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In the High Court of South Africa
(Western Cape Division, Cape Town)

CASE NO: A115/2023

In the matter between:

Z[...] B[...]

APPELLANT

And

W[...] B[...]

RESPONDENT

JUDGMENT

RALARALA, AJ

INTRODUCTION

[1] This is an appeal against the entire judgment and order of the Cape Town Magistrates Court handed down on 28 February 2023 in terms of which a final protection order was granted, as envisaged in section 6(4) of the Domestic Violence Act 116 of 1998 (“the Act”). On 2 February 2023 the court *a quo* granted an interim protection order in terms of section 5(2) of the Act. The application for the protection order was opposed by the appellant and on 28 February 2023 pursuant to the hearing held by the Court below, the interim protection order was confirmed.

[2] The issue this court is enjoined to determine is whether or not the magistrate was correct in confirming the interim protection order on the basis set forth in the court's judgment.

GROUND OF APPEAL

[3] The amended notice of motion contains a plethora of grounds upon which the appeal is based. However, the appellant's grounds of appeal can succinctly be summarised as follows:

3.1 that the magistrate failed to consider that the respondent's employees were not children or adults sharing the residence, as required by Form 2;

3.2 that the magistrate failed to find that no domestic relationship existed between the appellant and the respondent's employees who were listed as persons affected by the domestic violence;

3.3 that the magistrate erred in finding that Zane Norodien's affidavit supports the respondent's assertion that on 30 January 2023 the appellant told him that if he does not comply with her demands he will be sitting without a boss soon;

3.4 that the magistrate erred in finding that the respondent suffered emotional and psychological abuse which is evident from the social media posts; and that the respondent suffered intimidation, provocation and a more serious threat to his life;

3.5 that the magistrate erred in finding that the appellant in her papers did not allege that the respondent was in control of the alarm or its code; and that alarms are managed by external service providers;

3.6 that the magistrate erred in finding that the appellant sent a social media post on numerous occasions; and that the social media post has a bearing on the respondent's character with a potential to influence his business and personal relationships resulting in psychological and economic harm to the respondent, which in extreme cases lead to physical violence;

3.7 that the magistrate erred in finding that the appellant made a treacherous statement and posted it on a social media platform which was directed to Muslim men, insinuating that they are stealing properties; and that, daily, people are harmed as a result of comments that are posted on social media platforms, when there is no evidence in support of such a finding;

3.8 that the magistrate erred in finding that a pattern of emotional and psychological abuse is apparent from the social media post; and that the appellant engaged in behaviour to control and threatened the life of the respondent;

3.9 that the magistrate erred in finding that the appellant committed an act of domestic violence of psychological abuse, emotional abuse, economic abuse, harassment, intimidation, degrading and; finding that the final protection order granted in favour of the appellant solely confirmed an order in relation to verbal abuse.

[4] The respondent opposed the appeal and filed relevant papers in support of his case .

FACTUAL BACKGROUND

[5] The appellant and the respondent were married to each other and they were later divorced in 1996, but stayed together until May 2022 when the respondent presented the appellant with a Talaq effectively dissolving their marriage in terms of Islamic Law.

[6] Ms B[...] B[...], the youngest daughter of the appellant and the respondent, in her supporting affidavit to the respondent's application for a protection order, sketches the alleged abusive conduct of the appellant that they as a family had endured over the years during the subsistence of her parent's marriage in the epoch of hers and her siblings' childhood and adulthood inclusive of the period post talaq of her parents' marriage. Significantly, her averments are in support of the respondent's contentions in his founding affidavit that demonstrate past and present conduct of the appellant that threatens to harm the respondent and his family. The respondent and Ms B[...] B[...] assert that only when the appellant was undergoing psychiatric treatment would her condition stabilised.

[7] Subsequent to the talaq, the respondent moved out of the matrimonial home. On 29 November 2022, the appellant obtained an interim protection order against the respondent at the Cape Town Magistrates Court under case number D1949/202. However, the particulars of the interim protection order did not form part of the pleadings that were filed by the parties. The respondent opposed the confirmation of that interim protection order. A final protection order was nevertheless granted against the respondent on 10 February 2023 and the respondent was ordered not to verbally abuse the appellant; not to enter the appellant's residential address at 1[...] P[...] Road, Devil's Peak Estate; and not to have contact with the appellant directly or indirectly, except through their attorneys or through legal process.

