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REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

Appeal Case No: A3167/18

Court *a quo* Case No: 1731/2017

REPORTABLE: NO

OF INTEREST TO OTHER JUDGES: NO

REVISED.

13/05/2020.

In the matter between: -

GLEN JOHNSTONE Appellant

And

S [....] 1 L [....] S [....] 2 Respondent

JUDGMENT

Windell J:

INTRODUCTION

1. This is an appeal against the granting of a final protection order in terms of the Domestic Violence Act 116 of 1998.

2. The respondent (complainant in the court *a quo*) is a 21 year old female, employed as an *au pair*. She applied for an interim protection order against the

appellant, a 26 year old male and her erstwhile boyfriend (the respondent in the court *a quo*). An interim protection order was granted against the appellant on 20 October 2017 and confirmed on 13 August 2018. No oral evidence was called for by the court *a quo* and the matter was decided on affidavit.

3. It is common cause that the appellant and the respondent were in a romantic relationship. Although the relationship ended in May 2017, the parties decided to keep contact and to "re-evaluate" their relationship in January 2018. After some time passed the relationship between the parties turned sour and the respondent requested the appellant to stop any further contact with her. Despite several requests to stop any communication, the appellant continued to send the appellant numerous WhatsApp[1] messages per day and phoned her continuously. After ultimately threatening her on 13 September 2017 that he would *"make her life hell*", and that he had "*more than enough*", two fake Instagram accounts were opened in the respondent's name, false Gumtree advertisements were posted with her personal details, her parents were reported and investigated by the SAPS for possession of unlicensed firearms, and on 18 October 2017, a complaint was made against her at St Benedict's school that she assaulted the child she was looking after. The respondent averred that the appellant was responsible for all these actions and that it amounted to harassment. She consequently approached the Magistrate's Court for an interim protection order on 20 October 2017.

4. The appellant admitted that he sent the respondent hundreds of WhatsApp messages, phoned her constantly, tracked her phone, and that he threatened her on 13 September 2017 that he would make her life hell. He, however, contended that his actions did not constitute harassment and that he stopped communicating with the respondent weeks before she applied for the protection order. He submitted that his behaviour was normal and the communication exchanged between them was part and parcel of their relationship. He regretted threatening the respondent on 13 September 2017 but said that he had apologised to her for his behaviour on the same day. He denied that he was responsible for any of the subsequent events and

[1] WhatsApp is a form of communication by text message.

contended that one of the respondent's old school friends might be responsible for bullying her.

5. The court *a quo* found that the communication between the parties (during and after the relationship) had a certain volatility to it and that the texts, on a balance of probabilities, showed that the appellant committed "acts of domestic violence". The Magistrate further found that in the absence of a court order the appellant would have continued committing acts of domestic violence and that he only stopped when the interim order was granted against him. The court *a quo* consequently issued a final protection order and ordered the appellant not to commit the following acts of domestic violence: stalking, harassment, controlling and/or abusive behaviour towards the respondent and not to communicate with the respondent directly or indirectly in any way whatsoever. It is this finding that is the subject of this appeal.

6. The Domestic Violence Act ("the Act") came into operation in 1998. In the preamble the purpose of the Act is described as a measure:

> *"..... to afford victims of domestic violence the maximum protection from domestic abuse that the law can provide: and to introduce measures which seek to ensure that the relevant organs of State give full effect to the provisions of this Act, and thereby convey that the State is committed to the elimination of domestic violence…"*[2]

7. The Act recognizes, *inter alia*, that victims of domestic violence are among the most vulnerable members of society; that domestic violence takes on many forms; and that it may be committed in a wide range of domestic relationships. The Act defines domestic violence as (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

[2] Preamble of the Domestic Violence Act 116 of 1998.

