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**REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
LIMPOPO LOCAL DIVISION, THOHOYANDOU**

High Court Review Case No: 65/2025

Magistrate Case No: D534/2024

DATE: 13/2/2026

(on which review judgment is handed

(1) REPORTABLE: YES/NO

(2) OF INTEREST TO THE JUDGES: YES/NO

(3) REVISED.

DATE: 13.02.2026

SIGNATURE:

In the matter between:

N[...] K[...]

APPLICANT

and

M[...] M[...] A[...]

RESPONDENT

JUDGMENT

SEMENYA DJP

[1] The applicant in this matter launched an application for a protection order in terms of the provisions of the Domestic Violence Act 116 of 1998. The magistrate sitting at Vuwani magistrate court forwarded the matter to this court before the

conclusion of the application in view of what he perceives to be an irregularity in the proceedings before him.

[2] The background facts of this case are as follows:

The applicant approached the magistrate court on 18 December 2024 to apply for a protection order against the respondent. On the same date, the applicant completed Form 6 in line with the provisions of section 4(1) read with Regulation 7(1) of the Domestic Violence Act. The applicant described the respondent in this form as her stepfather who was in a love relationship with her mother prior to her demise on 4 December 2024. She further stated that the deceased mother and the respondent never married and were not living together during the subsistence of their relationship.

[3] The conduct the applicant complained about in Form 6 is that, after the burial of her mother, respondent came with his relatives to her home and instructed her and her siblings to vacate the premises so that he can move in. He would come to her house at night in the company of his relatives and shouted at them. She avers that on the 16 December 2024, the respondent came with his uncle at about 1:00 and told them to move out if they do not want him to call the police.

[4] After considering the application, the magistrate issued an interim protection order as provided in section 5(2) of the Domestic Violence Act. In the interim order, the respondent was ordered not to physically or psychologically abuse the applicant, not to assault the applicant or threaten to assault her, not to insult her with vulgar words or to chase her out of her home. The respondent was called upon to attend court on the 03 February 2025 to show cause why the interim order should not be confirmed and made final. The magistrate issued a warrant of arrest as envisaged in section 8(1) of the Domestic Violence Act which directed the police to execute it whenever it became necessary to do so. On the 18 December 2024, Mr Mudzusi, an administrative clerk at magistrate Vuwani magistrate court, served the interim order on the respondent.

[5] The record of the proceedings of 2 February 2025 is missing. However, the parties appeared before the magistrate on the 6 February 2025. The magistrate before whom the parties appeared noted on the record of the proceedings that the parties were before him 3 June 202[5] in a different case. In that matter the respondent in this matter was the complainant and the applicant in this matter was the respondent. The magistrate postponed the case to 12 March 2025 for hearing before another judicial officer.

[6] The applicant failed to appear before court on the 12 March 2025. The respondent appeared. The matter was struck off the roll. On the 13 March 2025, the applicant filed an affidavit in which she stated that she did not appear before court on the 12 March 2025 because she thought that the date of court was the 13 March 2025. The explanation was accepted and the case was reinstated.

[7] On the 22 July 2025, the parties appeared before court for hearing of the application. The applicant was represented by Ms Simango of the Legal Aid South Africa. The respondent was represented by Adv Tejada as instructed by Mlambo Attorneys. Before the hearing of evidence could commence, Adv Tejada addressed the court and stated that the interim order which was issued on the 18 December 2024 is no longer of force and effect and the court cannot proceed to hear the matter on that basis. He argued that the court did not extend the interim order after the applicant failed to attend court on the 12 March 2025.

[8] Section 6 of the Domestic Violence Act provides as follows:

"6. Issuing of final protection order

(1) If the respondent does not appear on a return date contemplated in section 5(3), and if the court is satisfied that-

- (a) proper service has been effected on the respondent; and
 - (b) the application contains prima facie evidence that the respondent has committed or is committing an act of domestic violence,
- the court must issue a final protection order in the prescribed form.

(1A) If the respondent does not appear on a return date contemplated in section 5(4), and if the court is satisfied that proper service has been effected

on the respondent, the court must proceed to hear the matter and if the court after considering-

- (a) any evidence previously received in terms of section 5(1); and
- (b) such further affidavits or oral evidence as it may direct, that was adduced during the hearing, which must form part of the record of the proceedings,

finds, on a balance of probabilities, that the respondent has committed or is committing an act of domestic violence, the court must issue a final protection order in the prescribed form.

(2) If the respondent appears on the return date contemplated in section 5(3) or (4), in order to oppose the issuing of a protection order, the court must proceed to hear the matter and-

- (a) consider any evidence previously received in terms of section 5(1);
- (b) consider such further affidavits or oral evidence as it may direct, which must form part of the record of the proceedings; and
- (c) if there is a dispute of fact, the court-
 - (i) may on application of the complainant or the respondent adjourn the proceedings to any time and date on the terms and conditions which the court deems appropriate in order to afford the party concerned the opportunity to adduce further evidence; and
 - (ii) must extend the interim protection order.

(2A)

(a) If the respondent appears but the complainant does not appear, or where both the respondent and the complainant do not appear, on the return date referred to in section 5(3), the court must extend the interim protection order and the return date, and the clerk of the court must notify-

- (i) the complainant; or
 - (ii) the complainant and the respondent, where both did not appear,
- in the prescribed form and manner of the extended date.

(b) The court may discharge the interim protection order if the complainant does not appear on the extended date.

(2B)

(a) If the respondent appears but the complainant does not appear, or where both the respondent and the complainant do not appear, on the return

date referred to in section 5(4), the court may, after due consideration of any evidence previously received in terms of section 5(1)-

- (i) set a new return date for the hearing of oral evidence; or
 - (ii) discharge the matter.
- (b) The clerk of the court must, in the prescribed form and manner, notify the parties of the extended date in terms of paragraph (a)(i).

[9] Based on the submissions made by Adv Tejada, the magistrate forwarded this matter to this court for review in terms of section 304A of the Criminal Procedure Act 51 of 1977. However, in terms of section 16 of the Domestic Violence Act, review and appeal of the orders made in terms of this Act are to be dealt with in terms of the Magistrate Court Act, 32 of 1944 and the Superior Courts Act, 10 of 2013 and not in terms of the Criminal Procedure Act.

[10] Section 22 of the superior Courts Act provides that:

22. Grounds for review of proceedings of Magistrates' Court

- (1) The grounds upon which the proceedings of any Magistrates' Court may be brought under review before a court of a Division are-
- (a) absence of jurisdiction on the part of the court;
 - (b) interest in the cause, bias, malice or corruption on the part of the presiding judicial officer;
 - (c) gross irregularity in the proceedings; and
 - (d) the admission of inadmissible or incompetent evidence or the rejection of admissible or competent evidence.

[11] The provisions of section 6 of the domestic Violence Act are peremptory. The magistrate **must** extend the interim order in circumstance where the complainant or the respondent, or where both fail to attend court. There is no provision for the striking of the matter off the roll. The magistrate is further authorised to either to set a new date or to discharge the matter in cases where the absenteeism is persisting.

[12] The magistrate committed gross irregularity by failing to extend the interim protection order. The interim order has therefore lapsed. It cannot be reinstated in

the manner the magistrate did in this case. The proceedings stand to be set aside. The applicant may apply for another protection order, if she so desires.

[13] In the result I make the following order:

The proceedings in this case are set aside.

MV SEMENYA
DEPUTY JUDGE PRESIDENT, LIMPOPO DIVISION

I agree.

TC TSHIDADA
JUDGE OF THE HIGH COURT
LIMPOPO LOCAL DIVISION, THOHOYANDOU