[8] It is common cause that on 30 January 2023 the appellant was at the respondent's place of business at 4[...] Albert Road Woodstock. She had been in the company of two members of the South African Police Service. The appellant was looking for the respondent in order to enforce the interim protection order in terms of which the respondent was to provide her with the alarm codes to her residential alarm CCTV system. At the respondent's business premises, the appellant was attended to by the respondent's employees from whom she required the alarm codes. It is alleged by the respondent and his employees, Mr Zayne Norodien and Mr Zakarriya Daniels, that the appellant threatened the said employees and the respondent with arrest in the event that they fail to comply with the interim protection order. The appellant thereafter left the respondent's business premises without obtaining the alarm codes.

[9] After the events of the 30 January 2023, and on 2 February 2023, the respondent went apply for a protection order against the appellant at the Cape town Magistrates Court. In his application, the respondent alleged that the appellant harassed and intimidated him and his employees. He sought an order that the appellant be restrained from harassing and intimidating him and his employees and entering his business premises. An interim protection order was granted in favour of the respondent in terms of section 5(2) of the Act and the return date was set on 15 March 2023, on which date the appellant to provide reasons why the interim protection order should not be confirmed. The relevant portion of the interim protection order stated that the appellant was ordered not to:

9.1 commit verbal, emotional, psychological, physical abuse or any form of domestic violence against the respondent or anyone in the household;

9.2 enter the respondent's residence at 3[...] M[...] Road, Fish Hoek or wherever he may reside, loiter outside or come within 100 metres of it;

9.3 enter the respondent's place of business at, 36 and 4[...] Albert Road Woodstock or any of the respondent's business premises or loiter outside or come within 100 metres of it;

9.4 threaten, shout at, swear at, stalk, follow, harass, humiliate, degrade, insult or assault the respondent or harm him or any family members in any way, or attempt to do so;

9.5 post or disseminate anything about the respondent, his businesses or employees to them or any third party on social media networks and the appellant was ordered to remove all posts and communications she made about the respondent or related persons and to destroy all data, including but not limited to photographs, images, audio visual materials, correspondence and emails of, taken from or pertaining to the respondent in her possession within 6 hours of service of the order;

9.6 have any contact with the respondent or his employees and affected persons directly or indirectly, except through court proceedings;

9.7 abuse the protection order which was granted against the respondent by laying false criminal charges against the applicant and or related persons;

9.8 take, remove, damage, destroy or dispose of any property of the respondent or the household;

9.9 a warrant was authorised for the arrest of the appellant, the execution of which was suspended subject to the appellant's compliance with the provisions of the order.

[10] The interim Protection Order was served on the appellant on 2 February 2023. Subsequently, ten days after the interim protection order in favour of the appellant was confirmed, on 20 February 2023 the appellant filed a notice of anticipation, in the result, the matter was heard on 23 February 2023. No oral evidence was called for by the magistrate and

the matter was decided on the strength of the affidavits and pursuant to oral arguments. On 28 February 2023, the magistrate in her judgment confirmed the respondent's interim protection order as contemplated in section 6 of the Act.

SUBMISSIONS BY THE PARTIES

[11] During the appeal hearing, Mr. Botha, the appellant's Counsel, argued that although the appellant was present at the respondent's business premises on 30 January 2023, along with two police officials, she denied committing any acts of domestic violence as claimed by the respondent in his protection order application. Mr. Botha also stated that the purpose of her (the appellant's) visit was to collect the alarm codes for her residence at 1[...] P[...] Road in accordance with the interim protection order dated 29 November 2022.

[12] Mr Botha submitted that the magistrate failed to consider that the persons listed by the respondent as affected by the domestic violence were not children or adults sharing the residence, as required by Form 2 (a document completed by applicants in Protection Order applications). It is further argued that neither were they in a domestic relationship with the appellant or the respondent, as required by the Act. Counsel further submitted that the magistrate erred in finding that Mr Zane Norodien, an employee of the respondent, filed an affidavit confirming that the appellant told him that he (Mr Zane Norodien) 'will be without a boss'. Expanding on this argument, Counsel submitted that the respondent claimed to have been informed by Mr Zane Norodien, that the appellant expressed this on 30 January 2023, while the affidavit deposed by Mr Zane Norodien reveals that the appellant had said this to him on 20 January 2023, proving to be incongruous with the respondent's version, thus tainting the respondent's and Mr Zane Norodien's credibility on this aspect of their evidence.

