

SOUTH AFRICA / JUDGMENT

G.D v N.B (HCAA26/2023)

[2024] ZALMPPHC 51; 2025 (1)

SACR 179 (LP) (20 May 2024)

[2024] ZALMPPHC 51

COURT

Limpopo High Court, Polokwane

BEFORE

T. Deane, M. Naude-Odendaal

CASE / FILE NUMBER

HCAA26/2023

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FLYNOTES:

FAMILY

– Domestic violence – Protection order – Appellant's marriage to sister of respondent creates existence of domestic relationship by affinity – Acts of violence – Intimidation – Controlling behaviour – Psychological abuse – Locking farm gates – Entry to family farm without consent – Denial of conduct – Appellant failed to raise a real, genuine or bona fide dispute of fact – Decision to issue final protection order justified – Appeal dismissed – Domestic Violence Act 116 of 1998, s 1.

REPUBLIC

OF SOUTH AFRICA

IN

THE HIGH COURT OF SOUTH AFRICA

LIMPOPO

DIVISION, POLOKWANE

CASE

NO: HCAA26/2023

REPORTABLE: YES/NO
OF
INTEREST TO THE JUDGES: YES/NO
REVISED
DATE:20
May 2024
In

the matter between: G[...]
W[...] P[...] D[...]
:
APPELLANT
And
N[...]
B[...]
:
RESPONDENT

JUDGEMENT

Heard on 08 MARCH 2024. The date and time for hand-down is deemed to be on the 20 May 2024 at 10 :00. This judgment handed down electronically by circulation to the parties' representatives by email and publication and release to SAFLII.

DEANE AJ:

Introduction

1. The Appellant appeals against the whole of the judgment of a final domestic violence order handed down by the Magistrate HD Swart on 6 June 2023.[1]
2. The essence of the appeal is founded on the following grounds:
 - 2.1 Whether a domestic relationship existed between the parties as contemplated by section 1 of the Domestic Violence Act 116 of 1998;[2]
 - 2.2 Whether the Magistrate erred in not considering an application for striking off irrelevant/ scandalous/ vexatious material from the record;[3]
 - 2.3 The Magistrate erred in finding that the Appellant committed acts of domestic violence[4] in that the:
 - 2.3.1 Respondent did not prove the requirements to obtain a final order and;
 - 2.3.2 Magistrate incorrectly applied the principles set out in *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd*,[5] regarding final interdicts and orders.

3. The Respondent's application for a protection order was predicated on the following factual matrix.
4. The Respondent is one of four daughters of the late N[...] J[...] B[...] (NJ B[...]), who passed away on 20 January 2022 at the age of 91 years.
5. The Appellant is married to C[...] D[...], the sister of the Respondent and one of the four daughters of NJ B[...].
6. In the last will and testament of NJ B[...], all four daughters were nominated as Executors together with Jan Boshoff an auditor and friend of the deceased.
7. The family has a family trust that had been registered since 1981. After the death of NJ B[...], the Appellant and his wife C[...] D[...] are the remaining trustees.
8. In January 2019, and before his death, an agreement was entered into by the Appellant and NJ B[...], whereby NJ B[...] allowed the Appellant to manage the affairs of both him and the family trust.
9. On or about 6 October 2022 the Executors by majority resolved that the Appellant's administration of the estate of NJ B[...] would be terminated as it had then become the responsibility of the Executors to wind up the estate. The Appellant was given notice on or about 7 October 2022 and was advised that his services would be terminated on 31 December 2022.
10. The result of the termination of the Appellant's service for the estate was that he could no longer conduct hunting activities on the farms or deal with the cattle or other assets. Furthermore, the Appellant was no longer required and allowed to be involved with the administration of the estate matters and was only required to do a handing over to one of the other sisters, M[...] O[...], who it was decided would further manage the farms.
11. On 15 December 2022 Jan Boshoff, in his capacity as executor, sent a letter to the Appellant inviting the Appellant to engage all the Executors in January 2023 regarding the Trust.
12. During December 2022 there was also an agreement reached whereby the Appellant and his wife C[...] D[...] would, by 7 January 2023, remove all the Appellant's personal belongings that were at the Seringhoek farms and cause a handover of the administrative duties.
13. On 16 January 2023 the Appellant and C[...] D[...] returned from the farms but failed to remove the personal belongings.
14. M[...] O[...], one of the sisters of the Respondent, acting on behalf of the majority Executors then sent an email correspondence to C[...] D[...] reminding her of the termination letter of 31 December 2022, as well as that there was not an official handover by the Appellant as was requested and required.
15. The Appellant subsequently returned to the farm on Friday 20 January 2023.

16. It is common cause that during the period of 16 January 2023 and 26 January 2023 the Appellant and the Respondent shared the farmhouse at Seringhoek.
17. It is also common cause that the alleged acts of violence relevant to the application for a protection order occurred during the period of 16 January 2023 to 26 January 2023 and that the actions complained of occurred at the farm Seringhoek, a property belonging to the deceased estate of NJ B[...].
18. The Respondent indicates that it was during this period and on Seringhoek where the Appellant was involved in the following acts of violence; intimidation, controlling and abusive behaviour, psychological abuse, locking the farm gates and restraining the Respondent from entering the property, accessing the family farm without consent, continuous threats and economic abuse.[6]

19. I now turn to an analysis and discussion of the specific grounds of appeal.

In re: Domestic Relationship

20. The first ground of appeal in this matter concerns the finding by the Magistrate that a domestic relationship as defined in section 1 of the Domestic Violence Act (OVA), existed between the Appellant and the Respondent. The

reasons

given for the alleged error are that:[7]

20.1 The Respondent and the Appellant do not share a household;

20.2 The Respondent and the Appellant reside in different addresses;

20.3 The Respondent and Appellant is in no way part of the same family unit as contemplated in the Act;

20.4 The Respondent and Appellant have not in any other way complied with the term "domestic relationship" as contemplated and defined in the Act".

