



SOUTH AFRICAN HUMAN RIGHTS COMMISSION REPORT

File Ref No: MP/2011/0035

In the matter between:

Nyalungu JB, Mr
(former Educator)

Complainant

And

Dumisani High School Learners

First Respondent

Department of Education

Second Respondent

REPORT

1. Introduction

1.1. The South African Human Rights Commission (hereinafter referred to as the "**Commission**") is an institution established in terms of Section 181 of the Constitution of the Republic of South Africa Act, 108 of 1996 (hereinafter referred to as "*the Constitution*").

1.2. The Commission is specifically required to:

1.2.1. Promote respect for human rights;

1.2.2. Promote the protection, development and attainment of human rights; and

1.2.3. Monitor and assess the observance of human rights in the Republic.

1.3. Section 184(2) of the Constitution empowers the Commission to *investigate and report on the observance of human rights* in the country.

1.4. The Human Rights Commission Act, 54 of 1994 (Hereinafter referred as “HRCA”, provides the enabling framework for the powers of the Commission.

Section 9(6) of the HRCA determines the procedure to be followed in conducting an investigation regarding the alleged violation of or threat to a fundamental right.

2. Parties

2.1. The complainant, JB Nyalungu, is an employee of the second respondent and a former educator at Dumisani High School (the School) in Mkhuhlu, Mpumalanga.

2.2. The first respondents (herein after referred to as “the learners”) were learners at the School, who are alleged to have labelled the complainant “**a Witch**”. For purposes of this report and in line with the approach adopted by courts, the identity of the parents and the learners is not disclosed. In *Governing body of the Rivonia*

Primary School and another v MEC for Education Gauteng Province and another [2012] 1 All SA (GSJ) at paragraph [96-98] and Johncom Media Inv LTD v M and others 2009 (4) SA 7 (CC) at paragraph [42], the court held that “disclosing identities of children or their parents could be prejudicial to the learner and has the potential to isolate the child involved”.

2.3. The second respondent (hereinafter referred to as “the department”) is the Department of Education in Mpumalanga and employer of the complainant.

3. Background to the complaint

3.1. The Commission received a complaint from the complainant on 17 March 2011.

3.2. The complainant alleged that on 15 September 2011 at the School, the learners instigated allegations that he is a witch. A grade eight learner reportedly “cried and hysterically claimed that she was seeing the complainant carrying green snakes in both his hands and frightening her with the snakes as she was sitting in class”. The complainant was subsequently called to the principal’s office and the principal informed him formally about the allegations.

3.3. On 20 September 2011, the learners staged a protest and demanded that the complainant be fired or removed from the School as he allegedly practiced witchcraft. Later that day, the School Management, the complainant, the police, the local Induna and the School Governing Body held a meeting to discuss the matter. The complainant was subsequently offered an escort home for safety and he declined it as he felt safe.

3.4. As a result of the accusations, the complainant felt harassed for the whole week. He further felt that the relevant stakeholders, and in particular the department, failed to deal with the harassment at the workplace as, in his view, the department concerned itself only with restoring normality at the School.

3.5. The complainant submitted that the accusations "defamed him and tarnished his character and public image as a human being and a worker". Further that the accusations jeopardised his effectiveness to work within the same school and also impacted on his performance in the interviews for principal which he attended on 23 September 2011 at a nearby school within the same community. Finally, that the accusations affected his family and his image in the church where he

