

## Judgment

Equality court case no. 1/2017

In the matter between:-

Isimangaliso Wetland Park Authority

First Applicant

Department of Tourism

Second Applicant

And

Sodwana Bay Guest House

First Respondent

Enki Andre M. Slade

Second Respondent

In the matter between:-

This matter was brought before the Equality Court on a complaint arising out of certain remarks made by the Second Respondent which the applicants contend are in contravention of sections 9 and 10 of the Constitution as it relates to Equality and Human Dignity and sections 6, 7, and 10 of The Promotion of Equality and the Prevention of Unfair Discrimination Act 4 of 2000. (to which I will refer to as The Equality Act) as it relates to:-

Enki Andre M. Slade

Second Respondent

1. Prevention and General Prohibition of unfair Discrimination.

2. Prohibition of unfair discrimination on grounds of Race.

In the matter between:-  
This matter was brought before the Equality Court on a complaint arising out

3. Prohibition of Hate Speech.

of certain remarks made by the Second Respondent which the applicants

contend are in contravention of sections 9 and 10 of the Constitution as it

relates to Equality and Human Dignity and sections 6, 7, and 10 of The

The Second Respondent elected to represent himself whilst the two applicants were assisted by the Human Rights Commission acting in terms of section 20 (1) (f) of the Equality Act.

Miss Pavashnee Padayachee and Miss Thandeka Magwuenyane represented the Human Rights Commission. The court is indebted to both of them for their in-depth contribution in this matter and for especially referring the court to the appropriate authorities.

**The offending remarks or comments complained of are the following:-**

Miss Pavashnee Padayachee and Miss Thandeka Magwuenyane represented that on about the 23 June 2016 the **Second Respondent** who was the owner of a guest house, sent out the following email communication.

“We do not accommodate blacks or government employees any longer”

Sodwana Bay Guest House

Enki Andre M Slade

The Book of Revelation 10...”

Subsequent to that he said the following.

That on about the 23 June 2016 the **Second Respondent** who was the owner of a guest house, sent out the following email communication.

1. We work according to Gods law and according to Gods law, we have to have some sort of segregation between the creation that he left here...the law you have in South Africa is Satan's law”.

Sodwana Bay Guest House

Enki Andre M Slade

The Book of Revelation 10...

2. "black people were servants and the Bible made it very clear ...his Bible said he could not mix with another race..."
3. "we do not have the same blood, skin, hair and there are about 300 differences between you and me..."
4. "you are classified in the Bible as an animal,you are not homosapien"
5. "black people were not people..."

The **First Applicant, Isimangaliso Wetland Park**, is a protected area along the East Coast of KZN Province, and is registered as a Schedule 3A Public Entity in terms of the Public Management Act 1 of 1999. To the north of the Wetland Park is Sodwana Bay and where the second respondent had his lodge under the name of Sodwana Bay Guest House. Sodwana Bay falls under the jurisdiction of this court and thus the matter before this court.

Section 20(1) of The Equality Act provides that:

(1) Proceedings under this act may be instituted by-

- (a) Any person acting in their own interest;
- (b) Any person acting on behalf of another person who cannot act in their own name;
- (c) Any person acting as a member of, or in the interest of, a group or class of persons;
- (d) Any person acting in the public interest;
- (e) Any association acting in the interest of its members;
- (f) The South African Human Rights Commission or the Commission for Gender Equality."

Isimangaliso Wetland Park is acting in the public interest because it had received telephonic enquiries from concerned members of the public enquiring as to whether the said park had any affiliation to the first and second respondents.

**The 2<sup>nd</sup> applicant is the Department of Tourism.** In terms of section 47(d), of the Tourism Act of 2014, The Tourism Complaints Officer has a duty to refer a complaint to the Equality Court if a complaint alleges unfair discrimination against a tourist.

I am therefore satisfied that both the applicants have the requisite *locus standi* to institute the present proceedings.

The First Respondent is Sodwana Bay Guest House which operated as a guesthouse situated at Sodwana Bay Main Road, Emoyeni. This business was situated within 5 km of Isimangaliso Wetland Park (the first respondent)

The Second Respondent is 55 years old Enki Andre M. Slade to whom I shall refer to as Mr. Slade. He was the owner of the Guest House in question.

