Sexual Harassment: Why do Victims so often Resign? *E v Ikwezi Municipality* 2016 37 ILJ 1799 (ECG)

K Calitz*

P·E·R
Pioneer in peer-reviewed, open access online law publications

Author

Karin Calitz

Affiliation

Stellenbosch University
South Africa

Email

kbc@sun.ac.za

Date of submission

27 May 2018

Date Revised

6 November 2018

Date Accepted

22 January 2019

Date published

28 January 2019

Editor Prof W Erlank

How to cite this article

Calitz K "Sexual Harassment: Why do Victims so often Resign? *E v Ikwezi Municipality* 2016 37 ILJ 1799 (ECG)" *PER / PELJ* 2019(22) - DOI http://dx.doi.org/10.17159/1727-3781/2019/v22i0a5169

DOI
http://dx.doi.org/10.17159/1727-3781/2019/v22i0a5169

Abstract

This article endeavours to find answers to the question of why the victims of sexual harassment often resign after the harassment, while the perpetrator continues working, and suggests how some of the human cost to victims of sexual harassment can be prevented. *E v Ikwezi Municipality* provides a classic example of how the failure of the employer to protect the victim exacerbated her suffering from Post-Traumatic Stress Disorder (PTSD), eventually leaving her with no option but to resign. Had the employer conducted a risk analysis, it could have prevented the sexual harassment by alerting employees to the content of the Code of Good Practice on the Handling of Sexual Harassment in the Workplace. Further, had the employer been aware that it was responsible for the victim's psychological safety also after the disciplinary hearing, it could have taken measures to ensure her safety. The unsatisfactory sanction (the harasser was not dismissed) could lastly have been referred to the Labour Court for review. Unfortunately, the wrong legal advice and an incompetent chairperson led to the municipality's failing adequately to protect the victim. This caused (and aggravated) the symptoms of PTSD, which forced the victim to resign.

Keywords

Sexual harassment; vicarious liability; direct liability; disciplinary hearing; unsatisfactory sanction; section 158(1) of the Labour Relations Act; Post- Traumatic Stress Disorder power relationships; psychological safety of a victim; close connection test; enterprise risk; second hearing; unilateral change of sanction.

.

.....

1 Introduction

The #MeToo movement, sparked by allegations of sexual harassment against Harvey Weinstein and other high profile men in the entertainment industry,[1] highlighted the continuous and widespread abuse of women in the workplace by men in positions of power.[2] Despite the common-law liability of employers, legislation imposing liability for sexual harassment on employers,[3] and a Code of Good Practice on the Handling of Sexual Harassment in the Workplace,[4] sexual harassment is still ruining the lives (and careers) of many women in the workplace in South Africa. The harassers are often not dismissed, with the result that the victims must then carry on with their jobs while being in the constant presence of their harassers. Often these victims cannot cope with the stress resulting from this, and as a result, they are forced to resign, while the perpetrators carry on with their jobs.[5]

In this article I endeavour to analyse the reasons for this injustice to victims of sexual harassment by analysing *E v Ikwezi Municipality*,[6] a 2016 judgment of the South African High Court. The question that I ask is how the pain and suffering, psychological damages, and loss of a job (to the victim/employee) and the financial loss (to the employer – in this case a municipality), could have been prevented. *Ikwezi* concerns an employee's claim based on the vicarious liability and direct liability of her employer for sexual harassment by her immediate supervisor. The chairperson of the

* Karin Calitz. BA (SU) LLB LLM (RAU) LLD (Unisa). Emeritus Professor, Mercantile Law, Stellenbosch University, South Africa. Email: kbc@sun.ac.za. My thanks to the two anonymous reviewers for their helpful recommendations.

1 BBC News 2018 http://www.bbc.com/news/entertainment-arts-41594672: "After a four-month investigation, New York state prosecutors announce they have filed a lawsuit against the Weinstein Company on the basis the studio failed to protect employees from his alleged harassment and abuse".

2 Cooney 2018 http://time.com/5015204/harvey-weinstein-scandal/.

3 Employers could be held liable for constructive dismissal in terms of s 186(1) of the *Labour Relations Act* 66 of 1995 (LRA), which could constitute an automatically unfair dismissal, and also on the ground of discrimination in terms of s 6(1) and s 60 of the *Employment Equity Act* 55 of 1998 (EEA).

4 Amended Code on the Handling of Sexual Harassment cases in the Workplace - Gen N 1357 in GG 27865 of 4 August 2005. In item 4 of the Code sexual harassment is defined as "unwelcome conduct of a sexual nature that violates the rights of an employee and constitutes a barrier to equity in the workplace, taking into account all of the following factors: whether the harassment is on the prohibited grounds of sex and/or gender and/or sexual orientation; whether the sexual conduct was unwelcome; the nature and extent of the sexual conduct; and the impact of the sexual conduct on the employee".

5 See *Grobler v Naspers Bpk* 2004 25 ILJ 439 (C) (hereafter the *Grobler HC* case); *Ntsabo v Real Security CC* 2003 24 ILJ 2341 (LC) (hereafter the *Ntsabo* case); *Piliso v Old Mutual* 2007 28 ILJ 897 (LC) (hereafter the *Piliso* case).

6 *E v Ikwezi Municipality 2016 37 ILJ 1799 (ECG)* (hereafter the *Ikwezi* case).

disciplinary hearing gave the harasser a slap on the wrist, whereafter the latter continued working while the victim, who was unable to cope with the situation, resigned approximately a year after the incident. *Ikwezi* mirrors the story of countless other cases of sexual harassment in which the victims are forced to resign (or wish to resign but cannot do so for financial reasons) because of the second trauma,[7] namely the unbearable situation of having to continue working with their assailants, because of a lack of protection by their employers.[8]

I firstly analyse the *Ikwezi* judgment, specifically the vicarious as well as direct liability of the employer for the sexual harassment of the victim. Secondly, I argue that the employer, in neglecting its duty to protect the victim against physical and psychological damages, contributed to her damages. I further argue that an assessment of the risk that sexual harassment could take place in the particular circumstances could have prevented the harassment and ensuing damages. Lastly, I point out that a botched disciplinary hearing presided over by an incompetent chairperson, as well as ignorance of the municipality of its right to refer the decision of the disciplinary chairman for review, exacerbated the victim's damages. These factors led to her resignation and a claim for more than R4 million against the municipality. Although outside the ambit of this case note, I briefly discuss the possibility that employers, in certain limited circumstances, have the option to hold a second hearing or to unilaterally change an unsatisfactory sanction to one of dismissal, if the seriousness of the misconduct warrants such a change.

