

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA

LIMPOPO DIVISION, POLOKWANE

CASE No: HCA 04/2025

|           |                                          |
|-----------|------------------------------------------|
| (1)       | REPORTABLE: <u>YES/NO</u>                |
| (2)       | OF INTEREST TO THE JUDGES: <u>YES/NO</u> |
| (3)       | REVISED: <u>YES</u>                      |
| PILLAY AJ |                                          |
| SIGNATURE | DATE <u>3/02/2026</u>                    |

In the matter between:

**MANKI OUPA THABETHE**

APPELLANT

V

**ALETTA VAN DER BANK**

RESPONDENT

Delivered : **3<sup>rd</sup> FEBRUARY 2026**

This judgment was handed down electronically by circulation to the parties' legal representatives by e-mail. The date and time for hand down of the judgment is deemed to be **3 February 2026 at 10:00 am.**

Date heard : **07 November 2025**

Coram : **Ngobeni J et Pillay AJ**

---

**JUDGMENT**

---

**PILLAY AJ:**

**Introduction:**

- [1] The appellant appeals against the whole of the judgment and order of Acting Regional Magistrate HHL Voster, which was delivered on 22 April 2024, wherein the appellant's claim against the respondent was dismissed.
- [2] The appellant raised the following grounds of appeal.
  - [2.1] That the Honourable Court erred and misdirected itself when accepting the evidence of the respondent as credible whereas her testimony indicated that she was being less than candid with the court.
  - [2.2] The Honourable Court erred and misdirected itself when finding that the respondent had a reasonable and probable cause for believing that she was harassed. It was clear that the respondent misrepresented the facts when she made the report for harassment and it was not up to the Court to supplement her evidence or explain her actions on her behalf.
  - [2.3] The Honourable Court erred and misdirected itself by failing to find that the respondent was not being truthful about receiving legal advice from Mr van Onselen and that her whole defence had no merit.
  - [2.4] For those reasons the appellant was of the view that the Appeal Court would reach a different conclusion.
- [3] The appellant sought that the appeal be upheld and that the judgment be set aside and substituted with the following order, "That the respondent is liable for one hundred percent of the appellant's proven damages," and that the respondent pay the taxed or agreed party and party costs. Condonation was

sought for the late filing of the appellants Notice of Appeal which was granted at the time of the hearing of the appeal.

**Brief Background:**

- [4] The appellant is a practicing attorney since 2016. Prior to this period, he was a District Court Magistrate for 23 years. The respondent is a clerk of the Civil Magistrate's Court in Mokopane. On 21 September 2020, the appellant attended the offices of the respondent to inquire about an application for Default Judgment which he had sought from Court. On entering the office, he noted that the respondent was not wearing her wedding ring and inquired from her where her "stop nonsense" was? The respondent inquired what that was and the appellant explained that he was referring to her wedding ring. The appellant proceeded to ask if the sanitizer had affected her ring to which the respondent confirmed. The appellant then uttered the words to the effect that this was another unintended effect of "COVID" that people who saw them would think they were available for marriage. The respondent indicated that even if people have wedding rings they were doing "those things". The appellant then inquired if the respondent meant "stout things"? This was confirmed by the respondent. The conversation ended and thereafter the appellant indicated the purpose for his visit and was subsequently helped.
- [5] The following day the appellant was contacted by the police and was served with a Protection Order in terms of the Protection of Harassment Act 17 of 2011, sought by the respondent. He opposed the application in Court and on



the 25th of March 2022 the Presiding Officer granted absolution from the instance in his favour. The appellant instituted action to recover damages in the amount of R400 000,00 from the respondent, based on the allegation that the respondent wrongfully and maliciously instituted a false charge of harassment, in terms of the Protection of Harassment Act<sup>1</sup> ('the Act'), against him.

- [6] The appellant relied on the allegation that the respondent gave false information namely that the appellant had harassed her by stating to her, "*that a woman without a wedding ring implied that she was available*" and that those words constituted harassment in terms of the Act. The respondent had no reasonable or probable cause for setting in motion the harassment charge. The Respondent did not have any reasonable belief in the truth of the information provided and relied on misinformation thus she acted *mala fide* for the following reasons;

[6.1] She deliberately decontextualized the appellants statement in order to concoct a charge of harassment against the appellant.

[6.2] She deliberately omitted to indicate to the Court that the appellant contextualized his statements as a consequence of the COVID virus and not against her marriage as she had alleged.

