother now 106 years' old was in Court on the day Mr Pon testified.

[124] Mr Pon told the Court that his grandparents at some stage lived in Sophiatown a mixed area until the government removed all the black people to Meadowlands. The Chinese people were moved to a place called Malay camp which was situated at the end of Commissioner Street. It is there where his grandparents opened their first grocery shop.

[125] Mr Pon grew up in Malaycamp later his parents purchased a property in Parkhurst a white area by using as a front a white person because Chinese people at that time were not allowed to own property. He attended school at Parkhurst Baptist where he was the only Chinese kid. Because he could at that stage not speak English he was teased by the white school kids who called him "Ching Chong Chinaman." They told him to go back to China and pulled their eyes and made fun of him. He remembers that at one stage he did not want to go back to school because of this ongoing harassment and ridicule by the white school children. He also experienced discrimination at the public swimming pool in Parkhurst when the white children would leave when he arrived to swim.

[126] Later at another school in Bryanston when he was 10 years old he was made to eat chalk by the white school kids who told him that after he had eaten it he will be like them. At one point he was assaulted by his own classmates. At another stage he and his sister were refused a ride in a bus to the Rand show as the conductor told them it was for “white people only.”

[127] He finished school in 1993 and went to University in 1994 at the dawn of a new South Africa. He had high hopes that all the bad things that were done and said about Chinese people in the past will all be wiped out and forgotten. He remembers being very happy standing in one queue with whites, blacks, coloureds and Indians to cast their votes. It made him feel proud to be recognised as a South African.

[128] The Chinese Association has a number of programmes one of them is to raise funds, for Anti-Rhino poaching. On or about the 28<sup>th</sup> January 2017 shortly after they had celebrated the Chinese New year it was brought to his attention that certain unsavoury comments were posted on face book about the Chinese people.

[129] It was on Monday the 30<sup>th</sup> January 2017 when his attention was drawn to the Carte Blanche face book page as well as links to a Karoo Donkey Sanctuary face book page where he read comments that were shocking about Chinese people, he says it was simply vile, racist, xenophobic and genocidal comments. The comments left him deeply upset and emotional. It was comments like “lets get rid of them” “let us wipe them out” “they are stealing our jobs” “let us go kill their children.”

[130] He told the Court that the comments made him feel they were attacking his family he started feeling concerned about the safety of his children as a result of the comments. In his view the comments were violent. He called a meeting of the committee who later instructed Emma Sadlier a media lawyer who assisted in drafting letters addressed to the Administrators of Carte Blanche face book as well as the Karoo Donkey Sanctuary demanding that all the offensive comments be removed. This was done immediately but the comments had already been read widely by thousands of people including Chinese nationals.

[131] Mr Pon told the Court that during their investigation in trying to make sure that the people they intend suing are the correct persons he came across a picture of a person whose name was that of the eighth Respondent. He then told the Court that the lady was present in Court and sitting at the back he also told the Court that the same lady with black hair he saw her during the sitting in March 2019. It was shortly after Mr Pon had pointed out the lady in Court that she then disappeared and left Court. There was no comment or denial from Counsel for the eighth Respondent that in fact it was their client who left Court after being identified. This incident must be seen in the context of the deletion of the eighth Respondents profile after Mr Pon had noticed it on the linkedlin website.

[132] Mr Pon told the Court further that the comments made by fourth Respondent Mr David Clive Horn in saying “wipe them out” would have been understood by any reasonable reader to mean “wipe Chinese people out.” This he told the Court was because every other reference to “them” “they” or “their” in the other comments already appearing on the Karoo Donkey Sanctuary post before the fourth Respondent added his own was reference to Chinese people.

[133] In response to the proposal that the fourth Respondent will testify that when he posted the comments he was referring to the gangs that were killing donkeys not to the Chinese people per se Mr Pon said the following:

“Mr Pon: I cannot accept that explanation because as I have said I read this in context, just as I read earlier on, with the other comments, all the other comments they refer to the Chinese as “them” “they” “their” so there is no doubt in my mind when I read his comment, after all the other comments, that they were referring to Chinese people.”

[134] Mr Pon testified further that he satisfied himself through searches on Google and LinkedIn that the person who bears the name of the eighth Respondent removed the information and when he searched on Google all that appeared was information about this matter. He also found a picture of the eighth Respondent on Instagram but later after he had given evidence about the picture on Instagram he discovered that it was removed the same day after he had given evidence. The

name of Mariette van der Linde as the username was there but the profile picture was that of someone else not the person whom he saw in Court. He told the Court that he found this to be suspicious.

[135] Cross-examination of Mr Pon by Counsel for the eighth Respondent commenced after tea break on the 27<sup>th</sup> November 2019. A large part at the commencement of cross-examination dealt with side issues which had no bearing or relevancy to the matter before me. For example, the witness was asked about Chinese people who eat dog meat, also about Rhino poaching and the manufacturing of aphrodisiac, about the fireworks on Chinese new year celebration.

[136] The real cross-examination commenced when the witness was asked about the investigation report that appears on page 602 of trial bundle 2. Page 602 up to 614 are pages with pictures and comments made by the Respondents on which the Complainant's investigating team made notes. At the top of page 602 the team made the following note: "comments in red were deemed to be most offensive." It was pointed out to Mr Pon that the investigating team did not mark the comment by the eighth Respondent as falling within the category of "most offensive." Mr Pon agreed that it is what the team noted. He however, added that the comment by the eighth Respondent was offensive hence it is part of the Complainant's case.

[137] Mr Pon conceded that there were comments that were also offensive but due to the fact that they could not align the comment to an identifiable person they decided not to prosecute that individual it was more a question of being cautious not to sue wrong persons as an example he referred to the comment by "Jo Du Plessis" page 602. They did not proceed against her because there was no available picture of her on her face book page. The twelve Respondents were chosen or picked out by a team comprising amongst others their attorneys Ms Joyce Namford, Emma Sadlier and Melanie Minnaar. There was no leader they worked as a team.

[138] When Mr Pon was asked what criteria was used to select the eighth Respondent as one of the people to be sued he responded that it is because the comment attributed to her was offensive, violent in nature, racist as well as genocidal towards the Chinese. It was when the cross-examination drifted towards the still

unresolved issue of the eighth Respondent's expert witness that it was decided to adjourn further cross-examination and then deal with the application to introduce the expert evidence of Mr Jason Jordaan into the record.

[139] On the morning of the 28<sup>th</sup> November 2019 the eighth Respondent moved an application seeking an order to in terms of Rule 36(9)(a) & (b) to allow a certain Mr Jason Jordaan to testify as an expert witness on behalf of the eighth Respondent. At the commencement of the submissions Counsel for the eighth Respondent proposed a settlement without prejudice inviting the Complainant to withdraw their claim against the eighth Respondent and that each party to pay own costs. This was rejected by the Complainant as it was clear that the eighth Respondent was not coming out forthright whether she admits to having posted the comment or not. Mr Barendse for the fourth Respondent made a similar tender of settlement which was also rejected by the Complainant.

[140] The application was argued and at 14h00 on the same day I dismissed same with costs. Thereafter instead of Adv Garvey proceedings with the cross-examination of Mr Pon as agreed on the previous day he requested that the matter stands down till the following day as he wanted to consider his client's position. After a lengthy argument I granted eighth Respondent's Counsel an indulgence and directed that Mr Barendse for the fourth Respondent utilise the remaining hours of the day to cross-examine Mr Pon

[141] The cross-examination by Mr Barendse commenced on a scrappy note with Mr Barendse not posing questions but delivering a lecture on various aspects. I tried to get Mr Barendse to please ask questions. He ignored my requests. He became angry and started accusing the Court of railroading him and told the Court in no uncertain terms that he will take his time to get to the questions. It was indeed a very confrontational stance that Mr Barendse adopted which in my view bordered on contempt. He boastfully described himself as a "highly specialised conflict revolutionists."

