

# JASA

## Justice Alliance of South Africa

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### MEDIA RELEASE

**Embargo: None**  
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#### **CHRISTIAN STUDENT'S FORCED CIRCUMCISION CASE REACHES ITS CLIMAX IN THE BHISHO HIGH COURT WITH THE JUDGE DECLARING:**

**“What is important is that in terms of the Constitution and law no one can be forced to submit to circumcision without his consent”**

In a ground-breaking judgment, of vital importance to all cultures and communities where traditional circumcision is practised in South Africa, the Bhisho Equality Court (High Court) yesterday made it clear beyond doubt that circumcision is unlawful unless done with the full consent of the initiate. This brings the law for adults in line with that prescribed by the Children's Act, 2007 which says that a boy between the age of 16 and 18 must consent to his own circumcision.

When the court convened yesterday, the father of Bonani Yamani accepted through his counsel that he had broken the law by unlawfully discriminating against his son on the ground of his religious beliefs, and by harassing him, when he was forcibly abducted and circumcised by a group of some ten men in the early hours of the morning of March 3 2007. In a short judgment the Judge made a Declaration to this effect with the consent of the parties, and incorporated into the Court Order the terms of settlement with Contralesa which were announced a week ago. (See page 2 hereof)

Mr Justice Ebrahim went on to say: “ I am aware that there has been a great deal of interest in this case. I think it is important that people should understand that the case is not about declaring traditional circumcision unlawful. Nothing prevents individuals making their choice. What is important in terms of the Constitution and law is that no one can be forced to submit to circumcision without his consent. That is very clear from the admission made by Contralesa; I trust everyone will respect the right of every man to make his own decision. In lay terms, any person abducted has the right to lay criminal charges.”

JASA is particularly pleased that this result has been achieved without father and son having to give evidence in court.

JASA believes that the judgement breaks new ground for a second reason. To our knowledge it is the first time in the “new South Africa” that a court has made an order of unfair discrimination in favour of someone discriminated against for *Christian* beliefs.

#### **Executive Board**

Grant Gunston (Chairman), Stephen van Rhyn (Vice-Chairman), Tendai Musikavanhu,  
Linda-Jane Tippoo, Nigel Desmond, Quinton George, John Smyth

**The full judgment will be displayed on the JASA website as soon as the transcript is available.**

### **Background**

Acting pro bono for Bonani Yamani (now 21 years of age) who was subjected to violent traditional circumcision on 3 March 2007 after being circumcised at the Frere Hospital, East London 3 months earlier, JASA filed suit in the High Court Division of the Equality Court in Bhisho in January 2008. Bonani had made it clear that his conscience and Christian beliefs did not allow him to undergo the traditional Xhosa rite. Bonani is a 2<sup>nd</sup> year student at the Free State University studying medical micro biology.

Bonani was abducted from his home at 4 am, tied up, taken to the bush, and subjected to further circumcision by some 10 community leaders. He was forced to eat skin incised from his penis. JASA took the view that this was a serious criminal assault and a gross breach of Bonani's dignity and constitutional rights not to be harassed or discriminated against on the ground of his religion, conscience and belief. Commenting on the case Chief Nonkonyana told the Press that a person such as Bonani who refused traditional circumcision should be ostracised by the community. JASA alleged that this too was unfair discrimination.

**The Consent ORDER of the Court made yesterday reads:**

- 1. A Declaratory Order be made in the following terms:  
That the First Respondent's conduct in forcing circumcision upon the Second Complainant contrary to his religious beliefs, amounted to:**
  - 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.**
- 2. The terms of Settlement between the Complainants and Third Respondents attached hereto marked 'A' are incorporated in this order of Court.**

**'A'**

- 1. 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 Bonani, who refuse traditional circumcision, should be ostracised by the community.**
- 2. 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.**
- 3. 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.**

Mr JJ Smyth, QC appeared for the Complainants, JASA and Bonani Yamani  
Advocate Silandela appeared for the First Respondent, Lindile Yamani

**JASA  
Upholding Justice in the Public Square  
Executive Board**

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