[6.3] Furthermore the respondent was well aware that what had transpired was a harmless conversation between colleagues hence she

---

<sup>1</sup> See Act 17 of 2011

deliberately took it out of context, in an attempt to qualify the remarks of the appellant as harassment under the Act.

- [7] The appellant sought damages for *contumelia*, reputation and discomfort. The appellant claimed that the respondent knew that he was not harassing her when she instituted the claim in terms of the Act. Moreover, he indicated that the respondent had lied by stating that he made her feel humiliated, offended and insulted.
- [8] The respondent noted an appearance to defend and pleaded that the harassment proceedings were based on a reasonable and probable cause inclusive of an honest belief, founded on reasonable grounds which was justified by the circumstances where she was advised by a senior attorney and also subjectively held a personal view.
- [9] The respondent's version briefly, was that on the date in question she was in the office, applying cream to her hands, when she was approached by the appellant who asked her, "*where is your stop nonsense?*" She responded to him, "*my what?*" And he explained that a lady who was not wearing her wedding band was available. She then attempted to be professional and responded, "*a wedding ring does not prevent you from doing wrong stuff.*" She thereafter assisted him and he left. She was of the view that the appellant had overstepped his boundaries and had acted in a manner that was unprofessional. She indicated that he made her feel that she had to defend herself at work and had implied that she was available even though he knew

that she was married. She was uncertain if he would come back later and she did not want that. The next day she sought protection in terms of the Harassment Act and was medically booked off from work for a week, following the incident.

- [10] In the Court *a quo* both parties testified and were cross examined in respect of the matter and closed their cases. They both filed written heads of argument and thereafter Judgment was delivered. The appeal was sought flowing from the Judgment and Order.
- [11] In this Court it was argued by the appellant that the Court *a quo* erred and misdirected itself in the acceptance of the respondent's version and that based on same the appeal was to succeed. The appellant drew the Courts attention to the written Heads of Argument to motivate the various misdirection's made by the Court *a quo*.
- [12] The respondent sought the dismissal of the appeal also relying on the submitted written Heads of Argument highlighting that the appellant failed to discharge on a balance of probabilities, that the respondent was malicious and that based on same the appeal must be dismissed.

**Issues for determination:**

- [13] The crisp issue for determination concerned whether the Court *a quo* erred in finding that the appellant had failed to prove his claim in respect of the allegation that the respondent was malicious when she lodged the harassment complaint against the appellant.



- [14] Whether the respondent used words which were not used by the appellant in order to decontextualise and intensify a possible existence of a harassment, arising from a normal conversation.
- [15] Whether the Court a *quo* erred by receiving the medical note as evidence, and what value was to be attached to that evidence?
- [16] Whether the appeal should succeed and the prayers sought be granted with costs.

### **The Legal Principles and Analysis:**

- [17] In **P P v J P**<sup>2</sup> the Court noted the following concerning interference with the discretionary power of the Court of first instance,

*“The circumstances under which a court of appeal may interfere with a lower court’s exercise of a narrow discretion were restated as follows in Ferris and another v FirstRand Bank Ltd 2014 (3) SA 39 (CC) at para [28]:*

*‘28 An appeal court may interfere with the exercise of a discretionary power by a lower court only if that power had not been properly exercised. This would be so if the court has exercised the discretionary power capriciously, was moved by a wrong principle of law or an incorrect appreciation of the facts, had not brought its unbiased judgment to bear on the issue, or had not acted for substantial reasons.’*

*In instances where a lower court exercises a narrow discretion, the ordinary approach on appeal is that the ‘the appellate court will not consider whether the decision*

---

<sup>2</sup> See (A3007/20) [2020] ZAGPJHC 281 (2 November 2020) at paragraph 22 to 26.

reached by the court at first instance was correct, but will only interfere in limited circumstances; for example, if it is shown that the discretion has not been exercised judicially . . . ' (see **Trencon Construction (Pty) Ltd v Industrial Development Corporation of South Africa 2015 (5) SA 245 (CC)** at para 85).

It would therefore not be competent for this Court to interfere with and set aside the exercise of the trial Court's discretion merely because this Court would have preferred the trial Court to have followed a different course among those available to it. It would equally not be competent for this Court to alter the percentage of the benefits that should be forfeited by the respondent merely because this Court believes that its preferred percentage is the appropriate percentage.

The appellant must therefore satisfy this Court that the trial Court has exercised its discretion capriciously or upon a wrong principle, that it has not brought its unbiased judgment to bear on the question that was before it or has not acted for substantial reasons."

