

IN THE EQUALITY COURT FOR THE DISTRICT OF DURBAN

HELD AT DURBAN

CASE NO: 45/2014

IN THE MATTER BETWEEN

SOUTH AFRICAN JEWISH BOARD OF DEPUTIES

COMPLAINANT

AND

SNOWY SMITH

RESPONDENT

JUDGMENT

A C MOOLMAN

We may have different religions, different languages, different coloured skin but we all belong to one human race.

Kofi Annan

2001 co-recipient Nobel Peace Prize

INTRODUCTION:

The complainant is the South African Jewish Board of Deputies (SAJBOD), the umbrella organisation of the South African Jewish community. The SAJBOD represents the Jewish persons in South Africa. The Respondent, as cited in the papers, is an adult male residing at 14 Shemar Court, Berea Park Road, Berea. The complaint, as set out in form 2 of the regulations to the Act¹, is that the Respondent contravened Section 10 (1) of the said Act by publishing, propagating advocating and/or communicating (disseminating) hate speech.

In the Particulars of the complaint, the Complainant avers that from October 2010 to May 2012, the complainant received reports of emails being addressed by the Respondent on an unsolicited basis to multiple recipients. The Complainant seeks the following relief from this court:

1. A declaratory order (in terms of section 21 (2) (b) of the Equality Act) that the emails which form the subject matter of the complaint constitute hate speech against the people of the Jewish faith as envisaged by section 10 of the said Act.
2. A final interdict (in terms of section 21 (2) (f) of the said Act) against the respondent interdicting and restraining him from disseminating hate speech.

¹ Promotion of Equality and Prevention of Unfair Discrimination Act, Act 4 of 2000.

3. An order that an unconditional apology (in terms of section 21 (2) (j) of the said Act) be made to South African people of the Jewish faith and
4. An order that the respondent pay the legal costs of the SAJBOD (in terms of section 21 (2) (o) of the said Act) on attorney and own client scale and that such costs to include the costs occasioned by the employment of two counsel.

The Respondent raises various defences in his answering affidavit, namely: Freedom of Speech, Fair Comment, The Truth, The Truth is not Anti-Semitic, No Hatred is propagated, and The Information is in the Public Domain and is Public Record. The complainant is represented by Mr P Jorgensen, instructed by Susan Abro Attorney. The Respondent is unrepresented.

THE EVIDENCE:

Mary Julia Kluk was the only witness for the Complainant. The Respondent was the only witness in his case. At the commencement of the hearing the Respondent brought an application to compel further particulars. This application was refused by court, as the court was of the view that the particulars were not strictly necessary for the Respondent to prepare for trial and that the particulars requested were in the court's view, matters for evidence. The court also refused the Respondent's application for an adjournment to call witnesses for the following reasons: At the directions hearings held on the 21st August 2015 the Respondent indicated that he had no witnesses to call and no witnesses statements were accordingly filed; the witnesses he intended to call would not have been able to comment on the findings of his expert witnesses (as reflected in his Answering affidavit) as their evidence would have been hearsay evidence and therefore inadmissible and lastly the court was not willing to delay the matter any further as this complaint was lodged a year ago. The following exhibit was handed into court: Exhibit A – Bundle of emails. I do not propose to repeat all the evidence on record but I will refer to the evidence in the course of my Judgment. Mr Jorgensen submitted in closing argument that the Complainant succeeded in proving its case against the Respondent. The Respondent submitted in his closing argument that none of the emails can be construed as hate speech.

EVALUATION OF THE EVIDENCE AND THE LEGAL POSITION:

It is common cause between the parties that the Respondent indeed despatched all the emails (annexed to the complaint) to numerous recipients. It would be an endless task to analyse each and every email despatched by the Respondent. I am therefore not going to deal with all the emails complained of. For the purpose of this judgment, the following emails are accordingly quoted:

Annexure i (Exhibit A-1) to the complaint, is an email dated the 19th October 2010. On the first page of the email, the following is stated:

“WHO IS THE ENEMY

For those who still have their heads in the sand and still do NOT know who the enemy is I will again explain to you in detail.

The ENEMY is –Zionist JEW, Freemasons, Communism, Fascist, Military Dictatorship NEW WORLD ORDER

Most Zionist JEW LEADERS are FREEMASONS”

At the foot of the first page of the email, the following is stated:

“The Zionist JEW NWO (new world order) hates us Gentiles or Goyim (The White People).

