REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case Number: A64/2025

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: NO
16 January 2026	[redacted]
DATE	SIGNATURE

In the matter between:

HENDRIK PETRUS PRINS Appellant

and

MOLATO JOSEPH KEKANA Respondent

JUDGMENT

DOMINGO, AJ

Introduction

[1] This is an appeal against the whole of the judgment and order of Magistrate Tjale delivered on 12 June 2024, ("Judgment") in which the Magistrate dismissed the appellant's application for a final protection order in terms of the Protection from Harassment Act, No 17 of 2011 ("PHA"). In addition to the merits of the appeal, the court was also called upon to determine a preliminary issue raised by the

respondent that that there was no application for condonation made by the appellant for the late prosecution of the matter after noting the appeal.

Preliminary Issue

[2] It was submitted by the appellant that after the Magistrate dismissed the appellant's application and on 5 July 2024, the appellant filed a written request for reasons for the judgment in terms of Rule 51(1) of the Magistrate's Court Rules. Despite this request the Magistrate failed to provide the appellant with a written judgment. The appellant filed his notice of appeal on the 16 October 2024, in the absence of the written reasons for the judgment which was requested. The respondent's notice of intention to oppose was served on 31 October 2024.

[3] The respondent contended that the appeal had lapsed due to non-compliance with Rule 50(1) of the Uniform Court of Rules which states that *"an appeal to the court against the decision of a magistrate in a civil matter shall be prosecuted within 60 days after noting such appeal, and unless so prosecuted it shall be deemed to have lapsed."*

[4] Furthermore, Rule 50(4) of the Uniform Court of Rules reads:

> *"(a) The appellant shall, within 40 days of noting the appeal, apply to the registrar in writing and with notice to all other parties for the assignment of a date for the hearing of the appeal and shall at the same time make available to the registrar in writing his full residential and postal addresses and the address of his attorney if he is represented.*
>
> *(b) In the absence of such application by the appellant, the respondent may at any time before the expiry of the period of 60 days referred to in subrule (1) apply for a date of hearing in like manner.*
>
> *(c) Upon receipt of such application from appellant or respondent, the appeal shall be deemed duly prosecuted."*

[5] In this matter, the appellant's practice note, heads of argument, list of authorities, chronology of events and the record of proceedings were all served on the respondent electronically on 21 January 2025 within the time period prescribed in terms of Rule 50(4). It was also uploaded on CaseLines on 21 January 2025.

The practice note was signed on the 17 January 2025 and lists the number of the matter on the roll as "unknown". The appellant thus clearly intended to duly prosecute the appeal. Therefore, no condonation application from the appellant was required. A written application for an appeal date was applied for on the 4 August 2025. Should this application for an appeal date be regarded as irregular, I am of the view that a rigid adherence to Rule 50(1) in the context of this matter will not be in the interest of justice and will lead to an injustice having regard to the substance of the merits of this matter. Furthermore, the respondent did not raise any substantial prejudice should the appeal proceed. I am satisfied that the appeal was duly prosecuted and therefore has not lapsed.

Background

[6] Before dealing with the grounds raised in the appellant's filed notice of appeal, this court considers the background, context and evidence.

[7] According to the appellant, on or about the 18 May 2023 he requested the respondent to vacate a dwelling house of which the appellant is the owner, and which he alleged the respondent occupied unlawfully. The appellant averred that he thereafter received threatening and intimidating voice note (Whatsapp) messages from an associate of the respondent, a person known as Mr Steven Khoza, saying they will come after the appellant. The appellant stated that throughout the year he also received intimidating calls from the respondent and his associates. The appellant took the court *a quo* into his confidence by disclosing that initially he thought the threats were empty and used as delaying tactics.

