

SOUTH AFRICAN HUMAN RIGHTS COMMISSION

Ref No: LP/1617/0220

In the matter between:

SOUTH AFRICAN HUMAN RIGHTS COMMISSION
(own accord)

Complainant

and

T MOLELE

Respondent

CONCILIATION AGREEMENT

1. INTRODUCTION

- 1.1. The South African Human Rights Commission (hereinafter referred to as the "Commission") is an institution established in terms of Section 181 of the Constitution of the Republic of South Africa Act, 108 of 1996 (hereinafter referred to as "the Constitution").
- 1.2. The Commission is specifically mandated to:
 - 1.2.1 Promote respect for human rights;
 - 1.2.2 Promote the protection, development and attainment of human rights; and
 - 1.2.3 Monitor and assess the observance of human rights in the Republic.

T. I. Molele

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8

D. S. Ledwaba

- 1.3. Section 184(2) of the Constitution empowers the Commission to investigate and report on the observance of human rights in the country and to take steps to secure appropriate redress where human rights have been violated. The Human Rights Commission Act, 54 of 1994 [the Act], provides the enabling framework for the exercise of the Commissions powers and imposes a mandatory duty on both public bodies and private individuals a duty of cooperation with the Commission.
- 1.4. Section 9(6) of the Act determines the procedure to be followed in conducting an investigation regarding an alleged violation of or threat to a fundamental right and Article 3(b) of the South African Human Rights Commission's Complaints Handling Procedures (CHP), provides that the Commission has the jurisdiction to conduct or cause to be conducted any investigation on its own accord or upon receipt of a complaint, into any alleged violation of or a threat to a fundamental right.
- 1.5. Article 16(1) allows the Commission to resolve a complaint by "applying a combination of one or more methods of dispute resolution or by any other appropriate means..." and Section 8 of the Act sets out the various forms of alternative dispute resolution that the Commission may embark upon with the aim of resolving any dispute, which includes mediation, conciliation and negotiation.

2. THE PARTIES

- 2.1 Having assessed the allegations contained in the media reports, the Commission resolved to investigate this matter on its own accord, as determined by article 3(b) of the Commission's gazetted Complaints Handling Procedures
- 2.2. The Respondent is Mr Tlou Molele, a male adult, residing in the Limpopo Province. (hereinafter referred to as the Respondent).

3. BACKGROUND TO THE COMPLAINT

3. 1 In October 2016 the Commission learned from media reports that on the 3rd of October 2016 the Respondent made the following comments on social media:

T. I. Molele
D. Ledwaba



If it wasn't for this Genetic error called mutation, then white fuckers would have never existed. You are the original Mother fuckers. We would not be in protests and shit like this if you white fuckers went back to your native lands. Do you even have place of origin? Boix! let me tell you I am not created to burn down any system that upholds the existing white supremacy. You white fuckers must just go back where to come from and leave there as peasants. Leave us alone and stop trying to start fights and divisions amongst our black genetically superior community. Fuck you and your generic ears and weaknesses. You will die inferior and that cannot be changed through any form of revolution. But rest assured that our status as economic inferior will definitely change. Fuck you and your everlasting genetic weakness.

4. STEPS TAKEN BY THE COMMISSION

- 4.1. In fulfilling its mandate under the Human Rights Commission Act, the Commission is tasked with ensuring that the rights contained in the Bill of Rights are not violated and that appropriate redress is provided where rights have been violated. This necessarily includes a consideration of the Constitution, statutory frameworks designed to protect such rights, relevant common law, prevailing social attitudes and norms and the facts of a particular matter.
- 4.2. In terms of its CHP referred to above, the Commission proceeded to investigate this matter.
- 4.3. On a *prima facie* evaluation of the abovementioned comment, the Commission resolved that the comments may have amounted to hate speech, as determined by section 10 of the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000.
- 4.4. The Commission invited the Respondent to its offices for a meeting to discuss the implicated statement, which meeting took place on the 28th of October 2016.
- 4.5. During the abovementioned meeting, the Commission established true remorse on the side of the Respondent, and a willingness to work with the Commission in order to address the transgression in a conciliatory manner.

