

REPUBLIC OF SOUTH AFRICA

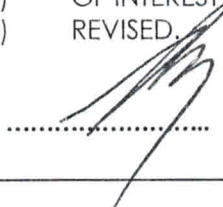


IN THE EQUALITY COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

CASE NUMBER: 74665/2016

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES / NO
(3)	REVISED.



IN THE MATTER BETWEEN:-

DIRK CORNELIUS SENEKAL

Applicant

And

LAW SOCIETY OF THE NORTHERN PROVINCES

First Respondent

M CHADWICK

Second Respondent

M PHALA (MOYO)

Third Respondent

J FOURIE

Fourth Respondent

MJS GROBLER

Fifth Respondent

K PHUROE

Sixth Respondent

F PHAMBA

Seventh Respondent

M LEKOLOANA

Eighth Respondent

D LEBENYA

Ninth Respondent

NSO NHLAYISI

Tenth Respondent

MH MAPONYA

Eleventh Respondent

J JUGIAL

Twelfth Respondent

J J INC

Thirteenth Respondent

A RAMKUSSAN

Fourteenth Respondent

L BUGANA

Fifteenth Respondent

JUDGMENT

Kollapen J

- [1] The Applicant instituted proceedings out of this Court in terms of the Promotion of Equality and Prevention of Unfair Discrimination Act No 4 of 2000 ("Pepuda") against all of the Respondents . All the Respondents filed opposing affidavits and following a directions hearing held between the parties, it was directed that the Court will first hear and determine the question of whether the Court has jurisdiction to hear the matter and depending on the determination made, proceed to deal with the merits of the complaint.
- [2] At the hearing the Applicant represented himself while Adv Duvenhage represented the 1st to the 5th Respondents and Ms Mofokeng the 6th to the 11th Respondents. There was no appearance on behalf of the 12th to the 15th Respondents.

The background facts relevant to the jurisdictional issue

- [3] The Applicant initially instituted proceedings against the MEC for Education Gauteng and the Gauteng Department of Education in about 2005 in the Labour Court and then brought further proceedings against the MEC and the Gauteng Department of Education in the Equality Court. Those proceedings were long in duration and protracted and ultimately there was some measure of consolidation and the matter came before the Labour Court for hearing during March 2014. In a judgment delivered on the 19 August 2015 the Labour Court found that the Gauteng Department of Education unfairly discriminated against

the Applicant on the ground of disability and ordered that it pay him an amount equivalent to 12 months remuneration. It however dismissed his claims for medical aid contribution, a cash bonus, a pay progression and other relief he sought in terms of the Employment Equity Act.

- [4] The Gauteng Department of Education was represented in the litigation instituted by the Applicant by the office of the State Attorney and the 6th to the 11th Respondents dealt with the matter and or supervised the litigation during the period in question.
- [5] Following the grant of the order of the Labour Court on the 19 August 2015, the Applicant consulted with a firm of attorneys in order to bring contempt proceedings against the Gauteng Department of Education. That firm and the attorneys involved in it are the 12th to the 15th Respondents.
- [6] Notwithstanding the order made in his favour by the Labour Court, the Applicant was aggrieved by the conduct of the 6th to the 11th Respondents as well as that of the 12th to the 15th Respondents and in respect of the former, he lodged a complaint with the 1st Respondent. The 2nd to the 5th Respondents are all in the employ of the 1st Respondent.
- [7] The main thrust of the Applicant's complaint is that he alleges that the 6th to the 11th Respondents acted unprofessionally in allowing the litigation he was involved in against the Gauteng Department of Education to continue for as long as it did. In addition it is his contention that by doing so they discriminated against him on the basis of his disability. The Applicant lodged a complaint with the 1st Respondent against the 6th to the 11th Respondents. The Investigating Committee of the 1st Respondent considered the complaints lodged by the Applicant and found that there was no unprofessional conduct on the part of the 6th to the 11th Respondents and also provided its reasons for the conclusion it had arrived at.
- [8] In this regard it says the following in its reasons for its decision:-

"Indeed, if one considers the wording of Mr Senekal's comments on his email under reply and his manuscript comments on the aforementioned judgement, it is clear that the kernel of problem lies in the interpretation of the judgement – namely that he is attributing to the State Attorneys the Court's criticism of unfair discrimination which the Court has ascribed to the Gauteng Department of Education. This is not so - the Court did NOT ascribe any criticism to the State Attorney's office in this regard."
- [9] In addition the Applicant's request to the 1st Respondent was to obtain copies of all recorded communications between the Gauteng Department of Education

and their legal representatives, something the 1st Respondent described as a fishing expedition.

