

**IN THE HIGH COURT OF SOUTH AFRICA,
GAUTENG DIVISION, JOHANNESBURG**

CASE NO: A2023/079152

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

DATE

SIGNATURE

In the matter between

E[...] **S[...]**

Appellant

and

S[...] **S[...]**

Respondent

Summary

In terms of section 6(4) of the Domestic Violence Act 116 of 1998 whether a respondent has committed or is committing an act of domestic violence is to be decided on a balance of probabilities.

Held: that when the appellant arrived uninvited at the respondents work function held at a hotel, the probabilities are that he did so in order to commit acts of violence which are prohibited in terms of the Act.

The interim order granted previously was confirmed when the appellant could not provide a plausible explanation why he went to the respondent's work function and confronted both the respondent's chief executive offices and the respondent with allegations intended to embarrass and humiliate her. The parties were engaged in an acrimonious divorce at the time and a date set for the finalization thereof. The respondent had earlier been compelled to withdraw

certain provisions of the interim order in order to secure certain divorce settlement agreements with the appellant.

On appeal: held that the court below did not err or misdirect itself when issuing the interim order on 3 October 2022 and confirming it subsequently on 14 April 2023.

JUDGMENT

Raubenheimer AJ:

Summary

Order

1. *The appeal is dismissed with costs.*

Introduction

[1] The appellant, Mr S[...], is appealing the confirmation of the protection order by the Learned Magistrate on 14 April 2023 and seeks to have the protection order set aside.

[2] The interim protection order that was applied for by the respondent, Ms S[...], on 3 October 2022 and granted on 3 October 2022, prohibited the appellant from physically or verbally abusing the respondent, threatening the respondent with violence including with a firearm, enlisting the help of another person to commit acts of domestic violence against Ms S[...], entering the Ms S[...]'s residence and place of employment, insulting Ms S[...] and emotionally abusing the her .

[3] The final protection order granted on 14 April 2023 confirmed the interim order and added an additional prohibition, namely, that the Mr S[...] may not swear or insult

the Ms S[...].

[4] When the interim order was granted, the parties were engaged in an acronymous divorce action, and the Mr S[...] had already left the common home.

[5] At the appearance on 8 November 2022 before the Magistrate, the parties requested the order to be discharged so as to facilitate the conclusion of a settlement agreement in the divorce action.

[6] The matter was then initially postponed to 19 January 2023, then to 14 February 2023, and finally to 24 March 2023, on which date the hearing proceeded and resulted in the judgment of the Learned Magistrate on 14 April 2023.

The Interim protection order

[7] The crucial event that gave rise to the application and granting of this order occurred on 28 September 2022, during a work function where Ms S[...]’s employer was celebrating the award of several prestigious awards. The award function was held at a well-known luxurious hotel in Johannesburg.

[8] The Management team, which included Ms S[...], attended the awards function. Present was also the Chief Executive Officer of the company and other members of the top management team.

[9] Mr S[...] turned up at the function and confronted the Chief Executive Officer in the presence of the other management team members. This altercation escalated to such an extent that Mr S[...] had to be forcefully removed from the premises by security guards.

[10] Despite being so removed he attempted to regain entrance to the premises on several occasions.

[11] He also involved himself in a verbal altercation with Ms S[...], which escalated to such a degree that her colleagues feared for her safety. Security guards had to remove him away again.

[12] Prior to this incident, Mr S[...] had subjected Ms S[...] to verbal, emotional and financial abuse by swearing at her and refusing to pay the maintenance, medical aid subscriptions, cell phone expenditure, and school fees to the two minor children, as well as the bond on the residential property.

[13] He has threatened to destroy Ms S[...] on numerous occasions and has informed her that he has followed her to her new residence in a borrowed vehicle so as to prevent being identified by her.

The final protection order

[14] The final order was granted after the incident that occurred on 28 September 2022.