[13] Mr Botha further argued that the magistrate erred by ruling that the appellant didn't allege that the respondent controlled the alarm or its code. To support this argument, Mr Botha referred the court to the respondent's answering affidavit to the protection order application of 29 November 2022. In this affidavit, the respondent mentioned that the interim protection order required them to transfer the security contract, which included the CCTV system, to the appellant. According to Mr Botha, this indicates that the appellant averred in

the papers that the respondent was in control of the security contract and CCTV system. He also stated that this implies that the respondent had the alarm codes relating to the security contract.

[14] Counsel also argued that the magistrate erred in finding that the appellant directed a threat to the respondent's life as the appellant denied making such a threat as alleged by her daughter, Ms B[...] B[...]. The fulmination expressed in this regard is premised on the hypothesis that Ms B[...] B[...] overheard this threat on 30 October 2022 but it only surfaced in court pleadings pursuant to the events of the 30 January 2023, and not prior thereto when opportunities previously availed to them allowed the respondent and Ms B[...] B[...] to raise this issue.

[15] Primarily, the appellant denied all the allegations, save for being at the respondent's business premises for the purposes of collecting alarm codes, while accompanied by two police officers. The appellant's Counsel contended that the Act only finds application if a domestic relationship exists between the parties. According to Counsel, a domestic relationship is necessary for an act of domestic violence to occur. If there is no domestic relationship, so the contention proceeded, the complainant can seek alternative remedies, such as those provided by the Protection from Harassment Act 17 of 2011.

[16] While Mr. Titus for the respondent, argued that when the appellant sought the alarm codes from the respondent, she demanded that she be furnished with the codes failing which she would use the protection order to implement a warrant of arrest. It is further submitted that the appellant's attendance at the respondent's business premises with the police officials was for purposes of effecting the respondent's arrest. Adding to the argument, Counsel contended that the appellant in her answering affidavit did not deal with the averments that relate to the threats the appellant made against the respondent on 20 January 2023. Counsel further argued the appellant failed to address the allegation regarding the harassment of Ms Nawaal Holmes and particularly, the incident described by Mr Zakariyya Daniels regarding a message conveyed to him by the appellant regarding the threat of the police presence and arrest. Also, Ms B[...] B[...]’s averments relating to the threat on the life of the respondent

were not rigorously challenged by the appellant. Mr Titus implored this court to dismiss the appeal with costs.

APPLICABLE LEGAL PRINCIPLES AND ANALYSIS

[17] In an application for a protection order the complainant must be in a domestic relationship with the respondent and is required to establish on the balance of probabilities that the respondent has committed or would commit an act of domestic violence against her or him. For the sake of completeness, it is apposite to refer to the definitions of domestic violence and domestic relationship, in sections 1(vii)(a) and 1(viii) of the Act. The meaning of domestic violence and that of a domestic relationship between the complainant and the respondent are defined as follows in section 1 of the Act:

“1. In this Act, unless the context indicates otherwise—

(vii) “domestic relationship” means a relationship between a complainant and a respondent in any of the following ways:

- (a) They are or were married to each other, including marriage according to any law, custom or religion;
- (b) ...;
- (c) ...;
- (d) ...;
- (e) ...;
- (f) ...;

(viii) “domestic violence” means —

- (a) physical abuse ;
- (b) sexual abuse;
- (c) emotional, verbal and psychological abuse;
- (d) economic abuse;
- (e) intimidation;
- (f) harassment
- (g) stalking;
- (h) damage to property;

- (i) Entry into the complainant's residence without consent, where the parties do not share the same residence; or
- (j) Any other controlling or abusive behaviour towards a complainant, where such conduct harms; or may cause imminent harm to, the safety, health or well being of the complainant;"

[18] Where a dispute of fact manifests from the affidavits in proceedings where a final order or interdict is sought, the court may grant such relief if the facts averred in the applicant's affidavits, which have been admitted by the respondent, together with the facts alleged by the respondent, justify such an order. However, it is recognised that, in certain instances the respondent's denial of facts alleged by the applicant may not be such as to raise a real, genuine or bona fide dispute of fact. In such a case, if the respondent has not availed himself or herself of her or his right to apply for the deponents concerned to be called for cross examination under rule 55 of the Magistrates Court Rules and the court is satisfied as to the inherent credibility of the applicant's factual averment, it may proceed on the basis of the correctness thereof. The court will, however, include this fact among those upon which it determines whether the applicant is entitled to the final relief which he seeks. Moreover, there may be exceptions to this general rule where the allegations or denials of the respondent are so far-fetched or clearly untenable that the court is justified in rejecting them merely on the papers. See *Plascon- Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* 1984 (3) SA 623 (A); *Johnstone v SLS* 2022 (1) SACR 250 (GJ).

