Max Planck Institute
for Social Anthropology
Department 'Law & Anthropology'

Afro-Brazilian Religions in the Portuguese Case Law

Question(s) at stake:

Whether the applicant's dismissal due to allegedly false statements about her health status was legally justified.

Outcome of the ruling:

The applicant had lied about her health status to her former employer, thus violating the legal duties of loyalty and good faith towards the respondent. The applicant's dismissal was legally justified.

Topic(s):

- Employment
- The Human Body

Keywords:

- Dismissal
- Good faith and loyalty
- Procedural aspects
- Religious practices
- Ritual modifications

Tag(s):

- Afro-Brazilian religions
- Umbanda
- Candomblé
- Macumba
- Yoruba religion
- Hair

- Bald head

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Country:

Portugal

Official citation:

Court of Appeal Porto, Judgmenet of 13 February 2017, Processo No. 7526/15.0T8VNG.P1 (Tribunal da Relação do Porto, Acórdão de 13 de fevereiro de 2017, Processo n.º 7526/15.0T8VNG.P1)

Link to the decision:

https://jurisprudencia.csm.org.pt/ecli/ECLI:PT:TRP:2017:7526.15.0T8VNG.P1.7C

ECLI:

ECLI:PT:TRP:2017:7526.15.0T8VNG.P1.7C

Date:

13 February 2017

Jurisdiction / Court / Chamber:

Second instance court of Porto

Remedy / Procedural stage:

Appeal

Previous stages:

- First instance court of Porto

Subsequent stages:

No information found

Branches / Areas of law:

Labour law

Facts:

On 3 September 2015, applicant A. filed a complaint against the respondent, her former employer C., arguing that her dismissal was unjustified. The applicant argued that she had a bad relationship with her former employer, resulting in her release. She denied absences at the workplace or delays in coming to work. She stated that she shaved her head due to her religion and never said that she had cancer.

Conversely, respondent C. claimed that she fired the applicant because the applicant was absent or came late to work for six months under the justification of a medical treatment for cancer. According to C., the applicant's shaved hair was a way to convince people at work of the applicant's alleged cancer treatment. Respondent C. did not require from the applicant a written medical confirmation of her disease. After finding out that the applicant was lying about her health condition (i.e., that the applicant did not have cancer) respondent C. started the disciplinary proceedings against the applicant. Then the applicant was dismissed.

On 26 July 2016, the first instance court issued a judgment favouring the applicant. It upheld that the dismissal was not legally justified. Accordingly, the first instance decided that it had been proven with evidence that: (I) the applicant was hired in the bakery as a *patisserie* student in 2013; (II) that the applicant was subject to a disciplinary process in 2015; (III) that following the process, on 20 August 2015, the respondent fired the applicant; (IV) that the applicant shaved her head and did not have cancer; (V) that as a result of the dismissal the applicant was angry and sad. The respondent was condemned to redress the applicant with financial compensation. The court dismissed the applicant's claim regarding compensation for moral damages.

The respondent appealed the judgment to the second instance court. She contested the proven facts as decided in the first instance court's ruling. The employer's witnesses declared that the applicant came late to work and that she

looked ill. Witness F. stated that applicant B., after shaving her hair, told her that she had cancer. Also, witness D. declared that B. said she would shave her hair due to cancer. Also, witness E. reported that B. explained that her son shaved her hair due to the cancer treatment. E. added that she started to suspect that B. did not have cancer when B.'s hair began to grow shiny and thick.

The applicant contested the respondent's and her witnesses' testimonies. Among other reasons, she alleged that one of the witnesses' testimonies was quite judgmental and emotional, going beyond the facts. The applicant referred to submitted written evidence confirming that she did not come late or miss work.

Ruling:

After the analysis of evidence produced before the first instance court, the second instance court ruled partially in favour of the respondent. It considered the applicant's dismissal to be legally justified. The respondent should pay the amount due for the applicant's holidays as established by the first instance court. Costs of legal proceedings should be shared between the parties.

First, the tribunal listed the three topics at issue: the proven facts, the legality of the dismissal, and the payment due for the applicant's holidays.

An extensive part of the judgment was dedicated to the examination of the factual background and related evidence. The applicant submitted as evidence written documents and the testimony of two witnesses – her husband and her son. The respondent submitted as evidence the testimonies of two employees and one former employee. Among the examined issues, the three judges evaluated whether the applicant told the respondent that she had cancer and whether the applicant shaved her hair to convince the employer and her work colleagues that she had cancer.

The court decided that it had been proven that the applicant lied to her employer and work colleagues about having cancer. There was no written evidence submitted by the applicant to the employer informing her about her disease. Instead, the court relied on the testimonies of the employer's witnesses. Furthermore, nobody in the workplace knew about the applicant's religion; only

her family did.

The applicant's intention in shaving her hair was not clear. However, the fact that she had a bald head convinced everybody about her health status. The applicant did not have cancer and lied to everybody at work. This violated the employee's duty of good faith and loyalty at work. Thus, the dismissal was legally justified.

There was no analysis of religious discrimination, since the applicant did not claim it.

