

Recent developments

(De)colonisation of beauty: A reflection on *Baba & Others v Clicks Group Limited & Another*

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Summary: *This discussion is a reflection on the decision on 28 February 2022 by the High Court of South Africa, Western Cape Division, sitting as an Equality Court, in the matter of Baba & Others v Clicks Group Limited & Another. On 4 September 2020 an unknown person posted an image of four women on social media. The circulation of this image caused an outcry on the premise that the image perpetuated racial stereotyping of black hair. Baba and 17 others subsequently brought an application to the Equality Court on allegations of contravention of the Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000. While the matter was dismissed, the case holds a different dimension within the discourse of decolonising beauty standards. This article argues that universal beauty standards were influenced by colonialism and continue to represent Eurocentric standards. This argument is premised on literature on texturism and colourism, coloniality of power and modernity. From this perspective, the article endorses a reflection on beauty hierarchies traced in Eurocentrism and the re-engineering of acceptable beauty aesthetics.*

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1 Introduction

Hair may be perceived as a symbol of social identity. African history demonstrates how people communicated through hair to represent status, age, wealth, rank in society, marriage, and so forth.¹ Regrettably, African hair has been racialised and categorised as inferior to Eurocentric beauty standards by forces of globalisation.² The impact of colonialism on African identity emphasises that this practice extended beyond economic and political dependence, but undermined African culture, traditions and beauty standards.³ The power dynamics of colonialism have limited the universal expression 'beauty lays in the eyes of the beholder'. The historical reality is that colonial powers became the 'beholders' and perpetuated the narrative that Eurocentric standards are acceptable and valuable.⁴ Global standards and trends on beauty sustain this narrative, thus highlighting that beauty continues to lay in the eyes of the colonisers' powers.⁵

The colonist values, attitudes, culture, traditions and beliefs imposed during the era of colonialism continue to hold power and exercise supremacy on the colonised.⁶ This, therefore, suggests that the effects of colonialism and cultural imperialism continue to impact the identity of the colonised. Today, despite movements aimed at reclaiming natural hair beauty,⁷ straightened silk hair is perceived as civilised and professional in comparison to afro-textured hair and dreadlocks.⁸ Afrocentric beauty standards, past and present, are deeply rooted in oppression. Consequently, years

- 1 ME Montle 'Debunking Eurocentric ideals of beauty and stereotypes against African natural hair(styles): An Afrocentric perspective' (2020) 7 *Journal of African Foreign Affairs* 113.
- 2 M Nkimbeng and others 'The person beneath the hair: Hair discrimination, health, and well-being' (2023) 7 *Health Equity* 407.
- 3 See S Mady and others '"A whiter shade of pale": Whiteness, female beauty standards, and ethical engagement across three cultures' (2023) 31 *Journal of International Marketing* 69-89.
- 4 See Mady and others (n 3) 69-89.
- 5 L Donnelly 'Is beauty in the eyes of the coloniser?' 2 June 2019, <https://africana.cornell.edu/news/beauty-eyes-colonizer> (accessed 28 March 2024).
- 6 AM Decena 'Identity, colonial mentality, and decolonising the mind: Exploring narratives and examining mental health implications for Filipino Americans' Master's dissertation, Smith College Northampton, 2014 6-8.
- 7 Eg, CA Jefferson *Reclaim natural beauty: How to grow, nourish, and strengthen natural, black hair* (2011).
- 8 See A Alexander 'Beyond the ballot: The politics of black hair' *Essence GU* (web blog) 23 August 2024, <https://girlsunited.essence.com/beauty/beyond-the-ballot-kamala-silk-press-hair/> (accessed 24 March 2025).

of being conditioned that African aesthetics were inferior, people of African descent have yielded and continue to succumb to modify themselves to model Western standards.

The continued influence by the European coloniser on the colonised refers to what is termed 'colonial mentality'.⁹ This may be understood as a deeply rooted ingenuine mindset towards one's own culture due to colonial historical influence.¹⁰ It explains internalised oppression of the colonised to view their cultural and/or ethnic identity as inferior to Western culture, leaving one to abandon their indigenous roots, whilst learning, adapting to and embracing Eurocentric standards.¹¹ The long-term consequence is the identity erosion and psychological injury.¹² Decena highlights ways in which colonial mentality manifests, namely, through internalised cultural and ethnic inferiority, cultural shame and embarrassment, within-group discrimination, physical characteristics and colonial debt.¹³

Recognising the impact of colonial mentality on the African identity, it is imperative to consciously decolonise the African mind, reconnect and strengthen indigenous cultures, traditions and beauty standards in order to ground oneself.¹⁴ Simply put, there is a need to reframe the narrative and claim power to redefine beauty and resist the imposition of colonial aesthetics. This is particularly important considering a number of cases on texturism, a systematic form of racism or discrimination based on hair texture on the premise that certain types of hair are more desirable than others. Texturism functions as systematic racism as it is premised on colonial racial hierarchies often immortalised by institutions. Consequently, addressing texturism requires more than widening the range of beauty standards; on the contrary, it requires dismantling the racial hierarchies.

This article discusses the case of *Baba & Others v Clicks Group Limited & Another*,¹⁵ decided on 28 February 2022 by the High Court of South Africa, Western Cape Division, sitting as an Equality Court. While the dispute involved advertising and advertising standards, I posit that this case has also brought attention to the prevalence

9 RPE Roca and others 'Colonial mentality and diabetes self-management in Filipino Americans' (2025) 12 *Nursing Open* 1-2.

10 As above.

11 BJ Balogun & ET Woldegiorgis 'Combating colonial mentality within higher learning spaces: The case of sub-Saharan African universities' (2023) 12 *African Journal of Teacher Education* 101-102.