2 The facts in *Ikwezi*

The plaintiff worked for the Ikwezi Local Municipality (the Municipality) as an archives clerk at their Jansenville offices. Her immediate superior, Xola Jack, who held the position of Corporate Services Manager, was stationed at the Klipplaat offices of the Municipality. His job entailed that he often had to visit the Jansenville offices and that he and the plaintiff had to work closely together. They sometimes had to work after hours to prepare council agendas. On one such occasion, Jack made a suggestion to the plaintiff which had a sexual connotation. The victim indicated that she was not interested.[9]

Approximately three weeks after this incident, Jack came into the plaintiff's office, walked straight up to her where she was sitting behind her desk, bent over her and tried to force his tongue into her mouth. He was unsuccessful only because she clenched her teeth. She struggled to free herself from his

7 See Calitz 2011 *SA Merc LJ* 280.
8 See *Grobler HC*, *Ntsabo* and *Piliso*.
9 *Ikwezi* para 10.

grip and eventually succeeded in pushing him away but was left with a mouthful of his saliva. She was "distressed and anxious" and found the incident to be "utterly revolting".[10]

She immediately attempted to report the incident to her senior managers, but they were unavailable at that time.[11] The next day she had a meeting with the acting mayor and acting municipal manager who were sympathetic and placed her on special leave for a few days. They also undertook to keep Jack away from her until the departmental enquiry into the incident had been finalised. Until such time she was instructed to report to the acting municipal manager and not to Jack. He was instructed not to visit the Jansenville offices without written permission from the municipal manager and not to contact the plaintiff. This arrangement was found to be impractical and Jack was consequently instructed to phone the municipal manager prior to his visiting the Jansenville offices so that the plaintiff could be warned to keep out of his way. The municipal manager later testified that this was to ensure that "she did not become a victim twice".[12] The manager was thus aware of the danger of not protecting the plaintiff after the incident. The telephonic arrangement also did not work because the municipal manager was often unavailable when the necessary permission had to be obtained.[13] The plaintiff was as a result often confronted with her harasser's presence and at such times she was traumatised and started crying.[14]

The plaintiff instituted criminal proceedings against Jack in the magistrate's court for sexual assault. He pleaded guilty and a suspended term of imprisonment was imposed. A disciplinary hearing was held at work at the same time and he was found guilty of misconduct. The charge at the disciplinary hearing was that he had tried to kiss the victim, which the court later pointed out was the wrong charge, since he in fact tried to force his tongue into her mouth, which differed vastly from a kiss.[15] A sanction of a written warning and two weeks suspension without pay was imposed. This is surprising, considering the seriousness of the misconduct. In several South African cases the seriousness of sexual harassment in circumstances where the harasser was a senior person in a power relationship with the victim had been emphasised.[16]

---

10 *Ikwezi* para 12.
11 *Ikwezi* para 13.
12 *Ikwezi* para 27.
13 *Ikwezi* para 34.
14 *Ikwezi* para 24.
15 *Ikwezi* para 36.
16 *Campbell Scientific Africa (Pty) Ltd v Simmers* 2016 37 ILJ 116 (LAC) (hereafter the *Campbell* case) in which the dismissal of an employee who merely invited the victim to his room and asked her "Do you want a lover tonight?" was found to be fair. Also see *Gaga v Anglo-Platinum Ltd* 2012 33 ILJ 329 (LAC) para 49 and *South African Broadcasting Corporation v Grogan* 2006 27 ILJ 1519 (LC) 1532A, para 51.

The chairperson further made the following astonishing remark:

> [Al]though the employer does have committed a serious misconduct during May 2009, I think that this Council needs to uplift the skills of their employee's by introducing a skills development plan (*sic*).[17]

In the High Court, Pickering J attempted to explain that the chairperson probably referred to Jack when he referred to the "employer" and further that he meant that the Municipality should inform employees of its sexual harassment policies[18] (and not uplift their skills through a skills development plan).

The High Court remarked that "it is a matter of very considerable surprise that the presiding officer did not consider dismissal as an appropriate sanction, especially in the light of the second defendant's previous warning for theft of municipal property".[19]

The court further remarked that Jack's conduct

> was an intolerable, despicable and violent abuse of his position of authority over her and a two week suspension in no way reflected the gravity of his offence. There is to my mind, no doubt whatsoever that Rhoode's award measured against the charge on which second defendant had been convicted together with his previous infraction was grossly unreasonable and the conclusion is inescapable that Rhoode did not apply his mind properly to the issue of an appropriate sanction. The awful irony is that, because of this, the second defendant continues with his employment … whilst the plaintiff has been forced to resign because of her Post Traumatic Stress Disorder.[20]

The municipal manager later testified that he was extremely critical of the sanction that had been imposed, but that the Municipality's legal advisor was of the opinion that there was nothing that they could do after Jack had served the two-week suspension.[21] The Municipality thus considered itself bound by a sanction which was highly inappropriate, imposed by a clearly incompetent chairperson. Consequently, although the municipal manager was sympathetic, had a high regard for the victim as an employee,[22] and knew about the effect that the harasser's presence had on her, he informed her that there was nothing more that he could do, since a disciplinary hearing had been held and a sanction had been imposed.

The plaintiff thus had to live with the burden of working together with her harasser. She saw the harasser quite often and she testified that on such occasions she suffered anxiety attacks. These encounters aggravated the

17 *Ikwezi* para 22.
18 *Ikwezi* para 37.
19 *Ikwezi* para 37
20 *Ikwezi* para 37.
21 *Ikwezi* para 29.
22 *Ikwezi* para 40.

Post-Traumatic Stress Disorder (PTSD) from which she suffered[23] and approximately one year after the incident she found the situation to be so unbearable that she could no longer cope with her job. She resigned and instituted a claim for damages in the High Court.

