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**REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG**

Appeal Case Number: A3132/2021

A Quo Case Number: 344/2021

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES:NO
(3)	REVISED: YES

26 January 2024

In the matter between

J[...] D[...] D[...] G[...]

APPELLANT

and

A[...] M[...] DE G[...] N[...]

RESPONDENT

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by e-mail and to saflii. The date and time for hand down is deemed to be 10h00 on 26 January 2024.

Civil procedure – final protection order – Domestic Violence Act 116 of 1998 – Scope of protection order – Definition of domestic relationship

JUDGMENT

MUDAU, J (NEL AJ concurring):

[1] This appeal is against the finding and order of the magistrate (Randburg), in which the magistrate issued a final protection order in favour of the respondent in terms of section 6 of the Domestic Violence Act, 116 of 1998 (the Act). The respondent brought an application for a protection order against the appellant pursuant to section 4(1) of the Act.

[2] The grounds of appeal are that the magistrate erred in the following respects. First, by erroneously finding that the respondent and the appellant are in a "domestic relationship" as defined in the Act. Secondly, by erroneously finding that the appellant's alleged denial of the respondent's version of events bears no evidential weight and falls to be rejected.

[4] The respondent's application for a protection order was predicated on the following factual matrix. The appellant (a 59 year old male at the time) and the respondent (a 56 year old female at the time) are siblings. Their parents were still alive at the time of the launch of these proceedings.

[5] The respondent alleged in her founding affidavit that the appellant made numerous threats towards her and her adult daughter. The threats have included serious threats of having her murdered and enlisting the assistance of third parties to intimidate her daughter through phone calls, which the appellant admitted. The respondent's daughter, J[...]s confirmatory affidavit in that regard was attached.

[6] By way of background, the respondent alleged that the appellant sexually molested her by touching her inappropriately in her youth when she was approximately 12 years old when he was approximately 15 years old. She alleged that he would continuously spy on her and would watch her bath through a high window looking into their bathroom. The respondent asserted that the pattern and history of abuse has been perpetuated into adulthood with the respondent describing an incident of further assault in 2006 in the presence of her then two minor children.

[7] The respondent also described instances of threats and intimidation in 2019. The respondent detailed further threats of violence during the period between December 2019 to August 2020. She asserted that, during or about December 2019,

the appellant, herself and another brother, Alberto Eusebio de G[...] ('Albert') met to discuss their parents' well-being and care. In Albert's presence, the appellant stated that he had ordered a hit on her life.

[8] The appellant went on to tell them that his instructions were to have her killed in her car in the absence of her children. The appellant requested in August 2020 that she attend to have coffee with him at Lifestyle Garden Centre to discuss the monies due to her late husband's estate from the deli business owned in equal shares by her husband and the appellant. Upon doing so, the appellant again informed her that he had taken a "hit" on her life, which she understood to mean murder because she was trying to take his business away from him.

[8] The respondent described another incident, which occurred around 14h15 at their parents' house on the 13 October 2020. The three siblings met there to discuss once again the well-being, care and various matters relating to their elderly parents. On that occasion, the appellant asked about their parents' will to which she and Albert confirmed that until the time of their death, the will would set out their parents' wishes.

[9] The appellant became agitated by her various responses and started screaming and shouting at her. The appellant stood up and started walking out of the door and out of the house. She followed the appellant asking him to calm down and to sit down so that they could finish the discussion regarding their parents and because they still needed to discuss the monies due to her husband's estate from their business. Upon getting out of the car, the appellant pushed his face right into her face telling her he was going to "fuck" her up and would have her killed. She attached to her founding affidavit a letter that she alleged was written by her brother Albert, who at the time was visiting his children in Cape Town in which the latter confirmed the alleged threats to the respondent's life on that occasion.

[10] According to the respondent, during 2020, the appellant informed her that he caused reports to be created, after her late husband's death, on her whereabouts and movements and that he had a drone outside their garden watching her and the children. The value of her late husband's membership in the business was to be paid

out to her late husband's estate which the appellant refused to do. This, however, is a subject of separate pending civil litigation and requires no further attention in these proceedings.

[11] In opposing the application, the appellant pointed out that he had no intention of dealing with the respondent's claims on merit but denied any wrongdoing. The appellant contends that there exists no *locus standi* on the construction of a family relationship as defined in the Act.

[12] In section 1 of the Act, a "complainant" is defined *inter alia* as "... any person who is or has been in a domestic relationship with the respondent ...". Domestic relationship is defined in terms of section 1 of the Act as follows —

"domestic relationship" means a relationship between a complainant and a respondent in any of the following ways—

- (a) They are or were married to each other, including marriage according to any law, custom or religion;
- (b) they (whether they are of the same or of the opposite sex) live or lived together in a relationship in the nature of marriage, although they are not, or were not, married to each other, or are not able to be married to each other;
- (c) they are the parents of a child or are persons who have or had parental responsibility for that child (whether or not at the same time);
- (d) *they are family members related by consanguinity, affinity or adoption* (my emphasis);
- (e) they are or were in an engagement, dating or customary relationship, including an actual or perceived romantic, intimate or sexual relationship of any duration; or
- (f) they are persons in a close relationship that share or shared the same residence."

