

**IN THE EQUALITY COURT OF JOHANNESBURG
HELD AT JOHANNESBURG**

File no. 07/2010 EQ JHB

In the matter between :

AFRIFORUM

First Complainant

and

TAU SA

Second Interested Party

and

JULIUS SELLO MALEMA

First Respondent

and

AFRICAN NATIONAL CONGRESS

Second Respondent

and

VERENIGING VAN REGSLUI VIR AFRIKAANS

Amicus Curiae

AMENDED PARTICULARS OF CLAIM

THE PARTIES

1. **The complainant**

- a. The complainant is Afriforum, a company incorporated and registered in terms of s 21 Companies Act 61 of 1973 and fully compliant with the requirements thereof. The complainant has its registered address at 1 Eendracht Street, Kloofsig, CENTURION, Gauteng,
- b. The complainant is an active non-governmental organization involved in the protection and development of civil rights within the context of the South African Constitution, 1996.
- c. At present the first applicant has 10 829 members and in bringing this complaint it is acting on behalf of its members, and specifically also on behalf of a certain class of persons commonly known as the Afrikaners of South Africa.

2. **The respondent**

- a. The respondent is Julius Sello Malema, a major male person with identity number 8103035973084 employed at 7th Floor, Luthuli House, 54 Sauer Street, JOHANNESBURG whose further and fuller particulars are to the first applicant unknown.
- b. The respondent is reputed to be the President of the African National Congress Youth League (the 'ANCYL'), a political youth formation under the banner of the African National Congress (the 'ANC').

CONDUCT COMPLAINED OF

3. The respondent, while addressing various public meetings –
 - a. recited and/or sang and/or chanted the words (‘the objectionable utterances’):
 - i. ‘Awudubele (i)bhulu’ (‘shoot the Boer/farmer’); and
 - ii. ‘Dubula amaBhuntu baya raypha’ (‘Shoot the Boers/farmers. They are rapists/robbers’); and
 - iii. ‘They are scared, the cowards. You should shoot the Boer/farmer! They rob, these dogs’
 - b. caused and or incited participants to recite and/or sing and/or chant the objectionable utterances.
4. The respondent made the objectionable utterances and/or caused them to be made on the following occasions:
 - a. on or about 3 March 2010 at Polokwane on occasion of the respondent’s birthday celebrations;
 - b. on or about 9 March 2010 at the University of Johannesburg;
 - c. on or about 22 March 2010 during a public address in the course of Human Rights Day celebrations at Mafikeng; and/or
 - d. on or about 26 March 2010 at Rustenburg.

IMPORT OF THE OBJECTIONABLE UTTERANCES

5. The word ‘boer’ or ‘I’bhulu’ –
 - a. taken literally, refers to Afrikaans farmers ,

- b. within the context –
 - i. refers to white people more generally, especially white Afrikaners;
 - ii. suggests that they are the enemy at least to be shunned and at most to be killed.
6. On or about 18 March 2010, the national chairman of the youth structures of the applicant, Ernst Roets, had a meeting with the respondent. At this meeting, the respondent made the following statements:
 - a. That the word “i’bhulu”, as used in the song “Awudubele (i)bhulu” does not only refer to farmers, but to Afrikaners in general;
 - b. That the word “i’bhulu” is also used by the respondent to symbolize any form of oppression and exploitation of blacks in South Africa;
 - c. That, if a court were to declare the song “Awudubele (i)bhulu” to be hate speech and prohibit the respondent to sing the song in future, he would:
 - i. encourage his supporters to sing the song “Awudubele (i)bhulu” while merely dancing to the rhythm of the song;
 - ii. sing other “struggle songs” in which the violence towards the “i’bhulu” are incited.
7. During the course of this meeting between Roets and the respondent, the respondent suggested that, if the youth structures of applicant were to protest

outside the head office of the ANC and the ANCYL on 19 March 2010, as had formally been arranged with the ANC and the ANCYL, there would be a repetition of what happened to members of the Inkatha Freedom Party ('IFP'), when they protested outside the ANC Headquarters without the consent of the ANC.