12 Decena (n 6) 9.

13 Decena (n 6) 10.

14 Decena (n 6) 17.

15 *Baba & Others v Clicks Group Limited & Another* 2022 (4) SA 141 (WCC) (*Baba*).

of hair discrimination, significance of representation in beauty industries, the role of media in reinforcing Eurocentric beauty ideals, and the need to decolonise beauty standards.

2 Synopsis of facts

On 4 September 2020, an unknown person posted a picture of four women on social media. The caption of the picture was 'dry and damaged hair'; 'frizzy and dull hair'; 'fine and flat hair'; and 'normal hair' for TRESemmé hair products. The hair of two black women was described as 'dry and damaged hair, frizzy and dull hair', whereas the hair of white women in the picture was described as 'fine and flat hair, normal hair'. This resulted in nationwide protest and a boycott of TRESemmé and Clicks retail outlets. The images of these women were cropped from an advertisement produced by Unilever, the second respondent, and published on the Clicks Retailers website.¹⁶

On 7 September 2020, the chief executive officer (CEO) of Clicks Group Limited (CGL) published an apology letter following the outrage. The apology letter, however, was condemned, which resulted in the cabinet minister, Khumbudzo Ntshavheni, urging for the removal of TRESemmé from Clicks shelves.¹⁷ On or about 10 September 2020, the Economic Freedom Fighters (EFF) and Unilever reached a settlement whereby Unilever agreed that the advertisement was offensive and racist, and expressed remorse, particularly towards black women. Additionally, Unilever committed to an investigation, taking measures to redress the situation, to withdraw TRESemmé products for 10 days, and donate 10 000 sanitary towels and sanitisers to informal settlements that would be identified by the EFF. The settlement agreement was deemed to be final between the signatories.¹⁸ However, on 20 September 2020, the applicants launched an application. In their founding affidavit, the applicants argued that the Court must declare the conducts of the respondents offensive to the dignity and repute of black women, and that their conduct contravened sections 7 and 12 of the Equality Act and sections 9 and 10 of the South African Constitution.¹⁹

16 *Baba* (n 15) paras 2 & 3.

17 *Baba* (n 15) para 6.

18 *Baba* (n 15) para 7.

19 *Baba* (n 15) para 9; and Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000 (Equality Act).

3 Arguments presented

3.1 Applicants' arguments

The applicants argued that the advertisement directly contravened sections 7 and 12 of the Equality Act²⁰ by contributing to racial inferiority and that the advertisement can reasonably be construed and/or understood as clearly and intentionally unfairly discriminating against a black person. Moreover, the applicants strongly believed that the respondents had a general duty of care when making or publishing an advertisement and their internal procedures must or should have complied with the Equality Act. In the end, the applicants concluded that, essentially, the advertisement was intentionally developed and published to offend black females.²¹

Buttressing on the impact of the advertisement, the first applicant submitted that hair is a crown and pride of women, and seeing the advertisement she felt demeaned, her self-esteem was attacked, she felt inadequate, and judged for her natural hair.²²

Concerning the respondents' apologies, the applicants condemned the apologies, particularly that of the first respondent who referred to the black community as the 'black hair community'. According to them, the respondents failed to recognise, admit and address the hurt and discriminatory message of their advertisement. Moreover, the applicants submitted that the settlement between the respondent and the EFF did not send a sufficiently strong message to companies and the treatment of black people.²³

3.2 First respondent's submissions

Aside from CGL submitting that the matter should be withdrawn and instituted afresh due to incorrect citing of the relevant company,²⁴ it (CGL) submitted that the first applicant did not make a case as to why the said advertisement was particularly offensive to her, distinct to other applicants, further arguing how her subjective feelings had 'no bearing on whether unfair racial discrimination had taken place or not in the publication of the TRESemmé advertisement'.²⁵ I take

²⁰ Act 4 of 2000.

²¹ *Baba* (n 15) para 11.

²² *Baba* (n 15) para 12.

²³ *Baba* (n 15) paras 13 & 14.

²⁴ *Baba* (n 15) paras 15-17.

²⁵ *Baba* (n 15) para 18.

issue with CGL's submission alluding to how the subjective feelings of one of the applicants is irrelevant. While it may factually be accurate, this submission overlooks the importance of social truth.²⁶ As a nation reeling with the legacy of apartheid, South Africa's racial issues are delicate, thus necessitating the recognition of social truth experienced by those who endured decades of oppression. The Truth and Reconciliation Commission defined social truth as 'the truth of experience that is established through interaction, discussion and debate'.²⁷ Moreover, it pointed out that establishments of the truth cannot be void 'from the affirmation of the dignity of human beings'.²⁸

Reverting to the case, CGL denied a basis for the Court to declare the advertisement offensive, unlawful, racist and demeaning to black females in terms of the Equality Act. Lastly, it submitted that the applicants had not established a case of unfair racial discrimination as per the Equality Act.²⁹

3.3 Second respondent's submission

In relaying the series of events, Unilever claimed that it and Clicks had entered into a digital marketing contract in November 2015 whereby it supplied Clicks with marketing material that will be put on its (Clicks') 'store-in-store' section of its website in order to represent the findings of the research on various hair types and haircare issues, and to show how these concerns could be managed by using TRESemmé hair products.³⁰ In describing this process, Unilever held the following position:

- It wanted to have different categories of haircare products. In doing so, it provided six different categories of hair or haircare concerns and aligned this with the relevant TRESemmé product. The hair categories were colour-treated hair, dry and damaged hair, fine and flat hair, frizzy and dull hair, normal hair and styling.
- Each hair category has a visual representation.
- The six images were lined to the six product categories to cater for the haircare needs with a description to assist a customer in navigating the best hair solution.