[142] Mr Pon responded that yes since the dawn of democracy in South Africa there has been indications of the general acceptance of Chinese people by other races in

South Africa. He also admitted that he has noticed that some Chinese people are doing well since 1994 whilst others are still where they were.

[143] It was put to Mr Pon that he and his committee were using this matter as a test case to highlight discrimination against the Chinese people. Mr Pon responded that there were comments on face book that led to them deciding to take action, he added that at that time there was a growing noise of insults of hate speech against the Chinese in general that is why they picked out what they considered the worst comments which happened to be those of the twelve Respondents.

[144] For a very long time once more Mr Barendse cross-examination was all over the place and not concentrating on what his client's version was. He gave long lectures about an International Human Rights Watch body that won the noble prize, then he moved on to speak about the xenophobic attacks that took place in KZN some years ago. When Mr Barendse was asked if his client will be giving evidence on those issues he responded boisterously "No my client is not giving evidence. I am talking on behalf of my client." I then made a ruling that his long statements about the history of other people was not relevant and directed Mr Barendse to stick to the issues in this matter. Once again Mr Barendse arrogantly told this Court that he will not be railroaded. I had to on several occasions warn Mr Bartends to stick to the rules and he continued to defy my ruling and spoke to the Court in a very disparaging manner. Counsel for the Complainant had to rise and object to the behaviour of Mr Barendse and the manner in which he addressed the Court. He was in short very disgusting and arrogant.

[145] Mr Barendse continued with further questions which had nothing to do with the impugned comment. I do not find it necessary to traverse those questions and answers as it was becoming clear to this Court that Mr Barendse was playing a game of wearing down the witness by keeping him long in the witness box with questions that did not advance his client's case.

[146] The height of contempt and insult was reached when Mr Barendse put it to Mr Pon that this case was a minor issue compared to what is happening elsewhere. He said this without explaining. It is no wonder that Mr Pon in response and seemingly

quite irritated said the following: “Now this is the problem and this is where it is insult to injury. It is where someone thinks that it does not matter. He does not look at Chinese as human beings. That is the problem.” It is no wonder that the response drew large applause and clapping of hands from the people inside the Court room the majority if not all were Chinese origin. This Court was not surprised by that simultaneous approval of the sentiments despite objection by Adv Garvey.

[147] When Mr Pon was asked if the people who commented on face book and on Carte Blanche were not simply expressing their rights to freedom of speech in terms of Section 16(2) of the Constitution he responded that freedom of speech does not mean hate speech, it does not mean xenophobic or violent speech. Mr Pon referred to comments made by other persons on face book which he said was fair comment for example the comment by the one Mignon Wainwright who said “I can’t even look. My heart bleeds” also the comment by one Judy Robinson which reads as follows: “Oh how dreadful, the suffering must be abhorrent” and many others which Mr Pon said was fair expression of freedom of speech.

[148] Mr Barendse once more descended into questioning Mr Pon on irrelevant issues concerning his attitude to white people in South Africa his work experience, the rule of law and all sorts of questions aimed at nothing else but to keep Mr Pon in the witness box for as long as he wished. He did not heed objection and rulings made against him. When the Court adjourned at 15h55 Mr Bartends told the Court that he still needs between 90 and 120 minutes to finalise his cross-examination. I indicated to him that I will only allow him 40 minutes to round up his cross-examination.

[149] Cross-examination of Mr Pon resumed on the 29<sup>th</sup> November 2019. It was put to Mr Pon that the statement by the fourth Respondent had been tempered with in that the first portion which read: “Thank you Johnna Sherman” was missing and only the part that reads “Personally I say wipe them out, I will be the first to be there” appears on the claim documents. Mr Pon agreed with that and said that it is his lawyers who decided not to include the first portion of the comment. He however, stressed on several occasions that the words “Wipe them out” to him were genocidal the words meant to ethnically cleanse like it happened in Rwanda a few years ago.

Mr Pon went on to stress that despite the Complainant having left out the greetings portion of the statement by the fourth Respondent the Complainants were of the view that the quoted comments were offensive.

[150] The further cross-examination became repetitive and harnered on one aspect namely that the fourth Respondent's statement was incomplete. There is nowhere in that line of questioning where the fourth Respondent denies having posted the comments despite what was pleaded. What appears on pages 618 of the trial bundle is the comment that the fourth Respondent made on the Karoo Donkey Sanctuary face book on the 21 January 2017. He commented to the report that read "Why are gangs killing our donkeys" to which he commented "Jonathan Johnna Sherwin Thank you personally I say wipe them out - I'd be the first to be there."

[151] The question to be answered by this Court is whether that comment was made referring to the gangs that were killing donkeys or whether it was directed at the Chinese people in general.

[152] Mr Barendse concluded his cross-examination at 11h00 on Friday the 29<sup>th</sup> November 2019. The matter was then postponed to Monday the 2<sup>nd</sup> December 2019 for further cross-examination by Adv Garvey. However, this was not to be as on the morning of Monday the 2<sup>nd</sup> December 2019 Mr Barendse asked for leave to pose a few questions that had come to his mind over the weekend. I acceded to his request as he indicated it would only be a few questions. This was once against a ploy to keep Mr Pon in the witness box ad nauseam as what happened was nothing new in fact in was a repetition of questions that had been dealt with before. The Court had to remind Mr Barendse on several occasions in between objection from Complainant Counsel to please ask new question. This did not deter Mr Barendse to continue to not adhere to my rulings.

[153] Adv Garvey for eighth Respondent re-commenced cross-examination shortly before tea break on Monday the 2<sup>nd</sup> December 2019. His questioning did not differ from what had been asked before on various aspects including the question as to who were the people who made the final decision on which comments to sue and who were the leaders.

[154] Adv Garvey asked Mr Pon why they as the Complainant did not accept the settlement offer of payment of the sum of R50 000.00 made by the eighth Respondent Mr Pon told the Court that the amounts were not discussed as there was a whole lot of issues that had to be agreed on first like the apology before they could apply their minds to the monetary settlement.

[155] Mr Pon was taken at length by Counsel for the eighth Respondent who wanted Mr Pon to show the Court were in the statement by the eighth Respondent does it advocate hatred and incitement to cause harm to the Chinese community. Secondly Counsel wanted Mr Pon to prove that the eighth Respondent acted in concert with the rest of the Respondents. Mr Pon in responding to the second question told the Court that it is of a legal nature and he can't respond to that. He was right he is not the drafter of pleading in any case there is nowhere in the papers where the Complainant pleads that the twelve Respondents be held liable jointly and severally. The first question is about what this Court has to decide.

[156] In her affidavit the eighth Respondent denies having posted the impugned comments. Counsel for the eighth Respondent asked Mr Pon to show him where in the pleading or the attachment does it indicate that the impugned comment was posted by the eighth Respondent. Mr Pon Respondent that their lawyers told them the documents were in order to proceed with the action. Mr Pon added that if the eighth Respondent did not post the impugned comments he sees no reason why then her previous attorneys Messrs Nolte sent four letters of apology during June 2017. According to Mr Pon if the eighth Respondent did not post the comment she should then have simply ignored the Complainant instead of writing four letters of apology.

[157] A big issue was made under cross-examination that Annexure A8 does not indicate that the comment there was that of the eighth Respondent. In reply Mr Pon referred the Court to page 19 which is a consolidated document transcribed directly from comments as they appeared on the Carte Blanche face book. The eighth Respondent in paragraph 11 of her affidavit only refers to Annexure A8 and avoids

saying anything about what appears on page 19 which quotes the exact words and time when they were posted.