[8] The appellant lived next door to the house occupied by the respondent. The appellant had workers who occupied the pool room on the property resided at by the respondent. The appellant averred that on the evening of 16 November 2023, the respondent called him and told him his workers must leave immediately. In response the appellant said, no and the respondent's response was that in 30 minutes if they are not gone, he will show the appellant what will happen. To avoid confrontation the appellant instructed the workers to vacate the property. The appellant then proceeded to state that in the next moment a car with a couple

of men (about six men) arrived to see if the workers left. The appellant also averred that he had suffered verbal abuse from the respondent continuously.

[9] The appellant noted that on 3 December 2023, he sent the respondent a WhatsApp message that he must stop with the threats and abuse otherwise the appellant would report him to the the police. The appellant stated that he went to the property occupied by the respondent on 12 December 2023 with a team of workers to remove gates and doors from the property. The respondent called the police. According to the the appellant two police officers came and then left as he informed them that he was the owner of the property. About 30 minutes later, another police van arrived (second set of police), and the appellant stated that at about 20h30, he received a call from a police sergeant about a complaint that he (appellant) had intimidated the respondent's wife when he removed the gates. According to the appellant he and his workers did not speak to any occupants on the property. The police officer then requested the appellant to come outside to talk to him. When the appellant went outside, two police officers approached him, and the next moment the respondent and an unknown associate joined the police and according to the appellant they intimidated him about the removal of the gates and door from the property. The appellant said that the police sergeant kept intimidating him and that the respondent kept making remarks and insults that the appellant is a liar and a criminal. The next moment, according to the appellant, the police sergeant arrested him and the sergeant said in Sotho, *"don't worry we will teach him."* The appellant said he was put in a van which the police sergeant drove recklessly, further intimidating the appellant. When the appellant arrived at the police station, he was placed in a holding cell, without anyone reading him his rights or requesting him to sign a form informing him of his rights.

[10] The appellant averred that, while sitting in the cell, the respondent and his wife arrived at the police station. The sergeant kept shouting at the appellant and said that now the appellant's trouble starts because he (appellant), according to the respondent, verbally abused the respondent's wife and stole R300 000 in cash. The appellant then stated that the police members, respondent, and respondent's wife went outside and discussed amongst themselves in Sotho how they were going to teach him a lesson by fabricating a case of robbery to be able

to send him to the police custody cells in Mamelodi. The appellant then informed the sergeant that he understood Sotho and that he (appellant) would not be framed.

[11] The appellant's wife and elderly father came to the police station to give him his medication. At this time, the sergeant informed the appellant that he would be transferred to Mamelodi and the appellant's family witnessed him being loaded into a van. The appellant pleaded not to be taken to Mamelodi police custody cells. He was then informed that he was white and not special. Again, the appellant explained that they drove recklessly with him in the back of the van, describing the journey as follows: *".....over speed bumps, breaking hard, swerving, causing me to hang on for my life...."* The appellant could hear the sergeant speaking on the phone with someone, and the appellant eventually ended up at Villeria police custody cells for the night, while his family thought that he was in Mamelodi. The appellant was eventually released after an investigation was done by a detective who opened up a docket. The appellant averred that the detective informed him that he could not understand why the appellant was arrested.

[12] In conclusion, the appellant stated that the arrest and subsequent events convinced him that the threats by the respondent are in fact real and that the respondent is connected with members of the South African Police (SAPS). The appellant became aware that the respondent's uncle works at the SAPS intelligence. The appellant now fears for his life and that of his family.

[13] On 14 December 2023, the appellant applied for a protection order in terms of s2 of PHA. According to the appellant the protection order was premised, in essence, on the following facts:

13.1 The respondent (who is referred to as the "King" and/or "Kgosi" and who unlawfully occupies one of the appellant's properties) used third parties to send intimidating and threatening messages to the appellant in order to prevent the appellant from evicting the respondent.

13.2 These messages included WhatsApp messages by a third party and associate of the respondent, Steven Khoza, which contained threats.