26 Truth and Reconciliation Commission of South Africa Report Volume 1 paras 40-42.

27 Truth and Reconciliation Commission of South Africa (n 26) para 40.

28 Truth and Reconciliation Commission of South Africa (n 26) para 42.

29 *Baba* (n 15) para 19.

30 *Baba* (n 15) para 22.

- Unilever observed that only pictures of white women were used, and this was viewed as being 'inconsistent with the objective of making the TRESemmé brand more inclusive'.³¹ In response, it requested images of black women with healthy hair to be included. Thereafter, there was an inclusion of a black woman under the category 'dry and damaged hair' 'consistent with the market research conclusion'.³²
- The revised product was thereafter shared with Clicks which went live on 15 May 2019.³³

When the cropped image circulated in social media, Unilever contacted Clicks Retailers who confirmed that the images used were images from the advertisement on its website.³⁴ Essentially, according to Unilever, the image that circulated on social media was not the advertisement that appeared on Clicks Retailers' website. Unilever claimed that the advertisement in question was an image cropped by unknown person(s).³⁵ In buttressing its argument, Unilever submitted that the images only included four of the six product categories. Moreover, it did not reflect the TRESemmé Botanic banner that showed a black woman with an afro hairstyle next to a slogan that read 'the natural choice for moisturised hair'. Therefore, according to Unilever, the actual content of the published advertisement breached neither the Constitution nor the Equality Act, nor did the advertisement that appeared on the Clicks Retailers' website contravene the said legislation.³⁶ Additionally, it disputed the fact that the first applicant saw the disputed image on the Clicks Retailers' website.

Nevertheless, Unilever acknowledged that the applicant saw the cropped image that circulated on social media even though it was not a reflection of the actual advertisement as it appeared on Clicks' website. It submitted that the published advertisement was not in any way demeaning, attacking, hurting, racist or stigmatising.³⁷ Despite this, Unilever accepts mistakes in the process of creating the content, and how in attempting to promote diversity in its products, the said images were manipulated.³⁸ It emphasised its prompt response in making a public apology and undertaking internal

31 *Baba* (n 15) para 22.

32 *As above*.

33 *As above*.

34 *Baba* (n 15) para 23.

35 *Baba* (n 15) para 20.

36 *Baba* (n 15) para 24.

37 *Baba* (n 15) para 27.

38 *Baba* (n 15) para 25.

remedial measures.³⁹ In closing, Unilever submitted that CGL ‘would never engage in a course of action that would offend or hurt black women’.⁴⁰

4 Issues and jurisdiction

The Court needed to address various issues:

- What is the test in determining whether there has been unfair discrimination on the basis of race?
- Whether the TRESemmé advertisement unfairly discriminated against the applicants (or any other black woman) on the ground of race, and whether the advertisement published information that reasonably construed or understood as demonstrating a clear intention to unfairly discriminate against the applicants or any other black woman.
- Was it the TRESemmé advertisement as published on Clicks Retailers’ website or the cropped images that appeared on social media that was the probable cause of the outcry?
- Did the respondents violate sections 7 and 12 of the Equality Act by creating and publishing the TRESemmé advertisement?

One cannot deny that South Africa’s constitutional democracy is committed to societal transformation free from racial discrimination. This commitment is anchored in section 9 of the Constitution which provides that everyone is equal before the law. Following the mandate contained in the section for the enactment of a national legislation to prevent or prohibit unfair discrimination, the Equality Act was enacted.⁴¹ The application before the Equality Court was brought in terms of section 20(1) of the Equality Act to which the applicants invoked sections 7 and section 12 of the Equality Act. Respectively, the provisions prohibit unfair discrimination based on race and the dissemination and publication that discriminates.⁴² Considering the submission made by Clicks Group Limited that there is no basis for the Court to declare the said publication offensive, unlawful, racist and demeaning towards black women and provide remedies for such harms. In addressing the question on jurisdiction and citing *Manong and Associates (Pty) Ltd v Department of Roads and Transport Eastern Cape & Another*, the Court held that ‘the Equality Court is a specialised court designated to hear matters relating to

39 *Baba* (n 15) para 26.

40 *Baba* (n 15) para 28.

41 *Baba* (n 15) para 30.

42 *Baba* (n 15) para 32.

unfair discrimination, hate speech and harassment. There is no doubt that this a matter that falls squarely within the jurisdiction of the Equality Court.⁴³

In addressing the applicants seeking to declare the TRESemmé advertisement as contravening and offensive in terms of sections 9 and 10 of the Constitution, while declaring that the application is brought before the Court in terms of section 20(1) and founded in terms of sections 7 and 12 of the Equality Act, the Court emphasised how the applicants went ahead and relied on the Constitution for declaratory relief.⁴⁴ Relying on *MEC for Education: Kwazulu-Natal & Others v Pillay*, the Court held that, based on the principle of subsidiarity, a litigant cannot bypass the legislation enacted to uphold the constitutional right by directly relying on the constitutional right.⁴⁵ The principle essentially provides that if an individual's constitutional right has been infringed, the individual has to rely on the legislation that protects their constitutional right, and not the constitutional provision directly. Thus, the Equality Act gives effect to section 9. In contrast, if an individual is calling on the court to examine the constitutionality of a legislative provision in order to declare it invalid, then direct reliance on section 9 will suffice.

5 Decision on the merits

For the Court, it was not clear whether the image referred to by the applicant in submitting that it was offensive, reference was being made to the image published on the Clicks Retailers website or the cropped image.⁴⁶ This may cause difficulties and problems, because essentially, it had to be determined whether the respondents can be held liable for the cropped images, which it did not publish.

