Editorial note: Certain information has been redacted from this judgment in compliance with the law.

IN THE HIGH COURT OF SOUTH AFRICA

(WESTERN CAPE DIVISION, CAPE TOWN)

Case No: EC 09/2021

In the matter between:

C[…] P[…]	Applicant
and	
CLARISSA VENTER	First Respondent
SCHOOL GOVERNING BODY FOR SANS SOUCI GIRLS HIGH SCHOOL	Second Respondent
MEC FOR EDUCATION, WESTERN CAPE	Third Respondent
MINISTER OF THE DEPARTMENT OF BASIC EDUCATION	Fourth Respondent

Coram: Justice J Cloete

Heard: 16 and 17 April 2024

Delivered electronically: 8 May 2024

JUDGMENT

CLOETE J:

Introduction

[1] On 5 February 2019 an incident occurred in the Grade 9 Afrikaans class at Sans Souci Girls High School where the applicant was a learner and the first respondent her teacher. That there was a physical altercation is not in dispute, although exactly what happened, and why, has not yet been finally determined.

[2] On 8 October 2021 (after withdrawing an Equality Court application in the Wynberg Magistrate's Court) the applicant launched the current application in the Equality Court (Western Cape Division) in which she claimed a combination of relief from such court *'sitting as both Equality Court and High Court'*. Put differently, she approached the Equality Court on the basis that it was permitted, without separate and parallel proceedings having been instituted in the High Court, to entertain and determine some of the relief which, it is common cause, an Equality Court cannot grant, in particular various declaratory orders based squarely on the Constitution (the "High Court relief").

[3] These were for orders declaring: (a) clause 10 of the school's code of conduct to be inconsistent with the Constitution and unlawful; (b) that the third and

fourth respondents (the MEC and Minister) have a duty to intervene where a learner's constitutionally protected rights are violated within the school environment; and (c) that the alleged refusal by the MEC and/or Western Cape Education Department to intervene in the particular circumstances of the matter was inconsistent with the MEC's constitutional duties and/or functions and/or obligations.

[4] In what I will refer to as the "Equality Court relief" the applicant claimed: (a) declaratory orders that the school's code of conduct unfairly discriminates insofar as it prohibits learners *'even among themselves'* from speaking languages other than English within the school premises, and that the MEC and/or Western Cape Education Department have a duty to intervene where a learner is subjected to disciplinary proceedings by the school without due process being followed; (b) damages of R100 000 as a result of harassment in terms of s 11 of the Equality Act;[1] (c) damages of R100 000 for impairment of dignity; (d) damages in an amount to be determined by the court for pain and suffering; (e) damages of R100 000 for emotional and psychological suffering; (f) damages of R100 000 for assault, alternatively *crimen injuria* (both under the common law); (g) an unconditional written apology by each respondent; and (h) an order for implementation of *'special measures to address the harassment suffered'* by the applicant at the school. Although not apparent from the notice of motion or founding affidavit the applicant stated in her replying affidavit that the damages claims were against all of the respondents jointly and severally.

---

[1] Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000.

[5] In the first respondent's answering affidavit she disputed that any of the relief falls within the jurisdiction of the Equality Court since: (a) none of the alleged conduct of which the applicant complains falls within the definition of *'discrimination'* in the Equality Act; and (b) section 11 of the Equality Act refers to *'persistent'* harassment which did not occur.

[6] In its answering affidavits the second respondent (the school's governing body) squarely disputed that the applicant's cause of action falls within the Equality Act, inter alia since the alleged conduct of the first respondent is not a *'prohibited ground'* for purposes of that Act.

[7] The parties subsequently agreed to separate the issue of jurisdiction of the Equality Court from the merits. The third and fourth respondents did not participate in the jurisdiction hearing, which came before me. The applicant, first and second respondents further agreed that the issues to be determined on jurisdiction are as follows:

7.1 Whether in matters before the Equality Court where the relief sought does not fall solely within the jurisdiction of that court, the Equality Court may sit as both a High Court and Equality Court despite the absence of parallel proceedings in the High Court; and

7.2 Whether the alleged acts of harassment and discrimination relied upon by the applicant fall within the ambit of the Equality Act.

