ENGLISH

Court Case

Cheng Yin Fong v Incorporated Owners of Siu On Court & Others

HCA 5975/1999

BACKGROUND FACTS

The Plaintiff saw several shirtless men around a wet market and an adjacent sports ground. She confronted these men about their attire and they responded with vulgar and abusive language. The Plaintiff filed a sexual harassment claim under the SDO against three Defendants. The First Defendant is the property management company that oversees the housing estate where the market and sports ground are located, which the Plaintiff argues allowed or failed to prevent the presence of shirtless men on its premises. The Second and Third Defendants are a newspaper stall and a vegetable stall at the market, respectively, which the Plaintiff argues the shirtless men were present near. The Plaintiff's claim was struck out by the Registrar of the High Court to the Court of First Instance and the Plaintiff appealed the decision accordingly.

COURT'S DECISION

The Court upheld the Registrar's decision to strike out the Plaintiff's claim, stating three reasons for its decision.

Firstly, the Plaintiff failed to establish standing to bring the claim as she did not indicate any relationship between her and the Defendants in the capacity of which they could be held responsible under the SDO. Although the Defendants were engaged in the provision of goods, facilities or services, the Plaintiff did not show that she was a resident of the housing estate where the market is located, or a customer of the Second or Third Defendants'.

Secondly, the complained-of conduct does not constitute sexual harassment. The Plaintiff complained of the state of undress of certain men in the vicinity of the market and sports ground who were engaging in physical labor. That they were shirtless is easily explained by the desire for increased convenience and comfort while working. It was not directed at the Plaintiff and does not involve a sexual nature, thus does not constitute sexual harassment. Taking into account of the culture of particular class of people in the Chinese society, in particular, the Cantonese society, the use of vulgar language, even including profanity relating to male and female reproductive organs, is rude and undesirable but not necessarily conduct of a sexual nature thus does not constitute sexual harassment in the circumstances.

Lastly, the men who allegedly committed sexual harassment by being shirtless were wholly unconnected to the Defendants in this case; they were simply present at or around the market. The Plaintiff was unable to establish any kind of relationship between the Defendants and those men, or to otherwise show why the Defendants should be responsible for the conduct of those men.

The Court found that the Plaintiff failed to state a reasonable cause of action and that her claim constituted an abuse of the process of the court. It dismissed the Plaintiff's appeal and ordered her to pay the costs of the appeal incurred by the Defendants.

[Click to Access the Court Ruling (Only Available in Traditional Chinese)]

繁體中文

法庭案例

鄭燕芳 訴 兆安苑業主立案法團 及另二人

HCA 5975/1999

案情背景

原告人在街市及鄰近的運動場看見幾個袒胸露臂的男人。她因這些男人的衣著而與他們對質，被他們回以粗言穢語。原告人根據《性別歧視條例》向三名被告人提出性騷擾申索。第一被告人是負責管理屋邨的物業管理公司，有關街市及運動場屬其管理範圍。原告人認為第一被告人容許或未有阻止不穿上衣的男人在其處所出現。第二及第三被告人分別是街市內的報紙檔及菜檔。原告人辯稱不穿上衣男人在他們附近出現。原告人的申索被高等法院原訟庭的司法常務官駁回，原告人因此提出上訴。

法庭的裁決

法庭維持司法常務官駁回原告人申索的決定，作出決定的原因有三：

首先，原告人未能指出她與被告人之間存有任何在《性別歧視條例》下可令各被告人負上法律責任的關係，因此，原告人未確立她以什麼身份提出申索。雖然被告人有份提供商品、設施及服務，但原告人既未能證明自己是街市所在屋苑的住客，也未能證明自己是第二及第三被告人的顧客。

其次，所投訴的行為不構成性騷擾。原告人投訴街市及附近運動場從事體力勞動的男人沒有穿上衣。他們不穿上衣是為了工作方便和舒適，是很易理解的。他們不穿上衣並非針對原告人，也不涉及性，因此不構成性騷擾。法庭考慮到中國社會(尤其是廣東人社會)個別階層人士的文化，粗俗語言涉及男女生殖器官，言語雖然粗鄙無禮，但不一定是涉及性的行徑，在這情況下並不構成性騷擾。

最後，因不穿上衣而被指稱性騷擾的男人與本案的被告人完全沒有關係；他們只是在街市裡或是在附近。原告人無法證明各被告人與這些男人之間的關係，也無法證明各被告人為甚麼該為這些男人的行為負責。

法庭裁定原告人無法說明提出訴訟的合理原因，因此她的申索濫用了法庭程序。法庭駁回原告人的上訴，並命令她為各被告人繳付上訴的費用。

[按此進入判案書全文]

简体中文

法庭案例

郑燕芳 诉 兆安苑业主立案法团 及另二人

HCA 5975/1999

案情背景

原告人在街市及邻近的运动场看见几个袒胸露臂的男人。她因这些男人的衣着而与他们对质，被他们回以粗言秽语。原告人根据《性别歧视条例》向三名被告人提出性骚扰申索。第一被告人是负责管理屋邨的物业管理公司，有关街市及运动场属其管理范围。原告人认为第一被告人容许或未有阻止不穿上衣的男人在其处所出现。第二及第三被告人分别是街市内的报摊及菜档。原告人辩称不穿上衣男人在他们附近出现。原告人的申索被高等法院原讼庭的司法常务官驳回，原告人因此提出上诉。

法庭的裁决

法庭维持司法常务官驳回原告人申索的决定，作出决定的原因有三：

首先，原告人未能指出她与被告人之间存有任何在《性别歧视条例》下可令各被告人负上法律责任的关系，因此，原告人未确立她以什么身份提出申索。虽然被告人有份提供商品、设施及服务，但原告人既未能证明自己是街市所在屋苑的住客，也未能证明自己是第二及第三被告人的顾客。

其次，所投诉的行为不构成性骚扰。原告人投诉街市及附近运动场从事体力劳动的男人没有穿上衣。他们不穿上衣是为了工作方便和舒适，是很易理解的。他们不穿上衣并非针对原告人，也不涉及性，因此不构成性骚扰。法庭考虑到中国社会(尤其是广东人社会)个别阶层人士的文化，粗俗语言涉及男女生殖器官，言语虽然粗鄙无礼，但不一定是涉及性的行径，在这情况下并不构成性骚扰。

最后，因不穿上衣而被指称性骚扰的男人与本案的被告人完全没有关系；他们只是在街市里或是在附近。原告人无法证明各被告人与这些男人之间的关系，也无法证明各被告人为甚么该为这些男人的行为负责。

法庭裁定原告人无法说明提出诉讼的合理原因，因此她的申索滥用了法庭程序。法庭驳回原告人的上诉，并命令她为各被告人缴付上诉的费用。

[按此进入判案书全文（只提供繁体中文版）]