The Zionist JEW NWO plans are to destroy the White Race, steal all the White Mans assets and force a One World Government, Military Dictatorship on us all.

We Whites are to be servants to the Zionist JEW NWO.”

In the middle of page 2 of the email, the following is stated:

“The Zionist JEW NWO orchestrated and systematically planned the downfall of every White Owned, White Run Country in Africa, including South Africa using communism.

The Zionist JEW NWO orchestrated and systematically planned the last World War and almost every war and or major revolution in history.

Most of these Wars and major revolutions orchestrated and systematically planned by the Zionist JEW NWO have one and only one aim and that is the organised massacre, GENOCIDE of the White Race (the Gentiles), to remove the White Race from power in every country World Wide.

The Zionist JEW NWO wants to be dictators over the Gentiles (The White People).

The Zionist JEW NWO are the dictators of the World.

The Zionist JEW NWO wants to take over the World.

Their ‘MASTER PLAN’ is clearly defined and laid out in detail in the excellent 100% TRUE book ‘The Protocols of the Learned Elders of Zion.’ ”

On the 5th June 2011, the Respondent addressed an email, which email is annexed as annexure ii to the complaint. On the first page of the email, the following is stated:

“OBAMA was put in power by the Zionist JEWS Freemason, ILLuminati, Bilderberg Billionare Bankers to destroy America and force a Dictatorial Socialist Fascist Military Dictatorship One Word Government on the World.”

On the final page of the email, the following is stated:

“What is the New World Order?”

TRUE NAME

Anglo American World Empire

American + British World Empire

New World Order

Zionist JEWS Freemason, ILLuminati, Bilderberg, Billionaire Bankers

New World Order.

The Whole World will be owned by the Zionist JEWS Freemason,

ILLuminati, Bilderberg, and Billionare Bankers

Who planned orchestrated, financed every WAR for more than 100 years?

ANSWER

The Zionist JEWS Freemanson, ILLuminati, Bilderberg, Billionaire Bankers.

During their WARS more than 500 MILLION people have been MURDERED.

Its time to PROSECUTE them ALL for MURDER and WAR CRIMES.”

On the 11th July 2011, the Respondent addressed an email, which email is annexed to the complaint as annexure iii. On the second page of the email, the following is stated:

“There is only ONE Group of TERRORISTS in the World today and they are the Zionist Chabad Freemasons, ILLuminati JEWS and the Billionaire Wall Street Bankers.

We know exactly where they are.

.....

South Africa is going to be flooded with MILLIONS of illegal Immigrant and NO JOBS because the rest of Africa is involved is Zionist JEW planned, promoted WARS.”

Later in the email, the following is stated:

"The ZIONIST JEWS WORLD WAR 3 HAS STARTED.

The WHITE Boer Farmer is NOT your Enemy.

ZIONST JEW HYPOCRITES

These WAR Mongering New World Order Zionist JEWS have a cheek to accuse us of destroying the planet with CO2 gas but what about their BOMBS, Rockets and explosives every day in their WARS World Wide?

ZIONIST JEW HYPOCRITES"

On the 22nd July 2011, the respondent addressed an email, which email is annexed to the complaint as annexure iv. The following extract appears at the first paragraph of the email:

"Just say 'NO' to JEW Carbon Taxes"

"Please, especially all GENTILES, watch the attached report on carbon tax

It is important, and then pass it on to as many people as you can!

THE BILLIONARE JEW BANKERS with their dirty fingers in the money machine are getting ready for their greatest coupe!"

On the 26th July 2011, the Respondent addressed an email, which email is annexed to the complaint as annexure v. On the first page of the email, the following is stated:

"GENOCIDE OF THE GENTILES OF THE WORLD

Detailed plans how the Zionist JEWS are going to MURDER the GENTILES of the World.

This clearly is PREMEDITATED MURDER, GENOCIDE OF THE GENTILES OF THE WORLD.

ACCESSORY BEFORE THE FACT

Every member of the Zionist JEWS ILLUMINATI is an ACCESSORY BEFORE THE FACT, ACCESSORY TO MASS MURDER, GENOCIDE OF THE GENTILES OF THE WORLD."

On the 7th October 2011, the respondent addressed an email, which email is annexed to the complaint as annexure x. The following is stated in the e-mail:

“More than 4000 White Farmers have been TORTURED, RAPED

and BRUTALLY MURDERED since 1994

More than 50 000 Whites have been TORTURED, RAPED and

BRUTALLY MURDERED since 1994.

