



## **COMPLAINANTS' PARTICULARS OF CLAIM**

1. The First Complainant is a non-profit making voluntary association with the objectives of upholding the Bill of Rights and Constitution of South Africa in all respects and entitled to sue in its own name under the provisions of its constitution. It acts herein in the interests of its members and in the public interest and brings this complaint pursuant to section 20(1)(d) and (e) of the Promotion of Equality and Prevention of Unfair Discrimination Act (Act No 4 of 2000), hereinafter called 'the Act', and pursuant to section 38 of the Constitution of South Africa, 1996 in respect of a threatened infringement of the Bill of Rights. The First Complainant's details are set out in Form 2 filed with this pleading pursuant to Regulation 6(1) of the Act.
2. The Second Complainant is a student of full age, and the son of the First Respondent, who was living at home with his parents in the Masele Location in the Eastern Cape at the time of the events hereinafter complained of. His details are provided in Form 2 filed with this pleading.
3. The First Respondent is the father of the Second Complainant. His details are set out in Form 2 filed with this pleading.
4. The Second Respondent is the Chairperson of the Eastern Cape House of Traditional Leaders, cited herein in his official capacity as the leader of the traditional community which exercises influence and jurisdiction in the Eastern Cape in respect of traditional practices, pursuant to the House of Traditional

Leaders Act No 1 of 1995(Eastern Cape) and the Eastern Cape Traditional Leadership and Governance Act No 4 of 2005. His deputy chairperson has stated to the Press that he believes that a youth who refuses circumcision initiation school should be ostracised by the community. His details are set out in Form 2 filed with this pleading.

5. The Third Respondent is the Chairperson of the Eastern Cape Provincial Congress of Traditional Leaders of South Africa (CONTRALESA), cited herein in his official capacity, and as a person who exercises influence in the Eastern Cape in respect of traditional practices including traditional circumcision. He has stated to the Press that he believes that a youth who refuses circumcision initiation school should be ostracised by the community and that such ostracism would constitute “fair discrimination.” He maintains that the custom of circumcision should be administered by Traditional leaders, and not by the MEC for Health. His details are set out in Form 2 filed with this pleading.

6. The Fourth and Fifth Respondents are Members of the Executive Council for Health, and Traditional Affairs respectively, for the Eastern Cape Province, cited herein in their official capacities as interested parties. Their details are set out in Form 2 filed with this pleading.

## 7. FACTS

7.1 The Second Complainant turned 18 years of age on 19 June 2006.

Thereafter the First Respondent put pressure on him to undergo traditional circumcision. He explained to his father that in the light of his Christian religion and beliefs he did not wish to undergo the traditional rite. In November 2006 he was put under such pressure by the First Respondent that he ran away from home and sought a protection order from the Fleet Street Police station in East London. The police declined to help him. On 6 December 2006 he attended the Frere Hospital and was circumcised. His whole foreskin was removed.

7.2 On March 3 2007, at approximately 0430 hours, the Second Complainant was sleeping at home when the First Respondent entered with a group of about 10 men whom he recognised as traditional community leaders. They tied him up by his feet. The Second Complainant told the men he had been circumcised and showed them his penis. One of the men, Vokonqo Mahlaza, mocked the circumcision and said words to the effect “We are going to have a cut, we need blood”. The men took him to the bush and when the traditional surgeon arrived further skin was incised from his penis and forced into his mouth. His penis bled for several minutes.

8.1 The First Complainant has written to the First Respondent asking him to identify the men who committed the aforesaid assault, in particular the traditional surgeon. He has not replied.

8.2 The First Complainant has written twice to the Second Respondent asking for an apology to the Second Complainant, an assurance that no one else will be subjected to circumcision against his will in the future, and for assistance in identifying the men involved in the assault. He has not replied.

8.3 The First Complainant has written twice to the Third Respondent asking for an apology to the Second Complainant, an assurance that no one else will be subjected to circumcision against his will in the future, and for assistance in identifying the men involved in the assault. He replied only to the second letter but refused to provide any assistance to the Complainants maintaining that traditional circumcision should be administered by traditional leaders and not by the MEC for Health.

9. In the premises the Second Complainant has suffered harassment, unfair discrimination on the ground of religion, conscience and belief, and has had his human dignity seriously undermined.

10. The First Respondent is concerned that other persons in the future will be subjected to similar assaults unless the Second and Third Respondents and the bodies they represent take active steps to prevent such behaviour.

## WHEREFORE THE FIRST COMPLAINANT CLAIMS

1. An Order pursuant to section 21(2)(f) of the Act, or alternatively pursuant to section 38 of the Constitution of South Africa, 1996, restraining the Second and Third Respondents and other traditional leaders, and any other person, from any conduct, verbal or physical, designed to cause any man to undergo traditional circumcision without his full consent, or designed to encourage ostracism or stigmatism of any such person.
2. A Declaration (pursuant to section 21(2)(b) of the Act) that any person who ostracised a man for refusing traditional circumcision on grounds of religion, conscience or belief, would be guilty of “unfair discrimination”.
3. An order for costs against the First, Second and Third Respondents.
4. Further or alternative relief.

## WHEREFORE THE SECOND COMPLAINANT CLAIMS

1. A declaration (pursuant to section 21(2)(b) of the Act) that the First Respondent’s conduct in forcing circumcision upon him contrary to his consent was contrary to the Bill of Rights in the Constitution of South Africa, 1996.
2. An unconditional apology (pursuant to section 21(2)(j) of the Act) from the Second Respondent and Third Respondent on behalf of the bodies they

represent for the breach of human rights inflicted upon him, and for publicly encouraging the community to ostracise him.

3. An order for costs against the Second and Third Respondents
4. Further or alternative relief.

DATED AT CAPE TOWN ON THE 22nd DAY OF JANUARY 2008

John J Smyth, QC On behalf of the First and Second Complainants.

Justice Alliance of South Africa

1 Ruskin Road, Bergvliet, Cape Town 7945

Tel/Fax 021 713 3259

Alternative Contact for Complainants:

Tina Karmis, Grant Gunston Inc

Tel. 021 762 7863

Fax: 021 762 7847

TO:

The Clerk of the Equality Court (High Court)

High Court of South Africa

Bhisho Local Division

Tel: 040 639 1699

Fax: 040 635 2142

AND TO

First Respondent

Lindile Yamani

PO Box 385, King William's Town 5600

Masele Location, Near Bulembu Airport, Bhisho 5600

Tel 072-760-4450

Second Respondent

Nkosi Ngangomhlaba Matanzima

5008, Ground Floor

Eastern Cape Legislature

Bhisho 5605

Tel 040-609-2841

Fax 040-635-0599

Third Respondent

Nkosi Mwelo Nonkonyana

Office Number 12, 3<sup>rd</sup> Floor

Manpower Building

Crn Madeira/Elliot Street

Mthatha

Tel/Fax 047 532 5799

Fourth Respondent

MEC for Health Eastern Cape

Dukumbana Building

P/Bag X0038

Bhisho 5605

Tel 040-609-3998

Fax 040-609-3892

Fifth Respondent

MEC for Local Government, Housing & Traditional affairs

Tyamzashe Building Room 2188

P/Bag X0026

Bhisho 5605

Tel 040-609-5789 Fax 040-639-2135