[15] The parties had submitted a full set of affidavits, and the matter proceeded by agreement on the affidavits. The Learned Magistrate confirmed the interim order in a written judgment and added the further prohibition that Mr S[...] may not swear at Ms S[...].

[16] During the hearing reference was made to an earlier application for a protection order that was launched by the respondent on 14 April 2022. This order was handed up

in court and was accepted into the record.¹

[17] The event that triggered the application of the April 2022 protection order was an incident that occurred at the Benoni Magistrate's Court, when Mr S[...] "*cornered*" Ms S[...] in the parking lot of the Magistrates Court, and physically prevented her from leaving in her vehicle by forcefully holding the door of the vehicle open, threatening her and verbally and emotionally abused her by swearing at her.

[18] Ms S[...] deposed to a statement withdrawing the protection order on 7 June 2022, which incidentally was the same day on which Mr S[...] signed the settlement agreement in the divorce action.

[19] Ms S[...] testified that she had to retract the protection order for Mr S[...] to sign the settlement agreement. She signed the settlement agreement on 1 June 2022. At the time of the signing of the settlement agreement, Mr S[...] was in arrears with maintenance, had not paid the medical aid for the minor children and the children consequently had no medical cover. He was obliged to pay the monthly cell phone accounts of the children, which he did not do, and the accounts were in arrears. The school fees of the children were also in arrears.

[20] Ms S[...] had left the common home in 2019 and moved into a rental property. Mr S[...] remained in the common home of which Ms S[...] pays the bond. She had to keep on paying the bond as Mr S[...] refused to pay the bond.

[21] Ms S[...] was in a financially vulnerable position and Mr S[...] capitalised on her vulnerability to get her to withdraw the April 2022 protection order.

The grounds of appeal

¹ Section 5(1) Domestic Violence Act, Glen Johnstone v SLS 2022(1) SACR 250 (GJ).

[22] The grounds of appeal are that the Learned Magistrate erred in:

- 22.1 Finding that the applicant made out her case on a balance of probabilities;
- 22.2 Finding that the respondent's conduct on 28 September 2022 amounted to conduct as defined in section 1 of the Domestic Violence Act, Act 116 of 1998;
- 22.3 Finding that as the respondent was at the function uninvited, he must have intended to embarrass the respondent;
- 22.4 In finding that the respondent's conduct at the function was intended to harass the respondent;
- 22.5 Overlooking that there was no evidence from the respondent that the appellant was at the function to engage, intimidate and/or harass the respondent;
- 22.6 Finding that the confirmatory affidavits corroborated the appellant's version rather than that of the respondent;
- 22.7 Misdirecting himself by applying undue weight to the lack of a confirmatory affidavit of Bettina Wood in support of the respondent's version.

The Statutory framework

[23] Domestic violence is regulated by the Domestic Violence Act, Act 116 of 1998.

[24] Domestic violence is defined as:²

- 24.1 Physical abuse defined as any act or threatened act of physical violence.
- 24.2 Sexual abuse.
- 24.3 Emotional, verbal and psychological abuse entails a pattern of

² Section 1 Domestic Violence Act, Act 116 of 1998.

degrading and humiliating conduct which includes the following:

- 24.3.1 Repeated insults, ridicule or name calling.
- 24.3.2 Repeated threats to cause emotional pain; or
- 24.3.3 The repeated exhibition of obsessive possessiveness or jealousy, which is such as to constitute a serious invasion of the complainant's privacy, liberty, integrity or security;
- 24.4 Economic abuse defined as the unreasonable deprivation of economic or financial resources entitled to in law or out of necessity. The definition includes the payment of bond repayments;
- 24.5 Intimidation which constitutes the utterance, conveying or causing the complainant to receive a threat which induces fear;
- 24.6 Harassment entails the engaging in a pattern of conduct that has the result of inducing fear of harm and includes the following:
 - 24.6.1 Repeatedly watching or loitering outside of or near the building or place
 - 24.6.2 Where the complainant resides, works, carries on business, studies or happens to be;
 - 24.6.3 Repeatedly making telephone calls or inducing another person to make telephone calls to the complainant, whether or not conversation ensues;
 - 24.6.4 Repeatedly sending, delivering or causing the delivery of letters, telegrams, packages, facsimiles, electronic mail or other objects to the complainant;
- 24.7 Stalking;
- 24.8 Damage to property:
- 24.9 Entry into the complainant's residence without consent, where the parties do not share the same residence; or
- 24.10 Any other controlling or abusive behaviour towards a complainant,