- [18] It must be borne in mind that an Appeal Court needs to first consider whether the threshold has been met to interfere with the decision by the Lower Court. It is an established principle, that the Court *a quo* being involved in the hearing of the matter, was best equipped to determine issues of credibility, reliability and whether the evidence reflected a true account of the circumstances, and based on that evidence whether the plaintiff was successful in respect of the claim. Moreover, it is trite that an appeal Court would only interfere with the factual findings of the Court *a quo* in circumstances where there was a demonstrable and material misdirection and the findings were clearly wrong.



- [19] In terms of Section 1 of the Protection from Harassment Act,<sup>3</sup> harassment is defined as follows;

*'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;*

- [20] In order to succeed with a claim for malicious prosecution, a claimant must allege and prove<sup>4</sup> —
- (a) That the defendants set the law in motion (instigated or instituted the proceedings);
  - (b) That the defendants acted without reasonable and probable cause;
  - (c) That the defendants acted with "malice" (or *animo injuriandi*); and
  - (d) That the prosecution has failed.'

The appellant bore this onus in the Court *quo* and based on the Judgment the appellant was unsuccessful in his claim. It was not disputed that the respondent had made a complaint in the Harassment Court flowing from a conversation that was had with the appellant. It is also not in dispute that

<sup>3</sup> See Act 17 of 2011.

<sup>4</sup> *Minister for Justice & Constitutional Development v Moleko* (131/07) [2008] ZASCA 43 (31 March 2008)

absolution from the instance was granted to the appellant in that Court. What is in dispute is the question of whether the respondent had acted without reasonable and probable cause and had acted with malice. These issues were to be proven by the appellant in order to succeed in his claim in the Court *a quo*.

- [21] In the Harassment Court absolution from the instance was granted to the appellant based on that Court finding that the incident was a once off situation<sup>5</sup>. The Court noted that the Harassment Act was designed not to punish past conduct<sup>6</sup>. The Court noted the following in the judgment;

*"The conduct complained of must be viewed reasonably. I mean, not to punish past conduct, but rather to protect against the potential of future harm. I do not think that the conduct of the respondent on the date of the incident amounted to harassment<sup>7</sup>."* Further, *"The test for apprehension is an objective one, I mean with regard to harm. so, the complainant did not object to what was being said by the respondent. She went on with the conversation, and it was after his departure from her office that, according to her she became scared, felt offended, humiliated and insulted by what was said by the respondent. I have already indicated the test for apprehension is an objective one. A reasonable apprehension of harm is one which a reasonable person might entertain on being faced with the facts which the court finds to exist on a balance of probability. We are talking about two adult persons who were talking about the wedding ring the wearing or not wearing off the wedding ring. I see no harm that*

---

<sup>5</sup> See line 9 page 9 of the Judgment.

<sup>6</sup> See line 12 page 9 of the Judgment.

<sup>7</sup> See line 15 to line 19 page 9 of the Judgment.



*the complainant suffered as a result of that the two were merely conversing. And the conversation never occurred again after that day. I do not think that she suffered any form of harm as a result of the conduct of the respondent. Now the question is, is there a prima facie case that the respondent was engaging or have engaged in harassment of the applicant? The answer to that is in the negative. Was there any harm that was being or might be suffered by the applicant? The answer is also not in the affirmative. So, if there is any evidence upon which a court acting reasonably might find for the applicant or the complainant? I do not think so. And the protection from harassment act provides that if a court is satisfied that there is a prima facie case of harassment and that harm is being or may be suffered by the applicant the court must. But in this case, I do not think that there is a prima facie case established by the applicant or the complainant. And as a result of which I have come to the conclusion that absolution from the instance should be granted in favour of the respondent<sup>8</sup>. When dealing with the issue of Costs the Harassment Court noted the following, "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 a party in question has acted frivolously vexatiously or unreasonably. The finding of this Court is that I do not think that the applicant acted in that fashion so the issue regarding cost cannot be awarded to any party at this juncture."<sup>9</sup>*

[22] It must be noted that in the Harassment Court the appellant had placed no version of the events before the Court, as the appellant did not testify under oath concerning the incident. The appellant posed questions to the respondent

<sup>8</sup> See line 24 page 9 to line 11 on page 11 of the Judgment.