It was clear to the Court that the applicant stated that although having seen the advertisement of the website of the first respondent, it was the cropped image, for which the respondents were not responsible, that prompted an outcry. Relying on the *Plascon-Evans* rule,⁴⁷ the Courts' primary determination, therefore, was that the

43 *Baba* (n 15) paras 38-39.

44 *Baba* (n 15) para 40.

45 *Baba* (n 15) para 41.

46 *Baba* (n 15) paras 54-55.

47 A rule whereby an order may be granted in an application proceeding when the facts outlined in the applicant's affidavit are admitted by the respondent to justify the order. See G Penfold & C Hoexter 'The treatment of facts in South African administrative law' in A Carter & J Tomlinson (eds) *Facts in public law adjudication* (2023) 185.

images that were circulated on social media, and not the respondents' advertisement, caused a public outcry.⁴⁸

As emphasised by the Court, the constitutional democracy of South Africa is steadfast on departing from the injustices of the past, as evidenced in section 9 of the Constitution. Conceptually, the right of equality enshrined in this constitutional provision ensures complete and equitable enjoyment of all rights and freedoms.⁴⁹ From a general perspective, the complaint submitted against the advertisement is anchored on allegations of unfair discrimination based on race which, if true, it is against section 7 of the Equality Act, which prohibits unfair discrimination on racial grounds. Thus, according to the Court, it is a contravention of the principle of equality. Moreover, when individuals experience unfair discrimination, their dignity is compromised.⁵⁰ These constitutional provisions and the Equality Act seek to address the racial practices of the past that were rooted in the apartheid era. From this perspective, I concur with the Court's submission that any person calling out action of, for instance, a private entity or official, on equality grounds, reliance should be the Equality Act, thus reflecting the principle of subsidiarity.

In addressing the allegations of unfair discrimination by corporations against individuals, the Court had to determine whether the differentiation was fair, in other words, 'whether the advertisement differentiated between people or categories of people. If so, is the differentiation fair?' If this differentiation was not fair, then there is a violation of section 7 of the Equality Act. However, if it was fair, 'it might nevertheless amount to discrimination'.⁵¹ Although the judgment does not provide an explanation on the differentiation and discrimination, differentiation often is acceptable for regulatory purposes, for example, differentiating people based on their income. For differentiation, often termed mere differentiation to be constitutional, it ought to be rational. When differentiation infringes on section 9(1) of the Constitution, it then takes the form of discrimination. In other words, differentiation may be fair and, therefore, constitutional. This interpretation is supported in the *Prinsloo* case.⁵²

The Court emphasised section 13(2) of the Equality Act to the effect that, if discrimination occurred on the prohibited grounds

48 *Baba* (n 15) para 58.

49 *Baba* (n 15) paras 59 & 60.

50 *Baba* (n 15) para 61.

51 *Baba* (n 15) para 67.

52 *Prinsloo v Van der Linde* 1997 (3) SA 1012.

stipulated in paragraph (a) of the definition of grounds, that is, demonstrating unfair discrimination as defined by the Act, then such discrimination is unfair unless the respondents established that the discrimination was fair.⁵³ Furthermore, the determination of whether differentiation amounts to unfair discrimination in terms of section 9(3) of the Constitution, a two-stage analysis as set out in *Harksen*⁵⁴ had to be conducted. Stage one seeks to determine whether the said differentiation amounts to discrimination as set out on grounds in section 9(3) or analogous grounds, and stage two seeks to determine whether the discrimination was unfair.

Having considered the facts of the case, it was determined that the applicants neither proved that the advertisement imposed, whether directly or indirectly, any burdens on them or disadvantaged them, nor did they prove 'that benefits, opportunities or advantages were withheld from them because they were black', apart from arguing that the advertisement was offensive and hurtful.⁵⁵

In determining whether the advertisement can reasonably be understood and/or considered intentionally unfair discrimination against black people, and whether the advertisement was commissioned intentionally to offend black women, the Court relied on the objective test as set out in *Qwelane*⁵⁶ on what amounts to the determination of an objective standard.⁵⁷ The Constitutional Court held that

an objective standard gives better effect to the spirit, purport and objects of the Bill of Rights. On the one hand, if it were based on the subjective perception of the target group, it would unduly encroach on freedom of expression, since claims could be based on 'a multiplicity of trivial actions by hypersensitive persons'.⁵⁸

According to the second respondent, it was true that TRESemmé was generally and ordinarily seen as a brand for Caucasian hair; however, efforts for diversity and inclusion were made.⁵⁹ This includes representation on hair texture, which was supported by market research, which findings prompted the second respondent to position

⁵³ *Baba* (n 15) para 69.

⁵⁴ *Harksen v Lane & Others* 1998 (1) SA 300.

⁵⁵ *Baba* (n 15) para 70. In *Qwelane v South African Human Rights Commission & Another* 2021 (6) SA 579 (CC), sec 16 of the Constitution was argued to create an objective standard on the determination of freedom of speech; whereas the subjective test or standard was argued to be grounded on sec 10 of the Equality Act.

⁵⁶ *Qwelane v South African Human Rights Commission & Another* 2021 (6) SA 579 (CC).

⁵⁷ *Baba* (n 15) para 71.

⁵⁸ *Baba* (n 15) para 99.

⁵⁹ *Baba* (n 15) para 72.

