

**IN THE HIGH COURT OF SOUTH AFRICA
WITWATERSRAND LOCAL DIVISION
EQUALITY COURT**

BETWEEN:

WILHELMIE MAGDALENA CHARLES FIRST COMPLAINANT

and

DOCTORS FOR LIFE INTERNATIONAL SECOND COMPLAINANT

and

JOHN JACKSON SMYTH THIRD COMPLAINANT

and

**GAUTENG DEPARTMENT OF
HEALTH (KOPANONG HOSPITAL) FIRST RESPONDENT**

and

**MEMBER OF EXECUTIVE COUNCIL
FOR HEALTH (GAUTENG) SECOND RESPONDENT**

and

**THE NATIONAL MINISTER OF
HEALTH THIRD RESPONDENT**

COMPLAINANTS' PARTICULARS OF CLAIM

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1. The First Complainant is a registered nurse who was employed by the First Respondent as a theatre sister at the Kopanong Hospital from 1997 until 31 August 2004. Her details are provided in Form 2 (filed with this pleading) pursuant to Regulation 6(1) made pursuant to The Promotion of Equality and Prevention of Unfair Discrimination Act (Act No 4 of 2000), hereinafter called 'the Act'.
2. The Second Complainant is a non-profit making association incorporated and registered under section 21 of the Companies act 1973, and acts herein in the interests of its members who are Health workers concerned to uphold the provisions of the Bill of Rights and the Act in all respects. The Second Complainant brings this complaint pursuant to section 20(1)(e) of the Act. The Second Complainant's details are set out in Form 2 filed with this pleading.
3. The Third Complainant is a retired member of the Bar of England and Wales and a voluntary legal advisor to the first two Complainants, and acts in the public interest pursuant to section 20(1)(d) of the Act. The Third Complainant's details are set out in Form 2 filed with this pleading.
4. The First Respondent was responsible at the material time for the management of the Kopanong Hospital in Vereeniging. The First Respondent's details are set out in Form 2 filed with this pleading.

5.. The Second Respondent is the Member of the Executive Council for Health for the Gauteng Province, cited herein in his official capacity as responsible for the Kopanong Hospital and Health services in Gauteng Province. His details are set out in Form 2 filed with this pleading.

6. The Third Respondent is the National Minister of Health for the Republic of South Africa and is cited herein in her official capacity as the political head of the Department and as the authority ultimately responsible for policy at the Kopanong Hospital and all Government Health facilities nation-wide. Her details are set out in Form 2 filed with this pleading.

7. From 1988 – 1992 the First Complainant trained at the Coronation Nursing College successfully qualifying as a registered nurse. From June 1994 to June 1995 she successfully completed a one year course in Theatre Nursing at the Military Hospital in Pretoria. In 1996 she was promoted to Senior Registered Nurse and in 1999 to Chief Professional Nurse. On the 8th January 1997 the First Complainant was appointed a Theatre Scrub Sister by the First Complainant at what was then known as the Vereeniging Hospital, now the Kopanong Hospital (hereinafter called ‘the Hospital’). She was continuously employed in theatre until May 2004 save for the following periods:

1. March 1997 – Jan 1998 during her first pregnancy when she asked to work elsewhere in view of her pregnancy.
2. April 2003 – November 2003 when she agreed to work elsewhere because of the harassment and intimidation to which she was subjected as set out hereafter, and in view of her further pregnancy.
3. November 2003 – April 2004 when she was granted maternity leave.

8. In February 2000 the staff at the Hospital were told that Terminations of Pregnancy (hereinafter called ‘TOPs’) were about to start in Ward 12. The First Complainant and other health workers at the Hospital who opposed induced abortion on conscientious grounds presented a petition to Dr Tshabalala on 25 May 2000. On the 28 February 2001 the First Complainant wrote a letter to the Hospital management in which she wrote inter alia:

1. That she had become a Jehovah’s Witness and did not wish to help with any abortion evacuations.
2. That CPN Smit, another theatre sister, had kindly offered to be called out for any evacuation in theatre should the First Complainant be on duty when such a case was referred to theatre.
3. Making the suggestion that two sisters be allocated to theatre during the day, and one sister be on call after 1900 hours for TOP evacuations.