- a. When asked what the first respondent meant by this, the first respondent encouraged the applicant to 'come and see'.
 - b. By this, the respondent meant to refer and was understood to refer to the so called 'Shell House Massacre' of 28 March 1994 in which 19 members of the IFP were shot dead by members of the ANC when they protested in front of the ANC Headquarters.
8. The respondent:
- a. is, alternatively may reasonably be expected to be, aware of the associations made with these utterances; and/or
 - b. has been made aware of the objections to the use of the objectionable utterances.
9. The objectionable utterances of the respondent:
- a. conveyed a message of racial inferiority; and/or
 - b. were directed against a minority group; and/or
 - c. were persecutorial, hateful and degrading.
- 10.

- a. The objectionable utterances of the respondent engendered a response of humiliation and degradation from the white individuals targeted thereby, Afrikaners and Afrikaner farmers not least.
 - b. The derision, hostility and abuse encouraged by the objectionable utterances had a negative impact on the sense of self-worth and acceptance experienced by the targeted individuals and groups, Afrikaners and Afrikaner farmers not least.
11. The objectionable utterances have -
- a. caused or perpetuated systemic disadvantage to those targeted thereby, Afrikaners and Afrikaner farmers not least;
 - b. undermined the human dignity of those targeted thereby, Afrikaners and Afrikaner farmers not least; and/or
 - c. adversely affected the equal enjoyment of the rights and freedoms of those targeted thereby, including Afrikaners and Afrikaner farmers.
12. The objectionable utterances published, propagated, advocated and/or communicated words based on ethnic or social origin, culture; language and/or birth that were reasonably construed by the complainant and its members to demonstrate a clear intention to:
- a. be hurtful to certain ethnic groups, Afrikaners and Afrikaner farmers not least; and/or
 - b. be harmful to or to incite harm against certain ethnic groups, Afrikaners and Afrikaner farmers not least; and/or

- c. promote or propagate hatred against certain ethnic groups, Afrikaners and Afrikaner farmers not least,
in contravention of s 10(1) of the Promotion and Prevention of Unfair Discrimination Act 4 of 2000 ('the Equality Act').
13. The respondent has been requested to apologise for the objectionable utterances , but refuses to do so.

WHEREFORE the Complainant prays for an order:

1. Declaring

- a. the following utterances of the respondent:
- i. 'Awudubele (i)bhulu' ('shoot the Boer/farmer'); and /or
- ii. 'Dubula amaBhuntu baya raypha' ('Shoot the Boers/farmers. They are rapists/robbers'); and /or
- iii. 'They are scared, the cowards. You should shoot the Boer/farmer! They rob, these dogs'
- b. made:
- i. on or about 3 March 2010 at Polokwane on occasion of the respondent's birthday celebrations; and/or
- ii. on or about 9 March 2010 at the University of Johannesburg; and/or

- iii. on or about 22 March 2010 during a public address in the course of Human Rights Day celebrations at Mafikeng; and/or
- iv. on or about 26 March 2010 at Rustenburg; and/or
- v. on or about 2 April 2010 in Harare, Zimbabwe;

to be hate speech within the contemplation of s 10(1) of the Promotion of Equality and Prevention of Unfair Discrimination Act 2 of 2000;

- b) Interdicting the respondent from inciting, encouraging or promoting hostility towards any ethnic group, Afrikaners and Afrikaner farmers not least, within the contemplation of s 10(1) of the Promotion of Equality and Prevention of Unfair Discrimination Act 2 of 2000;
- c) Costs of suit including the cost of two counsel, in respect of –
 - i. these proceedings;
 - ii. the proceedings before the Magistrate's Court sitting as an Equality Court;
 - iii. the proceedings under case number 18172/2010 in which his Lordship Mr Justice Bertelsman referred this matter to the Equality Court.
- d) Alternative relief.

Dated at PRETORIA on this 31 MARCH 2011.

MSM BRASSEY SC

MJ ENGELBRECHT
Counsel for Complainant

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SOUTH GAUTENG HIGH COURT

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AND TO: ATTORNEYS FOR THE FIRST AND SECOND RESPONDENT

AND TO: ATTORNEYS FOR THE SECOND COMPALAINANT

AND TO: ATTORNEYS FOR THE *amicus curiae*