TRESemmé for afro-textured hair and the creation of the impugned advertisement.⁶⁰ In responding to this, the applicants' response was 'that it was not only black women with dry and damaged hair' and, therefore, portraying non-black women as having better hair texture and black women with dry and damaged hair amounted to unfair discrimination as the experience of dry and damaged hair is not a 'phenomenon peculiar to black women'.⁶¹

Generally, hair relation issues are delicate. Nevertheless, the above submissions made by both the second respondent and the applicants are noteworthy. Responding to the respondent, TRESemmé indeed is often associated with Caucasian hair; similarly, to how Dark and Lovely empowers African women and embraces diversity of hair textures. It may be generally commendable that TRESemmé has made efforts to position itself to cater for afro-textured hair. However, does this stance open up opportunities for black-owned hair brands taking the lead in the textured hair industry in an attempt to address historical issues surrounding textured hair, and underrepresentation of such hair? Of course, all businesses are profit driven. However, the scale of profit, on the one hand, to exploring market ventures, on the other, must be balanced and further accompanied by the understanding and acknowledgment of one's contribution to speak up and make a difference on the dominance of Eurocentric beauty standards.

Ultimately, the Court held that the contentions of the applicants were not supported with a view of the disputed advertisement or image, and based on the six images on the banner, the different hair types and the inscription on the images of black women, it did not amount to unfair discrimination when the advertisement is viewed in its original context.⁶² This was particularly premised on how the applicants did not establish that the advertisement discriminated against them. Moreover, it was clear to the Court that the advertisement did not intend to unfairly discriminate against black women or people. The matter, therefore, was dismissed.

6 Coloniality of beauty

The *Baba* case extends beyond advertising concerns. This case serves as an opportunity to confront narratives surrounding textured hair and persisting incidences of hair discrimination. Simply put, this case prompts a larger conversation on beauty standards. To effectively

60 *Baba* (n 15) para 73.

61 *Baba* (n 15) para 74.

62 *Baba* (n 15) para 75.

address these beauty concerns and/or standards and combat the persisting perpetuation of inferiorities, it is imperative to recognise underlying causes of such incidents. This entails acknowledging the historical impact of colonialism and its influence in shaping beauty norms and standards along racialised hierarchies.

European colonialism influenced global power structures. Aside from it being theoretically dismantled,⁶³ its successor, Western imperialism, exists and persists as a system that connects the social interest of dominant countries with countries with unequal power. In this stance of unequal power dynamics, this colonial structure systematised specific social discrimination tabulated as 'racial', 'ethnic', 'anthropological' or 'national', depending on the those involved and the historical context.⁶⁴ By virtue of the way in which Eurocentric colonial domination moulded these constructs, they were perceived and accepted as being objective and scientific instead of being seen as a consequence of the history of power. It is precisely why these colonial power structures continue to be the framework of social and class dynamics.⁶⁵ For Quijano, this is demonstrated by observing the global exploitation, social domination and distribution of resources and work among the world population. The observation often reveals that the vast majority of those exploited, dominated and discriminated against are seemingly and precisely those within the 'races', 'ethnise' or 'nations' of the colonised populations categorised by world power.⁶⁶ Simply put, European colonialism imposed a system that not only positioned European knowledge, systems, institutions or identity as being exotic or superior; but evolved to Western imperialism in order to secure the continuation of the domination through global economy and social systems. Consequently, the unequal power dynamics remain an evident demonstration of the extent of inequalities between the Global North and Third World countries.

The extent of the unequal power dynamics of the coloniser and the colonised may be argued to be reflected on how modern societies are linked to and emerge through colonialism. European colonisation resulted in European modernity/rationality, thus contributing towards the Eurocentric capitalist colonial power being hypothesised and formalised by the west.⁶⁷ This observation supports assertions that the European modernity is a direct reflection of the

63 See A Karibi-Whyte 'An agenda for decolonising law in Africa: Conceptualising the curriculum' (2020) 2 *Journal of Decolonising Disciplines* 1-20.

64 A Quijano 'Coloniality and modernity/rationality' (2007) 21 *Cultural Studies* 168.

65 As above.

66 Quijano (n 64) 169.

67 Quijano (n 64) 172.

European colonialism, making it possible for domination in cultural, intellectual and social systems. Reflecting on the legacy of colonialism and the relationship between colonialism and modernity, Mignolo and Walsh are of the view that modernity/coloniality/decoloniality are terms that are often utilised simultaneously and are intertwined. In other words, with no modernity, there is no coloniality, and decoloniality denotes demodernity. Similarly, modernity/coloniality engenders decoloniality.⁶⁸ In other words, acknowledging that modernity is founded on colonialism, Mignolo and Walsh refer to this as coloniality⁶⁹ (which could be argued to take the form of neo-imperialism). Consequently, the decoloniality process seeks to dismantle the colonial structures, that is, coloniality.

In the absence of separating the legacy of colonialism from modernity, the persistence of European culture and/or the perception of its access to power and desirability, the colonisers portrayed their method and patterns of knowledge production and meaning as ideal, thus contributing to cultural coloniality or domination.⁷⁰ Ultimately, this has led to European culture being imposed as a universal standard for cultural development captivating and persuading other societies and cultures to Europeanisation.⁷¹ Amplifying this argument, modernity may be argued to be influenced by Eurocentric narratives. This is premised on how Eurocentrism as a universal paradigm of knowledge was perceived as valid, thus ignoring non-European perspectives.⁷² This perception continued during the period of colonialism and the age of enlightenment whereby non-Western people were not considered equals.⁷³

The dominance of the European norms and knowledge has led to submissions that knowledge is never impartial; that it (knowledge) is influenced by economic interests and power of the west, thus making knowledge function as a commodity exported from the west to the Third World. For that reason, knowledge from the Third World is constructed with political and economic interests of the west in mind. This narrative enabled historical western scholars to come forward and present their understanding of Eastern cultures as being objective.⁷⁴ This viewpoint emphasise how European dominance continue to shape the perception, narrative and understanding of

