



**IN THE HIGH COURT OF SOUTH AFRICA,
FREE STATE DIVISION, BLOEMFONTEIN**

Reportable:	NO
Of Interest to other Judges:	NO
Circulate to Magistrates:	NO

Case number: A100/2018

In the appeal between:

**JOHANNES DE BUYS SCOTT
JOHANNES DE BUYS SCOTT (Junior)
PIETER BAREND SCOTT**

1st Appellant
2nd Appellant
3rd Appellant

and

STEPHANUS JOHANNES SCOTT

Respondent

HEARD ON: 19 NOVEMBER 2018

CORAM: OPPERMAN, J *et* VAN RHYN, AJ

DELIVERED ON: 22 NOVEMBER 2018

JUDGEMENT BY: OPPERMAN, J

I CONTEXT

[1] The appeal before court revolves around **The Protection from Harassment Act, Act 17 of 2011** (The Act).

- [2] It is common cause that a feud persists between the two Scott-brothers; that is the 1st appellant and the respondent. It stretches over many years. They farm in the Winburg district and as fate would have it; in close proximity to each other. Their father, the patriarch of the family, died in April 2012 and the farms and other assets are to be inherited by the two sons in compliance with the will that was signed on 31 May 2007.¹ The oil on the fire is the fact that the finalisation of the estate has been dragged out due to; amongst others, poor management thereof as well as the bickering of the brothers. At the time of the hearing of the appeal on 19 November 2018, the estate was still not concluded.
- [3] The brothers have taken custody of the farms with the assistance of their legal representatives. On the 7th of March 2013 a letter was addresses to the legal representatives of the appellants in which the situation in regard to the estate as well as the feud was depicted.² The situation deteriorated and protection orders were issued against the appellants on 21 February 2018.
- [4] The grounds of appeal are that the evidence the magistrate considered did not support a finding of “harassment” as meant in the Act and that the evidence did not support an order to be granted against the second and third appellants. The costs order could not have been granted in light of the provisions of the Act.
- [5] The conduct of the parties in general shows a real disturbance of order that has not been managed; neither by the appellants nor by some of their legal representatives. Fortunately, the Republic of South Africa prescribes to the Rule of Law and civilised democratic values that are depicted in the **Constitution of the Republic of South Africa, 1996** and legislation such as **The Protection from Harassment Act, Act 17 of 2011**.

¹ Indexed bundle pages 45-48.

² Indexed bundle pages 94-96.

- [6] The parties are also neighbours and we cannot put it better; and do concur with AJ van der Walt:^{3 4}

In the post-apartheid constitutional dispensation, neighbour law has to support and embody a notion of neighbourliness that extends beyond the sum total of the individual interests of each neighbour or the localised interests of small, neighbourhood communities.

- [7] The fundamentals of this case entail more than mere economic interests. Here it is about safety of persons and property, peace and order; and more. The Preamble to **The Act** sets out the objectives of the Act:

Since the Bill of Rights in the Constitution of the Republic of South Africa, 1996, enshrines the rights of all people in the Republic of South Africa, including the right to equality, the right to privacy, the right to dignity, the right to freedom and security of the person, which incorporates the right to be free from all forms of violence from either public or private sources, and the rights of children to have their best interests considered to be of paramount importance;

AND IN ORDER to-

- (a) afford victims of harassment an effective remedy against such behaviour; and
- (b) introduce measures which seek to enable the relevant organs of state to give full effect to the provisions of this Act,...

- [8] One of the remedies afforded to a victim under the Act is the issue of a protection order by the Magistrates' Court against the perpetrator of harassment. That said; it is the duty of the courts to prevent abuse and misuse of the justice system. It has often been stated in past judgments that our courts must jealously protect the virtue of the justice system and litigation must be with the utmost honour and responsibility. It must not be for the mere sake of litigation. Superfluous litigation in one matter obstructs the genuine want for access to; and justice in courts, for another.

- [9] Misguided appropriation and reckless use of the law to avoid responsibility and blame the justice system for calamitous consequences, is offensive. Citizens must be granted leeway to control their own fate and being. If they struggle legal

³ B Jur et Art Honns (BA) LLB LLD (Potchefstroom) LLM (Witwatersrand), South African Research Chair in Property Law and Professor of Law, Stellenbosch University

⁴ The Law of Neighbours; First Edition, Juta's Property Law Service: Internet: ISSN 2226-342X dated 20 November 2018 at 1st Ed, 2010 ch1-p5 -6.

representatives must advise them with wisdom and honour. Counsel are the guardians of the dignity and integrity of the nation. They need to make sure that they give effect to what the Constitution expects of them. Lawyers are not hired guns but the foot soldiers of the Constitution, whose ultimate role it is to administer justice, and they need to do it with the highest standard of integrity.