3 Employers' liability for the sexual harassment of their employees

A victim of sexual harassment has several remedies at her disposal. She could claim damages in terms of the common law on the ground that her employer is vicariously or directly liable for such damages.[24] She could also base her claim on the *Employment Equity Act* 55 of 1998 (EEA) in terms of which harassment constitutes discrimination. Employers could be held liable for the harassment of one employee by another of their employees in terms of section 60 of the EEA.[25] Section 186(1) of the *Labour Relations Act* 66 of 1995 (LRA) presents a further remedy in the form of constructive dismissal, which could constitute an automatically unfair dismissal if the employee was a victim of sexual harassment.[26] However, to avoid constructive dismissal and retain their jobs, victims may possibly also rely on the common-law right to implied trust and confidence in the employment contract to secure an order of specific performance against their employers.[27]

The victim in *Ikwezi* chose to claim damages in the High Court in terms of the common law. She alleged that the employer was vicariously liable for Jack's actions and further that the employer was directly liable on account of negligence. The basis of her direct liability claim was the fact that the employer knew about the trauma that the presence of Jack caused and that the employer had neglected its legal duty to protect her against such trauma.[28] It is significant that she resigned only about a year after the incident, indicating that it was not so much the sexual harassment itself but rather the trauma suffered afterwards caused by her having to work with her harasser and having to constantly see him that aggravated the PTSD which eventually led to her resignation.

---

23 The psychological impact of the continued presence of the harasser also led to the resignation of the plaintiffs in *Ntsabo*, *Grobler HC* and *Piliso*. The plaintiff in *Mokone v Sahara Computers (Pty) Ltd* 2010 31 ILJ 2827 (GNP) considered resigning, but as an only breadwinner she was unable to do so.

24 See *Grobler HC* and *Media 24 Ltd v Grobler* 2005 26 ILJ 1007 (SCA) (hereafter the *Grobler SCA* case).

25 See *Ntsabo*.

26 *Christian v Colliers Properties 2005 ZALC 56 (25 February 2005).*

27 Bosch 2006 *ILJ* 52.

28 *Ikwezi* para 4.

4 Direct liability

The representatives of the Municipality did not deny that they had a legal duty to protect the victim, but alleged that they complied with this duty by warning the victim whenever Jack had to attend the Jansenville office, by instructing him not to contact the victim and by instituting a disciplinary hearing.[29] They later conceded that these measures did not protect the plaintiff adequately, but alleged that they only had this duty during the narrow period between the act and the disciplinary hearing. It was what happened after this period which finally had a severe psychological impact on the victim and eventually led to her resignation. The view that they had a duty to protect her only during the said narrow period is, in the light of jurisprudence, clearly incorrect. In *Media 24 v Grobler*[30] and *Piliso v Old Mutual*[31] it was emphasised that employers indeed have a duty to protect employees against physical as well as psychological harm during their employment period. There is no authority for narrowing down this duty to only the period between the unlawful act and the disciplinary hearing. Serious sexual harassment should almost without exception lead to dismissal, which would prevent a situation where the victim and harasser would have to work together. However, if the harasser is not dismissed, the duty of the employer towards the employee to ensure her safety will continue for the duration of the working relationship.

Pickering J in *Ikwezi* remarked that the Municipality rightly conceded that they had a legal duty to protect the complainant after the incident and up to the disciplinary hearing, that they failed to protect her, and that they were thus liable for the damages that she suffered during this period. The court left open the question of liability for the period after the disciplinary hearing and proceeded to establish that the employer was vicariously liable for the complainant's damages. It is not clear why the court did not consider the direct liability of the employer for the period after the disciplinary hearing; apparently because this was unnecessary given the fact that her claim based on vicarious liability was successful.

It is submitted that the Municipality had a duty to ensure the psychological safety of the claimant even after the disciplinary hearing and that they should have made arrangements to ensure this. It was clear that the presence of the harasser caused the victim to have anxiety attacks and that it had a profound negative effect on her psychological well-being. The Municipality had a duty to take measures by for instance deploying the harasser to a job not entailing his having to visit the offices where the employee worked. The court disappointingly did not examine the duty of the

29 *Ikwezi* para 6.
30 *Grobler SCA* para 65.
31 *Piliso* para 80.

employer for the psychological safety of the employee in the period after the disciplinary hearing. This would have emphasised that employers do bear this duty and would have encouraged employers to take the necessary measures to ensure the protection of the victim.

5 Vicarious liability

The requirements for an employer to be held liable on the ground of vicarious liability are trite; namely that there existed an employment relationship, that the employee acted unlawfully, that the act caused damage to the claimant, and lastly, that the act was performed within the course and scope of the employee's employment.[32]

This last requirement often leads to difficulties in the so-called "deviation cases", where the employee was not merely negligent, but acted in his or her own interests,[33] and especially where the employee wilfully committed an unlawful act,[34] as in *Ikwezi.*

Grobler v Naspers[35] was the first South African case which extended the vicarious liability of the employer to an act of sexual harassment. The court in *Grobler HC* conducted a thorough analysis of vicarious liability for sexual harassment in several other jurisdictions. In Canada, the ground-breaking Canadian decision in *Bazley v Curry*[36] emphasised the need for sufficient closeness of the employee's unlawful conduct to the enterprise risk, for imposing vicarious liability in the case of intentional torts:

> [I]n determining the sufficiency of the connection between the employer's creation or enhancement of the risk and the wrong complained of … the relevant factors may include, but are not limited to, the following:
>
> (a) the opportunity that the enterprise afforded the employee to abuse his or her power;
>
> (b) the extent to which the wrongful act may have furthered the employer's aims (and hence be more likely to have been committed by the employee);
>
> (c) the extent to which the wrongful act was related to friction, confrontation or intimacy inherent in the employer's enterprise;
>
> (d) the extent of power conferred on the employee in relation to the victim; and

32 Calitz 2005 *TSAR* 216.
33 Calitz 2005 *TSAR* 218.
34 *Minister of Police v Rabie* 1986 1 SA 117 (A); *K v Minister of Safety and Security* 2005 26 ILJ 1205 (CC); *F v Minister of Safety and Security* 2012 33 ILJ 93 (CC).
35 *Grobler HC*.
36 *Bazley v Curry* 1999 174 DLR (4th) 45 (hereafter the *Bazley* case).

> (e) the vulnerability of potential victims to the wrongful exercise of the employee's power.

