

PRO BONO & HUMAN RIGHTS ALERT

IN THIS ISSUE

THE K-WORD MERELY A SWEAR WORD ACCORDING TO MOMBERG . . .

According to Vicki Momberg - who has not only been found to have committed hate speech, but also recently found guilty of four counts of crimen injuria after racially abusing three South African Police Service (SAPS) helpline operators and our client Constable Mkhondo on the evening of 3 February 2016 - the K word is merely a swear word that should not be taken personally "unless that person feels or believes they are, what they are be[ing] called . . ."

THE K-WORD MERELY A SWEAR WORD ACCORDING TO MOMBERG . . .

The report was compiled upon the request of Momberg's legal team but not relied upon after it cast Momberg in a negative light.

When trying to assist Momberg Constable Mkhondo was met with a racist attack during which the k-word was used several times.

According to Vicki Momberg - who has not only been found to have committed hate speech, but also recently found guilty of four counts of crimen injuria after racially abusing three South African Police Service (SAPS) helpline operators and our client Constable Mkhondo on the evening of 3 February 2016 - the K word is merely a swear word that should not be taken personally "unless that person feels or believes they are, what they are being] called . . ."

This appears from a pre-sentence report that was compiled by Ms R Naidoo from the Gauteng Department of Social Development for purposes of the sentencing proceedings in the criminal case currently underway in the Randburg Magistrate's Court. The report was compiled upon the request of Momberg's legal team but not relied upon after it cast Momberg in a negative light. The state however decided to make use of the report and called Ms Naidoo to the stand last week when the sentencing proceedings got underway. The report included reference to the fact that the previously appointed social worker, Ms Sekoba, was forced to recuse herself from the case after she found herself falling victim to Momberg's insults and degradation.

Momberg was found guilty of four counts of crimen injuria in November 2017 after she verbally insulted and intentionally injured and impaired the dignity of three SAPS helpline operators after contacting the 10111 SAPS helpline. She was also found guilty of verbally insulting our client, Constable Mkhondo on the night of 3 February 2016, when he and his colleagues tried to assist her after she had allegedly been the victim of a smash and grab incident. When trying to assist Momberg Constable Mkhondo was met with a racist attack during which the k-word was used several times. Momberg not only attacked Constable Mkhondo in his personal capacity, but also made racist remarks in relation to all black people in general.

Best Lawyers 2018 South Africa Edition

Included 53 of CDH's Directors across Cape Town and Johannesburg.

Recognised Chris Charter as Lawyer of the Year for Competition Law (Johannesburg).

Recognised Faan Coetzee as Lawyer of the Year for Employment Law (Johannesburg).

Recognised Peter Hesseling as Lawyer of the Year for M&A Law (Cape Town).

Recognised Terry Winstanley as Lawyer of the Year for Environmental Law (Cape Town).

Named Cliffe Dekker Hofmeyr Litigation Law Firm of the Year.

Named Cliffe Dekker Hofmeyr Real Estate Law Firm of the Year.



THE K-WORD MERELY A SWEAR WORD ACCORDING TO MOMBERG . . .

CONTINUED

Momberg has since filed a notice to oppose and now has ten days within which to file any answering papers.



In September 2016, with the assistance of the CDH Pro Bono and Human Rights Practice (Pro Bono Team), Constable Mkhondo and the South African Human Rights Commission (SAHRC) brought a hate speech claim in the Randburg Equality Court (Equality Court). On 8 June 2017, the Equality Court found in Constable Mkhondo's favour and confirmed that Momberg's remarks amounted to hate speech and infringed Constable Mkhondo's constitutional rights to equality and human dignity. The Equality Court ordered that Momberg pay damages to Constable Mkhondo in the sum of R100 000 (one hundred thousand Rand) and that she perform community service for a total of 100 (one hundred) hours over a period of six consecutive months and attend sensitivity training facilitated by the SAHRC. Momberg was also ordered to write an unconditional apology to Constable Mkhondo – which was to be published on Twitter/Facebook and on the SAHRC's website.

Ms Naidoo, not only made reference to the above Equality Court order in her pre-sentence report but also recommended that the Randburg Criminal Court, impose similar sanctions to those imposed by the Equality Court, including that Momberg be ordered to make unconditional written apologies to all

of the victims within five days of the order being made and that she attend equality sensitivity training, also to be facilitated by the SAHRC, within six months from the date of the order along with periodic imprisonment (over weekends) in terms of s285(1) of the Criminal Procedure Act.

Unfortunately, despite all that has transpired to date, Momberg has failed to comply with any/all aspects of the Equality Court order. The Pro Bono Team was thus forced to serve contempt of court papers on Momberg on the morning of 9 March 2018, when she appeared at the Randburg Criminal Court for her sentencing hearing. This after Momberg refused to provide her current physical address.

We are seeking imprisonment for up to six months, suspended for two months, for Momberg's failure to comply with the Equality Court order in the contempt of court application. Momberg has since filed a notice to oppose and now has ten days within which to file any answering papers.

The sentencing hearing will resume today (16 March 2018) in the Randburg Criminal Court, in order for the prosecution to call Ms Sekoba to the stand.

Tricia Erasmus

OUR TEAM

For more information about our Pro Bono & Human Rights practice and services, please contact:



Jacquie Cassette
National Practice Head
Director
Pro Bono & Human Rights
T +27 (0)11 562 1036
E jacquie.cassette@cdhlegal.com



Tricia Erasmus
Senior Associate
Pro Bono & Human Rights
T +27 (0)11 562 1358
E tricia.erasmus@cdhlegal.com



Brigitta Mangale
Senior Associate
Pro Bono & Human Rights
T +27 (0)21 481 6495
E brigitta.mangale@cdhlegal.com

BBBEE STATUS: LEVEL THREE CONTRIBUTOR

Cliffe Dekker Hofmeyr is very pleased to have achieved a Level 3 BBBEE verification under the new BBBEE Codes of Good Practice. Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

This information is published for general information purposes and is not intended to constitute legal advice. Specialist legal advice should always be sought in relation to any particular situation. Cliffe Dekker Hofmeyr will accept no responsibility for any actions taken or not taken on the basis of this publication.

JOHANNESBURG

1 Protea Place, Sandton, Johannesburg, 2196. Private Bag X40, Benmore, 2010, South Africa. Dx 154 Randburg and Dx 42 Johannesburg.
T +27 (0)11 562 1000 F +27 (0)11 562 1111 E jhb@cdhlegal.com

CAPE TOWN

11 Buitengracht Street, Cape Town, 8001. PO Box 695, Cape Town, 8000, South Africa. Dx 5 Cape Town.
T +27 (0)21 481 6300 F +27 (0)21 481 6388 E ctn@cdhlegal.com

©2018 2243/MAR