II THE EVIDENCE

- [10] Counsel for the appellants argued that the facts of this case are too frivolous for the courts to intervene. The submission is of concern to us.
- [11] It must be kept in mind that there are two factions involved; the family of Johannes De Buys Scott⁵ and that of Stephanus Johannes Scott.⁶ There is a clear indication of collusion within the two families against each other.
- [12] There are numerous serious incidents that were alleged but we will first deal with those that are described by the appellants themselves from their perspective. The extracts are from the opposing statement of the 1st appellant as was confirmed by the 2nd and 3rd appellants.
- [13] At paragraph 26⁷ of the 1st appellant's replying affidavit he testified that the respondent chased his cattle (appellants' cattle) that broke into the respondent fields, onto a public road. In wanting to speak to the respondent about the incident and not being able to get to the respondent's door, he threw stones on his roof to get his attention. The respondent came out and fired shots with his firearm. The 1st appellant was severely shocked. The 1st appellant registered a criminal complaint at the local police station. After he has watched the video material of the incident, he used words such as "shocking", "dangerous", and "irresponsible" to describe the incident.

⁵ 1st Appellant.

⁶ Respondent.

⁷ Indexed bundle page 38.

- [14] The above is definitely not to be described as: “irritations, annoyances, even a measure of upset, arising at times in everybody's day-to-day dealings with other people” as was described in the **Mnyandu v Padayachi** (AR162/2014) [2016] ZAKZPHC 78; [2016] 4 All SA 110 (KZP); 2017 (1) SA 151 (KZP) (1 August 2016). It was so serious, on the version of the 1st appellant, that he opened a criminal charge against the respondent. The respondent, of course, has a different version. His version that both sons were also involved is corroborated by his wife.⁸
- [15] At paragraph 27 of the 1st appellants’ statement⁹ he described how the respondent’s wife confronted him and swore at him. This is verbal violence. On the respondent’s version, that was confirmed under oath by the wife, she was assaulted. This is serious.
- [16] The 1st appellant admitted driving over the property of the respondent and dragging the respondent’s railings and/or gates behind his vehicle. This is violent criminal behaviour.
- [17] The 1st appellant admitted entering the respondent’s property to use the cattle loading facility. The 1st appellant admitted filling up the holes in issue, but explains it was done for the safety of the animals. He goes on another man’s property with dubious permission, alter the ground and then pleads the safety of his animals. This claimed innocence does not have any substance; specifically, so with the raging feud in the background.
- [18] The 1st appellant admitted throwing rocks on the roof of the respondent’s house. It is common sense that you do not throw rocks on the roof of the person that you live in grave hostility with. You also use civilised methods of communication such as phones or the horn of the vehicle, if necessary. The appellants must realise that acts such as these, in light of the prevailing feud, will cause harm or inspire the reasonable belief that harm may be caused to the complainant or a related person. It falls within the watching, pursuing or accosting of the complainant or a related

⁸ Indexed bundle pages 22 & 118-119.

⁹ Indexed bundle pages 38-39

person, or loitering outside of or near the building or place where the complainant or a related person resides, works, carries on business, ...¹⁰ There are more.

[19] The respondent's allegations that the appellants drove recklessly onto and around on his property and killed one of their dogs was met by one of bare denial.¹¹ The respondent met the denial with the corroborating evidence of the farm workers.

[20] The breaking down of the door and damage to the windows of the farm worker's house is supported by witnesses for the respondent.

[21] The Plascon Evans-rule does not recue the case for the appellants. As was stated in **Naidoo v Pillay** (AR241/2016) [2017] ZAKZPHC 10 (13 March 2017):¹²

[9] With reference to the general rule in Plascon-Evans, Harms DP in **National Director of Public Prosecutions v Zuma** 2009(2) SA 277 (SCA) para 26 pointed out that the position may be different 'if the respondent's version consists of bald or uncreditworthy denials, raises fictitious disputes of fact, is palpably implausible, far-fetched or so clearly untenable that the court is justified in rejecting them merely on the papers'. In **Buffalo Freight Systems (Pty) Ltd v Crestleigh Trading (Pty) Ltd and Another** 2011(1) SA 8 (SCA) para 21 Shongwe JA was of the view that this could be done where 'the version propounded by the respondent was fanciful and wholly untenable.'

¹⁰ Section 1 of the Act:

"**harassment**" means directly or indirectly engaging in conduct that the respondent knows or ought to know—

(a) causes harm or inspires the reasonable belief that harm may be caused to the complainant or a related person by unreasonably—

- (i) following, watching, pursuing or accosting of the complainant or a related person, or loitering outside of or near the building or place where the complainant or a related person resides, works, carries on business, studies or happens to be;
- (ii) engaging in verbal, electronic or any other communication aimed at the complainant or a related person, by any means, whether or not conversation ensues; or
- (iii) sending, delivering or causing the delivery of letters, telegrams, packages, facsimiles, electronic mail or other objects to the complainant or a related person or leaving them where they will be found by, given to, or brought to the attention of, the complainant or a related person; or

(b) amounts to sexual harassment of the complainant or a related person;

"**harm**" means any mental, psychological, physical or economic harm;

"**related person**" means any member of the family or household of a complainant, or any other person in a close relationship to the complainant;

¹¹ Respondents Heads of Arguments: page 10, paragraph vi.

¹² Also see **Du Plessis v Van Niekerk** 2018 (6) SA 131 (FB) at paragraph 48.

