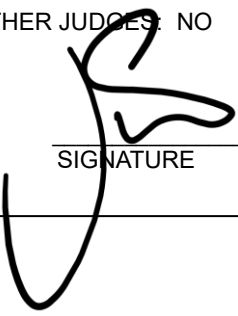


REPUBLIC OF SOUTH AFRICA



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

Case Number: 2025-052925

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: NO
DATE: 08/05/2025	 SIGNATURE

In the matter between:

JO-ANNE HELEN PAUL (WATSON)

Applicant

And

CANDICE SAMANTHA ADAMS

1st Respondent

MAGISTRATE PALESA SETSHEDI N.O.

2nd Respondent

**MINISTER OF JUSTICE AND
CONSTITUTIONAL DEVELOPMENT**

3rd Respondent

JUDGMENT

FISHER J

Introduction

- [1] This matter involves a complaint laid in terms of the Protection from Harassment Act 17 of 2011 (PHA or the Act) and a resultant interim order which was sought and granted against the applicant without notice.
- [2] The women concerned in this litigation are strangers. They have been brought together by chance on the basis that one witnessed a crime being perpetrated by the other.
- [3] The applicant in these proceedings twice tried to anticipate the return date to challenge the interim order, the first time on anticipation on forty eight hours' notice on 01 April 2025 and then on the assigned return date, 10 April 2025.
- [4] The applicant was not afforded a hearing on either the anticipated return date or the set return date. Instead the interim order was extended to 10 June 2025, for the hearing of the application for the final protection order.
- [5] The applicant alleges that she has had no option but to approach this court in a bid to free herself of the constraints of the interim order which she contends represent a serious incursion into her constitutional rights.
- [6] The facts of the matter are not disputed in any material way. I turn to setting them out.

Material facts

- [7] On 17 February 2025, in a so-called 'road rage' incident, the applicant, Ms Watson witnessed the respondent, Ms Adams assaulting another woman motorist ("Ms Mbazima"). The assault is not disputed, and it is not appropriate that I comment on the extent thereof as it is the subject of criminal proceedings. It suffices for these purposes that the assault appeared to Ms Watson as a sustained and unwarranted attack on Ms Mbazima.
- [8] Ms Watson then stopped her own vehicle and began recording the assault on her Smartphone. This precipitated Ms Adams turning her attention to Ms Watson. There is footage which is part of the case which shows Ms Adams in an angry exchange with Ms Watson during which she shouts expletives and strike Ms Watsons vehicle with her bare hand.
- [9] Ms Watson then left the scene. She felt aggrieved by what she had witnessed for her own part and that of Ms Mbazima. She states that she was particularly upset by the fact that both drivers each had a child in their vehicles both of whom witnessed the incident.
- [10] It has emerged that Ms Adams had her teenaged daughter with her and Ms Mbazima was performing her work, which is to transport children to school, and thus had a young boy with her.
- [11] An attempt was later made by Ms Watson to make a report to the police, but the absence of particulars as to parties involved made this impossible.
- [12] Miss Watson continued to be troubled by the incident. She was determined that the criminal activity witnessed and experienced by her should not go unaddressed.
- [13] Aided by a private investigator and facial recognition software Ms Watson was able to trace and identify Ms Adams.

- [14] Ms Watson is an author and has a public and media presence. Ms Watson published three videos on the online video-sharing application known as *TikTok*, discussing the incident with those who followed her content.
- [15] It is important that she refrained from identifying Ms Adams as the alleged perpetrator and did not post the footage taken by her.
- [16] She expressed that she hoped the person who was assaulted would come to know of her details and that she had video footage of the incident.
- [17] Social media being what it is, the *Tik Tok* posts did reach Ms Mbazima. The two women met, and Ms Mbazima expressed that she wanted to use the evidence and to lay a charge of assault.
- [18] The two women then attended at a police station and made statements.
- [19] By this time, there was considerable public interest in the (until then anonymised) discussion of the assault. Ms Watson was approached by the *Sunday Times*.
- [20] Pursuant to the statements given to the police Ms Adams was arrested and charged on 26 February 2025. Ms Mbazima and Ms Watson gave interviews to the *Sunday Times*, as well as a copy of the video.
- [21] The *Sunday Times* then, on 2 March 2025, published two articles identifying Ms Adams, as well as the video.
- [22] It is important that it was not Ms Watson who disclosed the identity of Ms Adams but the journalist dealing with the matter at the *Sunday Times*.