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

8. The Act provides for a very simple, inexpensive procedure. Any person in a "domestic relationship"[3], complaining about an act of domestic violence, can approach a Magistrate's Court and apply for urgent relief. A standard form is completed and on receipt of the complaint the Magistrate has two choices: if the court is satisfied, firstly, that there is *prima facie* evidence that the respondent is committing or has committed an act of domestic violence and, secondly, that undue hardship may be suffered by the complainant as a result of the violence if an order is not issued immediately, an interim order must be issued. If not so satisfied, the respondent is called to court to show reason why a final protection order should not be granted. If the respondent appears on the return date to oppose the application, a hearing must take place. The court must consider any evidence previously received, as well as further affidavits or oral evidence as it may direct. After the hearing the court must issue a protection order if it finds, on a balance of probabilities, that the respondent has committed or is committing an act of domestic violence.

9. The respondent approached the Magistrate's Court at Boksburg for urgent relief in terms of section 5(2) of the Act. The respondent was, at the time, unrepresented. She completed the standard form provided for in terms of the Act, wherein she set out the reasons why she was seeking a protection order against the appellant. She stated that during her relationship with the appellant he was very possessive and controlling, and would some days WhatsApp and call her more than 100 times if she didn't answer her phone. He would track her phone to check where she was and would question her if she switched off her phone. After she ended the relationship in May 2017, the incessant messaging and phoning continued and when

[3] Section 1 of the Act defines **'domestic relationship'** as 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) they (whether they are of the same or of the opposite sex) live or lived together in a relationship in the nature of marriage, although they are not, or were not, married to each other, or are not able to be married to each other; (c) they are the parents of a child or are persons who have or had parental responsibility for that child (whether or not at the same time); (d) they are family members related by consanguinity, affinity or adoption; (e) they are or were in an engagement, dating or customary relationship, including an actual or perceived romantic, intimate or sexual relationship of any duration; or (f) they share or recently shared the same residence.

she requested the appellant to stop contacting her, he refused to leave her alone. When she blocked[4] him on WhatsApp, he would send her messages on "iMessage".[5] She threatened to take the appellant to court but he told her that she did not have enough money or that the "*court would throw it out*". On 13 September 2017 during a phone call the appellant told the respondent that he would ruin her life. She confronted him in a WhatsApp message and asked him what he meant by ruining her life. He answered "*I won't tell you I will do it I have more than enough*". A few days later a fake Instagram account was opened in the respondent's name. As they had unfollowed and blocked[6] each other on all social media platforms i.e. WhatsApp, Facebook[7] and Instagram[8], she knew it had to be the appellant that was responsible for the fake Instagram account as some of the photos that were posted originated from his phone. Some of the other photos that were posted on Instagram were taken from her father's, cousin's and current boyfriend's Facebook pages. The Instagram account was removed by Instagram on 17 October 2017 after she laid a complaint. False adverts in Gumtree for boilermakers and technical assistants with her name and telephone number were also posted during this period and on 18 October 2017 the principal at St Benedictas School received an email from a "mom", complaining that the respondent was hitting the boy she was looking after, including the respondent's full name and particulars of the motor vehicle she was driving. After speaking to her employer and the principal it was determined that the personal particulars of the "mom" referred to in the email received by the principal was not in their records. The respondent's parents were also suddenly being investigated by the police for possession of unlicensed firearms. She suspected that the appellant was the one that called the police and told them that her parents had unlicensed firearms because he was the only person that knew about the firearms. She stated that:

> *"It is clear from everything that he has done or we suspect he has done that he has intentionally and willingly spent many hours thinking this through and actioning everyone of these false actions to either harass or personally*

[4] If you block a contact on WhatsApp they cannot call you or send you messages.
[5] iMessages can only be written and sent on an Apple device.
[6] If you block someone on Instagram or Facebook they cannot see your posts or photos.
[7] Facebook is an online social media platform where you can connect with friends and family.
[8] Instagram is a way to share photographs and videos on social network platform.

attack my character, my emotional state and my family. During our relationship he threatened to kill himself if I left him. This played on my emotions and only now do I realize that he was emotionally black mailing me as he had told me that he had tried it once before. I know for a fact that he was institutionalized for that"

10. Attached to the application the respondent attached a "Report an Impersonation Account on Instagram", various WhatsApp messages, Gumtree adverts, screenshots of Instagram photos, and posts.

