

SOUTH AFRICAN HUMAN RIGHTS COMMISSION

7th Floor ABSA Building
132 Adderley Street
Cape Town

PO BOX 3563
CAPETOWN
8000

Tel.: 021 426 2277
Fax: 021 426 2875



10 July 2013

Ms. Lara Johnstone

Per Email: jmcswan@mweb.co.za

Our Ref: WC/1213/0973-TC

Dear Madam,

RE: YOUR COMPLAINT WC/1213/0973-TC

Your complaint dated 5 March 2013 has reference.

After careful assessment, the South African Human Rights Commission (SAHRC or the Commission) has found that your complaint should be dealt with by other institutions namely the Press Ombudsman and the Office of the Public Protector.

Your complaint is based on the following allegations:

1. That on 27 November 2012, you submitted an application to the Constitutional Court for a Radical Honesty Culture review of the outcome of Equality Court case Afri-Forum and Another v Malema and Others on the basis that same is culturally vague and therefore unconstitutional and that the Constitutional Court Registrar refused to process your review application;
2. That on 8 December 2012, you submitted a press release to the South African Press Association (SAPA) regarding your inability to access legal services as a member of the Radical Honesty Culture for the last ten years;
3. That SAPA Published your story to the wire but did not write a story about the press release;
4. That upon enquiry to SAPA you were informed that the reason they did not write a story about your difficulty in accessing legal services and representation is that it is not news;

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Chairperson: M L Mushwana; **Deputy Chairperson:** P Govender; **Commissioners (Full-Time):** B Malatji, L Mokate;
Commissioners (Part-Time): J Love, D Titus;
Chief Executive Officer: A K Ahmed

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5. That on 10 December 2012, you sent unanswered letters of inquiry to SAPA and South African media editors in attempts to have an article published about your lack of legal representation for over 10 years;
6. That on 10 December 2012, the Constitutional Court Registrar refused to process your appeal against her refusal to issue your review application and advised that you need to comply with the Rules of that Court and advised that you should obtain legal representation.
7. That on 7 February 2013, you filed an appeal to Commission for the Promotion and Protection of the Rights of Cultural, Religious, and Linguistic Communities (CRL Rights Commission) regarding SAPA and SA Media;
8. That on 19 February 2013, you filed an appeal to CRL Rights Commission regarding the Constitutional Court Registrar;
9. That to date you have not received a response from CRL Rights Commission.

In regard to your complaint against the refusal by the Registrar of the Constitutional Court to issue your review application and your appeal against the refusal to issue the review application the SAHRC has determined that your complaint relates to alleged maladministration by a government official and that accordingly that the Office of the Public protector is the more appropriate body to deal with such a complaint.

The SAHRC's basis for this is the Complaints Handling Procedures issued in terms of Section 9(6) of the Human Rights Commission Act 54 of 1994 (Gazette, 27 January 2012, No 34963):

Chapter 4. Article 12 (7) provides that: "If the Provincial Manager makes a finding that the complaint should be rejected or referred as contemplated in subarticles (8) and (9), the complainant must, within seven days of the finding, be notified thereof, in writing: Provided that he or she must be provided with full reasons for the rejection or referral and be advised of his or her right of judicial review and appeal in terms of Chapter 9 of these Procedures."

Further Chapter 4. Article 12 (8) (a) of the SAHRC's Complaints Handling Procedures provides as follows:

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"If the Provincial Manager makes a finding that the complaint does not fall within the jurisdiction of the Commission, or could be dealt with more effectively or expeditiously by another organisation, institution, statutory body or institution created by the Constitution or any applicable legislation, the complaint must within seven days of the finding, be referred to such appropriate organisation, institution or body"

Section 6(a) of the Public Protector Act, 1994 (Act No. 23 of 1994) provides that the Public Protector is responsible for investigating "(i) maladministration in connection with the affairs of government at any level;" as well as "(ii) abuse or unjustifiable exercise of power or unfair, capricious, discourteous or other improper conduct or undue delay by a person performing a public function." In light of this mandate and the aforementioned allegations relating to alleged maladministration on the part of the Registrar of the Constitutional Court, it appears that the Office of the Public Protector is the appropriate body or institution to deal with your matter. You can contact the Office of the Public Protector at P.O. Box 712, Cape Town, 8000 or by telephone at (021) 423 8644.

In regards to the aforementioned allegations relating to the press the Commission has determined that the Press Ombudsman is the most appropriate organisation that should deal with your matter.

"The Council, the Ombudsman and the Appeals Panel are an independent co-regulatory mechanism set up by the print media to provide impartial, expeditious and cost-effective adjudication to settle disputes between newspapers and magazines, on the one hand, and members of the public, on the other, over the editorial content of publications."

You can contact the Public Advocate of the Press Ombudsman, Ms. Latiefa Mobarra via email at mobarra@ombudsman.org.za or via phone at 011 484 3612.

In view of the above, the SAHRC will close your file in this matter. Should you not be satisfied with this decision, you may lodge an appeal, in writing within 45 days of receipt of this letter. A copy of the appeal form is available at any office of the SAHRC. The appeal should be lodged with the Head Office of the SAHRC – contact details are as follows:

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Braampark
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Postal Address: Appeals Section
Private Bag X2700
Houghton
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Fax number: 011 403 0567 (Attention – Appeals Section) Telephone number: 011 877 3654 / 3653

Should you have any queries or points of clarity please do not hesitate to contact Ms. Tammy Carter, Senior Legal Officer on telephone number (021) 426 2277 or alternatively via email: TCarter@sahrc.org.za.

Yours faithfully,

Melanie Lue Dugmore
PROVINCIAL MANAGER

Tammy Carter
SENIOR LEGAL OFFICER

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