Mr Andre Zaloumis was the first witness called to certify on behalf of the First applicant.

The First Respondent is Sodwana Bay Guest House which operated as a guesthouse situated at Sodwana Bay Main Road, Emoyeni. This business was situated within 5 km of Isimangaliso Wetland Park (the first respondent)

When the offending remarks were brought to his attention he was shocked and hurt by his racist remarks. He told the court that close to 99.9% of Blacks

received telephonic enquiries from concerned members of the public enquiring as to whether the said park had any affiliation to the first and second respondents.

lived in Sodwana Bay and those remarks were extremely hurtful to the Blacks. The public were also outraged by the comments and that the comments received worldwide coverage.

People were enquiring from him whether the first applicant had any affiliation to the first and second respondents.

He thus approached the Human Rights Commission and requested that they institute an Equality Court Application against the Respondents on its behalf.

Miriam Mmaditlonki Setwaba testified on behalf of the second respondent.

She is the Chief Director of the Department of Tourism. She has been

designated as the Tourism Complaints Officer by the Minister of Tourism. In terms of Section 47 (d) of the Tourism Act 3 of 2014, she has a duty to refer the matter to the Equality Court if the complainant alleges unfair discrimination against a tourist.

She was very emotional when she testified and one could feel the pain and hurt that she felt by the offending remarks. She felt that she was a "nobody" when the second respondent regarded Blacks not as humans but as animals.

She said that Tourism brought diverse community together and that blacks and whites in her office worked in harmony.

That was very briefly her evidence and that concluded the applicant's case.

He thus approached the Human Rights Commission and requested that they

institute an Equality Court Application against the Respondents on its behalf.

She was **The Second Respondent Mr Slade elected to testify.**

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His opposing affidavit was also admitted as evidence into court.

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she said that Tourism brought diverse community together and that blacks and

whites in her office worked in harmony.

That was very briefly her evidence and that concluded the applicant's case.

He did not deny the allegations against him and he considered the attack against him as being unjustified.

He told the court that his biblical name is Yahshuah and he is "The son of God" He adds the title Enki before his name, which means Master of the Lord of Earth. His defence to the offending remarks was the Constitution and His Bible the Tora.

He made reference to certain provisions of the Constitution to justify his remarks and comment viz.

1. Right to association
2. Right to practise his belief
3. Right to privacy
4. Right to speak freely
5. Right to practise his tradition

The sudden decision in not allowing Blacks to his lodge was as a result of his intense research that he undertook regarding humanity. He wrote three books regarding Humanity and how it works. He regarded these books as books of Truth. Only on his third book which was titled "Where from here Cognition" was he surprised to learn that Blacks were in fact not Homo sapiens i.e. they were not regarded as people but animals.

He did a layout as to how The Bible, Humanity and The Planets work. He published all these information in these books and is standing by what he published.

He recognizes the Constitution of South Africa but he considers it subordinate to his Bible which is the Tora. The real law is God's law. He has no respect for the Constitution if it is not in line with the Bible.

He considers The Constitution of South Africa as being racist because it only addresses human beings. Blacks are regarded as animals and Constitution makes no provision for animals. He considers the Constitution as Satan's law.

His response to his comments that **"...black people were servants and the Bible made it very clear...."**

This he justifies by saying that the above quotes were found in 1611 King James Bible Version. He also makes reference to Jeremiah 27:6 and refers to the following quote..." and the beasts of the field have I given him also to serve him". The references to beasts according to him are the Blacks.

Reference is also made to Genesis 1:26 in which he says God gave Man dominion over Earth. He argues that this man spoken of is Homo sapiens .They are the servants of God, and Blacks are servants of man.

In South Africa he says that the Blacks call Whites "Mulungu", which is a common name of the creator deity in a number of Bantu languages and cultures over East and Central Africa .One can therefore conclude that Whites representation as Gods have been preserved in African culture.

**As for not as for mixing with another race, he justifies this as follows.**

He refers to Exodus 20:12.

He interprets this quote as "Honour your father and your mother, that your days may be long

upon the land which the Lord your God is giving you. He interprets this quote as "keeping the family lines pure". When asked to give an example of "unpure

in breeding" he used President Jacob Zuma as an example and says that he is not pure because he has white blood, pink inside, his lips are black and his nose is black just like an animal.