[23] Ms Watson then published three further *TikTok* videos, reflecting on road rage and violence in our society generally, as well as victim-shaming and victim-blaming. She also encouraged people to donate to a fund to support Ms Mbazima. Ms Watson did name Ms Adams in these video posts, as her identity was by then in the public domain.

[24] On 9 March 2025, the *Sunday Times* published another article about Ms Adams, reporting that they had gone to visit her at her workplace.

[25] On 10 March 2025, a *TikTok* account named *The Scent Central*, with no connection to Ms Watson, published a copy of the assault video taken from the *Sunday Times*' *YouTube* page, naming Ms Adams in the caption. This video "went viral" meaning it was shared and reshared on various social media and news platforms, such that the exposure thereto grew exponentially.

[26] On 11 March 2025, over a week after the expose in the *Sunday Times*, Ms Adams, sought and obtained the interim protection order in issue.

[27] It is uncontested that, when Ms Adams approached the Magistrates' Court on an *ex parte* basis, she did not disclose that:

- a. she had assaulted Ms Mbazima;
- b. she had been arrested and charged for such assault;
- c. Ms Watson was due to be a State witness in the prosecution against her; and
- d. Ms Watson did not publish her identity until it was in the public domain (after she had been arrested and charged, and identified by the *Sunday Times*);

[28] It seems that the *ex parte* application was precipitated by two events namely the *Sunday Times*' visit to her workplace, and the viral video published by *The Scent Central*.

[29] Ms Watson had no control over either of these events.

[30] In fact, Ms Watson had actively discouraged other *TikTok* users from trying to seek Ms Adams out and asked that the law be allowed to take its course.

[31] Ms Adams further did not present the Court with a copy of the *Sunday Times* article she complained of, which would have revealed the assault.

[32] Ms Adams sought and was granted an order in terms of which she was ordered not to threaten, harass and intimidate Ms Adams and not to publish any of her personal information on social media platforms.

[33] In addition, she was ordered to remove all posts disclosing Ms Adams' personal information on any social media platform.

The arguments

[34] Ms Watson argues that the existence of the interim order constitutes a serious and ongoing violation of her rights to personal liberty and dignity, to freedom of expression, and to be heard in legal process. A constitutional imperative attaches to all these rights. Ms Watson contends that whilst this order remains in force, she faces an ongoing abuse of these fundamental rights. She makes the point that such a position is contrary to the rule of law and unsustainable and argues that this court has the power and indeed the obligation to put an end to it.

[35] Ms Adams, on the other hand, argues that Ms Watson infringed her right to privacy by undertaking the investigation into her identity. She argues, in any event, that the matter is not urgent and should be struck from the roll with costs. *In limine* she argues that this court is without jurisdiction to interfere with orders of the Magistrates Court save on appeal.

Applicable legal principles

[36] The preamble to the Protection from Harassment Act 17 of 2011 (Act/PHA) states that equality, the right to privacy, the right to dignity, the right to freedom and security of the person, which incorporates the right to be free from all forms of violence from either public or private sources, and the rights of children to have their best interests considered to be of paramount importance.

[37] “Harassment” is defined in the Act as

“the 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;”

[38] The purpose of the Act is stated to afford victims of harassment an effective remedy against such behaviour and to introduce measures which seek to enable the relevant organs of state to give full effect to the provisions of the Act.

- [39] The purposes of the Act, simply put, is to engage with the phenomenon of behaviour which constitutes what is, in common parlance, called “stalking”.
- [40] The nature of the conduct which the Act seeks to address is such that applicants for relief would generally be in fear for their safety or even their lives. Such a predicament as of necessity would generally be characterized by factors which require the urgent imposition of a restraining mechanism which has a protective efficacy and force without notice pending the version of the applicant being given and interrogated.
- [41] Section 3(2)(c) specifically provides for the issuing of an interim protective order without notice in instances where the court is satisfied that there is prima facie evidence of harassment, that harm is being or may be suffered by the complainant as a result if a protection order is not issued immediately; and “ the protection to be accorded by the interim protection order is likely not to be achieved if prior notice of the application is given to the respondent,”.
- [42] An important part of the protective machinery in the Act is the mandatory issuing of a warrant of arrest by the Magistrate granting the order. The execution of the warrant is then suspended subject to compliance with the interim order.
- [43] Section 11(4) provides that the complainant may simply hand the warrant of arrest together with an affidavit wherein it is stated that the respondent has contravened any specified prohibition, condition, obligation or order contained in the protection order, to any member of the South African Police Service whereupon the police must arrest the respondent if there are reasonable grounds to suspect that the complainant is suffering harm or may suffer imminent harm.
- [44] Where a complainant seeks an interim protection order in terms of sections 2 and 3 of the PHA without notice to the respondent, the duty of full disclosure must apply.