The House of Lords in *Lister v Hesley Hall*[37] was guided by the decision in *Bazley.* The court in *Lister,* as in *Bazley,* had to decide whether a charity could be held liable for the sexual harassment of vulnerable children in its care facilities. In *Lister* the court endorsed the test requiring a close connection or sufficient connection between the unlawful act and the duties of the employee as formulated in *Bazley*.[38]

The court in *Grobler HC* applied the factors (enumerated by the court in *Bazley*) that would indicate such a close connection, and held that the enterprise indeed enhanced the risk that the supervisor would harass Ms Grobler.[39] The court regarded the constitutional rights to inherent dignity, bodily integrity and equality as a further ground for imposing vicarious liability.[40]

On appeal in *Grobler SCA*, the Supreme Court of Appeal (SCA) confirmed the amount of damages that the High Court ordered, but held the employer directly liable on the alternative claim that Media 24 negligently failed to ensure the victim's safety. Here the court held as follows:

> It is clear in my opinion that the legal convictions of the community require an employer to take reasonable steps to prevent sexual harassment of its employees in the workplace and to be obliged to compensate the victim for harm caused thereby should it negligently fail to do so.[41]

The court held the employer directly liable on the ground that the victim's supervisors knew that she was being harassed and nevertheless negligently failed in their duty to protect her psychological safety.[42] Although the SCA held the employer directly liable for failing to protect the employee, the court did not find that the employer was not also vicariously liable. The development of the doctrine of vicarious liability in *Grobler HC* is thus still good law.

One year after the judgment in *Grobler SCA*, the Constitutional Court in *K v Minister of Safety and Security*[43] and later on in *F v Minister of Safety and Security*[44] applied the "sufficiently close connection" test to include the act of rape, which can be seen as the most intensive form of sexual harassment. The "sufficiently close connection" test used in these cases to establish

---

37 *Lister v Hesley Hall* 2001 UKHL 22 (hereafter the *Lister* case).
38 See *Lister* paras 28 and 50.
39 *Grobler HC* 297.
40 *Grobler HC* 298.
41 *Grobler SCA* para 68.
42 *Grobler SCA* para 65.
43 *K v Minister of Safety and Security* 2005 26 ILJ 1205 (CC).
44 *F v Minister of Safety and Security* 2012 33 ILJ 93 (CC).

whether the perpetrators acted within the course and scope of their employment establishes that even though the perpetrator did not act in the interests of his employer, and acted subjectively in his own interest, objectively speaking there was still a close enough connection to his duties and the relevant act to still hold the employer liable.[45] The dignity, privacy and bodily integrity of the victims, and in the case of the police force, their constitutional duty to protect the public, were important factors in finding that the employer was vicariously liable.

The "sufficiently close connection" test, looked at through the "prism of the constitution", was followed in other cases[46] and is now well embedded in South African law.

As remarked above, *Grobler HC* was the first South African case which extended the vicarious liability of the employer to an act of sexual harassment of one of its employees by another employee. *Ikwezi* is the second of this kind. In between *Grobler HC* and *Ikwezi*, *K and F* were decided, but did not change the "sufficiently close connection" test on which the liability of the employer was founded in *Grobler HC.* Although the Constitutional Court in *K* and *F* did not rely on enterprise risk to facilitate a close connection, but rather focussed on the trust that the public should be able to place in the police force to enable them to do their job,[47] the trust relationship could be seen as closely aligned to the risk that an enterprise places in the community. It is the trust of the victim in the perpetrator (based on his special position) that places the perpetrator in a position to harm the victim.

The court in *Ikwezi* set out to develop the common-law doctrine of vicarious liability to include the sexual harassment of an employee by another superior employee.[48] The court quoted Ponnan J in *City of Cape Town v South African National Roads Authority Ltd,*[49] who warned against "overzealous reform".[50] Mindful of this warning, the court nevertheless found in the light of the test developed by the Constitutional Court in *K* and followed in *F* that the employer in *Ikwezi* could be held liable because the position of authority in which the perpetrator was placed had the effect that the victim "trusted him implicitly" and further "it was because of the nature of their employment relationship that the opportunity presented itself to [the]

45 The then Appellate Division in *Minister of Police v Rabie* 1986 1 SA 117 (A) formulated this test.

46 See *Minister of Defence v Von Beneke* 2013 2 SA 361 (SCA).

47 *K v Minister of Safety and Security* 2005 26 ILJ 1205 (CC) para 52; *Minister of Safety and Security v F* 2012 33 ILJ 93 (CC) para 62 *et seq*.

48 *Ikwezi* para 70.

49 *City of Cape Town v South African National Roads Authority Ltd* 2015 3 SA 386 (SCA).

50 *Ikwezi* para 29.

second defendant".[51] This development of the common law by the court was not strictly necessary as the High Court in *Grobler HC* had already in 2005 developed the doctrine of vicarious liability to include the sexual harassment of a secretary by her superior.

The court in *Ikwezi* found that the position of trust in which the employer placed Jack, as Corporate Services Manager, facilitated the act of sexual harassment.[52] The nature of the work (working closely together with the plaintiff after hours) gave him the opportunity to harass the plaintiff, who was in a vulnerable position.

Although vicarious liability is a form of faultless liability and can be imposed independently from the employer-imposed measures to prevent unlawful conduct, one of the theories providing justification for such strict liability is deterrence. The reasoning is that the possibility of liability for the unlawful conduct of their employees will encourage employers to take measures to diminish the risk of such conduct occurring.[53] In *Ikwezi* the warning lights should have gone on when a man and a woman in an imbalanced power relationship often worked together after hours. This should have indicated to the Municipality that an increased risk existed that sexual harassment could take place. Had the Municipality acted on the possibility that sexual harassment could take place, the harassment could possibly have been prevented. Pickering J in *Ikwezi* remarked that although schedule 2 of the *Local Government: Municipal Systems Act*[54] 32 of 2000 provides that "a staff member of a municipality may not embark on any actions amounting to sexual harassment", there was no evidence that the municipality trained its employees in this regard.[55] Further, there was no evidence that the content of the Code of Good Practice on the Handling of Sexual Harassment in the Workplace was brought to the attention of the employees of the Municipality.

6 Review of the decision of the chairperson of the disciplinary hearing by the Labour Court

The court in *Ikwezi* pointed out that the wrong advice was given to the Municipality, namely that they could not do anything after the chairperson of the disciplinary hearing imposed the sanction.

In the court's view, the inappropriate sanction should have been referred for review in terms of section 158(1)(h) of the LRA. This section provides that

51 *Ikwezi* para 76.
52 *Ikwezi* para 76.
53 *Bazley* para 28.
54 *Local Government: Municipal Systems Act* 32 of 2000.
55 *Ikwezi* para 79.

any action or decision of the state as employer may be referred to the Labour Court for review on any ground permissible in law.