The first issue: may an Equality Court sit as both a High Court and Equality Court despite the absence of parallel proceedings in the High Court?

[8] It was submitted on behalf of the applicant that it is axiomatic in matters before the Equality Court where the relief sought does not fall solely within the jurisdiction of that court, the Equality Court may sit as both High Court and Equality Court. It was argued that the assortment of relief claimed as a whole is all based upon the same factual and contextual matrix arising from the same event. Properly interpreted, s 20 of the Equality Act enables this court to order at this stage that the relief sought under the Equality Act will be determined by the court clothed with its Equality Court powers, and the remaining relief by the same court clothed with its inherent jurisdiction sitting as a High Court. In support of this argument the applicant relies on *Minister of Environment Affairs and Tourism v George and Others*;[2] *Qwelane v Minister of Justice and Constitutional Development and Others*;[3] *De Lange v Methodist Church and Another*;[4] *S v Neotel (Pty) Ltd*;[5] and *Nelson Mandela Foundation Trust and Another v Afriforum NPC and Others*.[6] The gist of the applicant's argument is that to find otherwise would be placing form over substance.

[9] The first and second respondents advanced essentially the same argument in support of their opposition. Relying on s 165 of the Constitution and *Manong*

---

2 2007 (3) SA 62 (SCA).
3 2015 (2) SA 493 (GJ).
4 2016 (2) SA 1 (CC).
5 2019 (1) SA 622 (GJ).
6 2019 (6) SA 327 (GJ).

& Associates (Pty) Ltd v Department of Roads and Transport, Eastern Cape and Another[7] they submit that when a court sits as an Equality Court it is neither a High Court (when it sits at High Court level) nor a Magistrate's Court (when it sits at magistrate's court level). Accordingly an Equality Court is a separate court and cannot assume the jurisdiction of the High Court where there are no parallel proceedings pending in the High Court capable of consolidation. It is only where there are such proceedings pending, and they are consolidated with the Equality Court proceedings, that a High Court can preside over both simultaneously, wearing two hats as it were. The first and second respondents also submit that the authorities relied upon by the applicant do not support her argument. In turn the applicant contends that *Manong* is distinguishable.

[10] I turn to consider the parties' respective arguments. Section 20 of the Equality Act deals with the institution of proceedings in terms of or under that Act. In terms of s 20(3) a presiding officer of the Equality Court must decide whether a matter instituted under the Act should be heard in the Equality Court or referred to another *'appropriate institution, body, court, tribunal or other forum'.* In terms of s 20(4) in making such a decision the presiding officer must take all relevant circumstances into account, including for present purposes *'the nature of the intended proceedings and whether the outcome of the proceedings could facilitate the development of judicial precedent and jurisprudence in this area of the law'* in s 20(4)(d). As I understand the applicant's argument, it is this subsection upon which she relies.

---

[7] 2009 (6) SA 589 (SCA).

[11] The difficulty I have with her submission is that s 20(4)(d) refers specifically to the development of judicial precedent and jurisprudence in *'this area of the law'*. When regard is had to the preamble of the Equality Act this can only be a reference to giving effect to the law pertaining to s 9 of the Constitution (the equality clause). As senior counsel for the applicant himself made clear, the very reason why the prior Equality Court proceedings were withdrawn in the magistrate's court was because only a higher court may determine the other declaratory relief sought by the applicant under the Constitution. In my view s 20(4)(d) cannot be interpreted in such a way as to mean that the consideration of legal issues other than those arising within the context of s 9 should be taken into account when a presiding officer in the Equality Court exercises the discretion contemplated in the subsection. The applicant's reliance thereon thus does not assist her.