[158] It was then put to Mr Pon that the comment at best if proved to be have been made by the eighth Respondent is not discriminatory in terms of the constitution and that it goes to dignity. Mr Pon disagreed he told the Court that the comment is definitely discriminatory and it referred to Chinese in South Africa.

[159] The cross-examination then moved to Mr Pon's replying affidavit dated the 7<sup>th</sup> December 2018. In the replying affidavit Mr Pon makes reference to the letters written by eighth Respondent's previous attorneys Messrs Nolte in which they on behalf of their client did not disavow or deny knowledge of the comment imputed to the eighth Respondent. It became clear after protracted cross-examination that nowhere did the eighth Respondent deny to her previous attorneys that she was the author of that statement. Mr Pon added as follows:

“The letters mean to me that she said those comments that she is apologising for those comments, that she will not do it again and let us talk and negotiate how we can make this go away.”

[160] Adv Garvey then asked Mr Pon what he in his capacity would have been acceptable. Mr Pon responded at length that the Chinese people wanted an unconditional apology and an undertaking that the comments would not be repeated. He told the Court that they wanted that the people who made the comments to understand the hurt and harm as well as the emotional stress they had caused to the Chinese community. Thereafter the cross-examination deteriorated into an unacceptable level in that Mr Garvey started questioning Mr Pon about his proficiency in English which question was correctly objected to. I made a ruling that Mr Garvey desist from such questioning as it is personal in any case Mr Pon had not been having any difficulty in expressing himself in English and where he could not answer he told the Court that it is lawyers language and he cannot respond thereto.

[161] It was put to Mr Pon that the eighth Respondent requested earlier in the year at a pre-trial conference as well as in her Rule 35(10) notice to be furnished with the

original data message relating to the impugned posting and that same had by the 2<sup>nd</sup> December 2019 not been furnished. Mr Pon could not respond to that as he said it is an issue that his lawyers have to deal with. He told the Court that according to him the screen printings were sufficient. Mr Pon concluded by saying that the eighth Respondent was linked through investigation on Instagram, linkedin and told the Court that the pictures he saw there were of the lady that had been in Court since March 2019. Mr Pon pointed her in Court again as the lady sitting on the back benches of the Court room.

[162] Despite that evidence neither did the lady who was pointed out in Court nor her legal team deny that instead Adv Garvey said the following when being invited to comment: Mr Garvey: "M 'Lord I am not admitting or deny anything". This is in my view signalled an end to the denial that the eighth Respondent is the person who posted the comment. If it was not her why did she not respond to the invitation.

[163] Adv Garvey then started asking question about the affidavit of Mr Jordaan. The expert witness that they had intended to call on which I had already made a ruling. When Mr Garvey insisted on pursuing that line I once more reminded him of my ruling. It was at that point that Adv Garvey informed me that his instructing attorneys have asked him to file an application for my recusal. Time frames were agreed upon for filing of the papers for my recusal. The application was argued on the 3 December 2019 and I dismissed it with costs.

[164] Cross-examination of Mr Pon by Adv Garvey continued immediately after I had dismissed the application for my recusal. Adv Garvey informed the Court that he will henceforth also be appearing for the fourth Respondent in these proceedings and that Mr Barendse will simply sit in as an observer.

[165] Further cross-examination went at length in testing Mr Pon's knowledge of how the internet works and if he knows what their investigating team did to link eighth Respondent to the comment. His responses were to a large extent that he does not know how the team went about that.

[166] Eventually Adv Garvey decided to put the version of the eighth Respondent to Mr Pon as follows:

Mr Garvey: The eighth Respondent will lead evidence before this Court. I do not want Mr Ismael to be confused that it is going to necessarily come out of Ms De Klerks own mouth, but she will adduce evidence in this Court, if necessary that in order – sorry, M ‘Lord, to identify the originator of the alleged post can only or consequently not be objectively determined unless the IP address that made the alleged offending post was obtained in this case from face book, the identity of the internet service provider was to be identified and the account holder was to be identified through the process that we – that I have just described to you will you accept that:

Mr Pon: I do not accept that is the only way to find it from the Associations perspective we found her, she apologised confirmed to that the team did the right thing – did the correct job. I went back I found that her profiles were suddenly gone or not accessible. I found another Instagram profile that was still alive. I found that her name was very original. I could not find anything else on the internet with regards to that. I saw her in Court. I saw her talking to you guys.

[167] It was put to Mr Pon that the first time that the eighth Respondent had sight of the screen shot linking her to the impugned statement was during March 2019 being a day or two before the hearing commenced. Mr Pon responded that he has no knowledge about that.

[168] On the 4<sup>th</sup> December 2019 Mr Pon was back in Court for further cross-examination. He was referred to trial bundles 1 and 2 specifically referring to the picture or screen shot depicting the eighth Respondent. It was put to Mr Pon that the picture on pages 52 of trial bundle 1 and that on page 554 of trial bundle 2 are not the same. Mr Pon agreed and told the Court a person can change his or her profile picture on face book at any time. He disagreed with Counsel when it was put to him that the fact that there are faces of two persons on page 52 it means the pictures could be from different face book profiles.

[169] The further cross-examination moved back to what Mr Barendse had already covered extensively in his cross-examination on behalf of the fourth Respondent particularly as regards the exact words attributed to the fourth Respondent. I reminded Counsel that this had already been covered and I see no need to go back that route. It was put to Mr Pon that the investigating team had changed or forged the wording of what the fourth Respondent wrote. This was denied by Mr Pon.

[170] At this point the cross-examination became woolie and Mr Pon had to ask Counsel exactly what his question was because Counsel kept on referring to various pages concerning the evidence of Ms Emma Sadlier without pin pointing exactly what he wanted to know from Mr Pon. I find that part of his cross-examination not to be useful at all and was clearly aimed at keeping Mr Pon in the witness box for as long as Counsel wished despite agreement that he will keep to one hour on that day.

[171] Interestingly enough it was put to Mr Pon that the eighth Respondent statement interpreted objectively did not mean kill the Chinese. However, Adv Garvey did not tell this Court what his client will say she meant by using the words "we need to get rid of Chinese, they are not welcome." All he could tell the Court was that his client's version is that firstly she denies having posted the comment and in the alternative should it be found that she did this, she will argue that her comment does not constitute hate speech.

[172] Adv Garvey did not keep to the agreed time limit ruling regarding further cross-examination and I had to curtail his cross-examination as it was going in circles and not of benefit to the matter before me.

[173] Re-examination of Mr Pon was interrupted at various places but nothing came out of that I say nothing more about it. The Complainant case was closed at 14h00 after Mr Pon had been excused. Thereafter Adv Garvey closed the case for the eighth Respondent and only called the fourth Respondent to testify in his defence, the matter stood down to the 5<sup>th</sup> December 2019 as the fourth Respondent was travelling from the Western Cape.

[174] Before the fourth Respondent could be sworn in Counsel for both Respondents raised an issue that the Complainant closed their case before seeking a ruling as to the admissibility of the evidence by Ms Emma Sadlier. It will be recalled that during the numerous objections raised when Ms Sadlier was testifying an agreement was reached that her evidence be provisionally accepted and that a ruling be made at the close of the Complainant's case. The crux of the objection was firstly that Ms Sadlier was not an expert witness secondly that her evidence was hearsay in as far as the copying of the screen shot. During the cross-examination of Ms Sadlier she repeated on various occasions that she was a factual witness and confirmed what the Complainant had always maintained. As regards the issue of hearsay Ms Sadlier said that Lizzie her colleague transmitted to her the screen shots. That in my view cannot be hearsay. She told the Court that she saw the screen shots personally and copied same onto her own devices.