Two questions arise in this respect. Firstly, are decisions by chairpersons of disciplinary hearings involving the conduct of the employees of a municipality considered decisions of "the State as employer" and further, what would constitute "grounds permissible in law"?

Municipalities are in terms of section 239 of the *Constitution of the Republic of South Africa*, 1996 (hereafter the *Constitution*) without doubt organs of state. In terms of jurisprudence, the decision of a chairperson of a disciplinary hearing who acts on behalf of a municipality will be regarded as an act performed by the state in its capacity as employer[56] and may therefore be referred for review in terms of section 158(1)(h).

Regarding "grounds permissible in law", the court in *Ikwezi* analysed *Hendricks v Overstrand Municipality,*[57] in which the particular municipality was successful in reviewing a decision of the chairperson of a disciplinary hearing. The Labour Court in that case stated that the municipality "had the right and was *obliged* to approach the Labour Court to review it where it failed to pass the test of rationality and reasonableness".[58] *Hendricks* concerned an employee working for the Overstrand Municipality as Chief, Law Enforcement and Security. He was charged and found guilty *inter alia* of dishonesty in that he made false representations regarding his own speed fines. He moreover instructed junior colleagues to facilitate the false statements. The chairperson of the disciplinary hearing imposed a sanction of a final written warning valid for twelve months, as well as suspension without pay for a period of ten days.[59]

Not happy with the decision, the Overstrand Municipality referred the decision to the Labour Court for review in terms of section 158(1)(h) of the LRA. The municipality argued that because of the seriousness of the offence and the senior position held by the employee, the employment relationship had broken down and that a continued employment relationship would be intolerable. According to the municipality the sanction imposed by the chairperson was irrational and unreasonable, which was a ground for review in terms of section 158(1)(h) of the LRA.[60]

The Labour Court agreed with the municipality and set aside the sanction imposed by the chairperson. The employee took the decision on appeal,

---

56 *Hendricks v Overstrand Municipality* 2014 12 BLLR 1170 (LAC) para 20 (hereafter the *Hendricks* case).
57 *Hendricks*.
58 *Hendricks* para 30.
59 *Hendricks* para 5.
60 *Hendricks* para 6.

arguing that in the light of the decisions in *Chirwa v Transnet Limited*[61] and *Gcaba v Minister of Safety and Security*[62] the chairperson's decision could not be reviewed. The courts in these two judgments held that the unfair termination of the employment of public employees or unfair labour practices perpetrated by their employer, did not entitle them to seek remedies in terms of administrative law, but that they should make use of dispute resolution in terms of the LRA.[63] The argument of the employee in Hendricks was that in the light of these judgments, the municipality could not rely on the grounds of irrationality and unreasonableness, which are in essence administrative-law grounds. The employee maintained that *Gcaba* overruled the decision in *Ntshangase v MEC for Finance Kwa-Zulu Natal*[64] (which lent support to a review procedure based on just administrative action).[65]

In *Ntshangase* both the Labour Appeal Court (LAC) and the SCA held that since the court in *Sidumo v Rustenburg Platinum Mines*[66] had found that arbitration at the Commission for Conciliation Mediation and Arbitration (CCMA) constitutes administrative action, disciplinary hearings regarding state employees also constitute administrative action. Such a hearing must thus be lawful, reasonable and procedurally fair. If not, it does not amount to just administrative action and can be reviewed.[67] The SCA in *Ntshangase* found further that since there was a breakdown of trust between the employer and employee, the decision of the chairperson not to dismiss the employee (who was found guilty on twelve counts of misappropriation of funds and dishonesty) was a decision that no reasonable person could reach on the facts of the case and was grossly unreasonable.[68]

The LAC in Hendricks did not agree with the argument of the employee in that case, namely that *Chirwa* and *Gcaba* overruled *Ntshangase*, and the LAC consequently upheld the decision of the Labour Court. The LAC pointed out that in *Chirwa* the Constitutional Court held that when the state acts in its capacity as employer, the employee is well protected by the LRA and that there is no need for reliance on section 33 of the *Constitution* or the *Promotion of Administrative Justice Act* 4 of 2000 (PAJA), which gives

61 *Chirwa v Transnet Limited* 2008 29 ILJ 73 (CC) (hereafter the *Chirwa* case).
62 *Gcaba v Minister of Safety and Security* 2010 1 SA 238 (CC) (hereafter the *Gcaba* case).
63 *Chirwa* paras 143-144; *Gcaba* para 64.
64 *Ntshangase v MEC for Finance Kwa-Zulu Natal* 2010 3 SA 201 (SCA) (hereafter the *Ntshangase* case).
65 *Ntshangase* para 19.
66 *Sidumo v Rustenburg Platinum Mines* 2008 2 SA 24 (CC) (hereafter the *Sidumo* case).
67 *Ntshangase* para 16.
68 *Ntshangase* para 19.

effect to section 33.[69] The LAC in *Hendricks* further remarked that in *Gcaba* the court agreed with *Chirwa* that public sector employees should use the remedies for unfair dismissal and unfair labour practices provided for in sections 191 and 193 of the LRA. The court in *Hendricks* further emphasised that the *Chirwa* and *Gcaba* decisions did not make a finding on section 158(1)(h) of the LRA. It held as follows:

> The underlying guiding rationale of the *ratio decidendi* in *Gcaba* and *Chirwa* is that once a set of carefully-crafted rules and structures has been created for the effective and speedy resolution of disputes and protection of rights in a particular area of law, it is preferable that dismissal and unfair labour practices contained in the LRA should be used by aggrieved employees rather than seeking review under PAJA. The *ratio* cannot justifiably be extended to deny an employer a remedy against an unreasonable, irrational or procedurally unfair determination by a presiding officer exercising delegated authority over discipline. … The only remedy available to the employer aggrieved by the disciplinary sanction imposed by an independent presiding officer is the right to seek administrative law review; and section 158(1)(h) of the LRA empowers the Labour Court to hear and determine the review. To hold otherwise is to deny the employer any remedy at all against an abuse of authority by the presiding officer.[70]

From the above it can be deduced that dismissal by the state does not entitle employees to administrative remedies (they will have to seek their remedies in terms of the LRA), but the state as an employer can allege that a decision of a chairperson was unreasonable and irrational, which are grounds for review in terms of section 158(1)(h) of the LRA.