<sup>9</sup> See line 4 to line 11 on page 12 of the Judgment.



under cross examination including his version of events, but same was not confirmed under oath, and therefore, did not tantamount to evidence. In the Court *a quo*, the appellant relied on the allegation that he was maliciously prosecuted on account of a conversation where there was nothing untoward mentioned in the conversation and that the respondent was malicious in making a complaint of harassment. The Presiding Officer of the Harassment Court indicated that the crisp issue was the so called "adult conversation" concerning a wedding ring, and that same did not tantamount to harassment and subsequently refused the application. The findings of the Harassment Court were accepted by the appellant including the Cost Order.

[23] The appellant's particulars of claim at paragraph 5 noted the following;

"The above-mentioned charge of harassment arose from a conversation between the parties that took place on or about the 21st of September 2020 wherein-

5.1 The plaintiff had noticed that the defendant was not wearing her wedding ring while sanitizing her hands and he inquired as to where is the ring;

5.2 The defendant indicated that she took it off to avoid the sanitizer damaging it;

5.3 Thereafter the plaintiff made remarks to the effect of the corona virus may further have unintended consequences because whenever people who do not know each other and see the other without a ring, they might

get the wrong impression that people are not married, hence available for marriage;

5.4 In response the defendant stated that a ring may not mean anything as people who wear a ring might still be available; and

5.5 the plaintiff then inquired from her if she means people do "stout" things(naughty) which she answered in the affirmation and that was the end of the conversation."

[24] In essence on the appellants version the conversation between the appellant and the respondent was the following;

*"He inquired from her where her "stop nonsense" was? The respondent inquired what that was and the appellant explained that he was referring to her wedding ring. The appellant proceeded to ask if the sanitizer had affected her ring to which the respondent confirmed. The appellant then uttered the words to the effect that this was another unintended effect of "COVID" that people who saw them would think they were available for marriage. The respondent indicated that even if people have wedding rings they were doing "those things". The appellant then inquired if the respondent meant "stout things"? This was confirmed by the respondent."*

The appellant saw nothing wrong with his conversation and further was unable to reconcile the respondent's reaction to same. It was argued that it was for those reasons that the appellant instituted proceedings against the respondent and why the appeal must succeed.

- [25] The appellant took issue with the respondent's evidence based on the "new version" which was tendered by the respondent that the appellant stated that a lady who does not wear a ring means she is available. In as much as the appellant was at pains to justify that the Court *a quo* erred by providing the respondent with a justifiable excuse in respect of the time lapse since the period before the incident and testifying in Court, according to the appellant this explanation was not supported by the evidence tendered. This Court disagrees with that submission, as no fault could be found from the conclusion drawn, by the Court *a quo*, since there was a period of time that had passed after the incident and the trial. This Court also noted that the respondent in her original complaint<sup>10</sup> noted, "*if a lady does not wear her wedding ring it means she is available,*" and that same was relied upon by the Harassment Court as the common cause facts during Judgment.<sup>11</sup>
- [26] The appellant took issue with the acceptance of the medical note which was handed in as part of the discovered documents by consent and used by the appellant during cross examination of the respondent during the trial<sup>12</sup> and was also part of the evidence tendered during the hearing of the harassment case.<sup>13</sup> This Court finds that it was an accepted fact at the Harassment Court and in the Court *a quo* that the respondent was booked off for "Spanning" as

<sup>10</sup> See harassment complaint line 8 page 3 in Vol 3

<sup>11</sup> See Volume 3-line 20 page 76 to line 11 page 77 of the Judgment.

<sup>12</sup> See record of proceedings Vol 2-page 110 line 10 to line 14

<sup>13</sup> See record of proceedings Vol 3-page 31 line 10 to line 14.



contained in the medical certificate. The appellant failed during the proceedings to present any evidence to rebut the medical proof and whether the respondent was sick or consulting an attorney, that did not detract from the fact that she had filed a complaint of harassment which the appellant had opposed and that she was booked off from work, following the incident.

