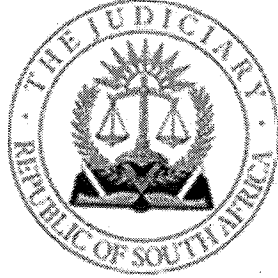


REPUBLIC OF SOUTH AFRICA

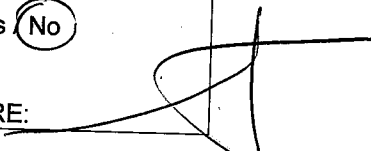


IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION
LOCAL SEAT, JOHANNESBURG

CASE NO: A 3130/2018

Magistrates' Court Case Number 224/2018

DATE: 5 MARCH 2019

DELETE WHICHEVER IS NOT APPLICABLE	
1. Reportable: Yes / <input checked="" type="radio"/> No	
2. Of Interest To Other Judges: Yes / <input checked="" type="radio"/> No	
3. Revised <input checked="" type="checkbox"/>	
DATE: 5.3.19	SIGNATURE: 

In the matter between:

PATRICIA MEEGAN RICE

APPELLANT

and

LEVI DARE

RESPONDENT

JUDGMENT

WRIGHT J

1. The appellant is a woman who lives in a unit in a gated complex. The respondent, a man is her neighbour. On 7 March 2018 the applicant sought a protection order against the respondent in the magistrates' court under section 2(1) of the Protection from Harassment Act 17 of 2011. The appellant filled in a standard form and submitted an affidavit. Under section 3(4), instead of an interim order being issued, an order was granted calling upon the respondent to show cause on a return date why a protection order should not be issued. That order was served and in due course the respondent filed an answering affidavit. Thereafter, the appellant filed a replying affidavit. At the hearing the magistrate dismissed the application. The appellant now seeks on appeal to set aside the magistrate's order. In short, the magistrate held that the limited conduct proved by the applicant did not amount to harassment.
2. The applicant's case, as originally set out in the form and in the founding affidavit is relatively terse. The answering affidavit is in some detail and provides context, defences and confirmatory affidavits by witnesses. The replying affidavit is far more detailed than the founding affidavit and includes confirmatory affidavits by witnesses for the applicant. There is much in the replying affidavit that the respondent has not had an opportunity to answer.
3. The level of animosity between the parties, read with the allegations and counter-allegations gives cause for concern. In my view, the disputes of fact are so far-reaching that it would be unwise to attempt to resolve the matter on affidavit. These disputes include allegations of swearing, stalking, dog-kicking, loud noise and threats to kill a person.

4. Under section 3(1), a court considering an application for an interim protection order may consider evidence additional to affidavits including oral evidence.
5. Under section 7(1) a court may, at any stage cause to be subpoenaed any witness if the evidence of that person appears to the court to be essential to the just decision of the case.
6. In my view, the appeal should succeed to the extent that the magistrate's dismissal of the application should be set aside but that the matter be remitted to a different magistrate for the hearing of oral evidence.

ORDER:

1. The appeal succeeds and the question of costs of the appeal is reserved.
2. The dismissal of the application is set aside.
3. The matter is remitted for the hearing of oral evidence of the parties and any other person, before a different magistrate.



WRIGHT J



WANLESS AJ

I agree / disagree

Appearances:

On behalf of the Appellant: Adv S S Cohen

Instructed by: Jan Bezuidenhout Attorneys
011 692 4025

On behalf of the
Respondent: Adv H Verhoef

Instructed by: Sharon Wilsnagh Inc
078 802 0527

Date of Hearing: 5 March 2019

Date of Judgment: 5 March 2019