[45] It is universally accepted that there is the risk of a serious infringement of the rights of the respondent if an interim protection order is unjustifiably granted¹. This stands to reason. The relief is far reaching and invasive.

[46] If the proceedings of this nature are weaponised to punish rather than to protect, this inevitably and axiomatically constitutes a breach of fundamental rights.

[47] The consequences of the making of an interim or final protection order involve a substantial curtailment of the rights of the respondent. A warrant of arrest is issued automatically, and it is open to the complainant to have the respondent arrested by simply deposing to an affidavit alleging a breach. Where the protection order proscribes one or other form of communication, that may also bring about a significant curtailment of the respondent's freedom of expression.

[48] In *LW v KCA*, the Full Bench of this court dealing with an appeal against the granting of an interim protection order and the subsequent confirmation thereof had the following to say:

“A party seeking relief ex parte has a duty of the utmost good faith to the court. This requires the applicant to disclose all material facts impacting upon the court's decision, including facts and potential defences that might favour refusal of the relief sought ... The rationale for the rule is that ex parte proceedings depart from the audi alteram partem rule. In the absence of the respondent, the applicant must step in by anticipating and disclosing what the respondent might have raised in opposition to the relief sought.”²
(Emphasis added).

¹ See *L.W v K.C.A* (A2023-013223) [2023] ZAGPJHC 1154; [2023] 4 All SA 769 (GJ); 2024 (1) SACR 626 (GJ) (13 October 2023) at para 68.

² Id at para 66.

[49] The definition of harassment must be read together with section 9(5), which reads:

“(5) For the purpose of deciding whether the conduct of a respondent is unreasonable as referred to in paragraph (a) of the definition of 'harassment', the court must, in addition to any other factor, take into account whether the conduct, in the circumstances in question, was engaged in-

- (a) for the purpose of detecting or preventing an offence;
- (b) to reveal a threat to public safety or the environment;
- (c) to reveal that an undue advantage is being or was given to a person in a competitive bidding process; or
- (d) to comply with a legal duty.”

[50] Clearly, the legislature was alive to the potential of abuse of the process and sought to put in place limitations to its usage.

[51] It is clear from the legislative scheme enacted to afford these protections that such scheme represents a careful balancing of rights of complainant and alleged perpetrator. It errs, as it must, on the side of protecting the vulnerable whilst imposing on the complainant the responsibility to use the machinery with circumspection and only when strictly necessary.

[52] In *LW v KCA*³, this Court concluded that the respondent's non-disclosures, his dishonesty and the likelihood that the magistrate would have refused relief in the event of full disclosure, warranted not only the discharge of the interim protection order, but also the denial of a final protection order.

[53] In the present case, Ms Watson seeks only that she be relieved of the burden and indignity of the interim order including the warrant of arrest which hangs over her

³ Id at para 132

under circumstances which are fraught with uncertainty as to when she is likely to obtain redress in due course. She does not ask this Court to deny a final protection order but seeks only that it set aside the interim order. This, it is argued, she is entitled to as of right, this crucial hearing having been thus far denied her.

Discussion

[54] The abuse of a process aimed at protecting vulnerable persons is repugnant to the rule of law and cannot be countenanced.

The argument on urgency

[55] To add insult to what is undisputably an abuse, Ms Adams seeks to compound the position by mounting an opposition to this sensible attempt by Ms Watson to undo the ongoing result of the abuse. She thus seeks to prolong the wrong being done to Ms Watson.

[56] Ms Adams' glib retort that Ms Watson should simply wait out the period until the determination of the final inquiry in the Magistrate's court ignores the gravity of the abuse and the everyday prejudice suffered by Ms Watson.

[57] It also ignores the perils of litigation which include ongoing postponements and wrong outcomes which require appeal.

[58] The process deliberately set in motion by Ms Adams has placed Ms Watson in a position which entails her incurring substantial expense by way of legal costs and other wasted resources.