[19] The respondent, in his founding affidavit, asserted that he sought an order to protect himself and his employees from harassment and intimidation by the appellant. The magistrate, in evaluating the evidence, fully set out in her judgment the various acts that constitute domestic violence and that the relationship shared by the respondent and the appellant does constitute a domestic relationship as envisaged in the Act. The relevant part of the judgment reads:

"The legal aspects in this matter is that of the Domestic Violence Act 116 of 1998. It was established that the parties had a domestic relationship by virtue of them having been married

previously, living in the same house during the said marriage and continued to do so after the divorce, . . . In terms of the Domestic Violence Act, domestic violence means physical abuse , emotional abuse, verbal abuse, psychological abuse, verbal abuse psychological abuse, economic abuse, intimidation, harassment, stalking damage to property, entry into complainant's residence without consent where the parties do not share the same residence or any other controlling or abusive behaviour towards a complainant or where such conduct harms or may cause intimidation...ag[sic] may cause imminent harm to the safety of and well-being of the complainant."

[20] In considering the pleadings that were presented before the court, it is apparent that the respondent had referred the court to the appellant's alleged conduct. The respondent averred that pursuant to him serving the appellant with a talaq (which signifies a dissolution a Muslim marriage), the appellant started harassing his employees. He specifies instances where the appellant would visit his business premises, particular reference is made to instances where the appellant would visit the respondent's Vida Cafe in Claremont and sit at a table, expect his employees to see to her as if it is a sit down type of restaurant and would take videos while in his business premises.

[21] The respondent averred that, at a certain stage and on numerous occasions the appellant would harass the respondent's personal assistant, requiring her to furnish the appellant with municipal accounts, threatening to have her arrested for withholding documents. Mr Zakariyya Daniels, an employee of the respondent at his Albert Road, Woodstock business premises, in his supporting affidavit, recounts an incident that occurred on 18 January 2023 while at work. He allegedly received four phone calls from the appellant who told him to convey to Ms. Nawaal Holmes that she knows that her calls are being ignored. The appellant conveyed threats of arrest. Mr Zakariyya Daniels avers that he later conveyed the message to Ms Nawaal Holmes as per the appellant's instruction.

[22] Mr Zane Norodien deposed to an affidavit in support of the respondent's application for a protection order, wherein he described the appellant's conduct of the 30 January 2023, at 4[...] Albert Road, Woodstock, as follows:

“4. On Monday 30 January 2023 Z[...] B[...] came into the premises at 4[...] Albert Road Woodstock with two police officers.

5. She was very agitated and hostile, wanting to know where Mr B[...] was so that the policemen could lock up for not handing over the alarm codes for 1[...] P[...] as per the protection order she had against him. I have seen the protection order and to my knowledge there was no mention of alarm codes. I tried to tell her that I had never been given any alarm codes for 1[...] P[...] but she wanted to hear none of it.”

[23] Ms B[...] B[...] averred that on 30 October 2022 she overheard the appellant speaking with someone else over the phone saying words to the effect that “let's not go for the violent side yet” and explaining how the killing of the respondent is the last option. She described the apprehension she felt induced by the appellant's conversation. The assertions of Mr Norodien and Mr Daniels in respect of the appellant's behaviour on 30 January 2023 and 18 January 2023 must therefore be considered against the backdrop of Ms B[...] B[...] and the respondent's evidence on the conduct of the appellant during the subsistence of their marriage.

[24] The appellant, in her answering affidavit, contends that the supporting affidavits do not refer to any acts of domestic violence and denies the contents of the supporting affidavits. She further dismisses the contents of these supporting affidavits as irrelevant and containing inadmissible evidence,

disclosing no domestic violence conduct in support of the interim protection order application by the respondent. A careful consideration of section 5 (1) of the Act is apt in this regard. Section 5(1) reads:

“5. (1) The court must as soon as is reasonably possible consider an application submitted to it in terms of section 4(7) and may, for the purpose, consider such admitted evidence as it deems fit, including oral evidence or evidence by affidavit, which shall form part of the record of the proceedings.”