From his research it was found that all of humanity had preference for their own kind and that the Natural Law as published in the Bible prevented the races from mingling. I quote "we strive for children who look like us and for a family who fit in our way of thinking and upbringing".

To illustrate his point regarding the mixing of races he draws a distinction between a Zebra and a Horse. He says by calling a black person a man is like calling a Zebra Horse. They may look the same, but one is a wild animal and the other is domestic. The Zebra is a domestic animal. It has white patches, pink skin with human genetics. Horses on the other hand are wild. They have plain black skin, from brown to dark black. These two kinds naturally do not mix.

In response to his comments:

**'We do not have the same blood, skin, hair and there are about 300 differences between you and me'.**

Here he refers to a research done by a certain American Professor regarding the various physical features and differences between Blacks and Whites such as, amongst others, head shape, physical maturity at birth, brain formation etc. He also referred to another research that was done whereby it was found that the brain weight and size is the greatest in Whites, with oriental second, Blacks third and Australian aborigines last.



He also draws a distinction between a man and a beast. Man has white skin and brown eyes.

Beasts, references to Blacks have intellectual restrictions. They do not have the same thinking power as whites.

The conclusion arrived, according to him, is that Blacks are less intelligent than whites.

He goes on further to say the following:

1. Blacks are not people. People are human beings.
2. Blacks have lower IQ than whites and are therefore less intelligent than whites. ( according to research) They are therefore inferior to Whites.
3. Whites are civilized. Blacks are still growing towards civilization.
4. Whites are children of god but not Blacks.
5. Whites have been Blacks guardian and have taught them well, but Blacks can never be better than their master.
6. Going back to history the only thing that connected Blacks to civilization is domestic animals.
7. That when the Boer met the Zulu tribe in Natal, they did not encounter any civil society. Their brain power was limited and they did not colonise and develop cities as Europeans did.
8. Their limited intellectual level is further evidenced by the fact that after 22 years, most of the Blacks are employed as drivers and office assistants.
9. That the further proof of animal behaviour amongst Blacks is the rate of procreation. Their birth rate is not controlled and that Blacks are responsible for the large scale of murder and rape in the country especially on White farmers, old people and even on foreign Blacks.,

**He had the following to say regarding the Dignity of Blacks being impaired by his racists' comments:-**

1. That the ANC Government and its leaders are responsible for impairing the dignity of the Blacks because the government has reduced the once flourishing economy of South Africa to that Junk status.
2. That through Black Economic Empowerment (B.E.E) white men in South Africa are victims of unfair discrimination based on colour and thus their dignity is not respected.
3. The fact that no Black President has the backbone to slow down his tribe's rate of procreation is a display of disrespect towards their own kind and towards whites as well.
4. That when the KZN, MEC Mr. Sihle Zikalala and others branded him and his girlfriend as racists, they did not consider their dignity. He accuses Mr.Zikalala of publically defaming their character.

In response to section 9 of the Constitution which deals with Equality he says the following:

'That equality between man and beast is impossible and therefore section 9 of the Constitution is in contrast to human dignity and Gods hierarchy.

. I quote "We are not all the same as we are led to believe".

"We are proven superior intellectually".

"In a world where everyone is equal, there can be no growth".

In response to section 9 of the Constitution which deals with Equality he says the following:

**That was a summary of the evidence of the second respondent Mr Slade.**

In order to justify and add credence to his research and findings, he called his girlfriend to testify and support his research and findings. Her name is Katrina Krizaniova. She refers to herself as a purebred white African woman married to a purebred white man according to Hebrew Law or Bible. They refer to each other as husband and wife although they are not married. She introduced herself by the Biblical name of IMMAYAHI, meaning the "Holy Spirit". She told the court that she is the Bride of the Son of God, The Son of God being the second respondent Mr. Slade.

She is a foreigner. She met Mr. Slade at a sporting event on 1 November 2012. Emanating from their conversation they found that they had a lot in common and she decided to live with him. She had the opportunity of reading three of his books that he had written and found that the first two books made no mention of one race being more superior to the other. It was only when Mr. Slade wrote the third book that he discovered and to his surprise, that Blacks were in fact not people. Based on his findings that Blacks were not people but animals, she influenced him not to allow Blacks any longer into the Guest House. Initially he was not keen with her suggestions but she persuaded him and he gave in.