[175] Mr David Clive Horne the fourth Respondent was sworn in and testified as follows:

- i) That his comment on the Karoo Donkey Sanctuary face book were taken out of context.
- ii) When he commented "wipe them out" he was referring to the gang that were shown to be killing Donkeys. He never meant to refer to Chinese people.
- iii) There is nowhere in his comment where he makes reference to Chinese people.
- iv) His response was simply in reaction to the photographs and the heading that he had seen which reads "Why are gangs killing our donkey."
- v) In his young days he had Chinese friends the Chowa Brothers in Cape Town. He also employed Chinese friend who was in the streets one Jason. He deals in importing of clothes from all over the world including China.

vi) He had been using face book for the past seven years and he is a friend of the Karoo Donkey Sanctuary. He belongs to their group and he now and then comments on postings made on their face book page.

vii) When he made the comment he had not read the Mail and Guardian report which appears on pages 642 – 645 of the trial bundle. When he was referred to the document by Counsel for the Complainant he explained that his understanding of the note is that the donkey hides were being sold to the Chinese market.

viii) Mr Horne was adamant that some people who read the posting may associate it with Chinese people whilst others may not have.

ix) The comment that he made in response to the gang story was removed from the face book by Jonathan Sherwin the Administrator of the Karoo Donkey Sanctuary face book at the request or when Emma Sadlier demanded that. He as Mr Horne cannot say if Jonathan did so because he regarded the comment as being offensive or not. He believes that all the comments were removed.

x) Mr Horne was referred to a series of comments that were posted on the 21<sup>st</sup> January 2017 on the Karoo Donkey Sanctuary face book page amongst the comments was one by Lisa Smith who wrote as follows: "The Chinese are just barbarians and have no empathy." Mr Horne agreed that the comment was not acceptable. His view was the same in respect of the comment by one June Johnstone who had described Chinese people as being greedy and came to South Africa to plunder our wild life and are cruel.

xi) Mr Horne went to say that all those comments he was referred to are totally unacceptable and he identifies himself with the hurt and feeling of the Chinese people. He added that if the same was said about his nationality he would feel the same. He repeated that when he posted his comment he was thanking Jonathan Sherwin for a job well done and not necessarily responding to the comments posted by other people with insulting words

about the Chinese. He was adamant that he was responding to the gang that were exporting the donkey skins.

xii) To him the words “wipe them out” in the context that he used it simply meant to take on the people who had actually committed the horrendous crimes. He did not know the nationality of the gangs.

xiii) When Mr Horne was referred to the settlement proposals made by his previous attorneys namely Nolte Inc. he told the Court that on hindsight it is not what he would have wanted. Things happened very fast. He acted on the advice of Mr Nolte. In fact, when the settlement proposals were made he was of the view that he had commented on the Carte Blanche face book when in fact it was the Karoo Donkey Sanctuary face book page.

xiv) In concluding his evidence under cross-examination Mr Horne said the following: “Unfortunately I cannot apologise for what I said. All I can do is apologise to the community – the Chinese community for the way that the comments that I had said left them. But unfortunately I cannot apologise for something that is in my heart – that I am far from a racist. I do not discriminate I have love for everybody, animals and people.

[176] The fourth Respondent closed his case and did not call any witnesses. The eighth Respondent did not testify and closed her case without calling any witnesses. Counsel on both sides agreed on timeline to file heads of argument and the matter was then postponed *sine die*. It was only during November 2021 when I was already on long leave that the fourth Respondent filed their heads of argument well out of the agreed time.

#### EVALUATION OF EVIDENCE AGAINST THE FOURTH RESPONDENT MR DAVID CLIVE HORNE

[177] It is common cause that the fourth Respondent Mr David Clive Horne admitted having posted the following words on the face book page of the Karoo

Donkey Sanctuary namely “Personally I say wipe them out I’d be the first to be there.”

[178] It is also now not in dispute that he posted those words on the 22<sup>nd</sup> January 2017 in the morning as a response to an article that had appeared on the 21<sup>st</sup> January 2017 posted by the Karoo Donkey Sanctuary which comprised an image and an accompanying statement. The image was a screen shot in part of an online Mail and Guardian article entitled “Why are gangs killing our donkeys.”

[179] In his evidence and in the affidavits that he filed prior to him giving oral evidence in Court he repeatedly emphasised that when he wrote “wipe them out” he did not refer to any particular race group but was referring to the “gangs that were killing donkeys.”

[180] The question is whether it is reasonable to infer that when he used the words “them” he was referring to Chinese people simply because other commentators before him had made specific reference to people of Chinese origin. He in his evidence denied that he was referring to Chinese people.

[181] The witness Emma Sadlier conceded later under cross-examination that it is the Court that must finally decide whether the fourth Respondent’s comment was aimed at the Chinese people or not.

[182] Wallis JA writing for the Court in **Natal Joint Municipal Pension Fund vs Endumeni Municipality 2012 (4) SA 593 (SCA)** said the following at page 603:

“Over the last century there have been significant developments in the law relating to the interpretation of documents both in this country and in others that follow similar rules to our own. It is unnecessary to add unduly to the burden of annotation by trawling through the case law on the construction of documents in order to trace those developments. The relevant authorities are collected and summarised in *Bastian Financial Services (Pty) Ltd v General Hendrik Schoeman Primary School*. The present state of the law can be expressed as follows: Interpretation is the process of attributing

meaning to the words used in the documents be it legislation, some other statutory instrument or contract having regard to the context provided by reading the particular provision or provisions in the light of the document as a whole and circumstances attendant upon its coming into existence. Whatever the nature of the document consideration must be given to the language used in the light of the ordinary rules of grammar and syntax, the context in which the provisions appear the apparent purposes to which it is directed and the material known to those responsible for its products. Where more than one meaning is possible each possibility must be weighed in the light of all these factors. The process is objective not subjective. A sensible meaning is to be preferred to one that leads to insensible or un-business-like results or undermines the apparent purpose of the documents. Judges must be alert to and guard against, the temptation to substitute what they regard as reasonable sensible or business-like for the words actually used.”

[183] Whilst it is correct that the test is objective not subjective, in my view it will be absurd to attach the meaning of “Chinese people” by the use of the word “wipe them out.” I say so because as Wallis JA warned in Natal Joint Municipality case (supra) Judges must be alert to and guard against the temptation to substitute what they regard as reasonable, sensible or business-like for the words actually used.

[184] The fact that other subscribers to the Karoo Donkey Sanctuary post referred specifically to Chinese people does not necessarily mean that the fourth Respondent was referring to Chinese people when he wrote “Wipe them out” it is in my view reasonable to accept that he meant the people who were killing donkeys. It is the people that he saw on the Karoo Donkey Sanctuary post and those people were not Chinese. It does not matter that the donkey skins and hides were destined to mainland China for use in producing medicines

[185] I can accordingly not find that the fourth Respondent by making the comment as set out above made himself guilty of hate speech, harassment or incitement to any form of racial violence or discrimination against Chinese people. The complaint against him must fail.

## THE CASE AGAINST THE EIGHTH RESPONDENT

[186] The eighth Respondent published the following words on face book: We need to get rid of Chinese in SA ... they not welcome. They steal our economy...dogs, Rhinos and now donkeys can be applied to dogs and pet.”

[187] The eighth Respondent despite overwhelming evidence put up a veiled attempt to distance herself from the statement and elected not to give oral evidence clearly avoiding being cross-examined. She was not only identified sitting in court by the witness Mr Pon during the hearing but was also positively identified by Ms Sadlier on the screen shot taken by Liz Morrison an employee of Ms Emma Sadlier.