[25] It is plain from the reading of the section that the Act aims at providing a simplified procedure for protection order applications and to afford the applications the exigency they

deserve, in order to provide victims of domestic violence with an effective, expeditious legal remedy. Importantly, section 5 confers a wide discretion on the court in respect of the hearing which may entail considering additional evidence either viva voce or in a form of affidavits. Therefore, it must be appreciated that the magistrate, when considering the protection order application, enjoyed such a discretion in dealing with the evidence as it was presented, which is in the form of affidavits. Similarly, on the return date when considering whether the interim protection order should be confirmed the court must consider all the evidence that was considered prior to the granting of the interim protection order.

[26] Evidently the respondent set out in his founding and supporting affidavits the facts he relied on for the relief sought and defined the issues between him and the appellant. In motion proceedings not only the contents of the founding affidavit must be interpreted to establish what the legal basis of the applicant's complaint is, but the contents of the supporting affidavits should also equally be considered in this process. Therefore, the appellant's contention that the contents of the supporting affidavits to the respondent's founding affidavit are irrelevant is in my view clearly untenable.

[27] The appellant's response to Ms B[...] B[...]’s averments of threats to the respondent's life is a bare denial and were not fully addressed. The argument proffered by Mr Botha that the magistrate erred in failing to meru motu call for the viva voce evidence of Ms B[...] B[...] in order to test the veracity of her evidence by way of cross examination is unsustainable. Only in a case where a real and genuine dispute has been raised in the answering affidavit will it be necessary for the court to call for oral evidence, which is not the case in this matter. Mr Botha's argument is based on the case of *Robbertze v Robbertze* (A3008/2016) [2016] ZAGPJHC 408 (1 November 2016) para 40. In that case, the court remarked that when a domestic violence application is opposed, on the return date it cannot be decided solely on the papers if there is a dispute of fact. Mr Titus argued that the appellant did not seriously and rigorously address the respondent's allegations in her answering affidavit nor raised a defence thereto, leaving the court *a quo* with no other alternative but to accept the uncontroverted versions. He placed reliance on *Wightman t/a JW Construction v Headfour (Pty) Ltd and Another* 2008 (3) SA 371(SCA) paras [12] and [13]. Where the court observed as follows:

“[12] Recognising that the truth almost always lies beyond mere linguistic determination the courts have said that an applicant who seeks final relief on motion, must in the event of conflict, accept the version set up by his opponent unless the latter’s allegations are, in the opinion of the court, not such as to raise a real, genuine dispute of fact or are so far-fetched or clearly untenable that the court is justified in rejecting them merely on the papers.”

I agree with Mr. Titus’ submissions in this regard. In my view, the denial did not raise a genuine dispute of facts to warrant the presentation of oral evidence.

[28] It appears from the record that when the matter was argued in the court *a quo* the proposition proffered on behalf of the appellant was that the case was about what happened on 30 January 2023. Further, the appellant in her answering affidavit confines or reduces the respondent’s complaint to the incident of 30 January 2023 as if it is an isolated incident, while the respondent and Ms B[...] B[...] clearly set out in their affidavits the history of appellant’s conduct since she has been off her medication, which evince an erratic behaviour towards the respondent and his family. Demonstrably, the conduct of the appellant is a recurrence as opposed to a once off event endured by her family. It was critical therefore that the court consider the evidence in its entirety, as contemplated in section 4(6) of the Act. Regarding the allegations of harassment and intimidation by the respondent one has to consider that although the threats are alleged to have been conveyed by the appellant in the absence of the respondent but in the presence of his employees and his daughter, Ms B[...] B[...], the evidence shows that the appellant’s conduct was directed at the respondent. In my view, the magistrate’s findings were based on a proper consideration of the appellant’s conduct including threats to have the respondent and his employees arrested upon failure to meet her demand to furnish her with alarm codes and the serious threat on the respondent’s life.

[29] Notably, the appellant sought to obtain the alarm codes from the respondent some two months after the interim protection order was granted against the respondent. The respondent asserts that he had previously indicated to the appellant that he was not in possession of such alarm codes. It bears emphasis that the answering affidavit deposed to by the respondent on 9 December 2022 sets forth in paragraph 17 (in response to para 3.1.2.8 of the appellant’s IPO) that the respondent was not in control or had no access to any CCTV

surveillance to the appellant's home. Curiously, this (order contained in paragraph 3.1.2.8) was ultimately not made a final order on 10 February 2023. The 29 November 2022 interim protection order did not contain an order pertinently requiring the respondent to furnish any alarm codes to the appellant.