Based on the above discussion, the Municipality in *Ikwezi* would probably have been successful had they referred the decision of the chairperson, described by the High Court as grossly unreasonable,[71] for review.

Was the sexual harassment sufficiently serious to constitute a breakdown in the employment relationship?[72] If so, this would have constituted a ground for arguing that a sanction less than dismissal would be irrational and unreasonable and thus prone to be reviewed. If one considers the judgment in *Campbell Scientific Africa (Pty) Ltd v Simmers,*[73] in which the harasser was dismissed for merely asking "Do you want a lover tonight?" the sexual assault in *Ikwezi* would no doubt constitute serious misconduct and would warrant dismissal. In *Campbell* the court remarked as follows on power relationships and sexual harassment: "At its core, sexual harassment is concerned with the exercise of power and in the main reflects the power

69 *Hendricks* para 27.
70 *Hendricks* para 27.
71 *Ikwezi* para 37.
72 See Edcon Ltd v Pillemer *2009 30 ILJ 2642 (SCA).*
73 *Campbell*; see further Grant, Whitear & Chandramohan 2017 *ILJ* 769.

relations that exist both in society generally and specifically within a particular workplace".[74]

In the same vein, the court in *Gaga v Anglo-Platinum Ltd*[75] remarked as follows: "By and large employers are entitled (indeed obliged) to regard sexual harassment by an older superior on a younger subordinate as serious misconduct, normally justifying dismissal".[76]

There is no doubt that the sexual harassment of the plaintiff in *Ikwezi* was sufficiently serious to have caused a breakdown in the employment relationship. The nature of the act itself, the age difference between the victim and harasser, as well as the superior position of the harasser all point to a serious case of sexual harassment. A sanction short of dismissal was thus unreasonable and irrational and therefore a ground permissible in law that could be referred for review in terms of section 158(1)(h) of the LRA.

7 Measures available to employers outside section 158(1)(h) of the LRA

Although it falls outside the ambit of this case discussion, I briefly refer to the alternatives (outside section 158(1)(h) of the LRA) available to employers who are dissatisfied with the sanctions imposed by the chairpersons of disciplinary hearings. Since the review process in terms of section 158(1)(h) of the LRA is not available to private employers, they will have to make use of alternative measures. State organs may also make use of these alternative measures if referral for review is for some reason not appropriate.

7.1 A second hearing

Should employers retry employees in a second hearing, an employee may raise the issue of double jeopardy (accused persons should not be tried and disciplined twice for the same offence).[77] The seminal case of *BMW v De Lange*[78] considered whether second hearings of employees are permissible. Here the court held that fairness is the overriding consideration when deciding whether a second hearing could be held.[79] However, the court cautioned that if the second hearing is "*ultra vires* the employer's disciplinary code … that might be a stumbling block. Secondly it would probably not be regarded to be fair … save in rather exceptional circumstances".[80] In *BMW* the fact that new evidence emerged after the first

74 *Campbell* para 20.
75 *Gaga v Anglo-Platinum Ltd* 2012 33 ILJ 329 (LAC) (hereafter the *Gaga* case).
76 *Gaga* para 48.
77 Grogan *Dismissal* 251-258.
78 *BMW v De Lange* 1999 ZALAC 28 (hereafter the *BMW* case).
79 *BMW* para 12.
80 *BMW* para 12.

hearing was regarded as exceptional circumstances which justified a second hearing. The test in *BMW* has been followed in several cases, namely *Branford v Metrorail Services*,[81] *YF and Multichoice Management Services*,[82] *Theewaterskloof Municipality and Independent Municipal & Allied Trade Union on behalf of Visagie*,[83] the last two cases like *Ikwezi* dealing with sexual harassment. The disciplinary code for senior managers in the *Local Government: Municipal Systems Act* does not contain any possibility of a second hearing or unilateral decision by management (an issue which is discussed in the next section) and no new evidence came to light after the hearing. It is thus doubtful whether a second hearing in *Ikwezi* would have been regarded as fair in terms of the *BMW* judgment.

7.2 The employer unilaterally dismissing the employee

In contrast to the lenient approach followed by the courts regarding the permissibility of second hearings, the LAC held in *County Fair Foods (Pty) Ltd v Commissioner for Conciliation Mediation and Arbitration*,[84] *South African Revenue Services v Commissioner for Conciliation Mediation and Arbitration*[85] and *South Africa Revenue Services v Commissioner for Conciliation Mediation and Arbitration*[86] that employers cannot unilaterally change a sanction imposed by a chairperson of a disciplinary hearing if no provision to that effect is made in the disciplinary code. Such a change, according to some of the judgments, would even be unlawful and invalid.[87] The effect of these decisions is that if a chairperson did not dismiss an employee, and the employer subsequently decided to dismiss the employee, the latter will remain in his or her position, because the employer's decision to dismiss would be invalid.[88]

---

81 *Branford v Metrorail Services* 2003 24 ILJ 2269 (LAC).

82 *YF and Multichoice Management Services* 2008 29 ILJ 2850 (ARB).

83 *Theewaterskloof Municipality and Independent Municipal & Allied Trade Union on behalf of Visagie* 2012 33 ILJ 1031 (BCA).

84 *County Fair Foods (Pty) Ltd v Commission for Conciliation Mediation and Arbitration* 2002 ZALAC 31 (11 December 2002) (hereafter the *Country Fair Foods* case).

85 *South African Revenue Services v Commission for Conciliation Mediation and Arbitration* 2014 35 ILJ 656 (LAC) (hereafter the *Chatroogoon* case).

86 *South African Revenue Service v Commission for Conciliation Mediation and Arbitration* 2016 37 ILJ 655 (LAC) (hereafter the *Kruger* LAC case).

87 *Kruger LAC*.

88 In contrast to these decisions, in *PSA obo Venter v Laka* 2005 26 ILJ 2390 (LC) the court found that s 17 of the *Public Servants Act*, 1994 trumps the disciplinary code (which did not make provision for the employer's imposing a different sanction) which was a collective agreement, and which permits the executive authority to dismiss an employee. Grogan *Dismissal* 262 views this decision as one that should be "treated with great caution or be written off as an aberration".