[12] This is not to say that where the relief sought (based on equality law) can also competently be granted by a High Court this detracts from the jurisdiction of the Equality Court. As was held in *George* upon which the applicant relies:

> *'[12] The jurisdiction and powers that the statute confers on equality courts is wide, and counsel for the Minister was obliged to concede that at least some of the relief the fishers seek lies solely within the jurisdiction of the equality court. The fishers conceded that all their claims arise from substantially the same facts, and that they are all directed at substantially the same relief: but they pointed out that the claims are based on a range of different causes of action. Some of the relief they seek the high court has no jurisdiction to consider or grant – most notably, their prayer for an inquiry in terms of s 21(1) of the Equality Act. The fact that much of the other relief they seek could also be granted by the high court does not detract from the equality court's*

jurisdiction, nor is it a reason to deprive the fishers of the procedural benefits they hope will accrue from proceeding in the equality court.

[13] Conversely, some of the relief the fishers seek can be adjudicated only by the high court – for instance their claims based on constitutional provisions other than equality, such as those conferring a right to choose a trade or occupation (Bill of Rights s 22) and access to socio-economic rights (Bill of Rights s 27). But this again does not entail that the equality court cannot first (or concurrently) adjudicate upon the claims that are properly before it.'

[13] Two provisions in the Equality Act need to be emphasised. First, s 3(3) stipulates that *'[a]ny person applying or interpreting this Act must take into account the context of the dispute and <u>the purpose of this Act</u>'.* Second, in terms of s 4(2) *'[i]f any conflict relating to a matter dealt with in this Act arises between this Act and the provisions of any other law, other than the Constitution or an Act of Parliament expressly amending this Act, <u>the provisions of this Act must prevail</u>.'* (my emphasis). And in *George*[8] it was also held that:

'It is true that s 20(3)(a) refers to "another… court". But "court" clearly cannot include a high court when the equality court is itself a high court sitting as an equality court. It may include a small claims court, or a magistrate's court, but it is not necessary for us to decide that now. What is clear is that in these circumstances a high court is not intended…

<u>It must therefore be concluded that the legislation does not contemplate that a high court sitting as an equality court can refer a matter to itself in another capacity</u>.' (my emphasis)

[8] At paras [10] and [11].

[14] To put this into perspective it is necessary to quote at some length from *Manong.* Before doing so I deal briefly with the relevant facts in that case and the findings of the court a quo. The appellant had been disqualified during a tender process due to scoring below the minimum points required for functionality. It considered this to have occurred unlawfully and launched urgent proceedings in the Equality Court for an interim interdict pending the determination of final relief in the form of a review, an order declaring the tender process to be inconsistent with s 217 of the Constitution, and a direction that the first and second respondents' procurement practices and procedures should undergo an audit in a manner to be prescribed. The first and second respondents opposed the main relief inter alia on the basis that the Equality Court did not have the power to grant relief in the form of administrative review.

[15] Having found that an Equality Court is not a separate court of a status similar to either the High Court or Magistrate's Court, and although s 21 of the Equality Act does not provide for review powers, the court a quo held that an Equality Court located at the High Court dealing with an adjudication dispute under the Equality Act could nonetheless exercise its High Court powers of review. The learned Judge reasoned that the High Court power to review was in terms of the common law as well as being a superior court with judicial authority under the Constitution. In reaching this conclusion the learned Judge relied on *George*, stating that:

'The outcome of the George *case in the Supreme Court of Appeal lends support to the approach that when the High Court sits as an "equality court for the area of its jurisdiction" in terms of s 16(1)(a) of the Equality Act, it does so as a High Court with judicial authority under the Constitution. The jurisdiction it exercises when doing so is its own, as a High Court. There is, in my respectful view, no separate "equality court" (either in the form of a court established under s 166(4) of the Constitution or as a tribunal without judicial authority under the Constitution) with any separate jurisdiction of its own. The High Court sitting as an "equality court" sits as a High Court, retaining its original jurisdiction as such, together with any expanded jurisdiction that may be conferred upon it in terms of the provisions of the Equality Act…*