She goes on to say that Blacks don't have the same concept of hygiene as Whites and gave an example that they don't flush the toilet. That they have the lowest level of intelligence and fall on the bottom level of the pyramid.

She agreed to everything that Mr Slade had to say about the Blacks and hold the same views as him about Blacks.

That was very briefly her evidence.

Mr. Slade also called his domestic worker for character reference. Her name is **Sindile Mthiyane**. She found herself in a catch 22 situation when asked as to how she viewed the comments made by her boss regarding Blacks. She said that she felt hurt by his comments and was not happy that Blacks were no longer allowed to come to the Lodge.

That concluded all the evidence before the court.

*Section 3(3) of the Equality Act provides that the complaint lodged must not be interpreted in isolation but must be interpreted in its historical context, taking into account the purpose of the Act and thus giving effect to the Constitution.*

I now to turn the provisions of the Constitution and the Equality Act relied upon by the applicants.

**Section 9 of Constitution** guarantees equality before the law and freedom from discrimination to the people of South Africa and which is based amongst others on race, the colour of a person's skin, ethnic or social origin.

Human dignity, freedom and equality, are the foundation values of our society. The right to dignity is reiterated as a founding value of our democratic state in section 1 of the Constitution, alongside equality, freedom and non-racialism.

I refer to an extract from the 2<sup>nd</sup> edition of volume 3 of the Constitutional Law of South Africa by Catherine Albertyn and Beth Goldblatt, Chapter 35 page 3.

“The meaning of equality in any jurisdiction is influenced by the historical, socio political and legal conditions of the society concerned. An important point of understanding equality in South Africa is the nature of equalities that have characterised the past and still haunt it’s present. For centuries that past was defined by the extensive and systematic exclusion and subordination of black people in all aspects of political, social and economic life. Under colonialism and apartheid, the colour of one’s skin determined whether one could vote or access quality education, where one could own land or live, the services and amenities one could enjoy, and the nature and availability of economic opportunities. These systems produced and reinforced racially-based inequalities that became part of the structure of economic and social relations. Deep-seated racial prejudices and racial disparities in education, health status, income and employment, access to land and housing persists to this day”.

In the Canadian case of **Egan vs Canada** the judge analysed the purpose of the Canadian right to equality as follows.

*Equality, as that concept is enshrined as a fundamental right.....means nothing if it does not represent a commitment to recognising each other’s personal worth as a human being, regardless of individual*

*differences. Equality means that our society cannot tolerate them, that treat them as less capable for no good reason, or that otherwise offend fundamental human dignity.*

### **Section 10 of the Constitution - Human dignity**

Everyone has inherent dignity and the right to have their dignity respected and protected.

The Right to Dignity is reiterated as a founding value of our democratic state in section 1 of the Constitution, alongside equality, freedom, and non-racialism.

Human dignity is mentioned in sections 1, 7, 10, 36 and 39 of the Constitution.

The Right to Dignity is a non-derogable right and like the right to life is protected in its entirety.

**In *S vs Makwanyane and Another* (1995) ZACC 3 paragraph 329 Judge O'Regan said.**

“Respect for the dignity of all human beings is particularly important in South Africa. For apartheid was a denial of a common humanity. Black people were refused respect and dignity and thereby the dignities of all South Africans were diminished. The New Constitution rejects the past and affirms the equal worth of all South Africans. Thus recognition and protection of human dignity is the cornerstone of the new political order and is fundamental to the New Constitution.”

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Alongside the right to life in section 11 of the Constitution, the right to human dignity has been described by the Constitutional Court as the most important of all human rights and the source of all other personal right.

Dignity is explicitly protected by **article 1 of The Universal Declaration of Human Rights of 1948** which states as follows:-

“All humans are born free and equal in dignity and rights. They are endowed with reasons and conscience and should act towards one another in a spirit of brotherhood”.

Human dignity is also protected by **article 5 of The African Charter on Human and Peoples Rights** which states as follows:-

“Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status”.

Section 9(4) of the Constitution gave birth to **The Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000**.

