

**IN THE EQUALITY COURT  
EASTERN CAPE HIGH COURT, BHISHO**

**CASE No.: 1/2008**

**DATE: 13 OCTOBER 2009**

**5 BEFORE THE HONOURABLE MR JUSTICE EBRAHIM**

**In the matter of:**

**JUSTICE ALLIANCE OF SOUTH AFRICA**

**1<sup>st</sup> Complainant**

**10**

**BONANI YAMANI**

**2<sup>nd</sup> Complainant**

**and**

**15 LINDILE YAMANI**

**1<sup>st</sup> Respondent**

**EASTERN CAPE HOUSE OF TRADITIONAL  
LEADERS CHAIRPERSON**

**2<sup>nd</sup> Respondent**

**20 EASTERN CAPE CONTRALESA  
CHAIRPERSON**

**3<sup>rd</sup> Respondent**

**M.E.C FOR HEALTH, E.C**

**4<sup>th</sup> Respondent**

**M.E.C FOR LOCAL GOVERNMENT,****HOUSING AND TRADITIONAL AFFAIRS, E.C** 5<sup>th</sup> Respondent

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5 MR SMYTH As Your Lordship pleases, I appear on behalf  
of the complainants in this matter and my learned colleague  
Mr Silandela appears for the first respondent. M'Lord there  
has since we last appeared before Your Lordship been a  
settlement with the third respondent, the Eastern Cape  
10 Contralesa Chairperson and my learned friend and I and those  
who we represent would like to thank Your Lordship for the  
time you have given us this morning. It has resulted in a  
settlement between the complainants and the first respondent  
also. I think Your Lordship has a copy of the order and may I  
15 ask Your Lordship to be good enough to read that because I  
think it would be much appreciated by the press and others  
who are here.

COURT Thank you Mr Smyth.

MR SILANDELA May it please you M'Lord, I appear on  
20 behalf of the 1<sup>st</sup> respondent in this matter and [inaudible] on  
the 1<sup>st</sup> respondent.

COURT Thank you. Let me just first of all place on record  
that this Court is sitting as an Equality Court in terms of the  
Promotion of Equality and Prevention of Unfair Discrimination

Act No. 4 of 2000. Let me also confirm that both Mr Smyth and Mr Silandela met with me in chambers and have conveyed to me that the matter has been settled and presented a draft order to me which they have requested be made an Order of  
5 Court. As is evident from the fact that this is the Equality Court, this Court is dealing with the complaint which was initiated in terms of the Promotion of Equality and Prevention of Unfair Discrimination Act, on the 22<sup>nd</sup> of January 2008. It has taken quite some time for the pleadings to be finalised and  
10 all the other procedures that are required in terms of the relevant Act for this matter to reach the stage today where the trial was going to commence. I am pleased to note that the matter has now been settled. I want to compliment both Mr Smyth and Mr Silandela and express the Court's  
15 appreciation for their efforts in having reached an accord insofar as the outstanding issues are concerned. I do not intend detailing with all the issues that have been raised since the order that this Court is going to issue will encompass the finality that has been reached in this matter.

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I wish to note, however, that it raises issues relating to cultural beliefs and religious beliefs and has obviously been brought to this Court with the view to settling certain issues in relation thereto. An unfortunate aspect is that it has resulted in a son  
25 having to cite his father as a respondent in order for the matter 1-2008/NC/13-10-2009

to be brought before this Court.

The first complainant is the Justice Alliance of South Africa and they are before the Court, and on the basis of the papers, to look at the interests of a wider group insofar as the breach of certain constitutional rights is concerned. Bonani Yamani is the second complainant and is the individual who has initiated the complaint in terms of the Act. It is unfortunate, but in terms of the Act and in terms of law he was required to cite his father Lindile Yamani as the first respondent. The other respondents in the matter are the Eastern Cape House of Traditional Leaders, that is the second respondent; the third respondent is the Chairperson of the Eastern Cape Contralesa; the fourth respondent is the Member of the Executive Council for Health in the Eastern Cape and the fifth respondent is the Member of the Executive Council for Local Government, Housing and Traditional Affairs, Eastern Cape. The fourth and fifth respondents have elected to abide the decision of the Court.

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At an earlier stage in the proceedings the dispute between the complainants and the second respondent was resolved and the complaint against them was withdrawn. In the past week the dispute between the complainants and the third respondent was also settled and a settlement was recorded and will be 1-2008/NC/13-10-2009

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incorporated in the order being made today.

The order which the parties have agreed to reads as follows:

“It is ordered by consent that –

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1. A declaratory order be made in the following terms:  
That the first respondent’s conduct enforcing  
circumcision upon the second complainant contrary  
to his religious beliefs amounted to –

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1.1 unfair discrimination on the grounds of  
religion, conscience and belief contrary to  
section 6 of Act 4 of 2000;

1.2 harassment contrary to section 11 of Act 4 of  
2000.

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2. The terms of settlement between the complainants  
and third respondent attached hereto marked ‘A’  
are incorporated in this Order of Court. The terms  
of settlement between the complainants and third  
respondent read as follows –

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(i) The Chairperson of Eastern Cape Contralesa  
apologises to Bonani Yamani for the remarks  
made by its previous Chairperson Nkosi  
Nonkonyana, (on behalf of Contralesa) to the  
Press to the effect that persons such as  
25 Bonani, who refuse traditional circumcision,

should be ostracised by the community.

5 (ii) Eastern Cape Contralesa accepts that the Constitution of South Africa gives the right to each adult male individual to choose whether or not he should attend traditional circumcision school according to his religious beliefs.

10 (iii) The Complainants withdraw their claim for costs against the Third Respondent and accept this agreement in full and final settlement of their action against Eastern Cape Contralesa Chairperson.”

15 This document was signed on the 16<sup>th</sup> of September 2009 by Nkosi Ngubo Mgcotyelwa, Chairperson Eastern Cape Contralesa and on the 5<sup>th</sup> October 2009 by John J Smyth on behalf of the complainants. I accordingly make this an Order of Court.

MR SILANDELA As the Court pleases.

20 MR SMYTH As the Court pleases.

COURT May I just also remark that I think that, or rather I am aware that there is a great deal of interest in this matter and the issue of circumcision which is in Xhosa terms referred to as “ulwaluko”. I think it is important that people understand that this case is not about declaring unlawful the tradition of

circumcision – nothing prevents individuals from undergoing circumcision. What it is important to know is that in terms of the Constitution and in terms of the general laws of the country no one can be forced to submit to circumcision without his consent. It is not in any way aimed at preventing circumcision, and I emphasise that. This much is very clear from the admissions made by the Chairperson of the Eastern Cape House of Traditional Leaders and I trust that people will respect the right of everyone to make a decision in that regard. In ordinary lay terms any person who is abducted for any reason whatsoever would have the right to lay criminal charges against someone else for such abduction. I trust that this clarifies what this case is about and what the order of settlement encompasses and what is permitted in terms of the law and what is not permitted in terms of culture or law. Mr Smyth and Mr Silandela, I trust that my brief remarks will assist in clarifying what is obviously a matter that has generated quite substantial interest.

MR SMYTH M'Lord on behalf of the complainants we thank Your Lordship for those remarks very much.

MR SILANDELA As the Court pleases M'Lord.

COURT And please convey to the family that I think the time for healing has arrived, and that the family unit needs to recognise and respect each other in like manner.

Court is adjourned.

1-2008/NC/13-10-2009