[13] Relying on *Daffy v Daffy* ¹, the appellant contended that the respondent had misconstrued her remedy and that the dispute between them was really of a commercial nature and not a matter of domestic violence that ought to be dealt with under the Act. Briefly stated, the relevant facts in *Daffy* were that the respondent suspected the appellant of having committed various financial irregularities in the

¹ 2013 1 SACR 42 (SCA).

conduct of the company's affairs and having abused his position by taking unnecessary trips abroad at company expense. This led to friction between them and there is evidence of them having argued at times, during which the appellant raised his voice. On occasions, the appellant threatened to assault and financially ruin the respondent, using crude and vulgar language.

[14] The SCA held at para 8 in *Daffy* held that —

“Thus the ordinary connotation of a domestic relationship involves persons sharing a common household. Clearly the legislature envisaged the definition to bear a wider meaning than that for purposes of the Act, but I do not believe that it intended that a mere blood relationship, even if close, would in itself be sufficient. After all, to adhere to a definition ‘regardless of subject-matter and context might work the gravest injustice by including cases which were not intended to be included’. In the context of the further provisions of the definition, some association more than mere consanguinity is clearly required for there to be a domestic relationship”.²

[15] The SCA further held that —

“...bearing in mind their respective ages and the fact that they have not shared a common household for many years, it would be absurd to conclude that the mere fact that the parties are siblings means that they shared a domestic relationship as envisaged by the Act.”³

[16] However, there is no denying, as the SCA pointed out in *Tsobo v Tsobo*⁴ , that the primary objective of the Act is to provide victims of domestic violence with an effective, uncomplicated, and swift legal remedy. It achieves this by providing for a simplified procedure for protection order applications, endowing the courts with a wide discretion – both in respect of the manner of the hearing and the form of relief – and placing upon the courts and law enforcement functionaries’ extensive obligations to assist and protect victims of domestic violence. While the Act is gender-neutral, the undisputed reality remains that domestic violence is "systemic, pervasive and overwhelmingly gender-specific" and "reflects and reinforces patriarchal domination and does so in a particularly brutal form".

² *Id* para 8.

³ *Id* para 9.

⁴ 2022 (2) SACR 233 (SCA)

[17] It is therefore still the most vulnerable members of society, namely women and children, who are invariably the victims of domestic violence and thus the beneficiaries of the protection accorded by the Act. However, as the facts of this case so vividly demonstrate, the provisions of the very legal instrument which are designed to protect those vulnerable sectors of society from domestic violence, are often abused as a tool of harassment and to reinforce patriarchal domination⁵.

[18] The distinction between this matter and *Daffy* over and above the commercial interest that the appellant had in the Deli business run by the appellant, the siblings had meetings and continue to meet about their parents' wellbeing. In the appellant's words, since 13 October 2020 the respondent and the appellant had in-person meetings and conversations on various occasions without any incident.

[19] Significantly, in section 1 of the Act, 'domestic violence' is defined as meaning —

“(a) physical abuse;

(b) ...

(c) emotional, verbal and psychological abuse;

(d) ...

(e) intimidation;

(f) harassment;

(g) stalking;

(h) ...

(i) entry into the complainant's residence without consent, where the parties do not share the same residence; or

(j) any other controlling or abusive behaviour towards a complainant, where such conduct harms or may cause imminent harm to, the safety, health or wellbeing of the complainant.”

[20] The appellant failed to deal with the various detailed allegations of impermissible conduct against him by the respondent, relying instead on

⁵ Ibid para 1.

a bare denial thereof. That was insufficient to stave off the relief sought by the appellant consistent with the *Plascon-Evans* approach⁶. In my view, the conduct complained of and which was not materially unchallenged, fall within the definition of verbal, emotional, or psychological abuse, harassment and stalking as defined in terms of subsections 1(vii)(c) and (f) of the Act. The dispatch of a drone over the respondent's property would be a prime example of stalking.

[21] The principal objective of granting an interdict (family or domestic violence) as the Constitutional Court pointed out, "is not to solve domestic problems or impose punishments, but to provide a breathing-space to enable solutions to be found; not to punish past misdeeds, but to prevent future misconduct. At its most optimistic, it seeks preventive rather than retributive justice, undertaken with a view ultimately to promoting restorative justice".⁷

[22] For these reasons, the magistrate correctly issued the final protection order. The appeal to this court must therefore fail, and there is no reason for the costs not to follow the event.

[23] I therefore make the following order—

a. The appeal is dismissed, with costs.

TP MUDAU
JUDGE OF THE HIGH COURT
JOHANNESBURG

I AGREE

NEL AJ
ACTING JUDGE OF THE HIGH COURT
JOHANNESBURG

APPEARANCES

⁶ *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* 1984 (3) SA 623 (A).

⁷ *S v Baloyi (Minister of Justice and Another Intervening)* 2000 (2) SA 425 (CC) para 17

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Date of Hearing:	20 April 2023
Date of Judgment:	26 January 2024