24.11 Where such conduct harms, or may cause imminent harm to, the safety, health or wellbeing of the complainant.

Discussion

[25] The purpose of the Domestic Violence Act is to give effect to the fundamental rights to equality and freedom and security of the person and therefore to “*afford the victims of domestic violence the maximum protection from domestic abuse that the law can provide*”.

[26] Its main objective is to provide for a swift, effective and simple procedure and providing courts with a wide discretion in respect of the procedure as well as the relief it may grant.³

[27] An applicant for a protection order has to satisfy the court of the existence of *prima facie* evidence of the commission of domestic violence acts. The applicant must further prove that undue hardship may be suffered due to the domestic violence should the protection order not be issued promptly.⁴

[28] In an opposed application the court must be satisfied that on a balance of probabilities the evidence establishes that the respondent perpetrated acts of domestic violence.⁵

[29] Domestic violence is characterised by its hidden and repetitive nature and the ripple effect it has on its victims.⁶

[30] The definition of Domestic Violence encompasses a comprehensive assortment of acts, such as emotional, verbal and psychological abuse entails a pattern of

³ T v T (287/2021) [2022] ZASCA 109 (15 July 2022) Glen Johnstone v SLS (n1 above)

⁴ Sect 5(2) Domestic Violence Act

⁵ Sect 6(4) Domestic Violence Act

⁶ S v Baloyi and Others 2000(2) SA 425 (CC)

degrading or humiliating conduct towards the complainant. and harassment which entails a pattern of conduct that induces fear of harm to the complainant.

[31] Harm is defined in the Harassment Act⁷ as “*any mental, psychological, physical or economic harm.*”

[32] This requires a persistent or at the least a consistent sequence of events.⁸

[33] The improbabilities in the version of Mr S[...] justified the court *a quo* to accept the version of Ms S[...].

[34] The proof of the payment of maintenance submitted by Mr S[...] referred to 2015, long before the respondent applied for a protection order. He provided no proof of the payment of the bond, school fees, medical aid and cell phone accounts for the children.

[35] Mr S[...] provided no reasonable explanation for attending the work function where Ms S[...] was in attendance. There was no need for him to present himself there. Viewed in the context of his earlier threats to go to her workplace and the threat to destroy her, his conduct at the work function was most certainly aimed at humiliating the respondent and cause her harm.

[36] His conduct at the work function was of such an aggressive nature that Ms S[...]’s co-workers feared for her safety and took steps to protect her from possible harm. This conduct falls squarely within the definition of harassment.

Conclusion

⁷ Sect 1 Act 17 of 2011

⁸ DT v BT 2021 (1) SACR 668 (FB)

[37] The conduct of the appellant, Mr S[...], meets the requirements of domestic violence.

[38] In the circumstances, the following order is made.

1. The appeal is dismissed with costs.

E Raubenheimer
ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION
JOHANNESBURG

I concur,

G Malindi
JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION
JOHANNESBURG

Electronically submitted

Delivered: This judgement was prepared and authored by the Acting Judge whose name is reflected and is handed down electronically by circulation to the Parties / their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines/CourtOnline. The date of the judgment is deemed to be **8 April 2026**.

Appearances

For the Appellant:	Adv G Cohen
Instructed by:	Rajen Naidoo Inc
For the Respondent:	Adv C van der Merwe
Instructed by:	Bhayat Attorneys Incorporated
Date of Hearing:	6 June 2024
Date of Judgment:	9 April 2026