

JASA

Justice Alliance of South Africa

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Please reply to: John Smyth QC
Honorary Director 083 653 8804

9 January 2008

Nkosi Mwelo Nonkonyana
The Chairperson
Eastern Cape House of Traditional Leaders
Contralesa
Manpower Building
3rd Floor Office 12
Mthatha 5699
BY FAX: 047-532-5799/032-252-0126

Dear Sir,

Bonani Yamani DOB 19 June 1988 ID No 8806195259082

Thank you for your letter of 6 December in reply to mine of 4 December. The delay in replying has been due to our desire to clarify a number of points which you raise, and of course to the holiday season intervening. We wish you a happy new year.

First, may I assure you that there is no question of “anger” here, nor are we wishing to “attack” your organisation. JASA is simply concerned that the conduct which you rightly describe as “criminal” should not reoccur. Indeed in constitutional matters such as this you will know that the principle of procedure is that all interested parties in the matter should be joined in the proceedings even if no blame is alleged against them. We do however appreciate that Contralesa is a non-statutory body which was not directly concerned in what occurred.

Having said that, we note that you “maintain that (circumcision) ought to be administered by Traditional Leaders” and it seems to us to follow that you and Contralesa are therefore interested parties who ought to have the opportunity to address the court on whether an order or declaration should be made that would forbid traditional circumcision without full consent in the future. You will be aware that section S.38 of the Constitution (which gives JASA the right to take this matter to Court) deals with :”threatened” breaches of rights, as well as actual infringements.

Executive Board

Tim Makamu (Chairman), Stephen van Rhyn (Vice-Chairman), Tendai Musikavanhu,
Nigel Desmond, Roger Gifford, John Smyth

If as you say, you regard the conduct that occurred as “criminal” we are at a loss to understand why you are not prepared to condemn it publicly in an unequivocal manner, and provide an assurance that Contralesa will do everything in its power to prevent any similar incident in the future. If you were to do that, there would be no reason to join you in the suit. Instead of that you were quoted in the Daily Despatch as saying that a youth who refused traditional circumcision should be ostracised, and that would constitute “fair discrimination”, not “unfair discrimination.” Are you prepared to retract that statement?

We also find it difficult to understand why you are not prepared to investigate the matter and assist us in identifying and bringing to court those you describe as criminals. Surely your organisation would be able to identify the traditional surgeon for the area.

You ask why Yamani has not laid criminal charges. In fact some time before he was abducted, he went to the Police and sought a protection order. He wrote a written complaint at King William’s Town Police station. The result was that he was visited by a police officer in the company of his father and threatened with force if he did not submit to circumcision. As a result of that experience Yamani did not think it worthwhile to attempt to lay charges after the assault. Instead he took the matter to the Press and later to ourselves.

May we respectfully invite you to take legal advice in this matter. We shall be filing our complaint in the Equality Court in the next two or three weeks.

Yours sincerely,

John J Smyth QC
On behalf of the Executive Board of JASA

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