21. The Appellant's contentions are securely founded upon the decision in Daffy v Daffy[8] (Daffy) wherein the Supreme Court of Appeal (SCA) considered the concept of a "domestic relationship", and they also reference the case of S v Baloyi (Minister of Justice and another) [9] (S v Baloyi) which deals with a breach of a domestic violence interdict.
22. The Appellant herein contends that although Daffy and S v Baloyi were considered before the amendments that were promulgated in the Domestic Violence Amendment Act 14 of 2021(DVAA), the applicable part of the definition which was considered in the Daffy matter was not amended and that the "only part of the definition of 'domestic relationship' which was amended was the addition of the phrase "they are persons in a close relationship" in respect of paragraph (f) of the definition, paragraph (d), the applicable paragraph, was not amended at all", [10] and furthermore that a "domestic relationship" encompasses a much

closer family unit, rather than a mere relationship" .[11]

23. The Respondent argues that the inferences by the Appellant "is not only factually incorrect, but that, on a proper interpretation of the Daffy-matter, the Respondent did prove on a balance of probabilities a domestic relationship between the parties".[12] Due to this reliance on the Daffy case, it becomes appropriate to first consider the main principles of that matter.
24. The facts of the Daffy matter in brief involved two brothers (both businessmen) who did not share a common household but whose main interests were business related. Much of the dispute involved their interests in the company Core Mobility (Pty) Ltd. The Appellant (Cristopher Redden Daffy) had worked at Core Mobility for a period of about ten years until a disciplinary enquiry resulted in the termination of his employment. Prior to the termination of his employment, the relationship between the brothers soured, with the Respondent (Stephen Redden Daffy) suspecting the Appellant of committing irregularities and abusing his position. This resulted in arguments between them and on one occasion the Appellant threatened to assault and financially ruin the Respondent,[13] and which led to the Respondent seeking a protection order against the Appellant. The court agreed that in order to obtain a protection order in terms of Act 116 of 1998 (DVA), the complainant and the Respondent have to be in a domestic relationship. Section 1 of the DVA provides for the definition of a "domestic relationship", which refers to, inter alia, a relationship between a complainant and Respondent where they are family members related by consanguinity, affinity or adoption. The Respondent therefore argued that as they were brothers, that they were in a domestic relationship and, therefore, that he qualified as a complainant in terms of the Act.
25. Disagreeing with this averment by the Respondent, the Court in Daffy found that the provision is too broadly formulated, in that no degree of relationship, consanguineous or otherwise, is mentioned and that the concept of "family" is extremely wide.[14] To illustrate this point the court questioned whether distant cousins, who have nothing in common other than sharing a mutual ancestor, would qualify as being in a domestic relationship. To the Daffy-court's mind, this question could not be answered in the affirmative.[15] Indeed, the SCA's dissatisfaction with the broad nature of the definition of a "domestic relationship" resulted in the court stating that as far as the interpretation of legislation is concerned the underlying purpose of a provision has to be considered in order to avoid a purely literal meaning that would result in absurdity.[16]
26. The SCA went further in attempting to interpret the legislation by placing reliance on the *S v Baloyi* case and highlighted that the concept of domestic violence is commonly understood as being violence within the confines of the family unit, which is often hidden from view by reason of the helplessness of the victim and the position of power of an abuser. Furthermore, the common meaning of "domestic" pertains to the home, house, or household, in other words, one's home or family affairs,[17] "family", according to the SCA, has as one of its general connotations "the body of persons who live in one house or under

one head, including parents, children, servants etc". Accordingly, the SCA avers that if one has regard to the ordinary connotation of a "domestic relationship" it would involve persons who share a common household.[18]

27. While the court in Daffy acknowledged that the legislature envisaged that the definition bears a wider meaning than the above for purposes of the DVA, it was not, in the court's opinion; intended that a mere blood relationship, even if close, would in itself be sufficient. [19] Accordingly, the SCA found that adhering to a definition "regardless of subject-matter and context might work the gravest injustice by including cases which were not intended to be included".[20] Furthermore, the court continued that other provisions under the definition of a domestic relationship require some form of association other than mere consanguinity to be regarded as a domestic relationship. Thus, it was found, that the definition is poorly framed and incapable of bearing a precise meaning. While stating this, the SCA nevertheless found it unnecessary to attempt to determine what would be required for such a relationship to be regarded as a domestic

relationship.[21]