Perhaps it would be conducive to clarify to talk of the High Court exercising "equality court jurisdiction" under the Equality Act rather than the "equality court" having that jurisdiction. Use of the term "jurisdiction" in that sense would denote that the High Court has jurisdiction to determine the cause of action brought before it which is based on the provisions of the Equality Act…

If used in that sense it would mean that there should be no obstacle to single proceedings being brought in the High Court, based on a cause of action under the provisions of the Equality Act, as well as any other cause of action over which the High Court would normally have jurisdiction.'[9]

[16] After considering the scheme of the Equality Act[10] the Supreme Court of Appeal disagreed with the court a quo. It held that:

'[54] In my view, Froneman J erred in stating that when the High Court sits as an Equality Court it does so as a High Court with all the powers and trappings of that court, including having jurisdiction in respect of causes beyond those stipulated in the Equality Act.

---

[9] *Manong & Associates (Pty) Ltd v Department of Roads & Transport, Eastern Cape, and Others (No. 2)* 2008 (6) SA 434 EqC at paras [16] and [18].

[10] At paras [26] to [51].

[55] As stated above, the reasoning of the court below is as follows: Equality is a fundamental constitutional value that underlies all adjudication under the Constitution. Equality is an integral feature of any adjudication in the High Court on any given day. When judges adjudicate disputes under the Equality Act, it is the High Court itself with all its attendant powers that is exercising equality jurisdiction.

[56] This view loses sight of the fact that when they are fulfilling their obligations and exercising the powers of their office as judges in their everyday adjudication, they do so within the powers that they have as set out in the Constitution, the common law and the statutes that specifically apply to them. They also do so in terms of the requirements of the substantive law which they apply under the umbrella of the Constitution. It is clear that any person who is the victim of racial or other discrimination is not precluded from asserting his or her right to equality as provided for in s 9 of the Constitution by the institution of proceedings in the ordinary course in a High Court. The matter will then be dealt with by the High Court, following the terms of its empowering statute and its processes and rules.

[57] The Equality Court is a special animal. In modern language one could describe it as 'a special purpose vehicle.' As stated above, it was clearly designed and structured to ensure speedy access to judicial redress by persons complaining of unfair discrimination. The infrastructure of magistrates' and high courts are to be utilised. Selected and 'specially trained' magistrates and judges are appointed to preside at the seats of their existing respective courts and in relation to a geographical area encompassing the territorial areas of jurisdiction of those courts...

[62] Outside of the provisions of the Equality Act, high courts and magistrates' courts continue, on a daily basis, to uphold the fundamental values of our Constitution within the parameters of their powers. The Equality Court is an added tool to promote the transformation of our society in realisation of our best aspirations. It is a separate and distinct court with powers specified in its empowering statute.

[63] As can be seen from the scheme of the Equality Act, dealt with extensively above, the Equality Court has its own rules and procedures, both

in terms of the Equality Act and the regulations framed thereunder. The provisions of the Magistrates' Courts Act 32 of 1944 and the Supreme Court Act 59 of 1959 and the rules of the Magistrates' Court and the High Court play a limited part as provided for in s 19(1) of the Equality Act and regulation 10(5)(d), the provisions of which are set out in paras 33 and 39 above. The statutory provisions and regulations apply in respect of the aspects set out in s 19(1)(a) to (e) and only insofar as no other provision has been made in the regulations under the Equality Act and for the purpose of supplementing them.

[64] Section 19(1)(e), in stating that those provisions and rules apply in respect of jurisdiction must, in the scheme of things, mean territorial jurisdiction. Earlier in this judgment the provisions of s 19(3) of the Equality Act were referred to. That subsection, it will be recalled, states that a magistrates' court sitting as an equality court is not precluded from making orders contemplated in the Act which exceed its monetary jurisdiction subject to confirmation by a judge of the High Court having jurisdiction. This provision is understandable. The legislature, it appears, was intent on ensuring that when an equality court matter was being heard at the seat of a magistrates' court a party against whom a complaint was lodged was precluded from raising the monetary limit as a jurisdictional point. As pointed out earlier in the judgment, this in itself distinguishes magistrates' courts from equality courts. The substantive jurisdictional bases for the institution of proceedings are set out in ss 6 to 12 of the Act. These sections prohibit specified unfair discrimination and other conduct. Section 21 provides extensive remedies and sets out the powers of the Equality Court.