However, the Constitutional Court in *South African Revenues Services v Commissioner for Conciliation Mediation and Arbitration* overruled this line of argument.[89] In this case a white employee referred to black colleagues as "kaffirs" on two occasions. The chairperson of the disciplinary hearing imposed a sanction of a final written warning valid for six months and suspension without pay for ten days. The employee was further ordered to go for counselling.[90] The disciplinary code, giving effect to a collective agreement, did not make provision for a unilateral change by management, but the SARS Commissioner nevertheless changed the final written warning to dismissal. Kruger was not given an opportunity to be heard.[91] The employee referred an unfair dismissal to the CCMA where the arbitrator, in line with the decisions in *County Fair Foods* and *South African Revenue Services v Commission for Conciliation Mediation and Arbitration*, reinstated him on the ground that the unilateral change was unlawful as the commissioner exercised powers that in terms of the disciplinary code were not his to exercise. Both the Labour Court and the LAC agreed with the CCMA.[92]

Eventually the Constitutional Court found that the reinstatement of the employee after such serious misconduct which rendered the employment relationship intolerable was a decision that (in light of *Sidumo*) no reasonable decision maker would take.[93] The court did, however, award damages to the employee on the ground that the dismissal was procedurally unfair.[94] The decision of the employer to dismiss the employee, contrary to the decision of the chairperson of the disciplinary hearing, was thus apparently regarded as substantively fair. The issue of the employer's unilateral decision which according to the lower courts was invalid, was not before the court as SARS only challenged the reasonableness of the reinstatement. The Constitutional Court placed substance above form which is, considering the seriousness of the offence in the South African context, to be welcomed. The situation appears to be that if an employer unilaterally dismisses an employee after a sanction short of dismissal by the disciplinary chairperson, and an arbitrator reinstates the employee, a court could decide (after having regard to the seriousness of the misconduct) that the arbitrator's award is a decision that no reasonable decision maker could

89 *South African Revenue Services v Commission for Conciliation, Mediation and Arbitration* 2017 38 *ILJ* 97 (CC) (hereafter the *Kruger CC* case).
90 *Kruger CC* para 16.
91 *Kruger CC* para 17.
92 *South African Revenue Service v Commission for Conciliation Mediation and Arbitration* 2010 32 ILJ 1238 (LC) and *Kruger LAC.*
93 *Kruger CC* paras 34-44.
94 *Kruger CC* para 58.

take. However, the lack of guidance on the aspect of the invalidity of a unilateral decision where the disciplinary code (often negotiated with the trade union) does not make provision for such a decision is disappointing and this issue calls for further research.

8 Conclusion

Allegations of sexual harassment by men in powerful positions, taking place in workplaces all over the world, brought to the fore by the #MeToo campaign, emphasise the need to focus on measures that will prevent the human damage caused by sexual harassment. In this article I have endeavoured to find answers to the question of why victims of sexual harassment often resign after such harassment. An analysis of the *Ikwezi* case provided some insight into the reasons for this phenomenon. In this case, the victim's symptoms of PTSD were aggravated when the harasser was not dismissed after a disciplinary hearing, because the victim had to continue working with him. As in many other cases of this kind, she could not cope with the effect that his presence had on her, with the result that she was forced to resign approximately one year after the incident.

The court in *Ikwezi* rightly found that the Municipality was vicariously liable for the sexual harassment of its employee. Although the court embarked on developing the doctrine of vicarious liability so that it could include sexual harassment in the specific circumstances of *Ikwezi*, it was not strictly necessary. The High Court in *Grobler HC* had already developed the test for vicarious liability in similar circumstances, namely a man in a senior position harassing a woman who was his subordinate. In *Grobler HC* the creation of risk by the employer was considered an important factor in creating the sufficiently close connection (later also required by the Constitutional Court in *K* and *F*) between the employee's employment and the unlawful act to give rise to vicarious liability. The court in *Ikwezi* also emphasised the element of risk. This emphasis is to be welcomed, since employers will be encouraged to assess the risks of potential sexual harassment occurring in their business and will hopefully further be encouraged to take the necessary measures to lower that risk. Had the employer in *Ikwezi* assessed the risk of sexual harassment taking place in the particular circumstances (a senior male employee working after hours with a younger female in a junior position), measures including training for employees on the prohibition of sexual harassment could have been taken to avoid the incident.

A factor that contributed to the victim's damages in *Ikwezi* was the employer's ignorance of the fact that it had a common-law duty to ensure the physical and psychological safety of the victim during the entire employment relationship and not only up to the disciplinary hearing. Had the employer been alert to this duty, the victim would not have suffered the second trauma of having to continue working with her harasser, culminating in her having to resign. The Municipality conceded that they had failed in their duty to ensure the psychological safety of the employee before (but not after) the hearing. It is disappointing that the court did not point out that the employer could, in terms of the common law, be held directly (and not only vicariously) liable for failing to protect the employee's psychological safety during the whole period of employment. This would have sent a strong message to employers that if the harasser is not dismissed after the disciplinary hearing, the employer still has a duty to ensure the psychological safety of the victim. This could entail taking measures to ensure that there is no contact between the victim and the harasser.

Damages to the victim in *Ikwezi* could further possibly have been avoided had the Municipality referred the sanction (short of dismissal) for review to the Labour Court in terms of section 158(1)(h) of the LRA. The Municipality was unfortunately wrongly advised by their legal advisor, that there was nothing that they could do about the unsatisfactory sanction. The High Court in *Ikwezi* pointed out that the requirements for review to the Labour Court would have been satisfied in *Ikwezi*, since a municipality is an organ of state, and further that the inappropriate sanction in this case was unreasonable and irrational and thus constituted a reason "admissible in law", which is required for referral for review in terms of this section.

The procedure of referring an unsatisfactory decision of a chairperson of a disciplinary hearing for review is available only to organs of state; thus, private employers cannot make use of this procedure. They are left with a choice between a second hearing and a unilateral decision to dismiss the employee. These measures are arguably also available to organs of state which for some reason cannot refer the decision of the chairperson for review in terms of the LRA. In *BMW* fairness was laid down as a requirement for a second hearing. The court did remark that a second hearing would usually be possible only in exceptional circumstances and that a prohibition on a second hearing in the disciplinary code could be an obstacle.

Regarding a unilateral change to the sanction, this was until recently held to be invalid if the disciplinary hearing did not make provision for such a change. However, in *Kruger CC,* a case of gross racist abuse, the Constitutional Court ruled that the CCMA's reinstatement of an employee

who had been dismissed by a unilateral decision of management was a decision that no reasonable decision-maker would take. No guidance was provided on the question of whether an employer has the power to make such a unilateral change if the disciplinary code excludes this possibility. It appears that the Constitutional Court found that the unilateral decision of the employer was substantively fair. However, it found that the dismissal was procedurally unfair because Kruger had not been heard before the decision was taken.