Main quotations on cultural or religious diversity:

- "In her testimony, A. declared her religious conviction, stating that shaving her head was a religious practice, and that was why she had done it. On her first holiday, A. shaved her hair and went to her workplace. [On that day] A. used a scarf to cover her neck, which was injured, with a necklace. A. denied saying that she had cancer. The Judge asked A. if she had said that she had cancer due to the fear of religious discrimination. A. stated that she did not say that she had cancer." (para. 2.2.3)

Main legal texts quoted in the decision:

Portuguese law

- Articles 126, 342, 762 of the Civil Code
- Articles 126, 245, 264, 351, 357, 387 of the Labour Code
- Articles 81, 98 of the Procedural Labour Code
- Article 640 of the Procedural Civil Code

Cases cited in the decision:

- Supreme Tribunal of Justice, 3 June 2009, App. no. 08S3085

Commentary

Afro-Brazilian Religions in the Portuguese Case Law

This case does not represent a landmark decision. It is not a standard representative of the so-called “multicultural case law” in Portugal, since it does not explore cultural and religious practices in depth. However, it is one of the few judgments touching upon the minority religion of *Umbanda* in Portugal, which is a growing religious movement.

The “diversity aspect” appears only in the appeal before the second instance court. Notably, the word “discrimination” appears only once in the judgment (see the quotation above). There was no official prohibition on female employees shaving their heads. However, one of the judges raised the sensitive issue of religious discrimination while questioning the applicant. The applicant answered indirectly, without mentioning the word “discrimination”. She stuck to her version of events, namely that she did not claim to have had cancer.

The judge’s question regarding discrimination can be better understood if one looks at the religious context in Portugal. Concerning religious demography, Portugal has a Catholic majority that corresponds to around 80% of its population. Therefore, Afro-based religions such as *Umbanda* – the applicant’s faith – and their practices are known by a relative small number of persons.

In the relevant case, the applicant contended that she shaved her head as part of a religious practice of *Umbanda*. This practice is usually called “shaving the saint” – from Portuguese *raspar o santo* (Kileuy and Oxaguiã 2009). This religious act is also known as *Iabé*, *Fári*, or *Catular*.

Silva (2005) explains that new followers have an initiation ritual that takes days and consists of singing, shaving the head, and sacrificing animals to the *Umbanda* supernatural entities and spirits. At the end of the ritual, the new follower is presented to the religious community in an open party named *saída-de-iaô*. Vincent (2018: 91) notes that consensual hair removal can be understood as a practice to welcome new members into institutions with solid ties (e.g., the buzz cut of the US Marines).

According to the anthropological literature (Pordeus Jr. 2009; Saraiva 2011), *Umbanda* is an Afro-Brazilian religion brought to Portugal by female Portuguese

migrants. Together with their families, those migrants have returned home from former Portuguese colonies in the Americas and Africa with new religions such as *Umbanda* and *Candomblé*. The place of worship for those religions is called *terreiro*, which dates backs to 1974 on Portuguese soil. The religious leaders of the *terreiros* are called *pai* or *mãe de sant*o (literally, in Portuguese, father or mother of a saint). There is no central religious chief for all the *terreiros*. Despite its long-standing tradition, *Umbanda* is not recognized as an official religion in Portugal. Only a few *terreiros* are registered as religious associations.

Of note is that, due to the "transnationalization of religions" from Brazil to Portugal, the practice of shaving the saint has transformed (Saraiva 2010). Some religious leaders avoid shaving *Umbanda* followers in Portugal due to the social context and unofficial grooming codes in the workplace. Especially female bald heads might be perceived as non-conforming with gender stereotypes and thus discriminated against, as happens in other countries (see Greene 2013). In this regard, Lowe (2016: 783) explains: "While Western Christianity has usually preferred short hair for men, from its inception, Christianity has mandated long, uncut, but controlled hair for women." Vincent (2018: 91) goes even further than Lowe by generalizing the following assumption: "Certainly, hair is highly sexualized and is deeply involved in understandings of gender, most especially – in the length and abundance of head hair – with the dominant paradigm of femininity."

Last update: February 2022.

Literature related to the main issue(s) at stake:

Case-relevant

- Monteiro de Matos, Mariana. 2022. "[Anotação ao acórdão do] Tribunal da Relação do Porto, proc. 7526/15.0T8VNG.P1, 13.02.2017", available at <<https://inclusivecourts.pt/en/tribunal-da-relacao-do-porto-proc-7526-15-0t8vng-p1-13-02-2017/>> accessed 12 July 2025.

General literature

- Greene, D.W. 2013. “A Multidimensional Analysis of What Not to Wear in the Workplace: Hijabs and Natural Hair”. *FIU Law Review* 8: 333–367.
- Kileuy, O. and V. Oxaguiã. 2009. *O candomblé bem explicado: Nações bantu, iorubá e fon*. Rio de Janeiro: Pallas Ed.
- Pordeus Jr., I. 1996. “Lisboa de Caso com a Umbanda”. *Revista USP* 31: 90.
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- Saraiva, C. 2010. “Afro-Brazilian Religions in Portugal: *Bruxos*, Priests and *Pais de Santo*”. *Etnográfica* 14 (2): 265.
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- Silva, V.G. 2005. *Candomblé e umbanda: Caminhos da devoção brasileira*. 5th ed. São Paulo: Selo Negro.

Interdisciplinary literature

- Lowe, Scott. 2016. *Hair*. New York: Bloomsbury Academic.
- Vincent, Susan J. 2018. *Hair. An Illustrated History*. London, New York: Bloomsbury Visual Arts.

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