[188] It was further argued by her counsel that the fact that the Complainant failed to submit original data in respect of the screen shots amounts to hearsay evidence. This cannot be correct, the Supreme Court of Appeal has ruled in **Botha v S 2009 ZASCA 125 at paragraph 27** that where it is no practicable to use original documents, the use of copies is permissible.

[189] This case drew wide public interest this is evidenced by the number of people of Chinese nationality who attended Court as well as the media who profiled the proceedings each day. The Court in the matter of **Attorney-General Transvaal v Kader 1991 (4) SA 747 (A)** held that public interest in receiving relevant evidence must be weighed against the disadvantages which the witnesses was likely to suffer if he were to testify. In striking such a balance the public interest should be afforded much more weight than the consideration relating to the individual.

[190] The eight Respondent’s election not to testify is further exacerbated by the fact that very early in 2018 even before case management could commence her own attorneys filed documents to the effect that she was the author of the words that appeared on face book referred to above. She has not denied that, neither has she told the Court why her own attorneys wrote what they wrote. The eighth Respondent could only say that all those documents are privileged and were aimed at settlement. That is not enough hence I earlier dismissed the application to strike out those letters

and emails. The without prejudice principle cannot be used to allow a litigant to lie to the Court on oath.

[191] The question that this Court must answer is what did the words mean and to whom were they directed. To answer the second question, the answer lies in the very first line of the statement it reads “Chinese in SA” who lived in South Africa and that includes the Complainants in this matter.

[192] It is first question that needs this Court’s attention in order to justify a finding that same do constitute a transgression of the requirements of Section 10 of the Equality Act. The issue before this court is whether the statement falls within the defined prohibited grounds in Section 1 of the Equality Act.

[193] The provisions of Section 10(1) prior to Qwelane’s case and Section 1 of the Act reads as follows:

(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

Section 1: prohibited grounds are:

- (a) Race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language, birth and HIV/AIDS status or;
- (b) Any other ground where discrimination based on that other ground:

- (i) Causes or perpetuates systemic disadvantage;
- (ii) Undermines human dignity; or
- (iii) Adversely affects the equal enjoyment of a person's rights and freedoms in a serious manner that is comparable to discrimination on a ground in paragraph a.

[194] In *Qwelani v South Africa Human Rights Commission and Another* 2021 Section 10(1) has been reworded to read as follows:

“No person may publish, propagate, advocate or communicate words that are based on one or more of the prohibited grounds, against any person that could reasonably be construed to demonstrate a clear intention to be harmful or to incite harm and to promote or propagate hatred.”

[195] Section 11(1) dealing with “harassment provides that No person may subject any person to harassment” Section 1(1) defines harassment as: unwanted conduct which is persistent or serious and demeans, humiliates or creates a hostile or intimidating environment or is calculated to induce submission by actual 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 characteristics associated with such a group.

[196] The last Section which has to be read in conjunction with Section 10 and 11 is Section 7(a) which provides as follows:

“No person may unfairly discriminate against any person on the grounds of race, including the dissemination of any propaganda or idea which propounds the racial superiority or inferiority, of any person including incitement to, or participation in any form of racial violence.”

[197] The eighth Respondent has not sought to seek refuge in any of the exclusionary provisions of Section 12 of the Equality Act. Her defence is a denial of being the author of the impugned words. She has also not raised any of the defences provided for in Section 16 of the constitution. I have already found that her denial that she authored the impugned statement is to be dismissed. She is the author of the comments.

[198] The test as set out in Section 10 whether the impugned statement could reasonably be construed to demonstrate a clear intention to be harmful or incite harm, promote or propagate hatred is objective as confirmed in *Qwelane* by the Constitutional Court. What is relevant is what effect the words have on people who hear or read them.

[199] The words “get rid off” taken literally mean “take action so as to be free of troublesome or unwanted person or thing, they mean dispose of, dump, eliminate, remove assassinate, cast aside. Mr Pon testified that he understood the words to mean like get rid of insects or vermin, a pest. As a result, he felt dehumanised.

[200] The words “get rid of” cannot be read in isolation for it to be well understood one has to complete the sentence to read “get rid of the Chinese in SA.” It is clear that the letter sa means South Africa. Ms V.D. Linde De Klerk the eighth Respondent, expressed herself in those words which indicate her hatred for people of Chinese origin and not only those who are accused of slaughtering donkeys but she does not want Chinese to live in South Africa simply because of the incident relating to the donkeys hence she concludes with the words “they are not welcomed.”

[201] The evidence of Mr Pon once more demonstrates how those words affected the Complainant. He demonstrated how hurtful he felt and could not be able to explain to his children who were born in South Africa that they are not welcome.

[202] The overall message conveyed by the eighth Respondent is to the effect that Chinese people as a race are foreigners in South Africa who are only here to exploit

the economy, kill donkeys and Rhinos and for that reason they are not welcome. They should be gotten rid off.

[203] The eighth Respondent's counsel in the heads of argument has referred me to the Constitutional Court decision in the matter of **The Islamic Unity Convention v Independent Broadcasting Authority & Others 2002(4) SA 294 (CC)** which matter dealt with the right to freedom of expression as guaranteed by Section 16 of the Constitution of South Africa.

[204] The right to freedom of expression in that matter related to a Complaint lodged in terms of Section 2(a) of the code of conduct for Broadcasting services. The complaint was that the comments made on radio were likely to prejudice relations between section of the population namely Jews and other communities. The complaint in that matter is distinguishable in that here we are dealing with a specific prohibition as described in Section 10 of the Equality Act. The Islamic Unity matter dealt with the constitutionality of Section 2(a) of the code of conduct.

[205] The Constitutional Court per Langa DCJ at paragraph 21 expressed itself as follows:

“[213] Although the matter has its origins in the complaint by the Board in respect of a specific broadcast, the function of this court in the present proceedings is to adjudicate on the question of the constitutionality of clause 2(a) of the code in relation to that complaint as an abstract and objective one. The contention of the particular statement in respect of which the Board complains are not relevant to the enquiry. What the court is concerned with is whether the provisions on which the complaint was based is consistent with the right to freedom of expression in Section 16 of the constitution.”

[206] The eighth Respondent elected not to place her evidence before this Court. This court is satisfied that the words attributed to the eighth Respondent not only encouraged other people to be hostile towards Chinese people and to expel them from South Africa. The words also seriously impaired the dignity of the Chinese

people and undermined national unity. The words clearly propagated and promoted hatred towards the Chinese people.

[207] Further the words complained of constitute harassment as defined in Section 11 of the Equality Act in that the eighth Respondent expressly referred to “Chinese” as a group and racial affiliation. Similarly, the eighth Respondent contravened Section 7(a) of the Equality Act and unfairly discriminated against the Chinese people in her statement, by disseminating her statement that Chinese people are foreigners and do not have the right to live and work in South Africa, also that they are cruel to animals and are only here in South Africa to exploit the economy.

[208] This matter is about words and as professor Kathy Govender the chairperson of the South African Human Rights Commission said words convey meaning and do cause hurt and injury. In the matter of Qwelane (supra) Majiedt J writing in a unanimous decision held as follows:

“Speech is powerful it has the ability to build, promote and nurture but it can also denigrate, humiliate and destroy. Hate speech is one of the most devastating modes of subverting the dignity and self-worth of human beings. This is so because hate speech marginalises and delegitimise individuals based on their membership of a group. This may diminish their social standing in the broader society outside of the group they identify with and can ignite exclusion, hostility, discrimination and violence against them. Not only does it wound the individuals who share this group identity but it seeks to undo the very fabric of own society as envisaged by our constitution.”