28. The SCA found that the Respondents sole reliance on the fact that they were brothers was not sufficient and taking into account their respective ages and the fact that they had not shared a common household for many years, the court held that it would be absurd to conclude that the mere fact that they were brothers resulted in them being in a "domestic relationship" for purposes of the Act.[22] Since the Respondent failed to show that he was in a domestic relationship, he was consequently not entitled to rely on the protection afforded in terms of the Act. Although the Respondent failed in this, the court nevertheless addressed why the Respondent also failed to show that there was domestic Violence. Thus, even if the Respondent had managed to convince the court that he was in a domestic relationship with the Appellant, he would have failed on this ground.
29. This constrictive interpretation of a "domestic relationship" seemingly ignores the intended aims of the DVA including that "acts of domestic violence may be committed in a wide range of domestic relationships". This would also be in line with the SCA's assertion that "as far as the interpretation of legislation is concerned the underlying purpose of a provision has to be considered".
30. Looking at the Preamble to the DVA it recognises, inter alia:
- "that domestic violence is a serious social evil; that there is a high incidence of domestic violence within South African society; that victims of domestic violence are among the most vulnerable members of society; that domestic violence takes on many forms; that acts of domestic violence may be committed in a wide range of domestic relationships; and that the remedies currently available to the victims of domestic violence have proved to be ineffective."

31. The DVA was clearly enacted to accommodate the growing number of domestic violence incidents and to rectify the shortcomings of the Prevention of Family Violence Act 133 of 1993. In fact, one aspect governed more extensively in terms of the DVA is the categories of persons who can apply for a protection order. In this regard, the DVA provides an extensive definition of a "domestic relationship".
32. Furthermore, the Constitution of the Republic of South Africa, 1996 (the Constitution) provides various rights that are also applicable to victims of domestic violence. The Constitution guarantees the right to dignity and to freedom and security of the person.[23] Domestic violence against any person is a violation of these rights.
33. Additionally, in *S v Baloyi* the Constitutional Court indicated that:

"All crime has harsh effects on society. What distinguishes domestic violence is its hidden, repetitive character and its immeasurable ripple effects on our society and, in particular, on family life. It cuts across class, race, culture and geography, and is all the more pernicious because it is so often concealed and so frequently goes unpunished [1999] ZACC 19; (2000 2 SA 425 (CC) 431C)."
34. Furthermore, in arguing that a wide definition of a "domestic relationship" in terms of the DVA is intended, the SCA pointed out in *Tsobo v Tsobo*,[24] that there is no denying that the primary objective of the Act is to provide victims of domestic violence with an effective, uncomplicated, and swift legal remedy. It achieves this by providing for a simplified procedure for protection order applications, endowing the courts with a wide discretion - both in respect of the manner of the hearing and the form of relief - and placing upon the courts and law enforcement functionaries' extensive obligations to assist and protect victims of domestic violence.
35. Accordingly, and as already alluded to above, the DVA was enacted as a means to combat the inadequate remedies available to victims of domestic violence in terms of both the common law and the Prevention of Family Violence Act.[25] Another result that the DVA aimed to achieve was to broaden the ambit of persons to which the act applied.[26] Unlike the Prevention of Family Violence Act, which focused on parties who are or were married to each other, but also heterosexual cohabitants, the DVA has a much broader ambit.[27] It is important to note that a constricted interpretation of the concept of a "domestic relationship" and the failure to place it within the broader realm of developments on domestic violence and research on family violence limits the very intention of the legislature.
36. For example, looking at the South African Law Commission's submission on the extent of the applicability of the proposed act it was noted that:[28]

"The further question arises whether the Act should not be amended to include family members that fall beyond the immediate family scope, for example an aunt, uncle, niece or nephew. There seems to be the argument that such an amendment would negate the spirit of the Act which is to prevent violence between parties living together as a family".[29]

37. The recommendation consequently provided as follows:

"[T]here should be comprehensive inclusion of all those exposed to the risk of domestic violence It is conceded that a broad definition of the class of persons eligible to seek protection could be criticised for including relationships that fall outside the 'domestic' realm. However, since the aim is to provide protection from violence, a definition which is criticised for being too broad is preferable to a definition that is criticised for being too narrow. If a person who arguably falls outside the domestic realm is protected by invoking the provisions of domestic violence legislation, it would be a small price to pay, if any, for the assurance that victims who ought to qualify for the intended protection are entitled to apply for relief'.[30]

38. It would therefore follow that a narrow perspective of "family" or a "domestic relationship" that favours only parties to a marriage seems to be unjustified.

39. Accordingly, the court in Daffy failed to take cognisance of the objectives and foundational principles of the DVA, one of the formers being the acknowledgment that domestic violence can occur in a wide range of domestic relationships.

40. In addition, although the DVAA only came into effect on 14 April 2023, and was not operational at the time the application was made by the Respondent for the protection order in the present matter, it is however important to mention that in line with a broader interpretation and approach the DVAA defines a domestic relationship as follows:[31]