68 CE Walsh & WD Mignolo *On decoloniality: Concepts, analytics, praxis* (2018) 139.

69 As above.

70 Quijano (n 64) 169.

71 Quijano (n 64) 170.

72 Quijano (n 64) 172.

73 Quijano (n 64) 176.

74 AV Praveen 'Postcolonialism: Edward Said & Gayatri Spivak' (2016) 5 *Research Journal of Recent Sciences* 48.

the rest of the world. The extent to which colonial systems influence aspects of society is referred to as colonial totality. Developed from colonial modernity, the concept explains the legacy of European colonialism, the idea of a unified Western tradition and how former colonial powers exerted control politically and intellectually in order to model universal structures.⁷⁵ For Quijano, addressing this reality requires 'to liberate the production of knowledge, reflection and communication from the pitfalls of European rationality/modernity'.⁷⁶

Aside from influence in political and economic structures, the persistent influence of colonial structures in contemporary societies can be described as coloniality of power. This concept emerged along the formation of America and Western Europe whereby the concept of race was utilised as a tool for social classification to reclassify cultural and traditional notions into hierarchies of biological and structural superiority and inferiority.⁷⁷ As delineated by Quijano, 'coloniality of power is based upon racial social classification of the world population under Eurocentred world power'.⁷⁸ Simply put, the consequence of European colonialism categorising and structuring the population of the world into racial categories established universal social hierarchies, where some are perceived as superior than others.⁷⁹ While this may be the perspective, it is equally imperative to appreciate that coloniality of power extends beyond racial classification. Thus, for example, it is capable of including social or economic domination leading to the continuation of colonial power configuring global inequalities.⁸⁰

The present-day expressions of beauty and the dominance of Eurocentric beauty standards can be attributed to the legacy of European colonialism. Consequently, one may argue that although European colonisation did not obliterate indigenous expressions, cultural destruction was grave, thus denouncing the legitimacy of African cultures in the global cultural order.⁸¹ History has evidence of hair discrimination on the colonised.⁸² Caucasian supremacists and slave masters performed heinous acts against Africans and other people of colour for scientific evidence to promote racial hierarchy,

75 P Brooker *A glossary of literary and cultural theory* (2016) 284.

76 Quijano (n 64) 177.

77 Quijano 'Coloniality of power, Eurocentrism and Latin America' (2000) 1 *Duke University Press* 533. See also Quijano (n 64) 171.

78 Quijano (n 64) 171.

79 As above.

80 As above.

81 Quijano (n 64) 70.

82 SMF Knight & W Long 'Narratives of black women on hair in the workplace' (2019) 58 *Psychology in Society* 27.

and document literature on black inferiority.⁸³ Through this historical lens, history continues to shape beauty standards through a Eurocentric lens/paradigm.⁸⁴ For pre-colonial Africa, hair was a means for 'self-presentation, identity, beauty, power, culture ... pride ... cultural and spiritual significance'.⁸⁵ During the Transatlantic slave trade period, African hair and their designed hair styles were not only sophisticated, but carried out a message, demonstrated social status, and conveyed emotion and personality.⁸⁶ When African people were captured as slaves, their owners cut their hair, devastating not only their spirit, but also their culture and identity.⁸⁷ The slave owners referred to black hair as wool and forced them to straighten or cover their hair in order to resemble their white slave owners.⁸⁸

The global ridicule, stereotype and stigma of those with textured hair continues.⁸⁹ Post-colonialism, the aftermath of racial categorisation and the use of skin colour as a tool for social hierarchy differentiation have contributed towards the indoctrination of beauty standards whereby skin colour, nose size and hair texture were utilised as apparatus to determine self-worth, intelligence, attractiveness and success, favouritism and the assessment of privilege.⁹⁰ This has led to straightened hair being perceived as more beautiful and African hair undesirable and at times less feminine.⁹¹ Consequently, the normalisation of Eurocentric beauty standards, consciously or subconsciously, has a psychological, economic, social and political consequence for black women.⁹² Additionally, the impact of colonial racial classification and promoted aesthetic biological hierarchies has contributed to the denial of or difficulty in confirming self-worth and overcoming alienation within the historically marginalised

83 Knight & Long (n 82) 28.

84 These standards include long and straight hair, light or fair skin, big eyes, small narrow nose, being tall and thin. See Knight & Long (n 82) 27 and Z Wilson 'Beauty and the beast of Eurocentric standards' *Daily Nexus* 13 February 2023, <https://dailynexus.com/2023-02-13/beauty-and-the-beast-of-eurocentric-standards/> (accessed 19 March 2024).

85 J le Roux & TD Oyedemi 'Entrenched coloniality? Colonial-born black women, hair and identity in post-apartheid South Africa' (2023) 82 *African Studies* 200.

86 KL Rowe 'Tangle: Black hair and texturism in Ethnodrama' (2022) 22 *Cultural Studies Critical Methodologies* 7.

87 As above.

88 G Rakim "'Light skin is the right skin? And long hair don't care?': An investigation of colourism and texturism amongst black and Latina women' (2021) *Senior Projects Spring* 9.

89 Le Roux & Oyedemi (n 85) 200. See also JG Asare 'How hair discrimination affects black women at work' *Harvard Business Review* 10 May 2023, <https://hbr.org/2023/05/how-hair-discrimination-affects-black-women-at-work> (accessed 19 March 2024).

90 KM Kinuthia, E Susanti & SP Kokonya 'Afrocentric beauty: The proliferation of "texturist" and "colorist" beliefs among young women in Kenya' (2023) 36 *Masyarakat Kebudayaan dan Politik* 33.