[209] It is against these words and by others before Qwelane and having considered all the evidence before me that I have come to the following findings against the Respondents mentioned here

## FINDINGS AND ORDERS

First Respondent – Alice Henning

[210] She did not oppose the application, and I will accordingly take that into consideration in the order against her

(a) I find that the following words “I hate them and get so upset when people bring their Chinese Mall junk bargains. I refuse to support them they are not human” constitutes hate speech, harassment and unfair discrimination against people of China and are in contravention of Section 10,11 and 7 of the Equality Act.

(b) The first Respondent is interdicted and restrained from publishing the same or similar words in respect of any race in any form or forum.

(c) Within 30 days of this order the first Respondent shall publish an unconditional apology as set out in Annexure “A” attached hereto on the social media platforms of Karoo Donkey Sanctuary, Carte Blanche and Chinese Group.

(d) Within six months of this order the first Respondent shall pay an amount of R50 000.00 (Fifty Thousand Rand) to the Hong Ning Chinese Aged Home, failing which the Complainant shall be entitled to issue a writ of execution against the first Respondent.

(e) If the first Respondent is unable to pay part or all of the amount referred to in (d) above and prior to the issuing of a writ of execution the first Respondent may approach this Court within 30 days on affidavit setting out fully her financial situation with reference to supporting documents and seek a substitution of part or all of the above amount with an equivalent amount of community service (where R1 000.00 is equivalent to 10 hours of community service during which she shall:

(i) Attend a training course at an organisation of the Complainant’s choice to teach her how to remove hate speech from the internet.

(ii) Search the internet for speech which harms, incites harm or promotes or propagates hatred against people of Chinese race (anti-Chinese hate speech) every week for a period of at least four hours per week.

(iii) Take reasonable steps to have such hate speech removed from the internet when found using techniques provided as part of the training.

(iv) Issue a monthly report to the Complainant recording the hours worked, the hate speech found the steps taken to have it removed and the outcome of those steps.

(v) She shall attend a racial tolerance training course conducted by the South African Human Rights Commission to commence within 3 months or soon thereafter as such course is available.

(vi) I make no costs order against the first Respondent as she did not oppose.

#### Second Respondent – Mrs Anja Lock

[211] the second Respondent having been duly served with the documents did not file any affidavit to oppose the granting of the order. In the result I find that her statement published on the Facebook page of the television show Carte Blanche to the following effect: “Why don’t these Chinese get the fuck away from our country, seriously go skin your own people leave our donkeys alone you MFS” to constitutes hate speech, harassment and unfair discrimination against people of Chinese race. This is a clear contravention of Section 10, 11 and 7 of the Equality Act.

[212] In the result I make the following order against Mrs Anja Lock the second Respondent

a) The second Respondent is hereby interdicted and restrained from publishing the same or similar words in respect of any race in any form or forum.

b) Within thirty days (30) from the date of this order the second Respondent shall publish an unconditional apology as set out in Annexure "B" attached hereto on the social media platform of the Karoo Donkey Sanctuary, Carte Blanche and the Chinese group.

c) Within six months (6) of this order the second Respondent shall pay an amount of R50 000.00 (Fifty Thousand Rand) to the Hong Ning Chinese Aged Home, failing which the Complainant shall be entitled to issue a writ of executive against the second Respondent.

d) If the second Respondent is unable to pay part or all of the amount referred to in (c) above and prior to the issuing of a writ of execution the second Respondent may approach this court within 30 days an affidavit setting out fully her financial situation with reference to supporting documents and seek a substitution of part or all of the above amount with an equivalent amount of community services(Where R1000.00 (One Thousand Rand)) is equivalent to ten (10) hours of community service during which she shall :

(i) Attend a training course at an organisation of the Complainant's choice to teach her how to remove hate speech from the internet.

(ii) Search the internet for speech which harms, incites harm or promotes or propagates hatred against people of Chinese race (anti-Chinese hate speech) every week for a period of at least four hours per week.

(iii) Take reasonable steps to have such hate speech removed from the internet when found using techniques provided as part of the training.

(iv) Issue a monthly report to the Complainant recording the hours worked, the hate speech found the steps taken to have it removed and the outcome of those steps.

(v) The second Respondent shall attend a racial tolerance training course conducted by the South African Human Rights Commission to commence within 3 months or soon thereafter as such course is available.

(vi) I make no costs order as to costs against second Respondent.

#### Fourth Respondent – Mr Dave Clive Horne

[213] The complaint against the fourth Respondent is dismissed with costs save for the costs levied against the fourth Respondent in the various interlocutory applications. Such costs shall include costs of Counsel were employed.

#### Fifth Respondent – Dawn Reeve

[214] The words posted by the fifth Respondent on the 25<sup>th</sup> February 2017 on the Facebook page of the Carte Blanche television show to the effect that: “The Chinese are destroying the earth we have to retaliate; I don’t know how anyone can support the f#eing Chinaman they are the rot of the earth.” Are hereby found to be offensive and constitutes hate speech, harassment and unfair discrimination against people of Chinese race. This is a contravention of Section 10,11 and 7 of Equality Act.

[215] In the result I make the following order against the fifth Respondent:

i) The fifth Respondent is hereby interdicted and restrained from publishing the same or similar words in respect of any race in any form or forum.

ii) Within thirty days (30) from the date of this order the fifth Respondent shall publish an unconditional apology as set out in Annexure "C" attached hereto on the social media platform of the Karoo Donkey Sanctuary, Carte Blanche and the Chinese group.

iii) Within six months (6) of this order the fifth Respondent shall pay an amount of R50 000.00 (Fifty Thousand Rand) to the Hong Ning Chinese Aged Home, failing which the Complainant shall be entitled to issue a writ of executive against the fifth Respondent.

iv) If the fifth Respondent is unable to pay part or all of the amount referred to in (c) above and prior to the issuing of a writ of execution the fifth Respondent may approach this court within 30 days an affidavit setting out fully her financial situation with reference to supporting documents and seek a substitution of part or all of the above amount with an equivalent amount of community services (Where R1000.00) One Thousand Rand is equivalent to ten (10) hours of community service during which she shall :

a) Attend a training course at an organisation of the Complainant's choice to teach her how to remove hate speech from the internet.

b) Search the internet for speech which harms, incites harm or promotes or propagates hatred against people of Chinese race (anti-Chinese hate speech) every week for a period of at least four hours per week.

c) Take reasonable steps to have such hate speech removed from the internet when found using techniques provided as part of the training.

d) Issue a monthly report to the Complainant recording the hours worked, the hate speech found the steps taken to have it removed and the outcome of those steps.

e) The fifth Respondent shall attend a racial tolerance training course conducted by the South African Human Rights Commission to commence within 3 months or soon thereafter as such course is available.

f) I make no costs order against the fifth Respondent.

#### Sixth Respondent – Joy Termorhuizen

[216] The words by the sixth Respondent during January 2017 on the Facebook page of the television show Carte Blanche to the effect that “Vile barbaric people, is there a living thing left in China” are hereby found to be offensive and constitutes hate speech, harassment and unfair discrimination against people of Chinese race. I accordingly made the following:

i) The sixth Respondent is hereby interdicted and restrained from publishing the same or similar words in respect of any race in any form or forum.

ii) Within thirty days (30) from the date of this order the sixth Respondent shall publish an unconditional apology as set out in Annexure “D” attached hereto on the social media platform of the Karoo Donkey Sanctuary, Carte Blanche and the Chinese group.

iii) Within six months (6) of this order the sixth Respondent shall pay an amount of R50 000.00 (Fifty Thousand Rand) to the Hong Ning Chinese Aged Home, failing which the Complainant shall be entitled to issue a writ of executive against the fifth Respondent.

iv) If the sixth Respondent is unable to pay part or all of the amount referred to in (iii) above and prior to the issuing of a writ of execution the sixth Respondent may approach this court within 30 days an affidavit setting out fully her financial situation with reference to supporting documents and seek a substitution of part or all of the above amount with an equivalent

amount of community services (Where R1000.00) One Thousand Rand is equivalent to ten (10) hours of community service during which she shall :

- a) Attend a training course at an organisation of the Complainant's choice to teach her how to remove hate speech from the internet.
- b) Search the internet for speech which harms, incites harm or promotes or propagates hatred against people of Chinese race (anti-Chinese hate speech) every week for a period of at least four hours per week.
- c) Take reasonable steps to have such hate speech removed from the internet when found using techniques provided as part of the training.
- d) Issue a monthly report to the Complainant recording the hours worked, the hate speech found the steps taken to have it removed and the outcome of those steps.
- e) The sixth Respondent shall attend a racial tolerance training course conducted by the South African Human Rights Commission to commence within 3 months or soon thereafter as such course is available.
- f) I make no costs order as to costs in respect of the sixth Respondent.