13.3 The respondent acted in a threatening manner (together with certain unknown individuals) when the appellant entered and/or attempted to enter the property unlawfully occupied by the respondent. The respondent further threatened the safety of the appellant's workers who resided on the property.

13.4 The respondent made use of certain alleged connections he has within the South African Police Services to have the appellant unlawfully arrested in order to "teach him a lesson."

[14] On the 14 December 2024, the Magistrates Court for the District of Tshwane North, Pretoria North, granted the appellant an interim protection order in terms of s3 of the PHA. On the 5 February 2024, the respondent filed an answering affidavit and on 2 April 2034, the respondent filed a supplementary answering affidavit. Thereafter, and on 26 April the appellant filed a replying affidavit. On 12 June 2024, the Learned Magistrate dismissed the appellant's application for a final protection order in terms of PHA. From the record of the proceedings of the court *a quo* the appellant testified in court while respondent did not provide any testimony in person in court. The respondent's legal representative made representations on his behalf during argument before the magistrate.

[15] In regard to the claim made by the appellant that the respondent used third parties to send intimidating and threatening messages, the respondent in his answering affidavit states *"these people were merely protecting me from his actions of causing us to feel unsafe in our house which we occupied legally by him removing all the safety features on the property and he admits this in his affidavit."*

[16] The respondent in his answering affidavit did not deny or provide an alternative version but merely stated that *"...the contents are noted..."* in respect to the following material averments as contained in the affidavit in support of the relief claimed by the appellant in the application, namely:

"(9) *Sitting in the cell, the next moment MJ Kekana and his wife arrived.The sergeant kept shouting at me and said that now my trouble starts as MJ Kekana says me and my team threatened his wife verbally and gained access to the* *house…and stole R300K in cash. Everybody went outside discussing in Sotho how they are going to teach me, by fabricating a case of robbery to be able to send me to Mamelodi cells. I informed the sergeant on his return that I can hear Sotho and that they will not frame me.*

(10) My wife and elderly father arrived at Sinoville Station to see where I am and give me medication. At this point the sergeant informed me and them that I am transferred to Mamelodi cells. I pleaded and was informed that I'm white and not special. I said that I will not return from Mamelodi.

(13) This act of 12 December showed me that the threats are in fact real and that MJ Kekana is connected with members of the SAPS. MJ Kekana's uncle works at SAPS intelligence. I fear for my life and my family and have gone through a huge ordeal. "

These averments were therefore common cause facts.

Grounds of Appeal

[17] The grounds of appeal raised by the appellant are as follows and were expanded in both written and oral argument:

17.1 The Learned Magistrate erred in failing to apply the correct test in analysing the evidence before her.

17.2 The Learned Magistrate incorrectly applied the principles laid down in *Mnyandu v Padayachi*[1] failing to consider the repetitive element of the different instances of harassment, focussing on an action specific approach to the harassment.

17.3 The Learned Magistrate was misdirected in finding that the conduct of the "second set" of police was a civil matter.

17.4 The Learned Magistrate was further misdirected in finding that the conduct of Steven Khoza did not constitute harassment. The Learned Magistrate erred to consider the above evidence in light of the WhatsApp

[1] (AR162/2014) [2016] ZAKZPHC 78.

audio recordings of 14 December 2023, which clearly threatened the appellant.

17.5 The Learned Magistrate erred in dismissing the appellant's application.

Legislative Framework and Legal Principles

[18] It is an established principle that in appeal proceedings the court of appeal may interfere only when it appears that the court *a quo* had not exercised its discretion judicially, or that it had been influenced by wrong principles or a misdirection on the facts, or that it had reached a decision which resulted in an order which could not reasonably have been made by a court properly directing itself to all the relevant facts and principles.[2]

[19] The PHA provides a remedy against acts of harassment. In terms of s1 of PHA, harassment is defined as follows:

"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 ensures; or

(iii) sending, delivering or causing the deliver of letters, telegrams, packages, facsimiles, electronic mail or other objects to the complainant or a related person or leaving them where they will

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[2] See Erasmus Superior Court Practice (2nd Edition, Volume 1) at RS 8, 2019, A2-72B. See also *Matoto v Free State Gambling and Liquor Authority and Others* (987/2017) [2018] ZASCA 110 (12 September 2018) at para 88.