- [22] The mere fact that so many issues are in dispute and that there are accusations flung to both sides of lies and misrepresentations, tells a story of its own. The overwhelming conclusion to be reached from a reading of the papers, and the undisputed facts in particular, is that it tells of violence whether, emotionally or physically. It tells of the disruption of order. The evidence shows that the second and third appellants are also involved.
- [23] The core of the animosity lies in the estate. The intentional delay of the finalisation of the estate forms part of the harassment. It is common cause that the bickering and delay of the finalization of the estate cause trauma to those involved.

III FINDING

- [24] As already stated, the harm in this instance is not trivial; the potential harm if the dispute is not managed, might be severe. The lawgiver only demands: “any mental, psychological, physical or economic harm.” The maintenance of a civilized community decrees as little harm as possible.
- [25] The dictum in the Mnyandu-case was never intended to be applied as it was in this case and the facts are not comparable to that of this case. It consisted of one email that was summed up by the court by remarking that: “in sending the email(it) may have been unreasonable, as she allowed her emotions to cloud her perception, but I am not persuaded that her conduct was objectively oppressive or had the gravity to constitute harassment.”
- [26] What is indeed applicable of the Mnyandu-case is that:
- [28] It is trite that a court of appeal will not interfere with the findings of fact and credibility of the trial court unless it is apparent from the record that the court a quo either materially misdirected itself or erred to the extent that its findings are vitiated and fall to be set aside. The court of appeal must also remain cogniscent that the trial court has the advantage of having observed and heard the witnesses.
- [29] In *S v Trainor* Navsa JA set out the obligation of a trial court:

A conspectus of all the evidence is required. Evidence that is reliable should be weighed alongside such evidence as may be found to be false. Independently verifiable evidence, if any, should be weighed to see if it supports any of the evidence tendered. In considering whether evidence is reliable, the quality of that evidence must of necessity be evaluated, as must corroborative evidence, if any. Evidence, of course, must be evaluated against the onus on any particular issue or in respect of the case in its entirety.

[27] The orders that were made against the appellants are in essence admonishments to comply with law and refrain from contact with certain persons. It is not draconic in nature or in any manner invasive or prejudicial to them under the circumstances. The application for these orders by the respondent was on recommendation of his legal representative after due consideration. They are;

Johannes de Buys Scott (1st appellant and brother of the respondent)

"The respondent¹³ is prohibited by the court from:

- (a) Engaging in or attempting to engage in harassment of (i) the complainant and/or (ii) Melanie van Rooyen;
- (b) Enlisting the help of another person to engage in harassment of the complainant and/or the above related persons;
- (c) Committing any of the following acts: (i) damage any of the property of the complainant, (ii) no contact with the complainant and/or the person mentioned in 3.1 (a)(ii) above, and causing real or potential harm to the applicant by leaving gates open as described in the founding affidavit."

Johannes De Buys Scott (2nd appellant and son of the 1st appellant)

"The respondent is prohibited by the court from:

- (a) Engaging in or attempting to engage in harassment of (i) the complainant and/or (ii) his wife Hannerie and children Barend H Scott and Stephanus Johannes Scott;
- (b) Enlisting the help of another person to engage in harassment of the complainant and/or the above related persons;
- (c) Committing any of the following acts: (i) ordered not to have any contact with the complainant and the persons mentioned in 3.1 (a)(ii) above, (ii) and refrain from entry to the complainant's farms. This includes entry to the complainant's farms, premises, buildings and house."

Pieter Barend Scott (3rd appellant and son of the 1st appellant)

"The respondent is prohibited by the court from:

¹³ In application in the court a quo.

- (a) Engaging in or attempting to engage in harassment of (i) the complainant and/or (ii) his wife Hannerie and children Barend H Scott and Stephanus Johannes Scott;
- (b) Enlisting the help of another person to engage in harassment of the complainant and/or the above related persons;
- (c) Committing any of the following acts: (i) ordered not to have any contact with the complainant and the persons mentioned in 3.1 (a)(ii) above, (ii) and refrain from entry to the complainant's farms. This includes entry to the complainant's farms, premises, buildings and house."

[28] There is no misdirection by the court *a quo*. The orders are proper and effective.

IV COSTS

[29] The same goes for the costs order. In terms of section 16 of the Act the court may only make an order as to costs against any party if it is satisfied that the party in question has acted frivolously, vexatiously or unreasonably. The above shows that the appellants conducted themselves in this manner and are the architects of their own fate. The finding of the court *a quo* that the appellant must pay the costs must read: The appellants must pay the costs jointly and severally, the one paying, the other to be absolved.

[30] The case in its entirety demonstrates that the appeal was brought without any factual and legal substance. The appellants will carry the costs.

V ORDER

[31] The appeal is dismissed.

[32] The appellants must pay the costs jointly and severally, the one paying, the other to be absolved.

M. OPPERMAN, J

I concur

I. VAN RHYN, AJ

On behalf of the appellants: Adv. P. Du P. Greyling
Instructed by:
Steenkamp & Jansen Ing.
BLOEMFONTEIN

On behalf of the respondent: Adv. J.S. Rautenbach
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