One of the important objects of the Equality Act is to give effect to the letter and spirit of the Constitution, in particular, the prevention of unfair discrimination and the protection of human dignity as contemplated in sections 9 and 10 of the Constitution, and the prohibition of advocacy of hatred, based on race, ethnicity, gender, or religion, that constitutes incitement to cause harm as contemplated in section 16(2) (c) of the Constitution.

One of the provisions to the preamble is that:-

“Although significant progress has been made in the restructuring and transforming our society and its institutions, systematic inequalities and unfair discrimination remain deeply embedded in social structures, practices and attitudes, undermining the aspirations of our constitutional democracy.”

The Act endeavours to facilitate the transition to a democratic society, united in its diversity, marked by human relation that are caring and compassionate, and guided by the principles of equality, fairness, equity, social progress, justice, human dignity and freedom:

**Section 6 of the Equality Act provides that** neither the state nor any person may unfairly discriminate against any person **whilst Section 7 provides that no person may unfairly discriminate against any person on the ground of race,** including-

- a) The dissemination of any propaganda or idea, which propounds the racial superiority or inferiority of any person, including the incitement to, or participation in, any form of racial violence.
- b) The engagement in any activity which is intended to promote, or has the effect of promoting exclusivity, based on race.

**Section 10 of the Equality Act deals with Hate Speech** and which provides that no person may publish, propagate, advocate, or communicate words based on one or more of the prohibited grounds which has the intention to:-

- a) Be hurtful
- b) Be harmful or to incite harm



(c) Promote or propagate hatred

Amongst **the prohibited grounds** mentioned in section 10(1) are race, ethnic or social origin, religion, conscience, belief, culture, birth etc.

**Article 4 of The Convention on The Elimination of All Forms of Racial Discrimination of 1965** describes hate speech as:-

Any speech, gesture, or conduct, writing or display which is forbidden because it may incite violence or prejudicial action against or by a protected individual or group or because it disparages or intimidates a protected individual or group.

Now the issue before this court is whether the second respondent's comments or remarks constitute

Discrimination of 1965 of so-called hate speech as:-

- (a) Unfair discrimination on the grounds of race as defined in terms of section 9 of the Constitution and section 6 and 7 of The Equality Act;
- (b) Hate speech as defined in section 10 of The Equality Act;
- (c) Impairment to the Dignity of Blacks in terms of section 10 of The Constitution.

Now the issue before this court is whether the second respondent's comments or remarks constitute

It is correct that Mr. Slade is protected by section 16(1) (b) of the Constitution to express himself freely. However if such freedom of expression incites

violence or hatred, and is based on, amongst others, race and religion, and

section 9 of the Constitution and section 6 and 7 of The Equality Act

- (b) Hate speech as defined in section 10 of The Equality Act;
- (c) Impairment to the Dignity of Blacks in terms of section 10 of The

which incites harm, then he is deprived of the protection offered by section 16(1). Section 16(2) (b) and (c) will offer the resistance to such freedom of expression.

Remarks such as:

**...Blacks are not regarded as human beings but animals**

**...they are uncivilized**

**...Blacks were servants**

**...Whites are children of god but not Blacks**

**...their birth is rate uncontrollable and they are responsible for high rate of crime such as rape and murder of white farmer's, amounts to Hate Speech in terms of section 10 of the Equality Act.**

stir up emotions of hatred between Blacks and Whites and are catalysts for the incitement of violence not only towards him but also towards innocent whites' amongst whom, are those who fought for freedom which we so dearly enjoy today.

He went to great lengths to justify his discrimination against the Blacks by comparing the many physical characteristics and attributes that exists between the brain sizes, cubic capacity of the brain, blood type, bone density, different bodily features etc. The conclusion reached is that a black person has limited mental intellect.

In Minister of Home Affairs and Another vs Marie A Fourie and Others 2005

ZACC the judge said the following.

He went to great lengths to justify his discrimination against the Blacks by comparing the many physical characteristics and attributes that exists between

The acknowledgement and acceptance of difference is particularly important in our country where for centuries group membership based on supposed biological characteristics such as skin colour has been the express basis of advantage and disadvantage. South Africans come in all shapes and sizes. The development of an active rather than a purely formal sense of enjoying a common citizenship depend on recognising and accepting people with all their differences, as they are. The Constitution thus acknowledges the variability of human beings (genetic and socio-cultural), affirms the right to be different, and celebrates the diversity of the nation'.