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."

[20] "Harm" in terms of s1 of PHA is defined as: *"...any mental, psychological, physical or economic harm."*

[21] The appellant directed the court to the case of *Horner v Baranov* where a full bench held the following insofar as what constituted harassment:[3]

"The law on what constitutes harassment and how conduct alleged to be in violation of the Act is to be evaluated is settled. In Myandu v Padayachi 2016 4 All SA 110 (KZP) (Mnyandu), a full bench of this division conducted an extensive review of the genesis of the Act and comparable legislation in other jurisdictions before expounding on the correct interpretation of "harassment". It is the only judgment on the topic to which we were referred and which we could find. It is therefore both appropriate and convenient to quote from it to a somewhat larger degree than would usually be necessary.

The following paragraphs of Mnyandu bear directly on the issues before us:

> *'[44] Given the comprehensive ambit of the Act, it is essential that a consistent approach be applied to the evaluation of the conduct complained of, although the factual determination will depend on the circumstances under or context within which the alleged "harassment" occurred. If the conduct against which protection is offered by the Act were to be construed too widely, the consequence would be a plethora of applications premised on conduct not contemplated by the Act. On the other hand, too restrictive or narrow a construal may unduly compromise the objectives of the Act and the constitutional protection it offers. Therefore, the interpretation of the term "harassment" as defined in the Act, is significant.*
>
> *[65] It is apparent from these cases that the offence of harassment is not merely constituted by a course of conduct that is oppressive and unreasonable but that the consequences or effect of the conduct ought not to cause a mere degree of alarm; the contemplated harm is serious fear, alarm or distress. The legal test is always an objective one: the conduct is calculated in an objective sense*

[3] (AR384/22) [2023] ZAKZPHC 126 (3 November 2023) at paras 4 and 5.

to cause alarm or distress and is objectively judged to be oppressive and unacceptable.

[68] Based on its examination of international legislation, the SALRC recommended that the recurrent element of the offence should be incorporated in the definition of "harassment." The definition in the Act states that "harassment" is constituted by "directly or indirectly engaging in conduct..." However, although the definition does not refer to "a course of conduct" in my view the conduct engaged in must be necessarily either have a repetitive element which makes it oppressive and unreasonable, thereby tormenting or inculcating serious fear or distress in the victim. Alternatively, the conduct must be of such an overwhelmingly oppressive nature that a single act has the same consequences, as in the case of a single protracted incident when the victim is physically stalked."

Merits of the Appeal

[22] First ground of appeal: It was submitted by the appellant that the Learned Magistrate erred in failing to apply the correct test in analysing the evidence before her. According to the record of proceedings, to analyse whether harassment occurred, the Magistrate held as follows: "*We look at who started, we look at who initiated the conflict? Who initiated you know, the whole set of conflicts*?" Furthermore, the Magistrate held that, in the circumstances, "*...a just, fair and equitable decision under the circumstances is that your application is dismissed.*"

[23] The appellant correctly argued that in terms of s9(4) of the PHA, the test/onus in order to obtain a final protection order is neither "*who initiated the conflict*", nor what is "*just and equitable*" in the circumstances, but rather that: "*...the court must, after a hearing as provided in subsection (2), issue a protection order in the prescribed form if it finds, on a balance of probabilities, that the respondent has engaged or is engaging in harassment.*"

[24] The respondent also submitted that it is imperative to note the definition of "balance of probability" and that a court will rule that it is satisfied that an event took place if it determines that, based on the evidence, the occurrence of the event was more likely than not to have take place.

