

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

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



12 August 2025

Case No: 2024-047761

In the matter between:

MARIUS NEL

FIRST APPLICANT

LETICIA MEGIT

SECOND APPLICANT

CHANTE NEL

THIRD APPLICANT

and

JACQUES VENTER

RESPONDENT

JUDGMENT

GOUWS, AJ

INTRODUCTION

- [1] The applicants seek an order that the respondent be interdicted and restrained from contacting or attempting to communicate with the applicants either telephonically, via email, social media, sign language, or any other means which can reasonably be construed to amount to communication; that the respondent be interdicted from posting any information about or relating to any of the applicants on social media; that the respondent be interdicted from passing the residences and places of employment of the applicants; that the respondent be interdicted from making any obscene signs towards the applicants either personally or through the use of technology, and that the respondents also be interdicted from instructing any third party to do so on his behalf; that the respondent be interdicted and restrained from instructing any other person to contact the applicants or cause harm to the applicants; that the respondent be ordered to pay the costs of the application on a punitive scale.
- [2] The application came before me on Monday 12 May 2025.
- [3] Despite the fact that the respondent has filed an answering affidavit, there was no appearance for the respondent at date of hearing. The application is accordingly determined in the absence of the respondent.

- [4] The applicant's replying affidavit was filed two days out of time. Condonation is granted for the late filing.
- [5] The evidence is briefly summarised hereunder.
- [6] During 2019, the second and third applicants' relationship with the respondent began to sour due to inappropriate work circumstances. It is stated that the respondent, on nearly every occasion where he saw the second applicant, showed his middle finger to her in an obscene manner with the intention to demean and insult her. It was also stated that the respondent is the neighbour of the first applicant, who also fell victim to the abuse and insults. It is alleged that a protection order against the respondent was also applied for by the second applicant, and it became settled during November 2022, where the respondent agreed to refrain from conduct towards the second applicant or her family which falls within the ambit of the definition of harassment as defined in the Protection from Harassment Act, 2011. It is also alleged that the respondent agreed that there would be no communication to the second applicant whatsoever, whether verbally or via electronic platform, and the respondent undertook that he would not employ any third party to attempt such communications other than through a legal representative. The respondent contends that these proceedings were instituted against his father's brokerage.
- [7] The first applicant is the father of the second applicant. He deposed to the founding affidavit. He states that the second applicant has two minor children,

and as their grandfather he enjoys the visits with the children. When the second applicant and the children would visit, the respondent would see their vehicle in front of the first applicant's house. The respondent would then go outside, yelling obscenities towards all the applicants.

[8] The allegation is also that the respondent would, on repeated occasions, leave his house and walk past the first applicant's house, showing his middle finger to the surveillance cameras, knowing full well that these cameras were monitored during the day.

[9] A picture from the surveillance footage of the respondent allegedly conducting himself in this manner was annexed to the founding papers. The picture is of rather poor quality, and I am unable to make out the gesture described, or make out the face of the individual on the photograph.

[10] An answering affidavit was filed where the respondent seeks to deal with the allegations made by the applicants.

[11] I am not impressed by the quality of the denials proffered by the respondent, which amount basically to a bare denial of the allegations.

[12] The point is made by the first applicant in the replying affidavit that the respondent's denial of the incidents, particularly where the middle finger is shown to the surveillance cameras when he passes the first applicant's

property, is unconvincing and does not constitute a true denial, insofar as it seeks to attack the quality of the evidence.

[13] The respondent would for instance submit that the *“quality of the attached image is severely poor and the images appearing thereon are distorted as well as pixilated”*. Upon examination of the image, he admits *“that the figure appearing therein appears to be that of a person but it is impossible to positively identify the gender nor identity of the person depicted thereon as the facial features of said person are severely distorted”*. The respondent states that *“I therefore submit that I cannot be positively identified by the image attached as Annexure FA2 and that the applicants have failed to substantiate the averments contained in this paragraph therewith”*.

[14] This is not a denial that the person in the footage is him.

[15] He goes further and submits that *“it is impossible to identify the position of the person’s finger due to the poor quality of the attached image”*. He concludes by stating that *“in the premises, I therefore specifically reiterate that the contents of this paragraph are false and unsubstantiated”*.

[16] Where the first applicant alleges that the respondent showed his middle finger to the second applicant on nearly every occasion that presented, the respondent answers by stating that he challenges the applicants to prove the averments, because they have been unable to prove same in 2 judicial proceedings.

- [17] What is lacking is an unqualified denial that the respondent ever showed his middle finger to the applicants as they complain of, or that he was the person appearing on the surveillance footage.
- [18] I agree with the applicants' criticism of the evidence. The respondent essentially denies the probative value of the supporting evidence produced by the applicants, as opposed to a true denial of the incidents complained of. He argues that it is improbable that the conduct complained of would not be captured on surveillance cameras, and argues that the applicants could have recorded the conduct on their cellular phones.
- [19] These denials are tenuous, and in the context of the answering affidavit as a whole, they are indeed unconvincing.
- [20] The Protection From Harassment Act, 2011 provides for an expansive definition of "harassment". It is defined as meaning 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...; 'harm' means any mental, psychological, physical or economic harm.

[21] Absent any appearance on behalf of the respondent and the benefit of countervailing argument, I am satisfied that a case has been made out in the founding papers that demonstrate conduct on the part of the respondent that falls within the purview of the definition of harassment.

[22] The respondent, on multiple occasions, directed vulgar language, obscene hand gestures, and derogatory remarks towards the applicants. The respondent has, at least, flouted the applicants' clear right to dignity and privacy. The conduct complained of is not isolated, but repetitive and calculated to cause distress and humiliation.

[23] The applicants were compelled to seek the intervention of this Court. They are entitled to the protection that they seek.

[24] On the question of costs, the respondent's deliberate conduct, in defiance of a prior undertaking, is clearly malicious.

[25] A costs order on an attorney-and-client scale is both justified and necessary to deter such conduct in future.

[26] The evidence does not support each prayer sought in the notice of motion. This much was conceded by the applicants' counsel.

[27] Resultantly, I make the following order:

[1] The respondent is interdicted and restrained from engaging in any conduct towards the applicants that would constitute harassment under the provisions of the Protection From Harassment Act, 2011.

[2] The respondent is interdicted and restrained from-

[2.1] Shouting, yelling or directing any verbal abuse, threats or obscenities at the applicants;

[2.2] Approaching or loitering outside the first applicant's residence, except when reasonably required for lawful purposes unrelated to the applicants;

[2.3] Performing any gestures or acts of intimidation at the applicants, or in the direction of the surveillance cameras at the first applicant's property;

[2.4] Communicating with the applicants in any form, directly or indirectly, save through legal representatives and for lawful purpose.

[3] The respondent is ordered to pay the costs of the application on a punitive scale, as between attorney and client.

A handwritten signature in black ink, appearing to be 'SG GOUWS', is written over a large black rectangular redaction box.

SG GOUWS

ACTING JUDGE OF THE HIGH COURT, PRETORIA

APPEARANCES:

FOR APPLICANTS: XT van Niekerk instructed by
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FOR RESPONDENT: No appearance; FRITS SNYMAN ATTORNEYS

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