A 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 Jaw, 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, premises or property within the preceding year.
41. The DVAA has from its wording and inclusions introduced changes to the original legislation, the DVA. Among these changes, the DVAA has expanded the section originally titled "definitions" to include "definitions and interpretations". The DVAA is intended to bring forth significant amendments to its predecessor. Additional acts of domestic violence, including spiritual abuse,[32] elder abuse,[33] and coercive and controlling behaviour, exposing a child to domestic violence, and unauthorised entry into a complainant's workplace or place of study have been included in the new Act.
42. Courts, like in *S V Saloyi*, speeches by the President,[34] statistics[35] and research[36] have constantly highlighted that South Africa is considered a country with high cases of domestic violence. Statistics reported for 2023 suggest that over 15 000 women were victims of physical and sexual assault. Additionally, more than 960 women were killed because of domestic violence related cases. The OVA is intended to curb the rates of violence. One of the ways identified to curb domestic violence is laws and the effective enforcement thereof. Society is constantly changing, and the law must adapt accordingly to ensure relevance and that the widest possible protections are afforded to those in a wide range of domestic relationship.
43. The DVA together with the DVAA has responded by broadening the types of relationships covered and to ensure that the law develops according to societies changing needs. This court should follow suit and extend and give protections as intended by the DVA and the DVAA. This is because, it is clear that in interpreting the definitions and preamble to the Act, that the DVAA is intended to extend the protections. The DVAA has accordingly extended the definition of a domestic relationship to include "family members related by consanguinity, affinity or adoption" and to include protections for a wide variety of relationships. What is therefore clear is that our courts cannot operate in a vacuum. The law reflects the values of society and taking into account the scourge of domestic violence it needs to adapt and effectively and responsibly respond to social changes and crises.
44. Going back to the Daffy matter, and as to why the Daffy-courts constrictive interpretation does not find favour with the

facts

of this case and in this court, the SCA mentions "that some form of association other than mere consanguinity" is required in the remainder of the definition but fails to elaborate what this other form of association entails. This is unfortunate in two respects. Firstly, if one has regard to some of the other categories under the relevant definition of a domestic relationship in terms of the DVA, it is not apparent what the additional "requirements" could be. Secondly, because the court indicates that it was not necessary to determine the exact meaning of the definition it becomes problematic in that this could impact the remainder of the categories, since it does not focus only

on a relationship by blood, but affinity and adoption as well.

45. To add to the SCA's statement that the other aspects of the definition require "some form of association", reference is made to the actual provision. Specifically regarding "(a) they are or were married to each other, including marriage according to any law, custom or religion", wherein reference is made to those persons who are or were married. The question that then arises is what about those who are no longer married. The legislature cannot have intended that by virtue of them no longer being married or that they no longer share a home that they be excluded from the ambit of protection in the DVA. This would have unpalpable consequences including that it could then similarly be argued that having been married does not suffice for the purpose of protections afforded under the DVA, especially if they no longer share a household as there is no longer a relationship.
46. Furthermore, if one has regard to category (e) it refers to "an engagement, dating or customary relationship including an actual or perceived romantic, intimate or sexual relationship of any duration". The term "any duration" implies that there is no set time that the parties needed to date in order to be protected in terms of the Act. Furthermore, this part of the provision does not require that the parties should have shared a home to rely on the DVA. Accordingly, it would have been prudent for the Daffy-court to elaborate on the qualification "some form of association" that is required in respect of the remaining categories.

47. Furthermore, the provisions in category (b) states:

".....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", specifically mention live or lived together, which again shows that sharing a common household is not required. In addition, the extension of the types of relationships under the DVAA now include spiritual abuse, elder abuse, related person abuse,[37] and exposing a child to domestic violence which is defined as intentionally causing a child to see or hear domestic violence or experience its effects. It is clear that the DVAA now covers various forms of abuse, including invisible forms such as technology-based abuse and controlling behaviour, a clear indication of extending

protections and adapting to the technological changes happening in society. With the scourge of domestic violence recorded in the country and the ever-evolving technological landscape, the Act offers children increased protection. By extending the definition of domestic abuse, the Act also provides added protection for the elderly. The DVA and the DVAA clearly recognises that domestic violence can extend beyond the confines of a home environment and that many different domestic relationships require protecting."

48. It is recognised that while there may well be strong arguments that there is a need to limit the provision, for example, by excluding distant cousins, the SCA in Daffy nevertheless failed to acknowledge that its' interpretation of the provision excludes many applicants. Furthermore, if one has regard to the court's statement that a "domestic relationship" entails sharing a common household, that would

mean that all categories or persons who lived together should also be excluded from the protection of the DVA. Accordingly looking at the intention behind the DVA, a broader definition is certainly required in that the notion of family does go beyond marriage and that cohabitation should not be a prerequisite. This is also recognised by the provisions and extensions of protections under the DVAA.

49. In addition, the distinction between this present matter and Daffy over and above the business interest is that the Appellant is a trustee of the "N[...] J[...] B[...] Trust",^[38] and the Appellant and the Respondent had meetings and continued to meet about issues related to the family trust and the farms of the deceased. In addition thereto, the needs of the mother of the Respondent, and of the Respondent's sisters, is currently being taken care of by the Appellant and his wife, C[...] D[...]. The Appellant in his answering affidavit states that "when B[...] grew older, he transferred more responsibilities to me, and B[...] and my mother-in law became more dependent for their personal care on me and my spouse C[...] D[...]. It is apposite to point out that my mother-in-law is currently unable to care for herself She stays in our household where C[...] and I are looking after her. We manage her affairs by virtue of a power of attorney since she is totally incapable of managing her own affairs. She is to a large extent non compos mentis".^[39] Now whilst it is deposed to that the financial needs of the mother are adequately provided for from the pension monies of NJ B[...], the living arrangements and the care of the mother of the Respondent and of her sisters, lies within the care of the Appellant and his wife, C[...] D[...]. It appears then that while the Appellant and Respondent had commercial interests and disputes, there is a relationship beyond mere business matters to include familial concerns, particularly regarding the Appellants mother-in law and mother to the Respondent.