[25] The court *a quo* in addressing the issue of onus in this matter stated the following:

> *"So, in Mnyandy it was said that the onus was on the party making an application in this instance, it is you Mr Prins for a protection order in terms of the Act to prove on a balance of probability that the respondent knew or ought to have known that his conduct would cause harm or inspire the reasonable belief that harm will be caused."*

[26] Having regard to the record of proceedings, the court *a quo* correctly cited the test, on a balance of probabilities, but then failed to apply the test and onus and incorrectly proceeded by considering the context of the evidence presented in terms of "*who initiated the conflict.*" The magistrate stated: "*In terms of the cases, I can cite many of them. We look at who started, we look at who started who initiated the conflict? Who initiated you know, the whole set of conflicts.*" The court *a quo* clearly erred in failing to apply the correct test in considering the evidence and the aforesaid statements of the Magistrate clearly constitute a gross misstatement of the law. Furthermore, the court *a quo* misdirected itself by applying a test of what constitutes "*a just, fair and equitable decision*" in reaching its decision that the application should be dismissed. The provisions of PHA does not confer an equitable discretion to a court to grant protection orders, and where an applicant satisfies the requirements for such an order, it may not be withheld by a court on the principle *ubi ius ibi remedium*. The test in analysing the evidence must be done on a "balance of probabilities" it is for this reason that the appellant's first ground of appeal stands to be upheld.

[27] Second ground of appeal: It was submitted by the appellant that the Learned Magistrate incorrectly applied the principles laid down in the *Mnyandu*[4] by failing to consider the repetitive element of the different instances of harassment, focussing instead on an action specific approach to the harassment.

[28] The respondent, on the other hand, submitted that the Magistrate did not have to consider any repetitive element because there was no repetition of any threats or even a single threat. It was further submitted by the respondent that the appellant only went to the police station to obtain a protection order against the respondent after the respondent reported him to the police which, according to

[4] *Supra* note 1 at para 68.

the respondent, was an attempt by the appellant to "get equal" with the respondent, thereby abusing the courts processes and state resources.

[29] Having regard to the record of proceedings, I am of the view that the magistrate indeed did not take into account the repetitive element of the conduct of the respondent. The repetitive nature of harassment is illustrated by threatening WhatsApp messages from third parties, the incident where the appellant was threatened to remove his workers whereafter six men arrived at the premises, the threat to have the appellant arrested followed up by an actual arrest, and the false allegation of a crime committed by appellant in respect of which the appellant was unlawfully arrested by members of the police, clearly acting in cahoots with the respondent who has a family member which is a ranking officer in the police. The court *a quo* simply failed to appreciate the cumulative effect of the sequence of events and incorrectly addressed the issues in isolation. For example, in regard to the appellant's arrest the Magistrate remarked and held that it is a civil matter and that the appellant "*can go to a civil court then you can send them a letter of demand, and then from there you can issue summons and then you can claim unlawful arrest and detention if you were assaulted..*" The court *a quo* further noted that the appellant is the "*aggressor*", and remarked that " *..If you feel that someone is occupying your house unlawfully as Mr Nhome correctly said, you do not just go and dispose him, that is what we call spoilage and you are spoilating him of something that you gave him*". The failure of the court *a quo* to appreciate the cumulative effect of the common cause events as it was illustrated by the facts of the case is clearly a misdirection on the facts and the law.

[30] Having regard to the totality of evidence in this matter I am satisfied that conduct engaged in by the respondent had a repetitive element which made it oppressive and unreasonable, which did culminate in the inducement of serious fear and distress in the appellant and his family. The appellant stated in the court *a quo* that; "*It is a a psychological hell that I go through every day because of the fact financially I am not gaining, and I am stuck against someone that is connected everywhere that is using state resources to run a battle against me.*" In the premises, the second ground of appeal is upheld.