In summary, in *Ikwezi* both the human and financial cost of the harassment could have been prevented had the Municipality trained employees on the content of the Code of Good Practice on the Handling of Sexual Harassment in the Workplace, protected the victim even after the disciplinary hearing, and referred the case to the Labour Court for review. They could also have held a second hearing, although in the light of *BMW* this would probably not be regarded as fair, since no new evidence came to light after the first hearing. In the light of *Kruger CC*, the municipality could also have gone the route of a unilateral change to the sanction, although the *Kruger CC* case was decided after *Ikwezi.*

Bibliography

Literature

Bosch 2006 *ILJ*
Bosch C "The Implied Term of Trust and Confidence in South African Labour law" 2006 *ILJ* 28-52

Calitz 2005 *TSAR*
Calitz K "Vicarious Liability of Employers: Reconsidering Risk as the Basis for Liability" 2005 *TSAR* 215-235

Calitz 2011 *SA Merc LJ*
Calitz K "Die Tweede Trauma van Slagoffers van Seksuele Teistering by die Werkplek: In die Steek Gelaat deur Bestuur: *Mokone v Sahara Computers (Pty) Ltd*" 2011 *SA Merc LJ* 280-290

Grant, Whitear and Chandramohan 2017 *ILJ*
Grant B, Whitear N and Chandramohan S "Do You want a Lover Tonight?' A Discussion of *Campbell Scientific Africa (Pty) Ltd v Simmers & Others* (2016) 37 *ILJ* 116 (LAC)" 2017 *ILJ* 769-784

Grogan *Dismissal*
Grogan J *Dismissal* 3rd ed (Juta Cape Town 2017)

Case law

Bazley v Curry 1999 174 DLR (4th) 45

BMW v De Lange 1999 ZALAC 2

Branford v Metrorail Services 2003 24 ILJ 2269 (LAC)

Campbell Scientific Africa (Pty) Ltd v Simmers 2016 37 ILJ 116 (LAC)

Chirwa v Transnet Limited 2008 29 ILJ 73 (CC)

Christian v Colliers Properties 2005 ZALC 56 (25 February 2005)

City of Cape Town v South African National Roads Authority Ltd 2015 3 SA 386 (SCA)

County Fair Foods (Pty) Ltd v Commission for Conciliation Mediation and Arbitration 2002 ZALAC 31 (11 December 2002)

E v Ikwezi Municipality 2016 37 ILJ 1799 (ECG)

Edcon Ltd v Pillemer 2009 30 ILJ 2642 (SCA)

F v Minister of Safety and Security 2012 33 ILJ 93 (CC)

Gaga v Anglo-Platinum Ltd 2012 33 ILJ 329 (LAC)

Gcaba v Minister of Safety and Security 2010 1 SA 238 (CC)

Grobler v Naspers Bpk 2004 25 ILJ 439 (C)

Hendricks v Overstrand Municipality 2014 12 BLLR 1170 (LAC)

K v Minister of Safety and Security 2005 26 ILJ 1205 (CC)

Lister v Hesley Hall 2001 UKHL 22

Media 24 Ltd v Grobler 2005 26 ILJ 1007 (SCA)

Minister of Defence v Von Beneke 2013 2 SA 361 (SCA)

Minister of Police v Rabie 1986 1 SA 117 (A)

Minister of Safety and Security v F 2012 33 ILJ 93 (CC)

Mokone v Sahara Computers (Pty) Ltd 2010 31 ILJ 2827 (GNP)

Ntsabo v Real Security CC 2003 24 ILJ 2341 (LC)

Ntshangase v MEC for Finance Kwa-Zulu Natal 2010 3 SA 201 (SCA)

Piliso v Old Mutual 2007 28 ILJ 897 (LC)

PSA obo Venter v Laka 2005 26 ILJ 2390 (LC)

Sidumo v Rustenburg Platinum Mines 2008 2 SA 24 (CC)

South African Broadcasting Corporation v Grogan 2006 27 ILJ 1519 (LC)

South African Revenue Service v Commission for Conciliation Mediation and Arbitration 2010 32 ILJ 1238 (LC)

South African Revenue Services v Commission for Conciliation Mediation and Arbitration 2014 35 ILJ 656 (LAC)

South African Revenue Service v Commission for Conciliation Mediation and Arbitration 2016 37 ILJ 655 (LAC)

South African Revenue Services v Commission for Conciliation, Mediation and Arbitration 2017 38 *ILJ* 97 (CC)

Theewaterskloof Municipality and Independent Municipal & Allied Trade Union obo Visagie 2012 33 ILJ 1031 (BCA)

YF and Multichoice Management Services 2008 29 ILJ 2850 (ARB)

Legislation

Constitution of the Republic of South Africa, 1996

Employment Equity Act 55 of 1998

Labour Relations Act 66 of 1995

Local Government: Municipal Systems Act 32 of 2000

Promotion of Administrative Justice Act 4 of 2000

Public Servants Act, 1994

Government publications

Amended Code on the Handling of Sexual Harassment cases in the Workplace - Gen N 1357 in GG 27865 of 4 August 2005

Internet sources

BBC News 2018 http://www.bbc.com/news/entertainment-arts-41594672
BBC News 2018 *Harvey Weinstein Timeline: How the Scandal Unfolded* http://www.bbc.com/news/entertainment-arts-41594672 accessed 23 May 2018

Cooney 2018 http://time.com/5015204/harvey-weinstein-scandal
Cooney S 2018 *Here are All the Public Figures Who've been Accused of Sexual Misconduct after Harvey Weinstein* http://time.com/5015204/harvey-weinstein-scandal/ accessed 23 May 2018

List of Abbreviations

CCMA	Commission for Conciliation, Mediation and Arbitration
EEA	Employment Equity Act 55 of 1998
ILJ	Industrial Law Journal
LAC	Labour Appeal Court
LRA	Labour Relations Act 66 of 1995
PAJA	Promotion of Administrative Justice Act 4 of 2000
PTSD	Post-Traumatic Stress Disorder
SA Merc LJ	South African Mercantile Law Journal
SCA	Supreme Court of Appeal
TSAR	Tydskrif vir die Suid-Afrikaanse Reg