BLACK RACIST HATE CRIMES AGAINST WHITES.

THANKS TO THE ZIONIST JEWS NEW WORLD ORDER.”

On the 11th April 2012, the Respondent addressed an email, which email is annexed to the complaint as annexure xi. The introductory paragraph of the email states as follows:

“Don’t be fooled the JEWS DID 911

911 was an OUTSIDE JOB premeditated MURDER perpetrated by

JEW MOSSAD.

Don’t be fooled!”

On the fourth page of the email the following extract appears:

“GENOCIDE of GENTILES by JEWS

62 000 000 MURDERED

62 MILLION WHITE RUSSIAN CHRISTIANS MURDERED BY JEWS.

GENOCIDE OF GENTILES BY JEWS.

USSR 1917 – 1987 PLANNED GENOCIDE 62 MILLION MURDERED

BY JEWS.

JEWS MURDERED 62 MILLION WHITE CHRISTIANS IN

BOLSHEVIK RUSSIAN COMMUNISM.

JEWS FORCED COMMUNISM ON THE RUSSIAN PEOPLE.

Joseph Vissarionovich Stalin was a JEW PUPPET.

JEWS PLANNED, FINANCED, ORCHESTRATED THE BOLSHEVIK

UPRISING GENOCIDE IN RUSSIA.

BY DECEPTION WE WILL MAKE WAR.

There was NO COLD WAR.

The Jews owned and controlled the USA.

The JEWS ROBBER BARONS owned and controlled the USSR

The JEWS both USA and USSR were just making lots of money
developing and selling Arms and ammunition.

Another JEW SCAM.

The Russians did NOT help the ANC to destroy South Africa it was
the JEWS.

THE WAR MONGERING JEWS”

On the 7th August 2012, the respondent addressed an email, which email is annexed to the
complaint as annexure xiv. On the 6th page of the email, the following is stated:

“Always remember the JEWS, MOSSAD motto:

“BY DECEPTION WE WILL MAKE WAR”

The JEWS do NOT do the fighting themselves they get others to do the fighting for them.

Get the country DIVIDED fighting each other.”

In determining whether or not the aforesaid emails amount to hate speech, the court has to
consider various aspects. One of the objects of the Equality Act – **supra** is to give effect to
the letter and spirit of the Constitution. Section 2 (b) (v) of the said Act describes the object
of the Act as being **inter alia** “the prohibition of advocacy of hatred, based on race,
ethnicity, gender or religion, that constitutes incitement to cause harm as contemplated in
section 16 (2) (c) of the Constitution and section 12 of this Act”.

Section 10 (1) of the Promotion of Equality and Prevention of unfair Discrimination Act
supra reads as follows:

“Subject to the provisions of 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 be reasonably be construed to demonstrate a clear intention to-

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

(c) Promote or propagate hatred.”

‘Prohibited grounds’ as defined in section 1 of the said Act are:

- (a) Race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth; or
- (b) Any other ground where discrimination based on that other ground-
 - (i) Causes or perpetuates systemic disadvantage;
 - (ii) Undermines human dignity;
 - (iii) Adversely affects the equal enjoyment of a person’s rights and freedom in a serious manner that is comparable to discrimination on a ground in paragraph (a).

Section 16 of the Constitution of the Republic of South Africa, 1996 provides as follows:

16. Freedom of expression

- (1) Everyone has the right to freedom of expression, which includes-
 - (a) Freedom of the press and other media;
 - (b) Freedom to receive or impart information or ideas;
 - (c) Freedom of artistic creativity; and
 - (d) Academic freedom of scientific research.
- (2) The right in subsection (1) does not extend to-
 - (a) Propaganda for war;
 - (b) Incitement of imminent violence; or
 - (c) Advocacy of hatred that is based on race, ethnicity, gender or religion, and that constitutes incitement to cause harm.

The test for determining whether speech causes harm is an objective one. The focus must be on whether the expression itself causes or is likely to cause harm and not on the subjective intention of the person articulating it. The test, therefore, is whether a reasonable person assessing the advocacy of hatred on the stipulated grounds within the context and having regard to its impact and consequences would objectively conclude that there is a real likelihood that the expression causes harm. There must be a real likelihood that the expression causes harm before it can be deemed to be hate speech.²

The Constitutional Court in *Islamic Unity Convention v Independent Broadcasting Authority*³ acknowledged that the concept of harm includes speech that impinges adversely on the dignity of others.