11. The appellant filed an answering affidavit wherein he admitted that he sent the respondent several WhatsApp messages a day, but denied that he was harassing her. He stated that they had broken up by consent and that he attempted "*in his own way and fashion to repair the damage*" as he did not want the respondent to "*feel low or unwanted*". He also wanted some closure and to move on. He stated that the respondent would keep him "*hanging*" or would not respond to questions that he was posing and hence further clarity was required and explains the large amount of messages received. He admitted that she asked him to stop messaging her, and that she was, at times, unfriendly and aggressive towards him, but that he did not know how to react as she was constantly "*blowing hot or cold*". He admitted that the respondent would, on occasion, block him on WhatsApp and that he phoned her on many occasions but that she did not answer the calls.

12. According to the appellant the messages should be looked at in context. They were boyfriend and girlfriend, if he phoned too much he would be in trouble and if he phoned too little he would be in trouble. He admitted that he tracked the respondent's phone movements, but stated that it was done by mutual consent and she tracked him as well.

13. He submitted that the respondent could have easily blocked him on WhatsApp if she found his messages abusive. He admitted that his messages were, on occasion, rude but it was when he had been provoked by her as she sent him rude and aggressive messages in which she swore at him. He admitted that she told him on many occasions to leave her alone. He explained it as follows:

"Although I sent her multiple messages in August and September and I concede that on occasion she would not reply I would repeat my messages and that she also on occasion requested me to stop messaging her. I repeated my messages as I did not get a response or a proper response from her and she would frustrate me.

14. The respondent blocked the appellant on WhatsApp on 30 August 2017 and unblocked him on 11 September 2017. She blocked him again on 14 September 2017 and unblocked him on 19 September 2017. On 20 September 2017 she blocked him and did not unblock him again. The appellant admitted that during one of the "block periods" and on 31 August 2017 he communicated with the respondent via iMessage and asked her why she was not responding. He sent her four messages. He further admitted that she threatened him with court and that he said that he did not believe that he committed an act of domestic violence.

15. He denied setting up two fake Instagram accounts or placing adverts on Gumtree. He further denied that he was the one that emailed St Benedict School or the person responsible for contacting the SAPS and reporting that the respondent's parents were in possession of unlicensed firearms. He stated that when the respondent applied for the interim order he had already stopped communicating with her in any way or format.

16. The respondent stated that the appellant had always been obsessive, manipulative and controlling. To substantiate these allegations, all the WhatsApp communication between the parties from February 2017 to September 2017 was made available to the court *a quo*. There are thousands of messages. The communication pre-break up shows a disturbing pattern of obsessive and jealous tendencies from the appellant. The examples are far too many to form part of this judgment, but, as an example, and to illustrate the manner in which the appellant communicated with the respondent, the messages exchanged during the weekend of 19 March 2017 to 21 March 2017, when the respondent attended a family wedding without the appellant, are set out below. On 19 March 2017 the appellant sent the following messages:

15:52.46: Can I please have photos of your room

15:53:23: Can you please send me photos of yourself

15:53:27: Full long photo

15:55: 09: Glen, I'm in the middle of a wedding and you call like that

15:56:26: Are there no photos of you with your shoes a full photo of you please??

15:56:35: And photos of your room

15:56:41: Can I please have photos of your room

15:56:51: Can you please send me photos of yourself

15:56:55: Full long photo of you

15:57:17: Please I am asking nicely for these photos

15:57:52:?

15:58:23: Did you take photos of your room?

15:58:25: (emoji)

16:01:02 Why you ignoring me now

16:01:06 (emoji)

16:01:08:???

16:01:17: Are there no photos of you with your shoes a full photo of you please??

16:01:27: And photos of your room

16:01:34: Can you please send me photos of yourself

16:01:42: Full long photo of you

16:01:52: Please I am asking nicely for these photos

16:02:09: Why do you read and ignore me now?