50. In addition, all actions complained about occurred on the farm in Seringhoek where during the period the Appellant and Respondent

shared the farmhouse at Seringhoek situated upon the property of the late NJ B[...]. It also appears that the Appellant and the Respondent have shared the common residence at Seringhoek for periods in the past while the Respondent's father was still alive.^[40]

51. When one has regard to the definitions and interpretation of the Acts, it is clear that the DVA is intended to be more inclusive rather than restrictive in nature.
52. Having further regard to the purpose of the DVA in that:

"it is to afford victims of domestic violence the maximum protection from domestic abuse that the law can provide the argument that the respondent has a different residential address would not, in these circumstances help the Appellant. From the purpose and ambit of the DVA and the DVAA, distance and residence are not intended to act as barriers in domestic violence allegations between relatives. This interpretation would be more in line with what is intended by the legislation, and which is to include the mistreatment of one family member by another to gain power and control."

53. Accordingly, the DVA and DVAA does indeed seek to protect the interests of persons who are involved in a wide range of domestic relationships. The definition of a domestic relationship must consequently be accorded an extended and purposive meaning.
54. Accordingly, in casu, it is clear that the Appellant is married to the sister of the Respondent which creates the basis for a conclusion that there exists a domestic relationship by affinity.

In re: Application to Strike Out

55. The Appellant avers that the Magistrate erred in not considering an application for striking off irrelevant/ scandalous/ vexatious material from the record.
56. In looking at whether or not the Magistrate erred in not considering the application to strike out the Appellant avers that:

".....[s]uch application was premised on the basis that many paragraphs, which the Court subsequently relied on in the granting of the order in favour of the Respondent, constituted objectional matters on the basis of being scandalous, vexatious and/or irrelevant. Further supporting and confirmatory affidavit which the Court attributed weight to were sought to be struck out"[41] specifically that the affidavits of GA Boshoff, PA Rossouw and P Van Heerden, as well as the paragraphs of the Replying affidavit referred to;[42] and further that "ultimately and most prejudicial to the appellant was the court a quo allowing the respondent to raise new matters for the first time in the replying affidavit which should have been contained in the founding affidavit"[43]

57. Having studied the record it is clear that the judgment of the Magistrate dated 06-06- 2023 makes no mention of an application for striking out or no order relating to that application was even made by the Magistrate.
58. This struck me as odd as an application for striking out in terms of the legal requirement is to be set down for hearing at the same time as the hearing of the main application on the merits.
59. What I have before me on the record is a notice of motion dated 13-02-2023 relating to the application to be made on 14 February 2023. There is however no record of a notice of set down or any indication as to the status of that application. On the papers before me it would seem that the Appellant simply did not move for the relief as set out in the application to strike out at the return date of the interim protection order.

60. As was rightly highlighted by the Respondent "in the circumstances it is submitted that it ill-behooves Appellant to attempt to sneak in the application to strike out as part of his appear . [44]
61. Looking at the provisions of Rule 55(9), it is clear from the word "may", that the court has a discretion in an application to strike out a matter from an Affidavit. The Magistrate could not have been in a position to exercise a discretion where no application for striking out was before it.
62. It certainly does not help the Appellants case on this issue to now say that the court a quo erred in not considering the application for striking of irrelevant/scandalous/vexatious material from the record when no such application was before it. The Magistrate could not accordingly exercise her discretion, that she may have had in terms of Magistrate's Court Rule 55 (9)[45] Appellant simply did not proceed with the application.
63. Absence detailed reasons for such an omission this court is not in a position to adjudicate upon this as a ground of appeal.

In re: Acts of Domestic Violence

64. Looking at the Form 2 completed by the Respondent for the application for a protection order, the Respondent lists the various acts that were alleged to be incidences of domestic violence.[46]

- i. Intimidation
- ii. Controlling and abusive behaviour
- iii. Locking of Farm Gates
- iv. Continuous Threats
- v. Economic abuse as he is squandering the finances of the farm
- vi. Psychological abuse
- vii. Harassment

65. In the Form J480E, the Respondent further mentioned the following:[47]

- i. Respondent is always armed and has ± weapons
 - ii. He is aggressive and intimidating
 - iii. I am a women and defenceless
 - iv. He locks the farm gates sabotages vehicles and throws away house keys
 - v. Makes threats that the farm is unsafe trying to scare us away
66. The Appellant herein contends that "in coming to a

conclusion

as to whether acts of domestic violence were committed the court a quo does not deal with the evidence other than stating that both parties have filed affidavits".[48]

67. In addition, regarding the evidence of these acts, the Appellant further argues that the Respondent "makes very limited and vague allegations only regarding acts of domestic violence, mainly in paragraphs 5 and 6 of the founding affidavit".[49]
68. The Respondent argues that looking at the acts of violence committed the following are apposite:
 - a. Trespassing on the farm.[50]
 - b. It was alleged that on 20 January 2023 the Appellant unlawfully and without notice given or permission granted gained access to the farm and changed the lock of the farm gate.[51]
 - c. The Appellant was intimidating to an extent that the Respondent feared for her safety and the Appellant was extremely aggressive against two defenceless women.[52]
 - d. Appellant engaged in behaviour designed to cause fear[53] and aimed at psychological and intimidation tactics.[54]
 - e. The Appellant caused that the Respondent and her sister to request from the Appellant "several times to provide us with a key to the new lock of the farm gate to enable us to enter and exit the farm",[55] which conduct "constitutes entry to our family farm without consent or legal right and abusive and psychological abuse by changing the lock to the farm gate and making me and my sister beg for a key to the lock and attempting to scare us off the farm by repeatedly telling us that it is dangerous and unsafe for us on the farm".[56]
 - f. The Appellants demeanour when addressing the Respondent and her sister caused them to fear for their safety and for the safety of their children.[57]
 - g. On 22 January 2023 the Appellant lingered in the farmhouse for approximately an hour,[58] sabotaged the bakkie on the farm,[59] took the Trelly safety door keys as well as the farmhouse keys for the backdoor so that the Respondent and her sister were unable to lock the door in the evening,[60] and switched off the plug controlling the air conditioner, causing it to not work.[61]
 - h. Appellant has further been accused of refusing to handover the deceased's property to the Executors, and "plundering the deceased estate from money that should come to the estate causing economic harm..".[62]