#### Seventh Respondent – Lana Berger

[217] I hereby find that the following words posted by the seventh Respondent on the Facebook page of the Karoo Donkey Sanctuary which reads as follows: "They are the most disgusting things on this earth. I wish they would start wiping themselves out, this earth is better off without them" as being offensive and accordingly constitutes hate speech, harassment and unfair discrimination against

people of Chinese race. In the result I make the following order against the seventh Respondent:

i) The seventh Respondent is hereby interdicted and restrained from publishing the same or similar words in respect of any race in any form or forum.

ii) Within thirty days (30) from the date of this order the seventh Respondent shall publish an unconditional apology as set out in Annexure "E" attached hereto on the social media platform of the Karoo Donkey Sanctuary, Carte Blanche and the Chinese group.

iii) Within six months (6) of this order the seventh Respondent shall pay an amount of R50 000.00 (Fifty Thousand Rand) to the Hong Ning Chinese Aged Home, failing which the Complainant shall be entitled to issue a writ of executive against the seventh Respondent.

v) If the seventh Respondent is unable to pay part or all of the amount referred to in (c) above and prior to the issuing of a writ of execution the seventh Respondent may approach this court within 30 days an affidavit setting out fully her financial situation with reference to supporting documents and seek a substitution of part or all of the above amount with an equivalent amount of community services (Where R1000.00) One Thousand Rand is equivalent to ten (10) hours of community service during which she shall :

a) Attend a training course at an organisation of the Complainant's choice to teach her how to remove hate speech from the internet.

b) Search the internet for speech which harms, incites harm or promotes or propagates hatred against people of Chinese race (anti-Chinese hate speech) every week for a period of at least four hours per week.

- c) Take reasonable steps to have such hate speech removed from the internet when found using techniques provided as part of the training.
- d) Issue a monthly report to the Complainant recording the hours worked, the hate speech found the steps taken to have it removed and the outcome of those steps.
- e) The seventh Respondent shall attend a racial tolerance training course conducted by the South African Human Rights Commission to commence within 3 months or soon thereafter as such course is available.
- f) I make no costs order against the seventh Respondent.

Eighth Respondent – Mariette Van Den Linde De Klerk

[218] The words published and uttered by the eighth Respondent to the effect that: “We need to get rid of the Chinese. In SA.... they not welcomed they steal our economy dogs, Rhinos and now donkeys can be applied to dogs and pet” are hereby found to constitute to hate speech, harassment and unfair discrimination against people of Chinese race in contravention of Section 10,11 and 7 of the Equality Act. In the result I make the following order against the eighth Respondent:

- a) The eighth Respondent is hereby interdicted and restrained from publishing the same or similar words in respect of any race in any form or forum.
- b) Within thirty days (30) from the date of this order the eighth Respondent shall publish an unconditional apology as set out in Annexure “F” attached hereto on the social media platform of the Karoo Donkey Sanctuary, Carte Blanche and the Chinese group.

c) Within six months (6) of this order the eighth Respondent shall pay an amount of R150 000.00 (One Hundred and fifty Thousand Rand) to the Hong Ning Chinese Aged Home, failing which the Complainant shall be entitled to issue a writ of execution against the eighth Respondent.

d) If the eighth Respondent is unable to pay part or all of the amount referred to in (c) above and prior to the issuing of a writ of execution the eighth Respondent may approach this court within 30 days an affidavit setting out fully her financial situation with reference to supporting documents and seek a substitution of part or all of the above amount with an equivalent amount of community services (Where R1000.00) One Thousand Rand is equivalent to ten (10) hours of community service during which she shall :

i) Attend a training course at an organisation of the Complainant's choice to teach her how to remove hate speech from the internet.

ii) Search the internet for speech which harms, incites harm or promotes or propagates hatred against people of Chinese race (anti-Chinese hate speech) every week for a period of at least four hours per week.

iii) Take reasonable steps to have such hate speech removed from the internet when found using techniques provided as part of the training.

iv) Issue a monthly report to the Complainant recording the hours worked, the hate speech found the steps taken to have it removed and the outcome of those steps.

v) The eighth Respondent shall attend a racial tolerance training course conducted by the South African Human Rights Commission to commence within 3 months or soon thereafter as such course is available.

- vi) The eighth Respondent is ordered to pay the taxed party and party costs of the Complainant which costs shall include the costs of two Counsel one of which is a Senior Counsel.

The Ninth Respondent – Regina Richardson

[219] I hereby find that the words attributed to ninth Respondent which were published on the 9<sup>th</sup> February 2017 on the Facebook page of the Karoo Donkey Sanctuary to effect that: “Nostradamus predicted the yellow people will take over evil, sick, ugly so called scum of the earth” to constitute hate speech, harassment and unfair discrimination against people of Chinese race, in contravention of Sections 10,11 and 7 of the Equality Act. In the result I make the following order against the ninth Respondent:

- i) The ninth Respondent is hereby interdicted and restrained from publishing the same or similar words in respect of any race in any form or forum.
- ii) Within thirty days (30) from the date of this order the ninth Respondent shall publish an unconditional apology as set out in Annexure “G” attached hereto on the social media platform of the Karoo Donkey Sanctuary, Carte Blanche and the Chinese group.
- iii) Within six months (6) of this order the ninth Respondent shall pay an amount of R50 000.00 (Fifty Thousand Rand) to the Hong Ning Chinese Aged Home, failing which the Complainant shall be entitled to issue a writ of executive against the ninth Respondent.
- vi) If the ninth Respondent is unable to pay part or all of the amount referred to in (iii) above and prior to the issuing of a writ of execution the ninth Respondent may approach this court within 30 days an affidavit setting out fully her financial situation with reference to supporting documents and seek a substitution of part or all of the above amount with an equivalent

amount of community services (Where R1000.00) One Thousand Rand is equivalent to ten (10) hours of community service during which she shall :

- a) Attend a training course at an organisation of the Complainant's choice to teach her how to remove hate speech from the internet.
- b) Search the internet for speech which harms, incites harm or promotes or propagates hatred against people of Chinese race (anti-Chinese hate speech) every week for a period of at least four hours per week.
- c) Take reasonable steps to have such hate speech removed from the internet when found using techniques provided as part of the training.
- d) Issue a monthly report to the Complainant recording the hours worked, the hate speech found the steps taken to have it removed and the outcome of those steps.
- e) The ninth Respondent shall attend a racial tolerance training course conducted by the South African Human Rights Commission to commence within 3 months or soon thereafter as such course is available.
- f) I make no order as to costs.

