



PRESS RELEASE
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Equality Court affirms lesbian couple's rights

The Alberton Magistrates' Court on Monday 30 July 2012 made an order vindicating the rights of two lesbian women who had lodged a complaint that they were not allowed to publicly celebrate their civil union at Sha-Mani, a privately-owned functions venue and conference centre in Alberton. Sitting as an Equality Court, the Court accepted the agreement between the parties and ordered that Sha-Mani must pay R20 000 to OUT, an NGO working towards gay and lesbian well-being. Sha-Mani was also ordered to allow gays and lesbians to hire any of Sha-Mani's three venues for any purpose, including for weddings. After the case, the couple, Francis and Liani Buitendag, said: "We really hope this case will help others in the LGBTI community to realise they can stand up against unfair discrimination on the grounds of sexual orientation or gender identity".

The Court proceedings arose from the couple's visit to Sha-Mani on 23 May 2011. Having earlier in 2011 entered into a civil union attended only by the two of them, the couple was looking for a suitable venue to host a public 'wedding ceremony'. Francis fell in love with one of Sha-Mani's venues. "I found Sha-Mani's Stellenhof to be the perfectly romantic place to celebrate our love and commitment in the presence of friends and family," she explained after the case. However, when they tried to obtain a suitable date, by email, immediately after their visit, they came up against a wall of obstacles, with Sha-Mani staff indicating that the venue was not available. At the same time, the couple enlisted heterosexual friends to help them to establish that there were in fact venues available on the relevant dates. They felt demeaned and approached the Equality Court. The case of the Buitendag couple was that Sha-Mani's staff knew that they were a lesbian couple, because they made no secret of their orientation, their love for one another, or their excitement about having found a suitable venue at which to hold their 'wedding ceremony', and that Sha-Mani on this basis withheld from them the opportunity to hire the venue of their choice.

The Buitendags brought their case in terms of the Promotion of Equality and Prevention of Unfair Discrimination Act, which was adopted in 2000 and came into force on 16 June 2003. Under this Act, any person may bring a case of unfair discrimination by the State or a private person or institution (such as a holiday resort, bar, restaurant or hairdresser) to an equality court. For this purpose, magistrates and high courts designate a specific magistrate or judge to sit as an equality court. Equality courts conduct their proceedings in an informal manner, and complainants need not have legal representation. The idea is that these courts should be easy and cheap to access. Proceedings can be started by filling out a simple form at any magistrates' court.

The underlying goal of the Equality Act is to assist in eradicating the pervasive inequalities that persist in post-apartheid South Africa. Although the South African Constitution eschews discrimination on the grounds of race, sex, gender, sexual orientation, age, disability (and other grounds), the mere inclusion of constitutional provisions does not change long standing practices and attitudes. The South African



Constitution outlaws unfair discrimination not only by the state, but also by non-state actors, such as Sha-Mani. The Equality Act spells out how cases can be brought to give effect especially to the guarantee against discrimination by non-state actors. Frans Viljoen, the Director of the Centre for Human Rights, who assisted the complainants, observed the following: "Recent and frequent reports about violence against lesbian women in South Africa underline the serious failure of our lofty laws to undo homophobic attitudes and actions. The increased use of equality courts is one way of making law matter more for lesbians and gays in the country".

The Equality Act not only prohibits direct (or explicit) discrimination, but also indirect (or implicit) discrimination. The case of the Buitendags is a good example of allegations of indirect discrimination. The couple contended that Sha-Mani never said openly that it or its staff was discriminating on the grounds of sexual orientation or gender identity. According to the Buitendags, the discrimination could, however, be inferred from the combination of the staffs' conduct towards them, and the constructive refusal to find any suitable date for them, while dates in the desired period were available for others who were not gay or lesbian.

Although the Equality Act is in force since 16 June 2003, relatively few cases have been brought to and have been decided by equality courts. Some of the reasons for the lack of cases are: the difficulty of proving the existence of indirect discrimination; the lack of awareness and knowledge about the possibilities under the equality courts and the Equality Act; and a lack of faith in the power of courts to change the lives of ordinary citizens.

A prominent exception to the non-submission of cases about unfair discrimination on the basis of sexual orientation is the matter brought by organist Johan Strydom against the Dutch Reformed Church Congregation Moreleta Park. In this case, the then Transvaal High Court, sitting as an Equality Court, found that the termination of Strydom's contract on the basis of his sexual orientation constituted unfair discrimination. Judge Basson ordered the Church to pay R 75 000 to Strydom for the impairment to his dignity and emotional and psychological suffering, and to apologise to him. (This case is reported as *Strydom v Nederduitse Gereformeerde Kerk Gemeente Moreleta Park* 2009(4) SA 510 (Equality Court, TPD)).

The Centre for Human Rights at the Faculty of Law, University of Pretoria, advised and represented the Buitendag couple. The Centre is an academic department of the University, but also takes up deserving equality court cases on a pro bono basis, and undertakes training programmes on various aspects of human rights, including the Equality Act.

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For more information please contact:
Francis Buitendag, cell 083 301 9674, febuitendag@distell.co.za
Liani Buitendag, cell 076 777 9260, lbuitendag@qilogistics.com
Frans Viljoen, Centre for Human Rights, cell 073 393 4181, frans.viljoen@up.ac.za