[31] Third ground of appeal: It was submitted by the appellant that the Learned Magistrate misdirected herself in finding that the conduct of the 'second set of police' was a civil matter in the following terms: "*If we have got police who acted in that manner you said, I was very attentive, if they unlawfully arrested me, they drove me in this manner when I was at the back of the bakkie. They detained me and then without trial. Those are civil issues...*" In making this finding the appellant submitted that the learned Magistrate erred by failing to have regard to the whole body of evidence before her which showed that the respondent had a tendency to make use of third parties to harass the appellant. This evidence is detailed in the incidents of harassment detailed in the Annexures to the appellant's founding affidavit. Secondly, when the police first came to the scene, the police informed the respondent that the removal of the gate was a civil matter and not a robbery. Thirdly, the respondent did not deny in his answering affidavit that when the appellant was unlawfully detained and taken to the holding cells, that the respondent discussed with the relevant police officials that they were going to "teach" the appellant by fabricating a case against him; the respondent noted and did not deny these allegations.

[32] In regard to this ground of appeal, the respondent submitted that the Learned Magistrate could not have misdirected herself by referring to this as a civil matter because the complaint from the appellant is the conduct of the police officers and not the respondent, therefore the complaint should be laid against the police and not the respondent.

[33] I agree with the appellant that the magistrate was misdirected in finding that the conduct of the second set of police was a civil matter. The magistrate was misdirected in this finding because she did not have regard to the totality of evidence presented, she failed to take into account that all the threats and intimidation by the respondent and his associates, culminated in the threat of an arrest and then an actual arrest. The appellant correctly argued that the respondent did not deny that he discussed with a police official in Sotho that they were going to teach the appellant a lesson by fabricating a criminal case against him. Thus, the Magistrate failed to take into account that the second police incident was part of the repetitive pattern of conduct of harassment initiated and

instigated by the respondent. In the premises the third ground of appeal stands to be upheld.

[34] <u>Fourth ground of appeal:</u> It was submitted by the appellant that the Learned Magistrate was further misdirected in finding that the conduct of Steven Khoza did not constitute harassment in that she required "*facts not suspicions*"; she failed to consider that the evidence that reference to "*my king*" referred to the respondent; she also disregarded the documentary evidence contained in the appellant's founding papers which showed that Mr Khoza sent various threatening messages on behalf of and/or at the behest of the respondent, including messages which provided:

"*From rikus, rikus must talk 2 my king not me I just protecting my king because people of today the deal their own ways no problem if my king is safe*"

"*Mr prince us act like stunt fool greedy dog that don't get enough.*"

"*You're a criminal your plans are going to brake.*"

[35] Furthermore, it was submitted by the appellant that the Learned Magistrate erred to consider the above evidence in the proper context of the WhatsApp audio recordings which threatened the appellant in the following manner:

"*Mr Prins if you are talking to people you must know who you are talking to; because we have spies everywhere, everyone is talking through us, everyone knows everything. Now we get a call from your friend Phiri, and you know that friend of yours is my friend, my real friend. I'm the one that make him to meet my King, don't play games with us you must be careful. Come clean with us and everything will be all right, sharp, it's the last warning from you, Mr Khoza, straight, good.*"

and

"*Mr Rikus, its Mr Khoza, yes I'm talking we are here at Tecoma with our King, with our boss, we are talk everything. You must know something from us at Tarentaal and Moshathi because if everything can happen to our King to our boss, everything, everything if he can suspect everything, you must know that we will think, we are people and we are black people this is our brother. We won't take a side of you, because we already know that you are a criminal, you tried to rob us, you tried to rob us everything,* *you must know if if everything can happen to our King you must know that everything is coming for you, sharp."*

[36] It was submitted by the respondent that the Magistrate did not err in her finding that the words uttered by Steven Khoza do not constitute harassment as according to the respondent "*it is clear as daylight that these were not threats but warnings due to the conduct of the appellant.*"

[37] Having regard to the above and the respondent's answering affidavit, the respondent did not deny that Mr Khoza acted to protect him, therefore an inference can be drawn that the respondent does acknowledge that the "*my king and or Kgosi*" in the messages refered to him.