16:02:58: (emoji)

S [....] 1: I'm not in the mood for 100 messages and calls

16:24 Well you won't if you answer me now?

16:24:03: And not ignore me??

16:25:29: Are there no photos of you with your shoes a full photo of you please

16:25:37: And photos of your room

16:26:58: Can you please send me photos of yourself

16:29:02: You said you will send me photos of your room and of how you look and you had a fight with me about it even
16:29:05: S [....] 1 please
16:29:08: Don't fight with me
16:29:11: (emoji)
16:29:56: I don't understand this
16:34:07: Image sent
16:36:21: And the bathroom babe? Can you please ask your aunt to take a full photo of you?? Like with shani or alone please"

17. The messages continued in the same fashion for the rest of the weekend. During this weekend alone, the appellant sent the respondent approximately 700 WhatsApp messages, monitored her activity on social network and phoned her constantly. Although the respondent asked the appellant to stop the messaging and telephone calls so that she can spend some time with her family, he simply ignored her requests and instead questioned her every movement.

18. After the break-up in May 2017 the barrage of messages and the controlling and manipulative pattern of the messages did not stop. The appellant constantly wanted the respondent to share her location with him, and would get upset if she did not do so immediately. He would then accuse her of wanting to hide things from him. He continued to stalk her on social media through any means (including the intervention of third parties). He made sexually charged and/or inappropriate comments and played on the respondent's emotions. Over and over, both during the course of the relationship and after the break-up, the respondent would ask the appellant to stop messaging and phoning her, but he didn't. "*No*" clearly did not mean no to the appellant. He disregarded the respondent's expressed wishes and had no respect of boundaries. The frequency, extent and magnitude of the messages and telephone calls paints a picture of a man desperate for attention, yet scorned by rejection.

19. The court *a quo* only took into consideration the WhatsApp messages post break-up and issued a final protection order and ordered the appellant not to stalk, harass, or to engage in controlling and/or abusive behaviour towards the respondent

and not to communicate with the respondent directly or indirectly in any way whatsoever.

20. Harassment and controlling or abusive behaviour (where such conduct harms, or may cause imminent harm to, the safety, health or wellbeing of the complainant), both constitute acts of domestic violence. The Act defines harassment as follows:

> *"harassment" means* ***engaging in a pattern of conduct that induces the fear of harm*** (emphasis added) *to a complainant including-*
>
> > *(a) repeatedly watching, or loitering outside of or near the building or place where the complainant resides, works, carries on business, studies or happens to be;*
> > *(b) repeatedly making telephone calls or inducing another person to make telephone calls to the complainant, whether or not conversation ensues;*
> > *(c) repeatedly sending, delivering or causing the delivery of letters, telegrams, packages, facsimiles, electronic mail or other objects to the complainant.*

21. There is no definition for "harm" in the Domestic Violence Act, but the Harassment Act,[9] which has a much broader term[10] for "harassment", defines harm as "*any mental*, *psychological, physical or economic harm*". There is no reason why "harm" in the Domestic Violence Act should mean anything different. The Domestic Violence Act defines 'emotional, verbal and psychological abuse' as a pattern of degrading or humiliating conduct towards a complainant, including, - (a) repeated insults, ridicule or name calling; (b) repeated threats to cause emotional pain; or (c) 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. This is not an exhaustive list and it is a court's task to objectively view each case on

[9] Act 17 of 2011.
[10] It includes actions against persons related to the complainant and electronic communications eg sms's and e-mails.

its own merits and determine whether a specific conduct complained of, induced any mental, psychological, or emotional harm to a complainant.

22. The court *a quo* held that as the versions of the appellant and the respondent were materially different, it could only rely on the objective evidence in the form of the text messages. The court *a quo* seemingly held that as there were two versions of the events after 13 September 2017 that a finding could not be made on the papers as they stood and consequently did not have regard to the incidents that occurred after 13 September 2017.