- [27] In as much as the appellant sought this Court to take cognisance of the evidence of Mr Van Onselen and the contradictions with that of the respondent, it was accepted before the Court *a quo* that this witness was deceased. Moreover, as per the Judgment of the Harassment Court, his evidence concerning his observation of the respondent and the office being locked, was accepted by the Harassment Court as facts of the incident on that date and corroboration of communicating with the respondent.<sup>14</sup> This Court is satisfied that the respondent's version of communicating with him was corroborated.
- [28] The appellant took issue with the differing versions of the respondent but failed to note the conflicting details as per his particulars of claim, which differed from his evidence, with the material omission of the words "stop nonsense". On the appellant's own version, there was no prior familiar personal relationship with the respondent, amidst their working relationship. It was unfathomable that the appellant, who was at the office of the respondent on business, would find it

---

<sup>14</sup> See record of proceedings Vol 3-page 78 line 111 to line 17.

appropriate to initiate a personal conversation with the respondent concerning her personal marital status. It started with the use of the words “*stop nonsense*”, which clearly was overstepping from professional to personal especially as he still had to explain what those words meant. This if anything should have been an alarm bell to the appellant, that the respondent was unfamiliar with this line of questioning and same was inappropriate. Moreover, this question had no bearing on his presence at Court and would be seen as unprofessional, especially as there was no prior personal relationship for the basis of this question. He then goes further to say, “*that people who saw them would think they were available for marriage.*” He believed that this comment was a generalization, however since he was only speaking of the respondent’s wedding ring and when said in context with the initial question of the “*stop nonsense,*” it could only be in reference to the respondent.

- [29] The appellant failed to contextualize his statements by indicating how the hand sanitizer or the consequence of “COVID” impacted him personally, and whether it was having an influence on his marital status. He felt the need to further his comments by asking whether she was referring to “*stout things*”. From his own version he was the initiator, who was engaged in conversation, which pertained to the respondent and clearly had no bearing on the official business for which he was present at her office.

[30] As much as he testified that she was “not a child,”<sup>15</sup> as indicated earlier this was not a professional conversation and the appellant could not know, how she would have interpreted his comments, regardless of being an adult. The lie sought to be relied upon by the appellant was the allegation that “*She lied to say I was attacking her marriage.*”<sup>16</sup> The appellant was unable to appreciate that what was being canvassed with him, concerned the respondent’s interpretation of the conversation, not whether it was correct or not, as per his recollection, amidst his view that same was immaterial. He correctly conceded that the respondent was entitled to approach the Harassment Court, who did not agree with her interpretation of the conversation and refused to grant an order in her favour.

[31] This Court was not called upon to consider whether the findings of the Harassment Court were in accordance with justice, however it had an impact on the institution of the proceedings, on which the appeal lies and was relevant when considering the appellant’s allegation of maliciousness, that was claimed to have been the conduct of the respondent. It is prudent to note that the Harassment Court noted the following;

*“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 a party in question has acted frivolously vexatiously or unreasonably. The finding of this Court is that I do not think that the*

---

<sup>15</sup> See record of proceedings Vol 1 page 62 line 20.

<sup>16</sup> See record of proceedings Vol 1 page 62 line 8.



*applicant acted in that fashion so the issue regarding cost cannot be awarded to any party at this juncture."*

It must be appreciated that the Harassment Court found that the respondent had not acted "*frivolously vexatiously or unreasonably*," these findings were accepted by the appellant as correct and was not appealed against. This Court aligns itself with the observation by the Harassment Court.

[32] The appellant was adamant during cross examination that the words "*frivolously vexatiously or unreasonably*" were different to "malicious" and that amidst this aspect not being ventilated in the "Harassment Court" it was only relevant to the proceedings in the "Court a quo."<sup>17</sup> This Court took cognisance of the fact that whilst "*frivolously vexatiously or unreasonably*" and "*malicious*" when considered in law literally referred to meritless, multiple lawsuits designed to harass, annoy, or cause unnecessary expense, "malicious" specifically intended to cause harm, distress, or damage to someone's reputation, which was indicative of falsehoods and lies.

[33] In considering whether the respondent had acted with malice (or animus injuriandi) regard was had to the case of ***Minister of Justice and Constitutional Development and Others v Moleko***<sup>18</sup> where the SCA noted the following;

<sup>17</sup> See record of proceedings Vol 1 page 70 line 1 to line 20.