i. In addition, the Appellant intimidated and caused confusion among the farmworkers by telling them that they were working for him;[63] committed fraud,[64] capturing of the deceased estates for his own use and selling off more than half of the deceased's cattle,[65] and his behaviour indicates that the "Appellant would do anything to retain control over the deceased's estate".[66]

69. The violent behaviour of the Appellant was attested to by a confirmatory affidavit of the sister, M[...] O[...]. [67]

70. In addition, a supporting affidavit deposed to by one George Albert Boshoff[68] regarding the acts of domestic violence complained of by the Respondent was used as confirmation thereof.

71. In addition, a supporting affidavit of Petrus van Heerden, a brother-in-law of the Respondent, was used as corroboration for the averments and allegations made by the Respondent in the founding papers.

72. The Appellant further submits that:

"viewed on its own, these allegations do not support a case, objectively, that it harms, neither that it reasonably inspires a reasonable belief that harm may be caused to the Respondent as contemplated in the Domestic Violence Act" .[69] They go further by stating that "when considered against the definitions of "intimidation", "controlling behaviour" and "emotional, verbal and psychological abuse" as contemplated in the Act, the allegations made clearly does not make out a case at all",[70] and that the "true nature of the dispute between the parties is not about any act of domestic violence, but rather about the issue of the late estate of N[...] J[...] B[...], the trust and the properties in relation thereto." [71]

73. According to the DVA, domestic violence is identified as:

"domestic violence" means -

- (a) physical abuse;
- (b) sexual abuse;
- (c) emotional, verbal and psychological abuse;
- (d) economic abuse;
- (e) intimidation;
- (f) harassment
- (g) stalking;[72]
- (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 wellbeing of the complainant;

"economic abuse" includes -

- (a) the unreasonable deprivation of economic or financial resources to which a complainant is entitled under law or which the complainant requires out of necessity, including household necessities for the complainant, and mortgage bond repayments or payment of rent in respect of the shared residence; or
- (b) the unreasonable disposal of household effects or other property in which the complainant has an interest;

"emotional, verbal and psychological abuse" means 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;

"harassment" means engaging in a pattern of conduct that induces the fear of harm 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;

"intimidation" means uttering or conveying a threat, or causing a complainant to receive a threat, which induces fear".

74.

Whilst once again acknowledging that even though the DVAA only came into effect after the application for a protection order was instituted by the Respondent, it is important to mention that further acts of domestic violence were added to the list in the DVA and includes coercive and controlling behaviour.[73]

75. Acts of domestic violence are consequently varied, wide and with varying effects and in terms of the scope and ambit of the Act, deliberately intended to be so. A too constricted approach or interpretation would render the aims of the DVA ineffective.
76. However, what actually translates to acts of domestic violence will be dependent on the facts of each case.[74]
77. In this case looking at the various acts complained of and its resultant effects, the Magistrate found the following acts by the Appellant to be acts of "domestic violence":

Intimidation Controlling Behaviour

Psychological abuse

Locking farm gates

Entry to family farm without consent

Continuous threats

Economic abuse

78. Looking at the definitions of what constitutes domestic violence in terms of the DVA, I am in agreement. The acts complained of falls squarely within the definitions and scope of the DVA and DVAA. When looking at the behaviour of the Appellant, it should not be considered in isolation but instead the court should consider the full context of the alleged violent acts to properly understand the full and resultant effect of said acts and behaviour. Indeed, a number of acts when viewed in isolation may appear to be trivial or minor, but when viewed in its entirety can form part of a pattern of behaviour that is abusive and or violent.
79. The Appellant's actions, when considered in full context and as alleged by the Respondent, fall within the definitions as articulated above, particularly concerning verbal, emotional, or psychological abuse, harassment, and stalking.

In re: Incorrect Application of the Plascon-Evans Principle

80. The Appellant avers that the Magistrate incorrectly found that the above acts of violence were committed by him and that the Magistrate

incorrectly applied the principle set out in *Plascon-Evans Paints Lt v Van Riebeeck Paints (Pty) Ltd*[75](Plascon-Evans) regarding final interdicts and/or orders.