23. Section 6 of the Act provides for the court to conduct a hearing on the return date. In *Omar v Government of the Republic of South Africa and Other*[11] the Constitutional Court referred to the procedure that must be followed by the court in establishing whether a final protection order should be granted. At paragraph [38] Van der Westhuizen J stated the following:

> *"The procedure provided for to obtain a protection order is not uncommon for situations where a party who feels threatened by the immediate conduct of another approaches a court for urgent relief without giving notice to the respondent. Interim relief is granted by courts on a daily basis and respondents are called upon to appear before the court on a specified return date to show cause why the interim relief should not be made final. On the return date the court, after a proper hearing, decides whether to discharge an interim order or to grant final relief. It is also quite common that the return date may be anticipated by the respondent and that an interim order can be varied or set aside. It is not surprising that the legislature has opted to utilise established and well-known procedures for dealing with emergency situations, to adapt these to meet the needs related to domestic violence and to codify them in a statute"*

[11] 2006 (2) 289 (CC).

24. In *Omar* the Constitutional Court made reference to the matter of *S v Baloyi* [12] where Sachs J said the following about the interdict process in the Act:

> *"The ambivalence of the victim and the reluctance of law enforcement officers to 'take sides' in family matters, coupled with the intimate and potentially repetitive character of the violence, is highly relevant to the* ***creation of a special process for the issuing of domestic violence interdicts.*** *The interdict process is intended to be accessible, speedy, simple and effective. The principal objective of granting an interdict is not to solve domestic problems or impose punishments, but to provide a breathing-space to enable solutions to be found; not to punish past misdeeds, but to prevent future misconduct. At its most optimistic, it seeks preventive rather than retributive justice, undertaken with a view ultimately to promoting restorative justice."* (Emphasis added).

25. It is clear from the above that the procedure created by the Legislature in the Act is *sui generis*. Section 6 of the Act therefore provides a wide discretion to the Magistrate to decide what evidence must be provided. The Magistrate in a domestic violence hearing should for that reason take control of the matter and play an active role, and dictate how the hearing is to be conducted, even if both parties are legally represented. Once all the evidentiary matter has been adduced only then will the court be a position to determine the extent of the protection that is needed.

26. Reporting on the first year of the Act's operation, Joanne Fedler[13] observes the following:

> *". . . the strange alchemy of violence within intimacy lends domestic abuse a unique quality as a legal problem, for there are no stark realities, no one-dimensional solutions".*

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[12] 2000 (1) SACR 81 (CC) at [17]

[13] "Lawyering Domestic Violence through the Prevention of Family Violence Act 1993 - An Evaluation After a Year in Operation" (1995) 112 SALJ 231 at 243.

....

[T]he lawyering of domestic abuse [therefore] requires skills and understanding not commonly required."

27. Although a court dealing with domestic violence should therefore avoid a formalistic and technical approach to the evidence, it is still, required to evaluate the evidence and to make a finding on the probabilities. The approach to be taken to factual disputes on application papers was set out in *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd*[14] by Corbett JA to the following effect:

'*It is correct that, where in proceedings on notice of motion disputes of fact have arisen on the affidavits, a final order, whether it be an interdict or some other form of relief, may be granted if those 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. The power of the Court to give such final relief on the papers before it is, however, not confined to such a situation. In certain instances the denial by respondent of a fact alleged by the applicant may not be such as to raise a real, genuine or bona fide dispute of fact…. If in such a case the respondent has not availed himself of his right to apply for the deponents concerned to be called for cross-examination under Rule 6(5)(g) of the Uniform Rules of Court…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 and 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, as, for example, 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…"*

28. It is so, however, that a court must always be cautious about deciding probabilities in the face of conflicts of fact in affidavits. Affidavits are settled by legal

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[14] 1984 (3) SA 623 (A) at 634G-H (references omitted). See also *National Director of Public Prosecutions v Zuma* 2009 (2) SA 277 (SCA) and *South Coast Furnishers CC* 2012 (3) SA 431 (KZP)

advisers with varying degrees of experience, skill and diligence and a litigant should not pay the price for an adviser's shortcomings. Judgment on the credibility of the deponent, absent direct and obvious contradictions, should be left open.[15] It remains then to establish whether the averments in the answering affidavit, are such that they are clearly untenable and can be rejected outright on the papers or whether they give rise to a genuine factual dispute relating to the subsequent events.

