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03RD DECEMBER 2010

CASE FLOW MANAGEMENT
LETTIE HAZEL OORTMAN / ST THOMAS AQUINAS
PRIVATE SCHOOL AND BERNARD LANGTON
EQUALITY COURT CASE NO: 1/2010
YOUR FAX DATED 30TH NOVEMBER 2010 REFERS

A copy of the written judgment may be obtained from the Clerk of the Civil Court.


H P FERREIRA
MAGISTRATE : WITBANK

/acj

FROM

- (e) *the washbasin are too high for her to reach to enable her to wash her hands.*
- (f) *the toilet allocated to her is a normal toilet (and not a special toilet for disabled persons).*

The questions raised in this application were:

- (a) *did respondents discriminate against Chelsea by not providing all the necessary facilities to her as a physical disable person?*
- (b) *if they discriminated against her, was it fair or unfair discrimination?*

In terms of section 9(1) of the Constitution of the Republic of South Africa, Act No. 108 of 1996, everyone is equal before the law and has the right to equal protection and benefit of the law.

No person may unfairly discriminate directly or indirectly against another person on the ground of physical disability – Section 9(4) of the Constitution and Section 6 of the Equality Act, No. 4 of 2000.

Section 1 of the Equality Act defines "discrimination as :

"any act or omission, including a policy, law, rule, practice, condition or situation which directly or indirectly

- (a) *imposes burdens, obligations or disadvantage on, or*
- (b) *withholds benefits, opportunities or advantages from, any person, on one or more of the prohibited grounds."*

"Disability" is one of the prohibited grounds – Section 1 of the Equality Act.

Section 9 of the Equality Act prohibits unfair discrimination against any person on grounds of disability.

It reads:

9 Prohibition of unfair discrimination on ground of disability

Subject to section 6, no person may unfairly discriminate against any person on the ground of disability, including

- (a) *denying or removing from any person who has a disability, any supporting or enabling facility necessary for their functioning in society;*
- (b) *contravening the code of practice or regulations of the South African Bureau of Standards that govern environmental accessibility;*
- (c) *failing to eliminate obstacles that unfairly limit or restrict persons with disabilities from enjoying equal opportunities or failing to take steps to reasonably accommodate the needs of such persons.*

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It is an unnecessary burden on her to expect from her to ask the teachers first to unlock the toilet door.. before she can use the toilet.

The problem about the library being on the first floor can easily be solved by bringing the needed library books to her class-room – where she will be able to do her research.

In the light of abovementioned conclusions, I came to the finding that the school unfairly discriminated against Chelsea by failing to take the necessary steps to accommodate her.

Second respondent confirmed in his affidavit dated 19th January 2010 that Chelsea is a learner at the school.

In his evidence under oath he told the court that he had a discussion with complainant about Chelsea. The conversation between them was about the fact that Chelsea failed almost every year since she has been enrolled at the school.

Complainant admitted that Chelsea failed several times.

She, however, testified that Mr. Langton reminded her that there are no schools in Witbank available for disabled children.

He then suggested that complainant must come with a positive answer about this problem.

Mr. Langton testified that they never discussed Chelsea's disability.

Complainant there and then decided to take Chelsea out of the school.

She testified that Chelsea does not want to go back to the school.

Presently she is doing home-schooling.

Complainant, however, want to take her back to ST Thomas Aquinas School.

The respondent's lawyer, Mr. Oelofse, argued that the matter is moot as Chelsea has left school.

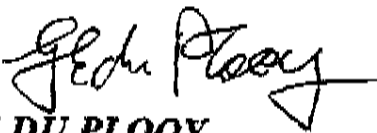
The majority of the constitutional court in the Pillay – case, supra, paragraph 115/512 A, decided that the fact that the matter is moot does not alter that position.

The equality court may make a declaratory order and also grant an interdict restraining unfair discrimination. (Section 21 of the Equality Act).

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In the light of abovementioned findings, the following order is made:

- 1) *Respondents may not refuse to re-admit Chelsea as a learner at ST Thomas Aquinas Private School on the ground of her physical disability.*
- 2) *In the case of Chelsea being re-admitted on complainant's request, the first respondent is ordered to take reasonable steps to remove all obstacles to enable Chelsea to have access to all the class-rooms and the toilet allocated to her by using a wheelchair. Reasonable steps that can be taken are:*
 - a) *to build ramps at the classes and toilet where she has to attend and to*
 - b) *build in a toilet and a washbasin for disable persons. (The door should not be locked). To take these necessary steps, would be to the benefit of not only Chelsea but also to other persons with a physical disability in the future.*
- 3) *Second respondent is ordered to investigate the alleged strained relationship between Chelsea and her teachers and to take the necessary steps to solve the problems. Teachers should get the necessary training and gain experience in handling children with disabilities.*
- 4) *Neither of the parties requested costs in this application. No order to costs is accordingly made.*



G E DU PLOOY
ADDITIONAL MAGISTRATE
EQUALITY COURT, DISTRICT WITBANK
01ST DECEMBER 2010