



To BEE or Not to BEE, that is the question in Solidarity obo Barnard SAPS (165/2013) [2013] ZASCA 177

Question:

Is it an act of discrimination to refuse a person, of a certain race, a promotion when they are the best person for the position???

The facts:

Solidarity obo Barnard (who is a white female) argued that she was the best person for the position and that the position had become common cause.

SAPS argued that Barnard's position was not filled and therefore there was no discrimination. Further, the position was not 'critical'. However the post was re-advertised three times. On all three occasions Barnard was the best candidate over her colleagues who are black males.

The Supreme Court held:

If you are the best person for the position and not chosen then you have been discriminated against.

And further:

BEE is meant to be about employment equity and who is best suited to the job. It should not be about filling quotas and earning points. BEE was never meant to be about the 'battle of the races'. For a particular job, it was designed to promote a more fair selection criteria when employing people. However sadly it appears this is not always the case.

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