29. The respondent averred that the appellant is responsible for all the events that transpired after 13 September 2017. She averred that after she blocked the appellant on WhatsApp on 20 September 2017, a fake Instagram account was opened in her name. She averred that the appellant was responsible for the opening of the fake account, because one of the photos posted was taken with the appellant's phone. She then posted a message on a Facebook group called ""Get Up Women" wherein she posted the following:

> *"Hi ladies, my ex created a fake Instagram account pretending to be me. I've tried everything and Instagram will not shut it down. Any advice? I'm literally considering hiring someone to hack the account".*

30. The appellant responded by sending the respondent a message on her iphone which stated " *S [....] 1 you have no physical proof*." This is quite a telling message. She did not mention any names in the Facebook post and at that time the appellant had been blocked from the respondent's social media platforms. It clearly shows the appellant was still monitoring the respondent's posts on Facebook. The appellant further made mention of two fake Instagram accounts in his answering affidavit, whilst the respondent only made mention of one fake account in her application form. If the appellant realistically knew nothing of these fake Instagram accounts, he did not explain as to how he knew that there were two fake Instagram accounts.

31. Furthermore, some of the photos used in the fake Instagram account were photos originating from the appellant's phone and the posts accompanying the

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[15] *South Coast Furnishers CC* at [6]

photos were calculated towards causing emotional harm towards the respondent as the photos and comments were in connection with the respondent's deceased grandfather with whom she had a very close relationship.

32. After the respondent obtained an interim protection order all further incidents of the same nature stopped. The only ineluctable inference and logical conclusion is that he was the person responsible for the acts.

33. The events after 13 September 2017 were clearly designed to cause the respondent emotional and psychological harm and constitutes harassment. In this regard, the court *a quo* was perfectly entitled and should have adopted the often spoken about robust common approach enunciated in *Soffiantini v Mould*[16] wherein the following was held:

> *"A bare denial of applicant's material averments cannot be regarded as sufficient to defeat applicant's right to secure relief by motion proceedings in appropriate cases. Enough must be stated by respondent to enable the Court to conduct a preliminary examination . . . and to ascertain whether the denials are not fictitious intended merely to delay the hearing.'(or for some other purpose) 'The respondent's affidavits must at least disclose that there are material issues in which there is a bona fide dispute of fact capable of being decided only after viva voce evidence has been heard. See also the case of Prinsloo v Shaw, 1938 AD 570.If by a mere denial in general terms a respondent can defeat or delay an applicant who comes to Court on motion, then motion proceedings are worthless, for a respondent can always defeat or delay a petitioner by such a device. It is necessary to make a robust, common-sense approach to a dispute on motion as otherwise the effective functioning of the Court can be hamstrung and circumvented by the most simple and blatant stratagem. The Court must not hesitate to decide an issue of fact on affidavit merely because it may be difficult to do so. Justice can be defeated or seriously impeded and delayed by an over-fastidious approach to a dispute raised in affidavits."*

[16] *1956(4) SA 150 (E)* at page 154

34. There are a number of highly improbable aspects of the appellant's version which, taken together, would have justified the court *a quo* to reject it as untenable and hence did not raise a genuine factual dispute. The appellant provided such an implausible explanation for the coincidental acts of domestic violence, namely that an unknown person from the respondent's high school days was secretly harassing the respondent. The appellant cannot realistically expect to be believed that an unknown third person would suddenly appear from nowhere, two years later, and start launching fake social media accounts, place false adverts, lay complaints at the school and police, without any reason or provocation, coincidentally days after the appellant made a threat. It is improbable that anyone else except the appellant could have been responsible for the subsequent events.