91 As above.

92 Rowe (n 86) 8.

communities.⁹³ Following independence and the recognition of the impact of the inferiority narrative, the 'black is beautiful' cultural movement emerged in the 1960s celebrating Afrocentric features in order to promote, confirm self-love and worth following the damage of racism on the psyche of black people.⁹⁴

For South Africa, it is widely known that apartheid was an institutionalised system of racial segregation creating a racial society premised on racial hierarchy. Apartheid in South Africa emerged and was supported following the concern of the endangerment of white supremacy by the increasing black population.⁹⁵ Consequently, in order to ensure racial purity, social order, surveillance and regulation, there was a need to systematise the movement of people and the reassertion of racial difference to ensure that everyone knew their 'proper' place economically, politically and socially.⁹⁶ Race was utilised as a tool to organise and allocate resources and opportunities, plan and spatially demarcate to establish a boundary for social interactions.⁹⁷ Moreover, race was accepted as having both cultural and biological markers, thus setting a foundation for the architects of apartheid.⁹⁸

During the apartheid regime, the determinate of race was on various factors, including the texture of one's hair, language and clothing.⁹⁹ To succeed in racial classification, legislation such as the Representation of Native Act 12 of 1936 and the Population Registration Act 30 of 1950 was enacted. The Representation of Native Act defined a 'native' as not only a person with African origin, but included coloured people.¹⁰⁰ The Population Registration Act laid out racial categorisation in order to ensure everyday racialisation.¹⁰¹ This Act divided societies into four categories: black, white, coloured and Asian. Aside from the Population Registration Act, the apartheid regime established the pencil test to determine racial identity.¹⁰² In the pencil test, officials placed a pen or pencil through a person's hair. If the pencil fell or slid through, they were declared coloured; if the

93 S Fernando *Mental health, race and culture* (2010) 18.

94 Kinuthia and others (n 90) 32. See also Fernando (n 93) 18.

95 D Posel 'What's in a name? Racial categorisations under apartheid and their afterlife' (2001) 47 *Transformation* 52.

96 As above.

97 As above.

98 Posel (n 95) 53.

99 Le Roux & Oyedemi (n 85) 201.

100 Sec 2(1). See also S Patterson *Colour and culture in South Africa* (2013) 363.

101 Sec 14(1). See Posel (n 95) 54.

102 The pencil test was a tool used to determine racial characteristics in order to bolster discriminatory legislative frameworks and policies. Moreover, the use of the test demonstrated how Eurocentric beauty standards were entrenched in law.

pencil was 'stuck', the person was categorised as black.¹⁰³ According to Fataar, hair texture for the coloured community, at times, was hierarchical whereby their hair can either determine one's racial inferiority or superiority.¹⁰⁴ Similarly, fair-skinned children of coloured parents passed as white, whereas coloureds who married into black families were categorised black.¹⁰⁵ Without a doubt, colonialism played a significant role in eroding African cultural lifestyles, leading to social and cultural inferiorisation of what is African.¹⁰⁶ As presented by Le Roux and Oyedemi and following this case, it is imperative to introspect whether 'the black identity with regard to hair and perceptions of hair changed in multiracial, liberated, post-apartheid South Africa'.¹⁰⁷

Globally, the state of independence of various countries has not shielded historically marginalised groups from discrimination. In fact, black women continue to carry the weight of hair discrimination. To combat this, some countries, such as the United States of America, have made efforts through legislation to address the prevalence of hair discrimination. Enacted in 2019, the Create a Respectful and Open World for Natural Hair (CROWN) Act was enacted to protect against race-based hair discrimination.¹⁰⁸ The Act seeks to protect hair texture and protective styles that include braids, locks, twists and knots in the workplace and public schools.¹⁰⁹ Nevertheless, despite this, hair discrimination continues.¹¹⁰

Aside from national measures, it is equally imperative for institutions and corporations to be aware and understand the impact of hair bias. This understanding, accompanied by preventative measures to prevent hair discrimination and texturism, may occur through conversations on racial equity.¹¹¹ This is critical as societies and beauty industries continue to view textured hair as unattractive

103 AS Harris *Everyday identity and electoral politics race, ethnicity, and the bloc vote in South Africa and beyond* (2022) 99.

104 A Fataar *The educational pathways and experiences of black students at Stellenbosch University* (2023) 100, 101.

105 Posel (n 95) 54.

106 Le Roux & Oyedemi (n 85) 202.

107 Le Roux & Oyedemi (n 85) 201.

108 Creating a Respectful and Open World for Natural Hair Act of 2022, HR 2116, 117th Cong (2022). See also A McLeod 'What is in a policy: Government information resources to help inform policy analysis and research' in T Diamond & D Hallett (eds) *What can US government information do for me? Librarians explains the discovery and use of public data, documents, maps and images* (2023) 43.

109 Creating a Respectful and Open World for Natural Hair Act of 2022 (n 108) sec 2.

110 C Duster 'Congress reignites a bipartisan effort to ban hair discrimination' NPR 12 March 2025, <https://www.npr.org/2025/03/12/nx-s1-5324544/crown-act-reintroduced-2025> (accessed 28 March 2025).