- [10] Following the refusal by the LSNP to uphold his complaint the Applicant then launched these proceedings and initially cited the 1st the 11th Respondents only and sought inter alia the following relief :-

"Respondents 3,7,8,9,10 and 11, shall individually and collectively, within 14 days of this ORDER, file a written submission and

[10.1] *State why the Applicants Employment Equity Claim-disability dragged on for 10 years and not resolved in a respectable time and manner;*

[10.2] *State why they should not be held accountable for the unfair and unlawful discrimination considering that they know about the disability of the Applicant and still neglected to observe the law for almost a decade;*

[10.3] *Provide this court with a (i) the written instruction(s) of the client (ii) their legal advice to the client;*

[10.4] *List ALL the Attorneys and Advocates who dealt with the matter;*

[10.5] *Clarify why the first **AGREEMENT IN Court** was NOT concluded with;*

[10.6] *State what steps they would take to prevent this OFFENCE in the future;*

[10.7] *Give reasons why this Court should NOT find you unfit and improper and remove you from the roll of Attorneys;*

[10.8] *State why a heavy ORDER OF COST should not be made against you.*

[11] *Referring/Redirecting this matter back to the LSNP and within 21-days from this ORDER,*

[11.1] *File a written submission on how you will rectify the poor quality of investigation by yourself.*

[11.2] *Re-investigate and take further appropriate action to prevent future discrimination."*

- [12] He later cited the 12th to the 15th Respondents and in his affidavit regarding their conduct says that they acted unprofessionally and did not know the law when it was expected of them to know it. He says further that they refused to

observe and uphold the law and that by doing so they unfairly discriminated against him.

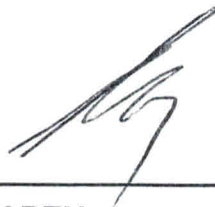
- [13] In argument before me the stance of the Applicant was that he was disabled and that a Court had reached such a conclusion in his favour and found that he was unfairly discriminated against. This was common cause between the parties. What the Applicant then seeks to do is to extrapolate the fact of his disability to suggest that any party who either acted against him or found against him or did not agree with his conclusions were by extension also guilty of unfair discrimination.
- [14] Section 13 of Pepuda requires a complainant to make out a prima facie case of discrimination before shifting the evidential burden to a respondent to prove either that the discrimination did not take place or if it did that it was fair. The Respondents argue that the Applicant has failed to even make out a prima facie case of discrimination in the complaint he has submitted and that accordingly the jurisdiction of the Equality Court has not been triggered.
- [15] Mindful that the guiding principles set out in Pepuda are to ensure the expeditious processing of cases and the use of the rules of procedure to facilitate participation, a Court must also be alive to ensuring fairness to all the parties.
- [16] In this regard it cannot be that a finding by a Court of unfair discrimination (which is what the labour Court found) can then be dispositive in respect of all prior and subsequent conduct of a diverse range of private and institutional actors. That in my view is where the Applicant has misinterpreted the effect of the Labour Court judgment.
- [17] The case against the 1st to the 5th Respondents is based largely on their failure to uphold his complaint of unprofessional conduct against the attorneys who represented the Gauteng Department of Education. Even if they acted unprofessionally that would not necessarily mean that they unfairly discriminated against him and no allegations are advanced in support of his contention that they attorneys who represented the Gauteng Department of Education unfairly discriminated against him on the basis of his disability and as I have indicated the conclusion that the Gauteng Department of Education did, cannot be simply extended to them as legal professionals.
- [18] *In Manong and Associates (PTY) LTD v City of Cape Town and another 2011 (2) SA 90 (SCA)* the Supreme Court of Appeal in dealing with Section 13 of Pepuda observed that to 'even begin with the company must at the very least show that it was treated differently ... '. The Applicant in these proceedings has not advanced any prima facie case of discrimination against any of the Respondents and accordingly his claim falls to be dismissed. To proceed to hear evidence from the Applicant and 15 Respondents in the absence of any

prima facie case being made out would in my view be offensive to the very spirit of Pepuda.

- [19] To this end the decision reached by the 1st Respondent is open to be reviewed if the Applicant is aggrieved with it. In the same vein it is open to the Applicant to approach the 1st Respondent with regard to the alleged unprofessional conduct of the 12th to the 15th Respondents.
- [20] Pepuda was enacted to deal with unfair discrimination complaints. Its efficacy and purpose stand to be diluted if it is allowed to become a vehicle to accommodate all kinds of grievances and in particular a court should be careful in not allowing the misuse of Pepuda in instances where an aggrieved party has not even got off the starting blocks in advancing a prima facie case of discrimination. This is precisely such a case.

Costs

- [21] Counsel for the Respondents sought costs in the event of the Court upholding the argument on jurisdiction. They contend that the conduct of the Applicant in making scandalous and scurrilous accusations against the Respondents and the haphazard manner in which he has litigated against them in these proceedings and previous proceedings justify an adverse costs order.
- [22] My view is that while the Applicant has certainly failed dismally in even getting off the mark, I am also of the view that he has misunderstood or misinterpreted the provisions of the Act and its implications as well as the evidentiary burden that he carries in making out a prima facie case. I would hesitate to penalise him with an adverse costs order under those circumstances.
- [23] In the circumstances I make the following order:-
- a) The Equality Court does not have jurisdiction to entertain the complaint and it is accordingly dismissed.



NJ. KOLLAPEN
JUDGE OF THE HIGH COURT,
PRETORIA

APPEARANCES

DATE OF HEARING	:	17 SEPTEMBER 2019
DATE OF JUDGMENT	:	^{OCTOBER} 17 SEPTEMBER 2019

APPLICANT : **Mr DC SENEKAL (in person)**
1ST TO 5th RESPONDENTS COUNSEL : **ADV A DUVENHAGE**
6th TO 11TH RESPONDENTS COUNSEL : **MS A MOFOKENG**