



**Sex Pest: An Appraisal of dismissal following Sexual Harassment in the Workplace:
Ekurhuleni Metropolitan Municipality v South African Local Government Bargaining
Council**

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PRESENTATION OUTLINE

- Introduction
- The meaning of sexual harassment
- Effects of sexual harassment
- Legislative framework
- Employer's liability
- Facts of the case
- Decision (BC, LC, LAC)
- Conclusion

INTRODUCTION



- The workforce often encounter numerous workplace difficulties that detrimentally impact on both their social and employment lives.
- Standing out from these socio employment issues is the escalating concerns relating to sexual harassment.
- Sexual harassment roots much emotional suffering and discomfort for those who happened to be victims.
- Good years has passed since the promulgation of the laws aimed at combating sexual harassment conducts, nevertheless today several high-profile sexual harassment cases are still recorded whereas considerable number of other cases go unknown or unrecorded.

Sexual harassment defined



- Sexual harassment means an unsolicited conducts (relating to physical, verbal and or non-verbal conducts) of sexual nature that adversely affect men and women's dignity at the workplace (Wasilwa, 2012)
- O'Leary-Kelly *et al* (2009) - **psychological perspective**- it refers to an unwanted sexual behaviour or conducts at the workplace that are perceived to be offensive or threatening to one's well-being. whereas **the sex-based perspective**- it refers to provocation and exclusion that can degrade or humiliate another person.

Effects of sexual harassment



- In the context of workplace relationship, the effects include lack of commitment, absences, low quality performance, and at times resignation.
- Victims of sexual harassment experience negative reactions such as embarrassment, shame, depression and a decrease in their self-esteem, job satisfaction and above all, safety.

Legislative framework



- **The 1996 Constitution-** sets out the values and principles that governs public administration. Among others, this include accountability, transparency, responsiveness.
- **The Code of Good Practice-** (the 1998 Code) and the 2005 Amended Code provide that “victims of sexual harassment may include not only employees, but also clients, suppliers, contractors and other personnel having and or doing business with the employer.

Employer's liability

- More often, the complainant will want to hold the employer liable because the employer will typically have greater means and in a good position to introduce effective measures to eradicate sexual harassment conducts.
- **Section 60 of the EEA** precisely provide that employer may be liable for the conducts of its employee in certain circumstances.

FACTS

- The LAC judgement in the case of *Ekurhuleni Metropolitan Municipality v South African Local Government Bargaining Council* was about two separate conducts of sexual harassment.
- On both occasions, the respondent had made utterances that the complainant “*looks like she taste nice in bed*”
- The complainant reported the respondent to the supervisor and the respondent denied all the allegations.

At the Arbitration hearing



- When imposing the sanction, the arbitrator considered the personal circumstances of the respondent.
- The Arbitrator ruled that the third respondent's dismissal was substantively unfair and as such, it was replaced with reinstatement and a final written warning.

At the Labour Court

- Displeased by the third respondent's reinstatement, the appellant sought the review of the arbitration award in the Labour Court.
- Following the review, the third respondent filed a cross-review and sought condonation, that the arbitration award be set aside and be replaced with a verdict that he had not sexually harassed the complainant and his dismissal was unfair.
- The court dismissed the appellant's application to review the arbitrators' award and upheld the respondent's cross-review.

At Labour Appeal Court

- The court overturned the decision of the LC and held that the award of the second respondent is reviewed, set aside and replaced with an order that the dismissal of the third respondent (Mr. Justinus Mabetoa) is found to have been substantively fair and the condonation for the inordinate late filing of his cross-review is refused.

Comments

- It is important to note that in the context of sexual harassment, sanctions serves an important purpose in that they sends out an explicit message that employees who commit sexual harassment offences do so at their own peril and should more often than not expect harsher punishment.

Conclusion

- This decision demonstrates that the judiciary have now become essential directing body providing valuable and commendable guidelines on how to deal with sexual harassment cases as part of the contemporary perennial distress (gender based violence- the second pandemic) in South Africa.