[30] The police officers in the exercise of their discretion in terms of section 8(4)(b) of the Act, must satisfy themselves that there are reasonable grounds to suspect that the complainant may suffer imminent harm as a result of the alleged breach. In this process, they must have regard to the risk to the safety, health or wellbeing of the complainant; the seriousness of the conduct comprising the alleged breach; and the length of time since the alleged breach occurred. Section 8(5) of the Act.

[31] During argument, Counsel for the appellant was confronted with the allegation that the appellant made threats to the respondent's employees to cause the arrest of the respondent, while in the presence of the two members of the South African Police Service whose duty is to uphold the law. The appellant knowingly misled the police as there was no order empowering the police to act in the manner they did. Counsel sought to persuade us arguing that such threats were lawful and did not constitute an act of domestic violence as they were made in the presence of the police officials. The argument is clearly untenable and presents a rigid contradiction as the appellant in her answering affidavit had contended that she had not made any threats to the respondent's employees while at the respondent's business premises. Nevertheless, it became apparent that the appellant's conduct did not accord with section 8 (4) of the Act, as Mr Botha conceded that there were no averments in the appellant's affidavit (made on 31 January 2023, pursuant to the visit with police to respondent's business premises) to the effect that the appellant presented the two police officials with a warrant of arrest as envisaged in section 8(4) of the Act. Further the appellant's answering affidavit contains no averments that the appellant reported to the police that the respondent has contravened any prohibition, condition, obligation or order contained in the interim protection order. That is notwithstanding the appellant conveying via email correspondence to the respondent and his employees that "should they fail to provide the alarm codes she will exercise her right to implement the warrant of arrest in terms of non-compliance with

the protection order “. Section 8 of the Act deals with the issuing of a warrant of arrest simultaneously with a protection order. Of particular relevance are section 8 (4) :

“(4) (a) A complainant may hand the warrant of arrest together with an affidavit in the prescribed form, wherein it is stated that the respondent has contravened any prohibition, condition, obligation or order contained in a protection order, to any member of the South African Service.

(b) If it appears to the member concerned that, subject to subsection (5), there are reasonable grounds to suspect that the complainant may suffer imminent harm as a result of the alleged breach of the protection order by the respondent, the member must forthwith arrest the respondent for allegedly committing the offence referred to in section 17(a).”

[32] In this matter, not only was a warrant of arrest not handed to the police, there is no averment that the appellant had deposed to an affidavit and handed it to any members of the South African Police Service who were to consider the affidavit and exercise a discretion whether the interim protection order has been breached or not. Essentially, the appellant only had to report the matter to the police and the execution of the warrant of arrest would be at the discretion of the South African Police Service and not the appellant. This is a process that should have been followed prior to the appellant visiting the respondent’s business premises. Evidently what transpired on 30 January 2023 did not accord with sections 8(4) and 8(5) of the Act. In this instance it can safely be stated that the process was not followed. Importantly, the complainant has no authority to usurp the police officer’s discretion or issue instructions to the police officers in such instances. In my mind, what the appellant engaged in was abuse of the interim protection order, thus the magistrate was correct in confirming clause 4.1.5 of the interim protection order relating to abuse of the protection order.

[33] The appellant, although she sought the advice of her attorney on communicating with the respondent’s personal assistant on 30 January 2023, some two months after the granting of the interim protection order, on more than one occasion sent email correspondence to the respondent and Mr Zane Norodien as well. Moreover, the appellant’s email correspondence to the employees of the respondent expressly claims that Ms Nawaal Holmes and Mr Zane Norodien each were privy to the interim protection order. From the foregoing, it is apparent that the appellant was not communicating with the respondent’s employees for the first time in this regard on 30 January 2023. Notably, Mr Zane Norodien also contends that the interim protection order did not contain an order relating to alarm codes. The respondent, in my view,

has established that the appellant's conduct is clearly a pattern of abuse and harassment and the magistrate was correct in finding that it amounted to harassment.