² *Freedom Front v South African Human Rights Commission* 2003 11 BCLR 1298A-C (SAHRC).

³ 2002 (4) SA 294 (CC) at 32.

In *Afri-Forum v Malemma (Vereeniging van Regslui vir Afrikaans as amicus curia)*⁴ the Equality Court held that 'hate speech' at a social level is prohibited for four reasons:

1. To prevent disruption to public order and social peace stemming from retaliation by victims;
2. To prevent psychological harm to targeted groups that would effectively impair their ability to positively participate in the community and contribute to society;
3. To prevent both visible exclusion of minority groups that would deny them equal opportunities and benefits of society and invisibly exclude their acceptance as equals
4. To prevent social conflagration and political disintegration.

In the matter of *Polakow (Complainant) vs Radio Islam (Respondent)*⁵ the Broadcasting Complaints Tribunal considered a broadcast which support was expressed for suicide bombers and held **inter alia**: "The tone in which the commentary is made is, however, strident, emotive, unforgiving and blatantly accusatorial. The commentary is also made in a propagandistic tone. One cannot escape the hate that flows from the comment and tone thereof. We have come to the conclusion that the hate speech lies in the content and the tone which is incitatory in the extreme."

Section 12 of the Promotion of Equality and Prevention of Unfair Discrimination Act-**supra** deals with the Prohibition of dissemination and publication of information that unfairly discriminates. This section reads as follows: No person may-

- (a) Disseminate or broadcast any information;
- (b) Publish or display any advertisement or notice,

That could reasonably be construed or reasonably be understood to demonstrate a clear intention to unfairly discriminate against any person: Provided that **bona fide** engagement in artistic creativity, academic and scientific inquiry, fair and accurate reporting in the public interest or publication of any information, advertisement or notice in accordance with section 16 of the Constitution, is not precluded by this section.

In *Jamiat Ul-Ulama of Transvaal v Johncom Media Investment Ltd and others*⁶ Jajbhay J in his discussion of section 16 of the Constitution-**supra** stated **inter alia**:

"Although freedom of expression is fundamental in our democratic society, it is not a paramount value. It must be construed in the context of other values enshrined in our Constitution, in particular the values of human dignity, freedom and equality. Our Constitution seeks to promote and to protect the legitimate interests of individuals and groups to have their reputation intact."

⁴ 2011 4 ALL SA 293 (EqC); 2011 12 BCLR 1289 (EqC).

⁵ [2003] JOL 10768 (BCTSA)

⁶ (1127/06) [2006] ZAGPHC 12 (3 February 2006).

The National Chairperson of the South African Jewish Board of Deputies, Ms Mary Julia Kluk, stated **inter alia** in her evidence that:

- the contents of the emails published by the Respondent is aimed at propaganda against the Jewish community and faith.
- the emails clearly label hatred against the Jewish community, which is extremely hurtful and degrading.
- The emails construe that the Jews are the enemy; the Jews are evil people; the Jews are responsible for wars; the Jews are terrorists, murderers and hypocrites; the Jews want to control the world; the Jews are not welcome in South Africa and that the Jews are untrustworthy and dishonest people.

The Respondent stated **inter alia** in his evidence that:

- He obtained his information from the internet, which information is true and correct.
- He did not make any videos.
- The Jewish websites give the true version of what happened in history.
- He does his own investigation pertaining to the truth of the information obtained from the internet before distributing any information via email.
- The emails are not hate speech as 90 % of the websites from where he obtains his information from is Jewish websites.
- He has the right to publish such information, as the public has the right to know the truth.
- World news is very important as everybody will be affected if a Third World War breaks out.
- His aim is to educate people and he wants people to know who is behind terrorism.
- The Jews must be prevented from taking over the world.

The Respondent conceded in cross-examination that the email dated the 19th October 2010, Exhibit A -1, portrays the Jewish Faith in a bad light.

The court, in assessing whether the Respondent's emails (which were sent to multiple recipients) fall within the definition of hate speech, will have to ask the following questions:

1. Are the contents of the emails communicated or disseminated to numerous recipients based on one or more prohibited grounds?
2. Could the contents of the emails reasonably be construed as a demonstration of a clear intention to be hurtful, harmful or to incite harm and promote or propagate hatred to the people of the Jewish faith, belief or ethnic origin? It must be remembered that the intention of the person making the utterance is wholly irrelevant.⁷

⁷ African National Congress v Harmse and Another: In Re Harmse v Vawda (Afriforum and Another Intervening) 2011 (5) SA 460 (GSJ) para 63.