111 Asare (n 89).

and unmanageable. This reality should not be viewed in abstract. In other words, it is more than merely being hair discrimination and accepting it as a form of racial discrimination, but it is the realisation that unfair differential treatment on the basis of race or other factors associated with race or ethnicity continues despite the end of colonialism.¹¹²

Aside from accepting that systematic discrimination has led to colourism, skin bias continues to occur not only in institutions but also in interpersonal relationships.¹¹³ This is evidenced in various studies and reports. Over the years, there are numerous reports of textured hair being seen as or declared to be either inappropriate or unprofessional. In 2019 an employee of a South African brewery company was informed that her dreadlocks were a safety hazard to her colleagues.¹¹⁴ In a 2023 incident, a 13 year-old girl with natural dreadlocks was prevented and forcefully removed from class at the Crowthorne Christian Academy in Midrand, South Africa.¹¹⁵ Similar incidences occurred in Trinidad¹¹⁶ and London.¹¹⁷ Hair bias has been documented in various empirical studies. For example, a study by Griffin examined how skin and hair affect black and Latina women, in order to determine the impact of colourism and texturism; and whether these biases are socialised within society and internalised by women.¹¹⁸ The study revealed that colourism and texturism negatively impact those in the black and Latina communities;¹¹⁹ additionally, that colourism and texturism are examples of within-group phenotype bias in black and Latina communities. This observation may be attributed to the emotional and psychological trauma experienced by these communities.¹²⁰ In another study, Kinuthia and others sought to understand colourism and texturism in Kenyan societies of women with different skin tones.¹²¹ The study

112 Nkimbeng and others (n 2) 406.

113 Kinuthia and others (n 90) 33.

114 T Makhetha 'Lose your dreads or stay home' *SowetanLive* 2 April 2019, <https://www.sowetanlive.co.za/news/south-africa/2019-04-02-lose-your-dreads-or-stay-home/> (accessed 24 March 2025).

115 M Magadla & N Sibiya 'Girl kicked out of school for her natural dreadlocks: Christian academy says its hair policy was offended' *SowetanLive* 16 August 2023, <https://www.sowetanlive.co.za/news/south-africa/2023-08-16-girl-kicked-out-of-school-for-her-natural-dreadlocks/> (accessed 24 March 2025).

116 N Fraser '[Updated] Trinity students protest at grad: BAD HAIR RULES' *NewsDay* 28 June 2023, <https://newsday.co.tt/2023/06/28/education-minister-hairstyle-issue-at-trinity-college-unfortunate-regrettable/> (accessed 24 March 2025).

117 T Thomas 'We need to push: Hair discrimination fight moves to UK workplace' *The Guardian* 28 October 2022, <https://www.theguardian.com/world/2022/oct/28/we-need-to-push-hair-discrimination-fight-moves-to-uk-workplaces> (accessed 24 March 2025).

118 Rakim (n 88) 15-16.

119 Rakim (n 88) 37.

120 Rakim (n 88) 13.

121 Kinuthia and others (n 90) 34.

sought to analyse the contribution of family and peers in colourism and texturism beliefs.¹²² The study revealed that young black Kenyan women encounter colourism and texturism at home and school. Additionally, there are persistent occurrences of colourism in social institutions and colourist incidences within families and peers.¹²³ Aside from these studies demonstrating the effects of racial classification on the previously marginalised groups, the studies support the submissions that phenotype bias exists in black communities. Phenotype bias and prejudice were prominent social, and utilised to justify racially motivated practices, slavery, white supremacy and colonialism.¹²⁴ While this bias may be exercised by those historically classified as racially superior, the effects of internalised oppression, evidenced in these studies, have contributed to this bias also being exercised in black communities. Consequently, knowing the history of how phenotype bias and colour discrimination can be traced to colonialism, slavery and white supremacy provide an opportunity to reflect on how this narrative continues to affect people of African origin today.¹²⁵ Supported by Nkimbeng, reports and studies demonstrating hair discrimination or bias illuminate on how the inferiority perception of textured hair is traced to subjugation of people of colour.¹²⁶

In these times of decolonisation, it is imperative to challenge the narrative and reclaim the power of natural hair 'as a symbol of power and identity'.¹²⁷ For Mignolo and Walsh, decoloniality is the decolonisation of knowledge and being: This process of decolonisation of knowledge cannot occur without one questioning the essence of Western epistemology, and the decolonisation of being cannot occur without one questioning the foundation of Western ontology.¹²⁸ In other words, in order to successfully decolonise, Western dominance ought to be dismantled. This implies seeing value in alternative knowledge and ways of thinking, and accepting humanity as diverse. Until this occurs, the process of decolonisation will be unsuccessful.¹²⁹ Additionally, Praveen offers insights into the decolonisation process. For Praveen, in acknowledging the consequences of European colonialism on societal and economic transformation of the colonised, it may be a Herculean task to attempt to restore a precolonial past. Rather, efforts should be placed on understanding the 'worlding of

122 Kinuthia and others (n 90) 41.

123 As above.

124 Rakim (n 88) 7.

125 Rowe (n 86) 7.

126 Nkimbeng and others (n 2) 407.

127 As above.

128 Walsh & Mignolo (n 68) 136.

129 As above.

the Third World'.¹³⁰ Worlding, a term coined by Spivak, is a process describing how colonisation was presented to the world as exotic and how the colonised were persuaded to accept domination.¹³¹ For this reason, the process of decolonisation of beauty requires redefining beauty beyond Eurocentric models and grounding African aesthetics and epistemologies in the process.

7 Conclusion

There are two perspective emanating from this case. First, the judgment handed down by the Court rightfully ruled that the applicants had failed to establish the advertisement discriminated against them following their failure to determine how they were discriminated by it. Second, the case highlights the need to converse on various factors that impact the response of beauty trends. This is paramount considering how incidences of hair discrimination or remnants of colonial racial hierarchies persist. Extending beyond the *Baba* case, it is evident that colonial ideas of racial superiority and Western culture dominance influence not only corporate mainstream, but also the broader impact of universal beauty ideals.

130 Praveen (n 74) 49.

131 B Ashcroft, G Griffiths & H Tiffin *Key concepts in post-colonial studies* (1998) 241.