[38] In the record of proceedings, it is noted that the appellant requested the court *a quo* to listen to the WhatsApp audio clips to actually hear the threatening tone of the messages. It is not clear whether indeed the court *a quo* listened to the messages as no mention is made of the tone of the messages in the Magistrate's judgment.

[39] Having regard to the totality of evidence in regard to the content of the messages from Mr Khoza to the appellant and in the context of the further incidences against the appellant and his family, the Magistrate misdirected herself in not finding that the conduct of Mr Khoza was indeed harassment. For these reasons, the court upholds the appellant's fourth ground of appeal.

[40] <u>Fifth ground of appeal:</u> It was submitted by the appellant that ultimately the Learned Magistrate erred in dismissing the appellant's application. Having regard to the totality of evidence in this matter, I am satisfied that the appellant showed on a balance of probabilities that the respondent had engaged or is engaging in harassment as defined in the PHA. The respondent had also engaged in harassment directly and indirectly (indirectly through Mr Khoza and his police connections). The appellant in the court *a quo* said that since he applied and was granted the interim protection order he has had peace in his life because the respondent has been abiding to the protection order. An inference can be drawn that the interim protection order was effective and that it indeed provided the

protection from harassment the appellant and his family sought. In the premises, the court upholds the appellant's fifth ground of appeal.

Costs

[41] In terms of s16 of the PHA: *"The court may only make an order as to costs against any party if is satisfied that the party in question has acted frivolously, vexatiously or unreasonably."*

[42] It is submitted by the appellant that when the respondent's conduct is considered as a whole, the respondent acted unreasonably and *male fide*, thereby justifying an order that the respondent pays the applicant's cost. The appellant directed the court to the case of *Public Protector v South African Reserve Bank*[5] where the Constitutional Court held the following in respect of punitive cost orders:

> *"More than 100 years ago, Innes CJ stated the principle that costs on an attorney and client scale are awarded when a court wishes to mark its disapproval of the conduct of a litigant. Since then this principle has been endorsed and applied in a long line of cases and remains applicable. Over the years, courts have awarded costs on an attorney and client scale to mark their disapproval of fraudulent, dishonest or male fides (bad faith) conduct; vexatious conduct and conduct that amounts to an abuse of the process of court."*

[43] Having regard to the conduct of the respondent holistically, and the fact that in this appeal the respondent failed to appear, I am persuaded that the respondent's conduct as a whole was unreasonable and *male fide* and therefore the court will award a punitive cost order.

[44] Having regard to the totality of evidence, after hearing counsel for the appellant, and in default of the respondent, I hereby propose that the following order is made:

44.1 The order of the Magistrates Court for District of Tshwane North, held at Pretoria North under case number 716/2023 dated 12 June 2024 is set aside.

[5] 2019 (6) SA 253 (CC) at para 233.

44.2 The interim protection order grant by the Magistrates Court for the District of Tshwane North, held at Pretoria North under case number 716/2023 on 14 December 2023 is confirmed.

44.3 The appeal is upheld with costs on Scale B.

[redacted]

W DOMINGO
ACTING JUDGE OF THE HIGH COURT
PRETORIA

I agree and it is so ordered.

[redacted]

P VAN NIEKERK
JUDGE OF THE HIGH COURT
PRETORIA

Delivered: This judgment was prepared and authored by the Judge whose name is first reflected and is handed down electronically by circulation to the parties' legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. This matter was heard in open court on the 20 November 2025. The date for hand down is deemed to be 16 January 2026.

APPEARANCES

For the appellant: ADV. BERNETTE BERGENTHUIN instructed by VAN HEERDEN & KRUGEL ATTORNEYS

For the respondent: NO APPEARANCE