<sup>18</sup> See [2008] 3 All SA 47(SCA), 2009 (2) SACR 585 (SCA) at page

62. *Animus injuriandi* includes not only the intention to injure, but also consciousness of wrongfulness:

*'In this regard animus injuriandi (intention) means that the defendant directed his will to prosecuting the plaintiff (and thus infringing his personality), in the awareness that reasonable grounds for the prosecution were (possibly) absent, in other words, that his conduct was (possibly) wrongful (consciousness of wrongfulness). It follows from this that the defendant will go free where reasonable grounds for the prosecution were lacking, but the defendant honestly believed that the plaintiff was guilty. In such a case the second element of dolus, namely of consciousness of wrongfulness, and therefore animus injuriandi, will be lacking. His mistake therefore excludes the existence of animus injuriandi.'*

63. *The defendant must thus not only have been aware of what he or she was doing in instituting or initiating the prosecution, but must at least have foreseen the possibility that he or she was acting wrongfully, but nevertheless continued to act, reckless as to the consequences of his or her conduct (dolus eventualis).<sup>33</sup> Negligence on the part of the defendant (or, I would say, even gross negligence) will not suffice.*

[34] From the record of proceedings, the appellant failed to establish on a balance of probabilities that the respondent when filing the complaint of harassment, had done so with a malicious intent. It was clear from the record of the proceedings in the Harassment Court and the Court *a quo* that the respondent found the conversation inappropriate and took offence from the words spoken by the appellant. This applied to the state of mind, of the respondent and whether objectively viewed by the Harassment Court, did not tantamount to harassment, it cannot be said that by her making this complaint, her intention was to be malicious, towards the appellant by 'laying a false complaint'. The respondent informed Mr Van Onselen and subsequently laid a complaint. This gave credence to her belief, that there was a need for protection in terms of

the Harassment Act. The appellant was unable to rebut those averments and this Court accepts as per the dicta of *Moleko (supra)* that the necessary intent was lacking and this was a crucial element, needed to be proven to succeed with the appellant's claim.

- [35] This Court was satisfied that the respondent was within her right to have her concerns addressed by a Court of law, and ultimately through the legal process those concerns were addressed. The Court *a quo* addressed all these aspects in the Judgment and Order, no fault could be found with same. It is trite that an appeal lies in respect of an Order and not the reasons for the Order<sup>19</sup>. In this matter the Court Order of the court *a quo* was correct and as such the appeal stands to fail.

**Costs:**

- [36] The approach to awarding costs is succinctly set out in ***Ferreira v Levin NO and Others, Vryenhoek and Others v Powell NO and Others***<sup>20</sup> as follows;

*"The Supreme Court has, over the years, developed a flexible approach to costs which proceeds from two basic principles, the first being that the award of costs, unless expressly otherwise enacted, is in the discretion of the presiding judicial officer, and the second that the successful party should, as a general rule, have his or her costs. Even this second principle is subject to the first. The second principle is subject to a large number of exceptions where the successful party is deprived of his or her costs. Without attempting either comprehensiveness or complete analytical*

<sup>19</sup> *Neotel (Pty) Ltd v Telkom SOC & Others* (605/2016) [2017] ZASCA 47 (13 March 2017)

<sup>20</sup> 1996 (2) SA 621 (CC) at paragraph 3:



*accuracy, depriving successful parties of their costs can depend on circumstances such as, for example, the conduct of parties, the conduct of their legal representatives, whether a party achieves technical success only, the nature of the litigants and the nature of the proceedings. I mention these examples to indicate that the principles which have been developed in relation to the award of costs are by their nature sufficiently flexible and adaptable to meet new needs which may arise in regard to constitutional litigation..."*

- [25] This Court accepts that this appeal was sought by the appellant and same was opposed by the respondent. It is accepted that Costs follow the successful party, and this Court finds no reason to order otherwise.

**Ruling:**

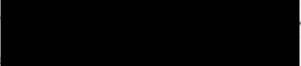
- [26] Based on all that has been said above and the reasons given, it is just and equitable that this appeal be dismissed. The appellant failed to establish that the Court *a quo* had erred in dismissing the appellant's claim for damages, based on the malicious prosecution by the respondent and there was no merit for this Court to interfere.

**Order:**

- [27] In the result the following order is made:-

[27.1] The appeal is dismissed.

[27.2] Costs are awarded to the respondent on party and party scale including cost to Counsel on Scale B.

  
K.L. PILLAY AJ  
ACTING JUDGE OF THE HIGH COURT,  
LIMPOPO DIVISION, POLOKWANE

I CONCUR,

  
J.T. NGOBENI J  
JUDGE OF THE HIGH COURT,  
LIMPOPO DIVISION, POLOKWANE

**APPEARANCES:**

FOR THE APPELLANT  
INSTRUCTED BY

: Adv. Malatji  
: Manki Oupa Thabethe Inc Attorneys

FOR THE RESPONDENT  
INSTRUCTED BY

: Adv. AC Diamond  
: De Beer Attorneys