[65] High courts have inherent power to protect and regulate their own process. Equality courts do not. The provisions of the Supreme Court Act and the Uniform rules do not provide for this inherent power and can therefore not be sourced through the Equality Act. The Equality Court has only those powers and functions set out in the Equality Act…

[69] The passage in George, a decision of this court, on which the court below relied was obiter*. In that case, this court was dealing with facts clearly distinguishable from those in the present case and was not required to*

confront the issue resolved in this appeal. In any event, for the reasons set out above, the conclusions on which Froneman J relied cannot be supported.

[70] For all these reasons I conclude that Froneman J erred in his characterisation of the Equality Court. In my view, the error in his reasoning was prompted because he was asked to consider, at the outset, whether the Equality Court had 'review' jurisdiction. It was the wrong question, which inevitably led to the wrong conclusion.

[71] The correct question was to ask whether Manong's complaint fell within the purview of the Equality Act. Clearly it did. The next step was to look at the powers and functions of the Equality Court referred to above. In the event of the complaint being sustained, any one of the orders set out in s 21(f) to (i) was competent. That an order by the Equality Court might have the same effect as an order made by a high court on review, is merely coincidental.

[72] The attempts to typify or categorise the proceedings brought by Manong is what led to the confusion. Labels are less important than substance. In respect of Manong's principal complaint, the Equality Court clearly had jurisdiction. In the event of the success of that complaint there would have been nothing further to adjudicate. However, in the light of the conclusions reached as set out above, it needs to be stated that only complaints or 'causes of action' provided for by the Equality Act are susceptible to adjudication by the Equality Court. That court was set up for a particular purpose. Other causes of action are accommodated in other appropriate fora*. The Equality Court was especially set up to deal with unfair discrimination and the other issues provided for by ss 10 to 12 of the Equality Act, as described above.'*

[17] I accept that in *Manong* the applicant only approached the Equality Court and not the Equality Court sitting as <u>both</u> Equality Court and High Court as is the case before me. I also accept that the applicant does not seek any review relief (which is the basis upon which she sought to distinguish *Manong*). But I

do not believe that it makes any difference having regard to the reasoning of the Supreme Court of Appeal. To my mind it is rather the applicant arguing the same issue from a different angle.

[18] For sake of completeness I deal briefly with the other authorities upon which she relies. In *Qwelane* there were parallel proceedings instituted in the Equality Court and the High Court which were consolidated by agreement before adjudication. In *De Lange* the Constitutional Court remarked that there was much to be said, in a matter involving an Equality Act question and an unrelated one, for allowing the same court (i.e. a single judge) to decide both questions, sitting alternately as the Equality Court and the High Court, but in the context of a consolidation of parallel proceedings;[11] in *Neotel* the court consolidated the parallel proceedings (although the heading of the judgment refers only to the Equality Court case), again before adjudication; and in *Nelson Mandela Foundation Trust* one of the parties raised a constitutional challenge to s 10 of the Equality Act with the court stating as follows:

> *'[11] Once the SAHRC raised the constitutionality of section 10 of the Equality Act, albeit in the alternative, the case required the Court to sit both as an Equality Court and as a High Court. This is despite the mistake that the SAHRC made inadvertently by maintaining the heading in its Notice of Motion and Founding Affidavit as "Equality Court", whilst their papers were in all material respects for the High Court. It is a mistake for which the SAHRC formally apologised at the hearing, which apology I accepted. The consolidated hearing, which I allowed, was both convenient and ideal in the circumstances.'* (my emphasis)

[11] See para [58] thereof.