**I also refer to The Declaration of Race and Racial Prejudice which was adopted and proclaimed by the General Conference of the United Nations Educational, Scientific and Cultural Organisation at its twentieth session, on 27 November 1978.**

#### **Article 1**

1. All human beings belong to a single species and are descended from a common stock. They are born equal in dignity and rights and form part of humanity.
2. All people of the world possess equal faculties for attaining the highest level in intellectual, technical, social, economic, cultural and political development.
3. The difference between the achievements of the different people is entirely attributable to geographical, historical, political, economic, social and cultural factors. Such differences can in no case serve as pretext for any rank-ordered classification of nations or peoples.

#### **Article 2.1**

2. All people of the world possess equal faculties for attaining the highest level in intellectual, technical, social, economic, cultural and political development.

Any theory which involves the claim that racial or ethnic groups are inherently superior or inferior, thus implying that some would be entitled to dominate or eliminate others, presumed to be inferior or which bases value judgments on racial differentiation, has no scientific foundation and is contrary to the moral and ethical principles of humanity.

Mr .Slade did not provide this court with any scientific evidence to authenticate or to back up his research other than to refer this court to certain verses of his Bible or Tora which he interpreted to suite his dogma. This is contrary to the moral and ethical principles of humanity.

By not regarding Blacks as human beings but as animals, he strips them bare of their dignity and reduces them to an inanimate object without any rights whatsoever. These remarks or comments are offensive and deeply demeaning and dehumanising to the Blacks.

These comments which are directed towards Blacks only incite both violence and hatred and falls outside the protection of the Constitution and are contravention of section 10 of the Equality Act as it relates to Hate Speech.

**In S vs Makwanya and Another (1995) ZACC 3 paragraph 329 Judge O’Rgan said:-** ‘Regarding Blacks as human beings but as animals, he strips them bare of their dignity and reduces them to an inanimate object without any rights whatsoever. These remarks or comments are offensive and deeply demeaning and dehumanising to the Blacks.’

refused respect and dignity and thereby the dignity of all South Africans was diminished. The new constitution rejects the past and affirms the equal worth of South Africans. Thus the recognition and protection of human dignity is the

contravention of section 10 of the Equality Act as it relates to Hate Speech.

cornerstone of the new political order and is fundamental to the new Constitution”.

Alongside the right to life in section 11 of the Constitution, the right to human dignity has been described by the Constitutional Court as the most important of all human rights and the source of all other personal rights.

His remarks are thus in contravention of section 10 of the Constitution as it relates to Human Dignity and also of section 7(a) of the Equality Act which provides as follows:

**‘No person may unfairly discriminate against any person on the ground of race, including the dissemination of any propaganda or idea, which propounds the racial superiority or inferiority of any person....’**

**Now coming to his comments:-**

**‘We do not accommodate blacks or government employees any longer’**

The words Blacks needs no further interpretation as Mr. Slade excludes Indians and Coloureds from the definition. By excluding a particular race group of accommodation at his Lodge flies in the face of section 9 of the Constitution and sections 6 and 7 of the Equality Act.

Section 9 of the Constitution emphasis that everyone is equal before the law and which includes the full and equal enjoyment of all rights and freedom, and thus the freedom to seek and enjoy accommodation and not being hindered by the colour of one’s skin.

By excluding Blacks only whilst allowing the other race groups the right to accommodation is outrageously discriminatory in terms of section 9(4) of the Constitution as it amounts to discrimination based on race. The discrimination constitutes a serious impairment of the fundamental **human dignity** of blacks **in terms of Section 10 of the Constitution** and thus also stirring up emotions of hatred between the Blacks and other race groups who are allowed unrestricted access to his lodge.

Mr Slade also uses his Bible which he calls the Tora as a justification or defence to the remarks made by him. He says that the Tora is the real and most superior law and the Constitution is subordinate to it.

**Section 2 of the Constitution provides that:**

The Constitution is the supreme law of the Republic, law or conduct inconsistent with it is invalid, and the obligations imposed by it must be fulfilled.

**Section 5 of The Equality Act provides that:**

1. The Act binds the State and all persons.
2. In the event of there being any conflict between a matter dealt by Equality Court and the provisions of any other law, other than the Constitution, the provisions of the Act must prevail.