35. The appellant averred that the court *a quo* erred in considering the WhatsApp messages and that the communication stopped long before the respondent approached the court for a protection order. The appellant also contended that the messages did not induce the "*fear of harm"*, because if they did, the respondent would have applied for a protection order after the threat was made on 13 September 2017.

36. The fact that the respondent did not immediately approach the court for a protection order after the appellant made the threat on 13 September 2017, is in my view, not a reason to conclude that there was no harm caused. It was ultimately not this threat alone that moved the respondent to apply for a protection order. In *S v Engelbrecht,*[17] Satchwell J held that the wide definition of 'domestic violence' in the DVA is an unequivocal recognition by the Legislature of the complexities of domestic violence and the multitude of manifestations thereof. At paragraph [342] the learned Judge stated:

> *[342] It must be accepted that domestic violence, in all manifestations of abuse, is intended to and may establish a pattern of coercive control over the abused woman, such control being exerted both during the instances of*

[17] 2005 (2) SACR 41 (W).

active or passive abuse as well as the periods that domestic violence is in abeyance.

[343] There is indeed compelling justification for focusing, not only on the specific form which the abuse may have taken over time and in particular circumstances, but pertinently on the impact of abuse upon the psyche, make up and entire world view of an abused woman."

37. Keeping in mind the complexities of domestic violence, there can accordingly be many reasons why a complainant does not seek help immediately. In a further affidavit, provided for in section 6(2)(b) of the Act, the respondent explained that she started dating the appellant when she was 18 years old and that he was her first boyfriend. They shared deep feelings for each other. During the initial stages of the relationship the appellant showed signs of controlling and possessive behaviour which the respondent did not like and found disturbing. She stated that given her inexperience and her feelings for him she tolerated the harassment and controlling and abusive behaviour. As the relationship developed his behaviour increased to such an extent that he would call and text her throughout the day to see who she was with and what she was doing.

38. In the replying affidavit the respondent also accused the appellant of physically and sexually assaulting her during the course of their relationship. She stated that the reason why she did not make mention of this before was because she was embarrassed and ashamed and she only now realized that she did not speak up under the misguided notion that the appellant was her boyfriend and she was his girlfriend and that she had no rights. She was also fearful that he would do something to himself. She stated that after she terminated the relationship, the respondent would emotionally manipulate her into meeting with him and forcing conversation. All this was done to emotionally abuse her and exercise his sway over her. At times he would threaten to send nude photos of her to her mother.

39. She further stated that she enabled the "Find Friends" feature on her iphone to enable the appellant to ascertain her whereabouts in case of an emergency, but he abused it. He would track her movements without her knowing it and when she

switched the feature off he would complain and nag her until she switched it back on. He would use this feature to deliberately lock her phone and would play sounds on it to insist that she speaks to him. (The respondent annexed emails from iphone as proof.) The appellant would then ask questions about her whereabouts to test whether she was honest with him.

40. If regard is had to the extracts of the WhatsApp messages, coupled with the events after 13 September 2017, it is apparent that the appellant, over an extended period, committed numerous acts of domestic violence, including emotionally and psychologically abusing the respondent as well as harassing her. If the text messages and facts are taken as a whole, and taking into consideration the great lengths the appellant would go to control and abuse the respondent, the granting of a final protection order was warranted.

41. In the result, the following order is made:

"The appeal is dismissed with costs".

L. WINDELL
JUDGE OF THE HIGH COURT
GAUTENG LOCAL DIVISION, JOHANNESBURG

I agree:

M. TWALA
JUDGE OF THE HIGH COURT
GAUTENG LOCAL DIVISION, JOHANNESBURG

APPEARANCES

Attorney for the appellant:	ENS Africa
Counsel for the appellant:	Adv. A. Saldulker

Attorney for the respondent:	Biccari Bollo Mariano Inc
Counsel for the respondent:	Mr. Edi Xavier
Date of hearing:	11 February 2020
Date of judgment:	13 February 2020