[19] To the extent that I have misunderstood the court's reasoning in *Nelson Mandela Foundation Trust* it is in any event not binding on me (being the decision of a single Judge in another Division), whereas I am of course bound by *Manong.* Having carefully considered the respective arguments of the parties involved at this stage, as well as the authorities to which I have referred, I am unable to accept the applicant's argument that an Equality Court may sit as both a High Court and Equality Court despite the absence of parallel proceedings in the High Court.

The second issue: do the alleged acts of harassment and discrimination relied upon by the applicant fall within the ambit of the Equality Act?

[20] The applicant has framed her first complaint as being harassment which is defined in s 1 of the Equality Act as follows:

> *'… unwanted conduct which is persistent or serious and demeans, humiliates or creates a hostile or intimidating environment or is calculated to induce submission by actual or threatened adverse consequences and which is related to –*
>
> *(a) Sex, gender or sexual orientation; or*
>
> *(b) A person's membership or presumed membership of a group identified by one or more of the prohibited grounds or a characteristic associated with such group…'* (my emphasis)

[21] Of the *'prohibited grounds'* two are race and language, and these are relied upon by the applicant. Section 11 of the Equality Act stipulates that *'[n]o person may subject any person to harassment'.* As previously stated the first

respondent submits that the applicant cannot rely on a complaint of harassment since she bases her case squarely on a single incident which can never amount to *'persistent'* conduct. The first respondent is incorrect since the definition of *'harassment'* encompasses conduct that is either persistent or serious.

[22] In her founding affidavit the applicant alleged that the first respondent's conduct which ultimately resulted in her slapping the applicant's face was harassment falling within the first part of the definition *'and which is related to my membership of a racial group and my use of* [the isiXhosa] *language'.* Save for this allegation, the founding affidavit is silent on any evidence to support her claim that the first respondent's conduct was related to her race and use of language. In *Nedbank Ltd and Another v Survé and Others*[12] the Supreme Court of Appeal held as follows:

> *[22] Of course, the respondents' view or perception that it was being discriminated against on the basis of race is not sufficient to establish a prima facie case. Their case was expressly inferential. Consequently, they were required to adduce facts sufficient to satisfy the equality court that the inference of unfair racial discrimination they sought to draw from the facts was more plausible than the alternative inference drawn from the facts averred by Nedbank in its defence to the charge.*[13]
>
> *[23] This means that the respondents had to show that:*
>
> *(a) the other impugned companies, which had not had their accounts closed, were 'white companies', whereas the respondents, which had faced closure, were 'black companies';*

---

[12] [2024] 1 All SA 615 (SCA).
[13] Referring to *Cooper v Merchant Trade Finance Limited* 2000 (3) SA 1009 (SCA) at para [7].

> *(b) these two groups were similarly situated in all other respects apart from race; and (c) the reason for this differential treatment was the race of the companies.*
>
> *Without this, a plausible inference could not be drawn that it was the victim of unfair racial discrimination by Nedbank…'*
>
> *[25] Effectively, the respondents' case rested on no more than an assumption of racial designation. That assumption was insufficient to establish even a prima facie case that Nedbank had treated the respondents, as black customers, differently from white customers…'*

[23] It is common cause that it was at an advanced stage of the incident when the applicant made a comment in isiXhosa which the first respondent did not understand, since she is not proficient in the language. The significance of this occurring at an advanced stage is that it did not spark the altercation. According to the applicant what started it was the first respondent insulting the class as a whole for the failure by most of them to bring their Afrikaans textbooks to class. The applicant's version is that she took umbrage at the insults and this started the incident.

[24] The first respondent's version is that the applicant, as had been the case in the past, was not participating in the class at all and was actively disruptive. She had also not done her homework and when reprimanded she became insolent and aggressive. She also yet again broke a school rule that cell phones are not allowed in class and refused to heed the first respondent's instruction to put it away, grabbing her cell phone and thus deliberately provoking and disrespecting the first respondent in front of the entire class.