[59] The further attempt of Ms Adams to downplay the significance of the order obtained is that there is no real urgency in the warrant because Ms Adams is unlikely to be wanting or able to make use of this arrest mechanism calls into question why she obtained the warrant at all.

[60] Clearly there was method behind the process adopted. It was meant to have a chilling effect on Ms Watson and perhaps to chasten her in pursuing her role as witness. To now say that Ms Watson should content herself with the knowledge that Ms Adams is unlikely to invoke the warrant is cold comfort indeed in all the circumstances.

The jurisdiction argument

[61] The argument raised on jurisdiction on behalf of Ms Adams is that this court cannot interfere with proceedings in a lower court save on appeal.

[62] Every fibre of the respondent's case seems strained to maintain the abusive order in place.

[63] Ms Adams has thus far been successful in achieving the keeping of the order in place. This is so whilst Ms Watson has been denied the hearing to which she is entitled. She was given no relief when she sought to anticipate the hearing date, and neither was such a hearing granted her on the return day set. She has simply been placed in a position where she is now expected to mount a fully-fledged opposition – with all that this entails including costs and delay when the ill-gotten interim order should have been dealt with weeks ago.

[64] It is sought that this court also refuse Miss Watson a hearing.

[65] I move to deal with this jurisdictional challenge.

[66] In *Maughan 1*⁴, the Pietermaritzburg High Court reiterated the principle that it “constitutes an abuse of process to institute and pursue proceedings which are unsustainable as a certainty”

[67] I agree with counsel for Ms Watson that such description applies to Ms Adams’ complaint against Ms Watson.

[68] The highwater mark of Ms Adams’ complaint was that she had allegedly “become the subject of social media badgering and abuse... tarnishing [her] reputation and character on a public forum”. The most serious part of her complaint was that Ms Watson had allegedly “instructed” a journalist to go to her workplace to show the assault video to her colleagues.

[69] In answer, however, it is made clear that Ms Watson had nothing to do with any journalist’s visit to Ms Adams’ workplace, and neither was Ms Adams’ counsel able to point me to any personal information of Ms Adams disclosed by Ms Watson.

[70] All that was discussed on Ms W’s *TikTok* platform were the events that had occurred in public and in general issues of road rage and victim blaming. It appears from the transcripts of the posts the latter issue was addressed because there were comments suggesting that Ms Mbazima should have defended herself against the assault. The platform was also used to ask for a contribution

⁴ *Maughan v Zuma and Others* [2023] ZAKZPHC 59; [2023] 3 All SA 484 (KZP); 2023 (5) SA 467 (KZP); 2023 (2) SACR 435 (KZP), para 79.

to Ms Mbazima's legal fees. This kind of fundraising is not uncommon on social media platforms where worthy causes are recognised, and donations provided.

[71] It must also be acknowledged that certain of those posting, expressed anger and a wish to confront Ms Adams.

[72] To her credit, Ms Watson informed those commenting that the law should be allowed to take its course.

[73] I am most concerned with the general effect of the abuse of this process. If persons feel themselves at liberty to obtain orders on false information and without notice this will affect the very purpose that the Act was enacted to curtail.

[74] Such conduct brings the legal system into disrepute. Any conduct which has this effect is always to be strongly deprecated. This is more so the case when legislation of this nature is at stake. That victims of conduct covered by the Act maintain their confidence in legal process is paramount in a legislative scheme such as this one.

[75] The upshot of what I have said is this. The obtaining of the order represents a clear abuse of this court's process which has resulted in a significant infringement of fundamental rights. This judgment on jurisdiction proceeds on an acceptance of this fact.

[76] This court's power to set aside the abuse of its process is rooted both in section 38 of the Constitution which empowers it to grant appropriate remedial relief when a right in the Bill of Rights is threatened or infringed and the common law which gives it an inherent power to prevent an abuse of process.

[77] But this power is not new. In *Mineral Sands*⁵, the Constitutional Court held:
 “Our courts have over many years used their inherent powers to protect the institution from litigious abuse”.