Tenth Respondent – Ryan Van Der Walt

[220] I hereby find that the words posted by the tenth Respondent on the 29 January 2017 on the Facebook page of the television show Carte Blanche I which he described his feelings towards Chinese people as follows: "I think we should start killing their children for cure for the common babalaas maybe they will leave our animals alone" to be highly offensive and constitutes hate speech, harassment and unfair discrimination against persons of Chinese race. The said words are in

contravention of Section 10, 11 and 7 of the Equality Act. In the result I make the following order against the tenth Respondent:

i) The tenth Respondent is hereby interdicted and restrained from publishing the same or similar words in respect of any race in any form or forum.

ii) Within thirty days (30) from the date of this order the tenth Respondent shall publish an unconditional apology as set out in Annexure "H" attached hereto on the social media platform of the Karoo Donkey Sanctuary, Carte Blanche and the Chinese group.

iii) Within six months (6) of this order the tenth Respondent shall pay an amount of R50 000.00 (Fifty Thousand Rand) to the Hong Ning Chinese Aged Home, failing which the Complainant shall be entitled to issue a writ of executive against the seventh Respondent.

iv) If the tenth Respondent is unable to pay part or all of the amount referred to in (iii) above and prior to the issuing of a writ of execution the seventh Respondent may approach this court within 30 days an affidavit setting out fully her financial situation with reference to supporting documents and seek a substitution of part or all of the above amount with an equivalent amount of community services (Where R1000.00) One Thousand Rand is equivalent to ten (10) hours of community service during which she shall :

a) Attend a training course at an organisation of the Complainant's choice to teach her how to remove hate speech from the internet.

b) Search the internet for speech which harms, incites harm or promotes or propagates hatred against people of Chinese race (anti-Chinese hate speech) every week for a period of at least four hours per week.

- c) Take reasonable steps to have such hate speech removed from the internet when found using techniques provided as part of the training.
- d) Issue a monthly report to the Complainant recording the hours worked, the hate speech found the steps taken to have it removed and the outcome of those steps.
- e) The tenth Respondent shall attend a racial tolerance training course conducted by the South African Human Rights Commission to commence within 3 months or soon thereafter as such course is available.
- f) I make no costs order against the tenth Respondent.

#### Eleventh Respondent – Shana Markram

[221] I hereby find that the words posted by the eleventh Respondent on the Facebook page of the Karoo Donkey Sanctuary on the 29<sup>th</sup> January 2017 in which she said the following: “why do we need the Chinese nation, should wipe them off the face of earth they just killing everything in their path” to constitutes hate speech, harassment and unfair discrimination against people of Chinese race. Contravention of Section 10,11 and 7 of the Equality Act. In the result I make the following order against the eleventh Respondent:

- i) The eleventh Respondent is hereby interdicted and restrained from publishing the same or similar words in respect of any race in any form or forum.
- ii) Within thirty days (30) from the date of this order the eleventh Respondent shall publish an unconditional apology as set out in Annexure “I” attached hereto on the social media platform of the Karoo Donkey Sanctuary, Carte Blanche and the Chinese group.

v) Within six months (6) of this order the eleventh Respondent shall pay an amount of R50 000.00 (Fifty Thousand Rand) to the Hong Ning Chinese Aged Home, failing which the Complainant shall be entitled to issue a writ of executive against the fifth Respondent.

vi) If the eleventh Respondent is unable to pay part or all of the amount referred to in (iii) above and prior to the issuing of a writ of execution the eleventh Respondent may approach this court within 30 days an affidavit setting out fully her financial situation with reference to supporting documents and seek a substitution of part or all of the above amount with an equivalent amount of community services (Where R1000.00) One Thousand Rand is equivalent to ten (10) hours of community service during which she shall :

a) Attend a training course at an organisation of the Complainant's choice to teach her how to remove hate speech from the internet.

b) Search the internet for speech which harms, incites harm or promotes or propagates hatred against people of Chinese race (anti-Chinese hate speech) every week for a period of at least four hours per week.

c) Take reasonable steps to have such hate speech removed from the internet when found using techniques provided as part of the training.

d) Issue a monthly report to the Complainant recording the hours worked, the hate speech found the steps taken to have it removed and the outcome of those steps.

e) The eleventh Respondent shall attend a racial tolerance training course conducted by the South African Human Rights Commission to commence within 3 months or soon thereafter as such course is available.

- f) I make no order as to costs.

Twelve Respondent – Tracy Terink

[222] I hereby find that the words posted by the twelve Respondent on the Facebook page of the television show Carte Blanche on the 29<sup>th</sup> January 2017 to the effect that: “The Chinese are despicable savages can’t even call them people and the disgusting savages murdering these animals for money all deserve to die the painful death they inflict on these animals.” I find to constitutes hate speech, harassment and unfair discrimination against people of Chinese race. This is a contravention of Section 10,11 and 7 of the Equality Act. In the result I make the following order against the twelve Respondent:

- i) The twelve Respondent is hereby interdicted and restrained from publishing the same or similar words in respect of any race in any form or forum.
- ii) Within thirty days (30) from the date of this order the twelve Respondent shall publish an unconditional apology as set out in Annexure “J” attached hereto on the social media platform of the Karoo Donkey Sanctuary, Carte Blanche and the Chinese group.
- iii) Within six months (6) of this order the twelve Respondent shall pay an amount of R50 000.00 (Fifty Thousand Rand) to the Hong Ning Chinese Aged Home, failing which the Complainant shall be entitled to issue a writ of executive against the fifth Respondent.
- iv) If the twelve Respondent is unable to pay part or all of the amount referred to in (iii) above and prior to the issuing of a writ of execution the twelve Respondent may approach this court within 30 days an affidavit setting out fully her financial situation with reference to supporting documents and seek a substitution of part or all of the above amount with an equivalent amount of community services (Where R1000.00) One Thousand

Rand is equivalent to ten (10) hours of community service during which she shall :

- a) Attend a training course at an organisation of the Complainant's choice to teach her how to remove hate speech from the internet.
- b) Search the internet for speech which harms, incites harm or promotes or propagates hatred against people of Chinese race (anti-Chinese hate speech) every week for a period of at least four hours per week.
- c) Take reasonable steps to have such hate speech removed from the internet when found using techniques provided as part of the training.
- d) Issue a monthly report to the Complainant recording the hours worked, the hate speech found the steps taken to have it removed and the outcome of those steps.
- e) Attend a racial tolerance training course conducted by the South African Human Rights Commission to commence within 3 months or soon thereafter as such course is available.
- f) I make no order as to costs save for the costs of the interlocutory applications.

Dated at Johannesburg on this 28<sup>th</sup> day of July 2022

**M A MAKUME**  
**JUDGE OF THE HIGH COURT**  
**GAUTENG DIVISION, JOHANNESBURG**

**Appearances:**

DATE OF HEARING : March 2019 to November 2021

DATE OF JUDGMENT : 28 July 2022

FOR APPLICANT : ADV F ISMAIL SC  
WITH ADV KERRY WILLIAM  
ADV KATHLEEN HARDY  
ADV VEN WINKS

INSTRUCTED BY : Messrs Namford Attorneys

FOR 1<sup>st</sup> RESPONDENT : IN PERSON

FOR 2<sup>nd</sup> RESPONDENT : IN PERSON

FOR 3<sup>rd</sup> RESPONDENT :

FOR 4<sup>th</sup> & 8<sup>th</sup> RESPONDENT : ADV GARVEY SC

INSTRUCTED BY : Messrs Nolte Attorneys

FOR 5<sup>th</sup>RESPONDENT : IN PERSON

FOR 6<sup>th</sup>RESPONDENT : IN PERSON

FOR 7<sup>th</sup>RESPONDENT : IN PERSON

FOR 9<sup>th</sup>RESPONDENT : IN PERSON

FOR 10<sup>th</sup>RESPONDENT : IN PERSON

FOR 11<sup>th</sup>RESPONDENT : IN PERSON

FOR 12<sup>th</sup> RESPONDENT : IN PERSON