The first respondent also alleges that it was classroom practice to speak and respond in Afrikaans which is understood by all in the class, and the applicant was not deprived of her right to use her language of choice (isiXhosa) while class was not in session.

[25] In its answering affidavits the second respondent supported the first respondent's version pertaining to the applicant's past behaviour. It alleges that in August 2018 fifteen fellow learners provided statements related to the applicant's bullying behaviour, disrespect to fellow learners and educators and in particular her disruption of classes. In September 2018 the applicant was charged with the theft of a classmate's tablet. She pleaded guilty to this charge at a disciplinary hearing. In January 2019 the applicant was involved in a physical fight with a classmate in class. This fight continued to the reception area in full view of visitors, staff and other learners. The applicant was placed on warning for this incident. She also regularly failed to do her homework and was regularly late for school. She seldom had the necessary textbooks with her. During 2018 she was absent from school for 55 days, even absenting herself during examination times. She was referred to the school psychologist and counsellor but refused to avail herself to them. The second respondent alleges that:

> *'From the aforesaid, it is clear that the Applicant is an insolent learner. It follows that the incident that occurred on 5 February 2019 is merely the… First Respondent's reaction to the Applicant's insolence and nothing to do with unfair discrimination on the basis of racism…*

[26] The second respondent also alleges that during 2017, apart from Afrikaans, isiXhosa was introduced as an option for first additional language. Learners could thus choose either Afrikaans or isiXhosa as their first additional language (FAL). The applicant of her own volition elected to do Afrikaans instead of isiXhosa. Apart from the FAL's, all other classes are taught in English as this is the language of teaching and learning at the school. The second respondent is also an English Medium School. The second respondent thus denied that the applicant was discriminated against, either on the basis of race or language. In her replying affidavit, while alleging that the first and second respondents attempted to justify the first respondent's behaviour due to provocation by the applicant, she did not deny any of the factual allegations pertaining to her past behaviour or the complaints of other learners, which, it is also common cause, are predominantly not members of the white race.

[27] The applicant's second complaint of discrimination based on language is that the school's code of conduct prohibits learners *'even among themselves from speaking languages other than English within the school premises'.* This allegation was demonstrated to be factually untrue. The second respondent referred to clause 10 of its code of conduct which reads as follows:

> *'**Language***
>
> *All classes except for First Additional language classes are conducted in English. Thus, English must be spoken during these classes. Home languages may only be used to enhance understanding and with permission from the teacher. Pupils are permitted to speak their home languages outside*

> *the classroom but we encourage pupils to practice inclusivity. Home language use must not be used as a bullying tactic, or to deliberately exclude or gossip about others.'* (my emphasis)

[28] The applicant did not dispute clause 10 of the school's code of conduct in reply. Accordingly, applying the principles laid down very recently in *Nedbank*[14] I am compelled to conclude that the applicant's view or perception that she was being discriminated against on the basis of race and language, without laying any evidential basis, is not sufficient to establish a prima facie case for purposes of s 13(1) of the Equality Act. Put differently, bare allegations do not equate to establishing a prima facie case. It follows that the alleged acts of harassment and discrimination relied upon by the applicant do not fall within the ambit of the Equality Act, and the Equality Court lacks jurisdiction.

Conclusion

[29] Given particularly the first issue for determination in this case, the applicant, first and second respondents were all in agreement that, irrespective of the outcome, no order should be made as to costs. Given that the third and fourth respondents did not participate in this hearing it appears to me to be appropriate that the same should apply to them.

[14] See fn 12 above.

[30] **The following order is made:**

1. **The application is dismissed; and**

2. **Each party shall bear their own costs.**

_____

J I CLOETE

For applicant: Adv D Ntsebeza SC with Adv T Sidaki
Instructed by: Legal Aid South Africa (Ms R Carstens)

For first respondent: William Booth Attorneys (Mr W Booth) assisted by Adv J Aspeling

For second respondent: M Esau & Assoc. (Mr M Esau**)**

For third and fourth respondents: Office of the State Attorney (Mr L Manuel)