[34] Mr Botha argued that the respondent's employees were not in a domestic relationship with the appellant, thus a domestic violence act could not have been committed by the appellant. He relied on the case of *Daffy v Daffy* [2012] 4 All SA 607 (SCA), where the court dealt with the scope of the protection order and had to determine whether two adult brothers who did not share a common residence were in a domestic relationship or not. The court in interpreting a domestic relationship, concluded that some association more than mere consanguinity is required for there to be a domestic relationship. The court held that it would be absurd to conclude that the mere fact that the parties were siblings meant that they shared a domestic relationship as envisaged by the Act.

[35] In my view, this case is distinguishable to the current matter in that the respondent, [the complainant] has a domestic relationship with the appellant as envisaged by the Act. It is true that there is no domestic relationship between the appellant and the respondent's employees. However, the appellant has employed a stratagem to intimidate and harass the respondent and indirectly threatened him by intimidating and harassing his employees. While appreciative of the fact that domestic violence is commonly understood to manifest within family margins where parties share a common household, a domestic relationship encompasses ex-spouses. In this instance, the respondent and the appellant fall into that category of a domestic relationship. Most significantly it should be stressed that the employees in this case are not the complainants who are seeking relief in terms of the Act, it is their employer, the respondent who is a complainant and in a domestic relationship with the appellant. [section 1(iii) of the Act]. The appellant is alleged to have harassed the respondent and his employees about matters that are not personal between the employees and the appellant, but rather personal to the respondent and the appellant. In my view, this is the type of conduct which would fall in the category of any other controlling or abusive behaviour towards the complainant that harms the complainant and or has such potential to cause imminent harm to the safety, wellbeing or health of the complainant as contemplated in section 1(viii)(j) of the Act.

[36] I must further emphasise that the respondent's application for a protection order and the interim protection order do not specify any particular employee's name, it refers to the respondent's employees as a collective. In my view, the manner in which the relief was sought in these circumstances, was not suggestive of a domestic relationship between the appellant and the respondent's employees. Therefore, the relief was correctly sought and was warranted, notwithstanding that there is no existence of a domestic relationship between the appellant and the respondent's employees. Intelligibly, the order is in favour of the respondent and not the employees. In addition, upon breach of the order, it is the respondent that would be entitled and able to enforce it and not his employees.

[37] The respondent avers that during the subsistence of their marriage the appellant would stop using her medication and would be very aggressive which would cause him stress and he would have to implement coping mechanisms to manage the stress and torment caused by appellant's conduct. He further explains that while the appellant is off her medication, she is a dangerous person who might act on all her threats including the threat to his own life. Clearly the respondent entertained a reasonable apprehension of harm on these facts which the *court a quo* was faced with. In my view, the respondent objectively demonstrated in the *court a quo* that his apprehensions are well grounded. The argument proffered by Mr Botha in his heads of argument that the respondent places no evidence that the conduct alleged, harmed him or may cause imminent harm to his safety, health and well-being cannot be sustained. The respondent has, in my view, sufficiently established a pattern of the appellant's conduct that induces fear or harm to him and his employees. Thus the magistrate was correct in finding that the harassment of the respondent and his employees is an act of domestic violence towards the respondent.

[38] One last aspect of the order requires consideration. In her judgment on the merits, the magistrate found that on 31 January 2023 a statement was posted on a social media network by the appellant on diverse occasions. The magistrate's finding was incorrect as there was no evidence to support such a finding. Importantly the social media post referenced by the respondent in his affidavit deposed on 30 January 2023 presents a glaring discrepancy in that the affidavit was deposed on 30 January 2023 before the statement was posted on the social media network. Only this point warrants correction. Other than that the respondent has

accordingly established on a balance of probabilities that he was entitled to the final relief sought by him in the *court a quo*. The appeal stands to be dismissed with costs.

ORDER

[37] In the result, I propose the following order:

- 1.The order in paragraph 3.1.2.9 of the protection order granted on 28 February 2023, that ‘The respondent is ordered not to post or disseminate anything about the applicant, business, or employees on any social media network’ is set aside.
- 2.The appeal in respect of the other remaining orders of the protection order is hereby dismissed.
3. The appellant is ordered to pay the costs of the appeal.

N E RALARALA

ACTING JUDGE OF THE HIGH COURT

I concur, and it is so ordered

DOLAMO J

JUDGE OF THE HIGH COURT

APPEARANCES:

For the Appellant : Mr M Botha instructed by MacGregor & Erasmus Attorneys.

For the Respondent : Mr A Titus instructed A Fotoh & Associates Inc.