81. Looking at the replying affidavit of the Appellant, there is a denial of the acts constituting domestic violence and it is averred that when one looks at:

"the true nature of the dispute between the parties [it] is not about any act of domestic violence, but rather about the issue of the late estate of N[...] J[...] B[...], the trust and the properties in relation thereto. The issue of the written agreement entered into between the Appellant, B[...] and Nadan CC is of particular importance in the dispute between the parties".[76]

82. A denial by the Appellant of a factual allegation in the Respondent's founding affidavit must be real, genuine and bona fide before it can be considered prohibitive to the Respondent being granted final relief. This issue was touched upon in the decision of

Islam v Kibir.[77]

"When in application proceedings there is a dispute of fact which has to be resolved on the papers and on the basis of the principle enunciated in the Plascon-Evans Paints matter, the court can only reject the version of the respondent if the absence of bona fides is abundantly clear and manifest and substantially beyond question. See: Reynolds v Mecklenberg 1996 (1) SA 75 (W). The court must therefore be convinced that the allegations of the respondent are so far-fetched or clearly untenable that it is justified in rejecting them merely on the papers. See in this regard Plascon-Evans Paints (supra)."

83. Thus, a court must be convinced that the allegations of the Respondent are so far- fetched or so clearly untenable that it is justified in rejecting them merely on the papers and without requiring oral evidence to be led.

84. Looking at the Plascon-Evans rule it stipulates that:

"where there is a dispute of fact in motion proceedings, the respondent's version is generally accepted. The court therein found that the detailed allegations made by the respondent, which were unchallenged in substance by the appellant, warranted the granting of a protection order. The primary purpose of issuing an interdict in cases of family or domestic violence, as highlighted by the Constitutional Court, is not to address domestic issues or to inflict penalties. Instead, its aim is to offer a period of respite, facilitating the discovery of solutions. This approach is focused not on penalising previous wrongdoings but on averting future transgressions. Ideally, it strives for preventive justice rather than punitive measures, with the ultimate goal of fostering restorative justice".[78]

85. In the matter before this court, in his answering affidavit, the Appellant's response to the Respondent's allegations amounted to what can only be described as a mere denial of such acts. When allegations made in the founding papers are not substantially contradicted by the opponent, it stands to reason that the allegations made can be accepted as correct. Accordingly, if there are real factual disputes on the papers before a Court, the Court will adjudicate the matter on the version put before it by the Respondent. Where either the allegations or denials are so far- fetched or clearly untenable, a court is justified in rejecting them merely on the papers.

86. It becomes important to mention as was highlighted in Wightman t/a JW Construction Ltd[79] that:

"a judge should not allow a respondent to raise 'fictitious' disputes of fact to delay the hearing of the matter or to deny the applicant its order. There had to be a bona fide dispute of fact on a material matter. This means that an uncreditworthy denial, or a palpably implausible version, can be rejected out of hand, without recourse to oral evidence "

87. In casu therefore the Appellants mere denials relating to complaints about domestic acts committed by him, were palpably implausible and far-fetched, and could be rejected by the Magistrate. Indeed, the Magistrate correctly found that acts of domestic violence was committed and stated that:

".....these acts of domestic violence vary from intimidation, controlling behaviour, psychological abuse, locking farm gates entry to a family farm without consent, continuous threats and economic abuse".[80]

88. The acts in its totality together with the bold denials by the Appellant failed to raise a real, genuine or bona fide dispute of fact which could have created a hurdle for the Magistrate to make a final finding in the Respondent's favour.

89. Indeed, there was nothing stopping the Appellant from filing confirmatory affidavits to corroborate their version.

90. The Respondent on the other hand filed a supporting affidavit of George Albert Boshoff wherein references were made to the acts of domestic violence complained of by the Respondent and wherein specific dates relevant to the occurrences were deposed to.

91. In addition, the supporting affidavit of Petrus van Heerden was filed to corroborate the averments and allegations made by the Respondent in the founding papers.

92. Having regard to these two supporting affidavits it is clear that it elaborates on and confirms allegations and averments already made in the founding papers.[81]

93. The Magistrate on all the evidence found that "on a balance of probabilities... a domestic relationship existed between the complainant and the respondent and that the respondent had committed an act of domestic violence towards the complainant".[82]

94. The Magistrate correctly applied the Plascon-Evans principle and found that the general denial of all allegations of domestic violence acts by the Appellant was implausible, to the extent that it was found that the denials could be rejected outright on the papers alone.

95. After considering all aspects of the case, this court finds that the Magistrate's decision to issue a final protection order was justified. The Magistrate had correctly interpreted the scope of the DVA and its application to the facts of the case.

96. The Magistrate recognised that domestic violence, as defined in the DVA, encompasses a wide range of behaviors, including those exhibited by the Appellant. The court acknowledged that such behaviors extend beyond physical violence to include emotional, verbal, and psychological abuse, which were relevant in this case.

97. Furthermore, in its judgment, the Magistrate applied the Plascon-Evans rule, which favored the Respondent's version of events due to the Appellant's failure to substantively refute the allegations. The

Magistrate correctly found that the Appellant's bare denials were insufficient to counter the detailed and specific allegations made by the Respondent.

98. In *J.G v A.N*, [83] thereto, the court found that the Appellant's approach of relying on a bare denial of the allegations without substantively addressing them was deemed insufficient by the court. The court further reiterated the purpose of a protection order under the DVA, emphasising its role as a preventative measure rather than a punitive one. The court highlighted that the primary objective of such orders is to prevent future misconduct and provide a safe space for potential resolution of domestic

issues.