After the First Respondent received the said letter, the First Complainant

became increasingly conscious of bad feeling against her from the Hospital management. She felt increasingly intimidated and on 20 August 2001 and again on 13 September 2001 she was forced to 'scrub' for a TOP case in the face of her protestations and contrary to her conscience.

9. On 19 February 2003, a TOP case was referred to theatre during the night when the First Complainant was on duty; she phoned both Sister Smit and Mrs C Jacobs, the area manager, and was told by Mrs Jacobs that she had no choice and she must scrub for the case. She did so very much against her wishes. She contacted the Second Complainant who faxed her a form entitled 'Declaration of Health Professional' that certified that she had a conscientious objection to induced abortion; she filled in the form and presented it to Sister Smit the next day, February 20. On the same day she saw the Hospital CEO, Mr Madonsela, who was supportive of her and said 'they were not supposed to force you to scrub for that (abortion) case.'

10. On 28 March 2003 there was a meeting of theatre staff to discuss the matter at which the First Complainant felt very intimidated.

11. In April 2003 the First Complainant was pregnant again and agreed to move out of theatre to avoid any more stress during her latest pregnancy.

12. On May 2 2004 the First Complainant returned from maternity leave but was not placed on the theatre roster. Between that date and 6 September 2004 the First Respondent failed to respond to requests from the First and Second Complainants to re-instate the First Complainant in theatre, and has failed to give any reasons in writing as requested by the Complainants.

13. In the premises the First Respondents have unfairly discriminated against the First Complainant, directly or indirectly, on the ground of her religion, conscience and belief and she has suffered impairment of dignity, and emotional and psychological suffering as a result.

14. Further, or in the alternative, the First Respondents by their managerial and senior staff have harassed and intimidated the First Complainant by permitting conduct which was persistent and serious, which humiliated the First Complainant and created a hostile and intimidating environment, and which was deliberately calculated to make her submit to their wishes and act contrary to her constitutional rights and her conscience.

15. The Complainants allege that unfair discrimination on the grounds of religion, conscience and belief was systemic at the Kopanong Hospital and they will lead evidence of another health professional being removed from a post in the Hospital because of refusal to participate in abortions.

16. The Complainants further allege that unfair discrimination against health workers who have a conscientious objection to participating in abortion procedures is a nation-wide problem. They will lead evidence of the numerous complaints, and requests for advice, received by the Second Complainant's office, and will ask the Court to take judicial notice of the problem based on the media coverage.

17. The Complainants bring these proceedings in the High Court because of the nation-wide importance of the constitutional issues raised and the fact that the words 'religion, conscience and belief' in section 9 of the Constitution have not yet been considered by any superior court.

WHEREFORE THE COMPLAINANTS CLAIM:

1. Damages (pursuant to s.21(2)(d) of the Act) for the First Complainant against the First and Second Respondents for the impairment of her dignity, and emotional and psychological suffering from 16 June 2003 (when the Act came into force) until this matter is resolved and her suffering ceases, in the sum of R.50,000.
2. An order (pursuant to s.21(2)(j)) that an unconditional apology be made by the First Respondent to the First Complainant.

3. An order (pursuant to s.21(2)(f)) directing the Third Respondent to take all reasonable steps to prevent unfair discriminatory practices, harassment and intimidation on the ground of religion, conscience or belief at health facilities designated for terminations of pregnancy nation-wide.
4. An order for costs against each Respondent, save that the Third Complainant makes no claim for costs.
5. Further and/or alternative relief.

DATED AT UMDLOTI ON THE 20TH DAY OF JANUARY 2005

John J Smyth, QC Legal Advisor to First and Second Complainants, and
Third Complainant in person PO Box 200 Umdloti 4350 Tel/Fax 031-
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