

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO.: A188/2025

(1)	REPORTABLE:	no
(2)	OF INTEREST TO OTHER JUDGES:	no
(3)	REVISED:	yes
DATE		12/02/2026
SIGNATURE		[Redacted Signature]

In the matter between:

ANDRIES POTGIETER

Appellant

And

THABO MASEMOLA

Respondent

JUDGMENT

THUPAATLASE, AJ

- [1] This is an appeal against the judgment and order delivered by learned magistrate sitting in Pretoria magistrates' court Pretoria in Tshwane Central district. The learned magistrates dismissed with costs an application by the appellant to set aside a protection order granted against him in favour of the respondent. The protection order was issued in terms of the provisions of Protection from Harassment Act, 117 of 2017(the Act).

- [2] The respondent, Mr Masemola obtained a final protection order against the appellant on 31/05/2024. The order prohibited the appellant '*not to communicate in any manner*' with the respondent and members of his family mentioned in the said order. The appellant was subsequently arrested after it was alleged by the respondent that he had violated the condition of the protection.
- [3] As a result thereof the appellant launched an application before the magistrate's court for the setting aside of the order granted on 31/05/2024. The essence of the attack against the order was that the respondent was abusing the court process to harass him and that there was no basis for the existence of the order. Additionally, the appellant argued on the merits there was no violation of the order as he did not have any communication with the respondent.
- [4] The magistrate in a brief judgment dismissed the application to set aside the protection against the appellant and found that there was indeed violation. The learned magistrate found the application to be 'null and void'.
- [5] Dissatisfied with the aforementioned judgment, the appellant appealed to this court. It is clear that the magistrate appears not have appreciated the nature of the application before her. It is also apparent from the cursory reading of the reasons provided in support of her judgment the application for the setting aside was done in a perfunctory manner.
- [6] It is not clear on why the learned magistrate found it amiss that the application was signed on 04/12/2024 whilst the founding affidavit was commissioned on 26/11/2024. The learned found that the affidavit was signed way back before the application. This is factually incorrect as the period is only 8 days.

[7] The court appeared to have appreciated that the protection order was couched in ambiguous language and decided to add an additional condition to the existing order. Unfortunately, this was based on an assumption that the appellant didn't understand the terms of the first order. This assumption is not supported by the facts.

[8] I am satisfied that the magistrate misdirected herself in the manner she dealt with the application. The failure to provide adequate reasons has been dealt with in a number of judgments by our superior courts. In the case of *Vodacom (Pty) Ltd v Makate and Another*¹ at para 46 the court stated that:

'The court speaks through its judgment. It is thus in the judgment that one expects to find evidence that the court discharged the duty of proper consideration the way it should. An indicative factor -albeit not exclusive- of the performance of the duty of proper consideration is providing adequate reasons for a judgment (the duty to provide reasons). Woefully lacking reasons are symptomatic of a flawed assessment of facts and issues. For present purposes, flawed in the sense that amounts to failure of justice. We must not lose sight of the fact the adequacy of reasons relate to a proper consideration of the evidence and issues and – based on that- taking a reasoned decision. That in no way, means that the reasons must be correct. I accept that unsatisfactory reasoning does not necessarily equal to discharge the duty of proper consideration'.

[9] The court at para 54 went further to underscore the importance of providing reasons despite the simplicity of the facts to be decided. The court continued to state:

'Reasons given for a court's decision help demonstrate that there was or wasn't proper performance of the duty of proper consideration. If the facts are simple and straightforward, not much may be required by way of reasons to support the conclusion reached. But the reasons must still be enough to demonstrate sufficiently that there compliance the duty'.

¹ [2025] ZACC 13

[10] I am satisfied that the learned magistrate misdirected herself and that the judgment stands to be set aside

I propose the following order:

1. The appeal is hereby upheld with costs.
2. The order of the learned magistrate is set aside.
3. The matter is referred back to the Magistrate's Court to be dealt with afresh and for judgment on the merits of the application. The referred matter is to be heard by a different magistrate than the one that presided initially.




T THUPAATLASE AJ
JUDGE OF THE HIGH COURT
PRETORIA

I agree




C J VAN DER WESTHUIZEN
JUDGE OF THE HIGH COURT
PRETORIA

On behalf of Appellant: Instructed by:	Adv. M De Meyer F Van Wyk Incorporated
On behalf of Respondent: Instructed by:	Mr Mpakathi Mpakathi Inc. Attorneys
Date of hearing:	6 November 2025
Date of Judgment:	12 February 2026