The Bible or The Tora that Mr. Slades refers to have no application in our law and is not recognized as such. He therefore cannot use the Bible or the Tora to justify his racist views as these are only held by himself and his girlfriend.

**In Minister of Home affairs and another vs Marie A Fourie and others 2005**

**ZACC at paragraph 113 page 71)** the court held that, " however strongly and

sincerely held the religious beliefs, these beliefs cannot through the medium of state law be imposed upon the whole of society in a way that denies the fundamental rights of those negatively affected”.

Whilst one is entitled to his or her beliefs, he or she cannot use his or her beliefs to violate the rights of any other person.

The court further held that “In an open and democratic society contemplated by the Constitution there must be mutually respectful co-existence between the secular and sacred ...there must be no prejudice to basic rights”.

Given the value and the importance that the Constitution places on the right to equality, the rights to religion and freedom of association cannot override the fundamental rights of those negatively affected.

Mr. Slade is therefore entitled to his beliefs in terms of section 15(1) of the Constitution; he may however not use his beliefs to discriminate against the blacks.

In **Hoffman v SAA 2001(1) SA 1 (CC)** the court cautioned that, “prejudice can never justify unfair discrimination” given that South Africa has emerged from institutionalised prejudice. Our constitutional democracy is categorised by respect for human dignity for all human beings and in our democracy prejudice and stereotyping have no place.

This implies that prejudice which is informed by sincerely held religious beliefs and ideology cannot justify any form of discrimination. Therefore enforcing or protecting prejudice could never be a legitimate purpose for unfairly discriminating against anyone based on their race.

I refer to the remarks made by the late Justice **Mahomed in Azapo vs President of the RSA (1996) ZACC and Others 16; 1996(8) BCLR 1015; 1996(4) SA.**

"By adopting the Constitution the nation signalled its commitment to reconciliation and national unity, and its realization that many of the unjust consequences of the past can never be fully reversed but it would nevertheless be necessary to 'close the book' on the past.

Now Mr. Slade has not fulfilled his obligations in terms of the Constitution viz. the right to equality and the right to human dignity. He is still living in the pre-constitution era and has not 'closed the book on the past'. He has no respect for the constitution and regards it as Satan's law.

He has totally demoralized the black community by his ill-considered remarks. He has trampled on their 'sacred' dignity without for a moment considering the consequences therefore. His total disrespect for the Blacks is also evidenced by the fact that he simply refers to them as the "Black kind".

The Blacks in this country, who despite having been treated as less than second class citizens or as a pariah in their own country were still prepared to reach out their hand in a spirit of reconciliation and forgiveness, after the dawn of democracy, only to have it bitten by the likes of Mr. Slade with no sense of reciprocation and forgiveness.

I agree that the Respondents practices, beliefs, comments and conduct are all inconsistent with the vision that our Constitution seeks to achieve because they are based on racial segregation and is demeaning and oppressive towards the Blacks.



I am therefore satisfied that the applicants **have made out a prima facie case against the second respondent.** He has failed to discharge the onus resting on him to show, that by excluding only Blacks from his lodge, his actions were fair. He has also failed to show that the derogatory remarks or comments made about Blacks were fair.

I therefore make a finding that the Second Respondents conduct and or comments amount to:-

- a) Unfair discrimination on the ground of race as defined in terms of section 9 of the Constitution and Sections 6 and 7 of The Equality Act;
- b) Hate speech as defined in Section 10 of the Act;
- c) Impairment to the Human Dignity of Blacks and Government Employees in terms of Section 10 of the Constitution.

Now before coming to the question of awards in terms of section 21(2) of the Equality Act, I wish to place the following on record.

Mr Slade has shown no remorse or any regrets by his racist remarks. He has become so imbibed in his religious beliefs that he does not feel that he has said or done anything wrong. He was cool, collected and confident when he gave his evidence and did not blink an eyelid whilst we were glued to our seat.

Now before coming to the question of awards in terms of section 21(2) of the Equality Act, I wish to place the following on record.