T. I. Molele 3

D O.S Ledwaba

5. **RECOMMENDATIONS BY THE COMMISSION**

5.1. Having engaged with the Respondent, and taking into account the normative and legal frameworks, background of the matter as communicated to the Commission by the Respondent, the voluntary nature of the Respondent's willingness to apologise, the apology already tendered, the need for restorative justice and understanding, amongst other relevant factors, the Commission makes the following recommendations:

5.1.1. That in the interests of all parties, the matter is resolved as expeditiously and amicably as possible;

5.1.2. That the mandate of the Commission as a constitutional body with a statutory duty to protect and promote human rights and to respond to complaints is understood by the Respondent and other interested stakeholders;

5.1.3. That the Respondent agrees to refrain from any similar future actions, words or attitudes which may infringe on the rights of others as contained in Chapter two (2) of the Constitution;

5.1.4. That the Respondent repeats on the relevant social media platform, that he distances himself from any form of discrimination, supports the work of the Commission, and encourages his followers to respect and protect the rights of all who live in South Africa;

5.1.5. That the Respondent further signs a written unconditional apology for the words uttered, which will be included in a media statement in order to communicate the outcome of this investigation to the public at large;

5.1.6. That the Respondent attends, assists and participates in one (1) of the Commission's Anti-Racism Advocacy outreaches within three (3) months after signing of this agreement;

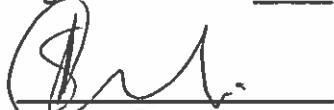
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4
D. S. Ledwaba

- 5.1.7. That the Respondent donates ten (10) hours of his own time to assist disadvantaged learners with mathematics revision, within one (1) month after signing of this agreement;¹ and
- 5.1.8. That subject to the above, the Commission regards the matter as being resolved.

6. **TERMS OF SETTLEMENT**

- 6.1. The terms of the settlement agreed to by the parties resulting from the recommendations set out above are as follows:
 - 6.1.1. That the matter be resolved by the Commission subject to the conditions set out under paragraph five (5); and
 - 6.1.2. That the Commission will actively monitor the future actions of the Respondent and should it find that the terms of this agreement has not been met, it will proceed to institute immediate civil or criminal action against the Respondent, or any other appropriate redress it may deem fit as determined by its Constitutional mandate.

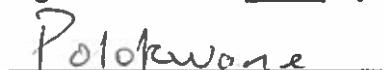
Signed on this the 31 day of 10 2016 at



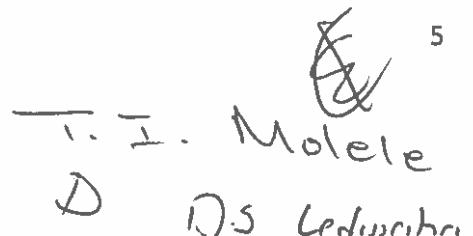
MR T MOLELE

RESPONDENT

Signed on this the 31 day of 10 2016 at



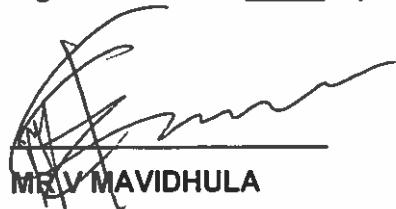
¹ The names of the schools where this revision will take place will be determined by the Commission in conjunction with the Department of Education, and communicated to the Respondent.


T. I. Molele
D. S. Lekwane



WITNESS

Signed on this the 31 day of Oct 2016 at

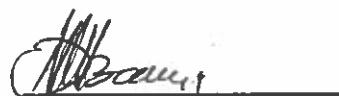


Mervyn Mavidhula

PROVINCIAL MANAGER: LIMPOPO PROVINCIAL OFFICE

FOR AND ON BEHALF OF THE SOUTH AFRICAN HUMAN RIGHTS COMMISSION

Signed on this the 21 day of Oct 2016 at



WITNESS

6

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D.S Ledwaba

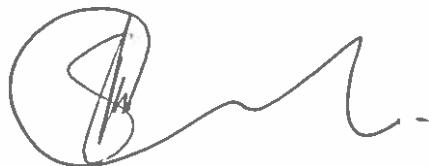
APOLOGY

On this the 31 day of 10 2016 in Polokwane and before Mr Victor Mavhidula, the provincial manager of the Limpopo Provincial Office of the South African Human Rights Commission, I, Mr Tlou Molele wishes to state the following:

I hereby tender my summary and unequivocal apology to the public and the South African Human Rights Commission, and specifically the individuals who were adversely affected and/or hurt or offended by my actions in respect of referring to white persons in the manner I did on the 3rd of October 2016. I accept the recommendations of the Commission and undertake to address the concerns raised vigilantly and appropriately so as to prevent any similar occurrence in the future.

The Commission hereby recommends that members of the public accept this apology.

Signed on this the 31 day of 10 2016 at Polokwane.



TLOU MOLELE