- (I also agree with the following submissions made by the complainant in the complaint: The court has to consider the content, context and tone of the emails. In other words, in which manner were these emails published? Was it published seriously, clearly and obviously without any respect shown towards those involved? Is the tone in which the commentary was made strident, emotive, unforgiving and blatantly accusatorial? Is the commentary made in a propagandistic tone?)
3. Do the emails fall within the prescribed exclusion as set out in Section 12?⁸ An assessment needs to be made whether or not the emails communicated are protected under Section 12 **supra**. Thus, the provisions of Section 12 can be raised as a defence.
 4. Do the emails enjoy the protection afforded by Section 16 (1) of the Constitution?-**supra**.

In answering the first question, it is clear that the emails fall squarely under (a) of the prohibited grounds as defined in section 1 of the Promotion of Equality and Prevention of Unfair Discrimination Act –**supra** more specifically: religion, belief, ethnic or social origin and culture and even under (b) (ii) any other ground, namely ‘undermines human’ dignity. It is further clear from the contents of the emails that the Respondent has contravened Section 10 (1) of the said Act when he disseminated the emails to various recipients, which emails could be, in the court’s view, reasonably construed to demonstrate a clear intention to be hurtful, to incite harm and to propagate hatred against the Jewish people, ethnic origin and belief. The court is accordingly also satisfied that the defences raised by the Respondent hold no merit. The court finds that the Respondent is not protected by the exclusions in Section 12-**supra**, namely **bona fide** engagement in fair and accurate reporting in the public interest or publication of any information in accordance with section 16 of the Constitution. Neither is the Respondent in the court’s view protected by the provisions in Section 16 (1) of the Constitution-**supra**, freedom of expression, as this right does not extend to advocacy of hatred that is based on race, ethnicity, gender or religion that constitutes incitement to cause harm as stipulated in Section 16 (2) (c) of the Constitution – **supra**.

The allegations of Jewish conspiratorialism (hate speech) are clearly designed to diminish the public’s estimation of the worth of the Jewish persons. This is clearly speech that impinges adversely on the dignity of the Jewish people. The court finds the contents of the emails to be blatantly accusatorial and offensive. Any reasonable person assessing the advocacy of hatred would in my view conclude that the expressions are likely to cause harm. The values of human dignity, freedom and equality are placed far above any freedom of expression. An individual’s freedom of expression cannot in the court’s view prevail against such hate speech, as in the present matter, where the

⁸ Promotion of Equality and Prevention of Unfair Discrimination Act, Act 4 of 2000.

dignity of the Jewish people, the ethnic origin of the Jewish people and the Jewish belief or faith are targeted. It is clear from the contents of the emails quoted below that the Jewish people are referred to as:

- The enemy and dictators: "THE ENEMY is-Zionist JEW, Freemasons, Communism, Fascist, Military Dictatorship NEW WORLD ORDER." "The Zionist JEW NWO wants to be dictators over the Gentiles (The White People). The Zionist JEW NWO are the dictators of the World. The Zionist JEW NWO wants to take over the World."
- Murderers and war criminals: "The Zionist JEWS Freemason, ILLuminati, Bilderberg, Billionaire Bankers. During their WARS more than 500 MILLION people have been MURDERED. It is time to PROSECUTE them ALL for MURDER AND WAR CRIMES."
- Terrorists: "There is only One group of TERRORISTS in the World today and they are the Zionist Chabad Freemasons, ILLuminati JEWS and the Billionaire Wall Street Bankers."
- Torturers, rapists and murderers: "More than 4000 White Farmers have been TORTURED, RAPED and BRUTALLY MURDERED since 1994. More than 50 000 Whites have been TORTURED, RAPED and BRUTALLY MURERED since 1994. BLACK RACIST HATE CRIMES AGAINST WHITES. THANKS TO THE ZIONIST JEWS NEW WORLD ORDER."
- People who hate the non-Jewish people: "The Zionist JEW NWO (new world order) hates us Gentiles or Goyim (The White People)."
- Thieves and Dictators: "The Zionist JEW NWO plans to destroy the White Race, steal all the White Man's assets and force a One World Government, Military Dictatorship on us all."
- Supporters of communism: "The Zionist JEW NEW orchestrated and systematically planned the downfall of every White Owned, White Run Country in Africa, including South Africa using communism."
- People who planned wars and revolutions: "The Zionist JEW NWO orchestrated and systematically planned the last World War and almost every war and or major revolution in history." "The Whole World will be owned the Zionist JEWS Freemason, ILLuminati, Bilderberg, and Billionaire Bankers Who planned, orchestrated, financed every WAR for more than 100 years."
- Dishonest people: "Just say no to JEW Carbon Taxes. Please, especially all GENTILES, watch the attached report on carbon tax. It is important, and then pass it on to many people as you can! THE BILLIONARE JEW BANKERS with their dirty fingers in the money machine are getting ready for their greatest coupe!"
- People who were responsible for the attack on the World Trade Centre, New York City, on the 11th September 2001: "Don't be fooled the JEWS DID 911. 911