He came to Sodwana Bay in 1986 and enjoyed a good relationship with the Blacks. His attitudes towards Blacks started changing when he met his

Mr Slade has shown no remorse or any regrets by his racist remarks. He has become so imbibed in his religious beliefs that he does not feel that he has said

girlfriend Katrina in 2010. They refer to each other as husband and wife. One can say there are a couple made in heaven as both sing from the same hymn sheet regarding their views on Blacks. She co-authored Mr Slade's third book named 'Where from here, Cogniton, the contents of which are discriminatory and demeaning to the Blacks.

She played a major role in feeding Mr Slade with the fertilizer necessary to grow and sustain his religious beliefs to the detriment of the Blacks.

She is the one who influenced him in preventing Blacks from coming to the lodge. Mr Slade initially resisted but she insisted and he gave in.

She took it upon herself to make herself part of the proceedings by submitting an opposing affidavit and referring to herself as the First Respondent. Her affidavit speaks the same language as Mr Slade's.

I am surprised that the Human Rights Commission on reading her affidavit did not join her to the proceedings. Even when in court she played an active part in assisting Mr Slade find his feet. She wanted to represent him.

When the court adjourned for the day she came into my chambers upset by the fact that she was not given an opportunity to present her closing

arguments. She felt that there was no justice because she was not given this opportunity. In consultation with representatives from Human Rights

Commission we went back into court just to give her this opportunity to hear what she had to say and for what it was worth.

Had Katrina not come into Mr Slade's life, then I don't think Mr Slade would have been appearing before this court.

The applicants seek amongst other an order for an unconditional apology in terms of section 21(2) (j) of the Equality Court.

The applicants would agree that it will be futile to ask Mr Slade for an apology as he went to great lengths to justify his comments and he does not believe what he said was wrong and had shown no remorse whatsoever.

The applicants also seek an order that Mr Slade pay an amount of R50 000.00 to Mpilonhle, a non-profitable organisation based in Mtubatuba. I am surprised that such paltry amount is asked for in view of the extreme racist's views that Mr Slade hold of Blacks. I would have awarded an amount of between R150 000 to R200 000 as damages but I a confined to the amount that the applicants ask for.

I accordingly make the following order in terms of section 21 (2) of the Equality Act:

**1. In terms of section 21(2) (e) of the Equality Act, I order that Mr Slade to pay an amount of R50 000 as damages in the form of an award to Mpilonhle, a non-profitable organisation based at Mtubatuba, which is dedicated to identifying and implementing innovative solutions for the health and social problems faced by the youth of South Africa. The amount is payable within 60 days from date hereof. The Clerk of the**

**Court to provide Mr.Slade with the necessary particulars regarding the Organisation.**

2. **In terms of section 21(2) (f) you are ordered to remove all materials from your website which are discriminatory and demeaning to Blacks and which has racial undertones as they are open to the public domain and have the potential of propagating further discrimination and hurt.**
3. **You are also ordered to stop distributing or publishing any material which discriminates, incites hatred, demeans, embarrass, and humiliates Blacks in general.**
2. **You are accordingly ordered to stop distribution and further publication of your book titled "Where to from here, Cogniton" as its content contravenes the provisions of section 12 of the Equality Act as certain Chapters of the book discriminates against Blacks.**
4. **The publisher of this book viz Xlibris is ordered not to publish or distribute the said book in South Africa. The Clerk of the Court is to serve the copy of the court order on the Publisher, Xlibris**
5. **I also direct the Film and Publication Board of South Africa to monitor the publication, distribution and possession of the book: -  
"Where to from here, Cogniton", thus ensuring that the book does not surface within the borders of South Africa. The Clerk of the Court to serve a copy of this order on the said Board.**

*In terms of Section 23(5) (a) of the Equity Act the proceedings in this matter will be sent on review to the Durban High Court within 7 days. If parties to these proceedings wish to submit any written statements or arguments for the attention of the Judge must do so within 5 days from today and must be handed to The Clerk of The Court.*

Mr. Slade if you wish to appeal any of my findings then you may do so by delivering a Notice of Appeal within 14 days from today to the Clerk of the Court and The Human Rights Commission.

The Notice of Appeal must:-

- a) Be in writing;
- b) State whether the whole or only a specific part of the order is being appealed against;
- c) Set out fully the finding of fact or the ruling of law appealed against; and
- d) Where appropriate, set out the order or orders or part thereof against which the appeal is founded.

You may also, subject to the rules of the Constitution Court, appeal directly to the Constitutional Court.