[78] Some in *Solomon*⁶, this Court (per Roper J) held (in the context of a private prosecution):

“The taking out of the summons would clearly be an abuse of the process of the Court, in that it had been undertaken not with the object of having justice done to a wrongdoer, but in order to enable the prosecutor to harass the accused or fraudulently to defeat his rights... The process of the Court, provided for a particular purpose, would be used not for that purpose, but for the achievement of a totally different object, namely for the oppression of an adversary. The Court has an inherent power to prevent abuse of its process by frivolous or vexatious proceedings ... “

[79] Almost 100 years ago, in *Hudson*⁷, the Appellate Division held:

“When ... the Court finds an attempt made to use for ulterior purposes machinery devised for the better administration of justice, it is the duty of the Court to prevent such abuse. But it is a power which has to be exercised with great caution, and only in a clear case.”

⁵ *Mineral Sands Resources (Pty) Ltd and Others v Reddell and Others* [2022] ZACC 37; 2023 (2) SA 68 (CC); 2023 (7) BCLR 779 (CC), para 49.

⁶ *Solomon v Magistrate, Pretoria, and Another* 1950 (3) SA 603 (T), 607E-608A (emphasis added).

⁷ *Hudson v Hudson and Another* 1927 AD 259, 268 (emphasis added).

[80] The fact that the protections built into the machinery allowing an interim order to be challenged without delay have failed is one of the reasons why this is, to my mind, a clear case.

[81] A similar argument to that raised on behalf of Ms Adams was also recently rejected in *Zuma v Downer*⁸, where the Supreme Court of Appeal said the following:

“The authorities are long-established and clear both that a court has the power (and in fact a duty) to prevent an abuse of its process and that this principle applies to proceedings in a civil court in relation to a private prosecution which is irregular, vexatious or an abuse of the process of court.”

Conclusion

[82] The abuse of process in this matter is established on both versions. I agree with counsel for the applicant that this case represents one of those clear cases where interference with the processes of a lower court is merited because of abuse of such processes.

[83] Lower courts, especially those specialised courts which deal with domestic violence and harassment are often under- resourced and inefficient. This court must not be hamstrung by these constraints and has a duty to act when the abuse is such that the system of justice is impaired. This is manifestly such a case.

⁸ *Zuma v Downer and Another* [2023] ZASCA 132; [2023] 4 All SA 644 (SCA); 2024 (2) SA 356 (SCA); 2024 (1) SACR 589 (SCA), para 31.

Costs

[84] There is no doubt that Ms Watson must be compensated for the costs that she has had to expend in this matter to the full extent possible. Furthermore, this court is bound to express its disapproval by means of an award of punitive costs.

Epilogue

[85] This case is representative of the fact that our communities are often stretched to their limit. People are hurried. They drive inexpertly. They are often upset or afraid or angry due to personal circumstances against which they feel powerless or hopeless.

[86] Ms Adams reports, in her version of events to the Magistrate, that she was recently involved in a motor collision that was not her fault and which traumatised her to the point where she endured compounded distress and triggering at the collision between herself and Ms Mbazima.

[87] Her teenage daughter was in the vehicle at the time of the incident which would cause distress to any mother.

[88] None of this condones violence or criminal activity or abusive conduct.

[89] But here there are three women of substance. One is an educator, one a writer and another a businesswoman. In different circumstances they would view one another as sisters or friends.

[90] What has occurred is deeply unfortunate. The law will take its course in the criminal case. I have no doubt that progress will be slow and that the results will be of little comfort to those involved.


[91] There are alternative ways to resolve disputes which steer away from retributive justice and towards conciliation. These alternative processes allow for a measure of understanding, compassion, and education.

[92] I do hope that these women attempt to find a space for the possibility of conciliation in the way forward. It would, perhaps, serve as an example to others.

Order

[93] I make the following order:

1. Part A of this application is heard urgently and the applicant's departure from the Rules is condoned.
2. The interim protection order granted against the applicant on 11 March 2025 by the Magistrates' Court for the Sub-district of Randburg under the Protection from Harassment Act, 2011, is set aside.
3. The costs of Part A of this application on Scale C, shall be paid by the first respondent on the scale as between attorney and client.



FISHER J
JUDGE OF THE HIGH COURT
JOHANNESBURG

This Judgment was handed down electronically by circulation to the parties/their legal representatives by email and by uploading to the electronic file on Case Lines. The date for hand-down is deemed to be 08 May 2025.

Heard: 22 April 2025

Delivered: 08 May 2025

APPEARANCES:

Applicant's counsel: Adv B Winks

Applicant's attorneys: Barter McKellar Attorneys

1st Respondent's counsel: Adv M Y Razak

1st Respondent's attorneys: N. Moola Inc