was an OUTSIDE JOB premeditated MURDER perpetrated by JEW MOSSAD.
Don't be fooled!"

RULING:

1. Declaratory order: The emails which form the subject matter of the complaint impinge adversely on the dignity of the Jewish people and constitute hate speech against people of the Jewish faith or belief and ethnic origin.
2. Interim order granted on the 12th November is hereby confirmed. The Respondent is restrained from disseminating any further hate speech.
3. The Respondent is hereby ordered to furnish an unconditional written apology as envisaged by sec 21 (2) (j) of the Promotion of Equality and Prevention of Unfair Discrimination Act *supra*. The said apology should be addressed to the Complainant and is to be handed to the Clerk of Court within ten days of the granting of this order.
4. The content of the said apology is to conform substantially with the requirements as set out in the dictum of Curlewis J in:⁹ "An apology should not only contain an unreserved withdrawal of all imputations made, but should also contain an expression of regret that they were ever made. A mere retraction cannot be called a full and free apology."
5. The clerk of this court shall transmit the original thereof to the complainant as soon as possible after receipt thereof.
6. Each party to pay its own costs.

DATED AT DURBAN THIS 15TH DAY OF DECEMBER 2015.



A C MOOLMAN.

ADDITIONAL MAGISTRATE: DURBAN

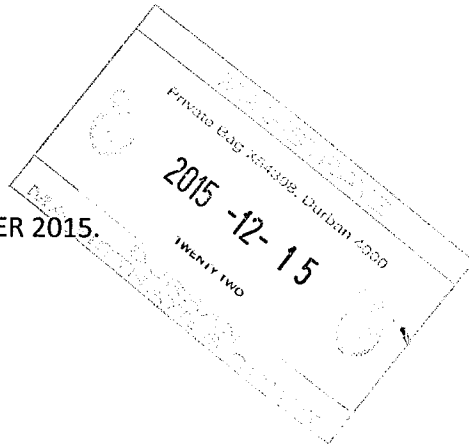
APPEALS AND REVIEWS

Sec 23. Appeals and reviews (PROMOTION OF EQUALITY AND PREVENTION OF UNFAIR DISCRIMINATION ACT NO.4 OF 2000)

(1) Any person aggrieved by any order made by an equality court in terms of or under this Act may, within such period and in such manner as may be prescribed, appeal against such order to the High Court having jurisdiction or the Supreme Court of Appeal, as the case may be.

(2) On appeal, the High Court or the Supreme Court of Appeal, as the case may be, may make such order in the matter as it may deem fit.

⁹ Ward Jackson v Cape Times Ltd 1910 WLD at page 257.



(3) Notwithstanding subsection (1), any person aggrieved by any order made by an equality court may, subject to the rules of the Constitutional Court, appeal directly to the Constitutional Court.

(4) In the event of conflicting decisions being made by presiding officers in matters in respect of paragraph (b) of the definition of 'prohibited grounds', the Minister may refer a stated case to the Supreme Court of Appeal or the Constitutional Court for a determination.

(5) (a) If a presiding officer in a magistrates' court makes a determination relating to a ground of discrimination referred to in paragraph (b) of the definition of '**prohibited grounds**', the decision must, after the finalisation of the proceedings and in the prescribed manner, be submitted to the High Court having jurisdiction for review.

(b) The High Court in question must, after considering the matter, make a determination in respect of the ground referred to in subsection (5) (a) and thereafter may make any order in terms of this Act as it deems fit.

(c) The operation of subsection (5) (a) is suspended until any appeal contemplated in this section is finalised.