99. In conclusion, the court's judgment in *J.G v A.N* reinforced the broad scope of the DVA and its applicability to various forms of domestic relationships. The case highlighted the importance of detailed factual analysis in cases of domestic violence and the role of protection orders in safeguarding individuals from potential harm.
100. Having regard to all of the above, the only inference from the contextual facts is that a domestic relationship exists between the Appellant and the Respondent and that such a relationship is deserving of being protected by the principles in the DVA.
101. The Respondent consequently proved a clear right and a reasonable apprehension of harm and imminent harm to her rights, without any other satisfactory remedy available to her. The Respondent dsid prove on a balance of probabilities that she was entitled to the domestic order granted by the Magistrate.
102. There is no basis on which to find that the costs of the appeal should not follow the results. [84]

ORDER

1. The Appeal is dismissed with costs.

T.DEANE

ACTING JUDGE OF THE HIGH

COURT, POLOKWANE; LIMPOPO

DIVISION

I agree, and it is so ordered.

M. NAUDE-ODENDAAL

JUDGE OF THE HIGH COURT

POLOKWANE; LIMPOPO DIVISION

APPEARANCES FOR THE PLAINTIFF : Adv SM Stadler INSTRUCTED BY : Bernhard Van Der Hoven Attorneys FOR THE DEFENDANT : Adv JG Bergenthuin INSTRUCTED BY : Cilliers & Reynders Inc.

[1] Record: Vol 3, pp 176-184.

[2] Record: Vol 3, p 185.

[3] Record: Vol 3, p 186.

[4] Record: Vol 3, p 186.

[5]

[1984] ZASCA 51; 1984

(3) SA 623 AD.

[6] Record: Vol 1, pp 4, 13, 16.

[7] Record: Vol 3, p 186.

[8] 2012

(4) All SA 607 (SCA).

[9] 2000

(2) SA 425 (CC).

[10] Appellants Heads of Arguments: p 12, para 28.

[11] Appellants Heads of Arguments: p 12, para 29.

[12] Respondents Heads of Arguments: p 3.

[13] Daffy v Daffy at para 4.

[14] Daffy v Daffy at para 7.

[15] Daffy v Daffy at para 7.

[16] Daffy v Daffy at para 8.

[17] Daffy v Daffy at para 8 and with reference to the Shorter Oxford English Dictionary on Historical Principles (6th ed).

[18] Daffy v Daffy at para 8 and with reference to the Shorter Oxford English Dictionary on Historical Principles (6th ed).

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- [19] Daffy v Daffy at para 8.
- [20] Daffy v Daffy at para 8.
- [21] Daffy v Daffy at para 9.
- [22] Daffy v Daffy at para 9.
- [23] See ss 10 and 12 of the Constitution respectively.
- [24] 2022
- (2) SACR 233 (SCA).
- [25] No. 133 of 1993.
- [26] Vetten L (2005) "Violence against women: Good practices in combating and eliminating violence against women". Conference of the UN Division for the Advancement of Women & UN Office on Drugs and Crime - 17 to 20 May 2005 Vienna, Austria, at 3.
- [27] The DVA is applicable to a range of familial (Married, divorced or separated couples; couples living together; parents of a child; family members (including the extended family); people who are or were engaged or dating one another - including those circumstances where one party (but not the other) perceives some form of romantic, intimate or sexual relationship to be in existence; and children) and domestic (such as people who share or have recently shared the same residence) relationships and covers both heterosexual and same sex relationships. See Vetten (2005) at 4.
- [28] SA Law Reform Commission (1996) "Family Violence". Issue Paper 2, Project 100, at 5.
- [29] See SA Law Reform Commission (2007) "Domestic Violence". Discussion Paper 70, Project 100 at 25.
- [30] SA Law Reform Commission (2007), at 37.
- [31] DVAA section 2(h).
- [32] Spiritual abuse is defined as inciting harm against the complainant based on their religious or spiritual beliefs, amounting to advocating hatred, preventing the complainant from exercising their constitutional right to freedom of conscience, religion, thought, belief, and opinion, including the external manifestation of their religious or spiritual convictions and manipulating the complainant's religious or spiritual convictions to justify or rationalise the abuse.
- [33] Elder abuse is defined in alignment with the Older Persons Act, making the abuse of older individuals a punishable offense. Notably, this extension of protection to the elderly is a crucial aspect of the Act.

- [34] South African Government (2022) "President Cyril Ramaphosa: Second Presidential Summit on Gender-Based Violence and Femicide". At <https://www.gov.za/news/speeches/president-cyril-ramaphosa-second-presidential-summit-gender-based-violence-and> (3 April 2024).
- [35] Statista
(2023) "Number of domestic violence-related crimes in South Africa in 2022/2023". At <https://www.statista.com/statistics/1401015/number-of-selected-domestic-violence-related-crime-in-south-africa-by-gender/> (4 April 2024).
- [36] Brodie, N (2023) "Domestic Terror: Intimate partner violence in South Africa". Kwela: Cape Town.
- [37] Means causing a complainant harm by: a. committing physical violence against or damaging the property of a related person; b. threatening a related person with physical violence against or damage to the property of either the complainant or the related person concerned; or c. threatening a complainant with physical violence against or damage to the property of a related person
- [37] Means causing a complainant harm by:
- committing physical violence against or damaging the property of a related person;
 - threatening a related person with physical violence against or damage to the property of either the complainant or the related person concerned; or
 - threatening a complainant with physical violence against or damage to the property of a related person
- [38] Founding Affidavit: p I0, para 4.7.
- [39] Record: p 51, para 5.9.6.
- [40] Record: p 82, par 8.19; p 64, para 8.25; p 66, para 8.32.
- [41] Appellants Heads of Argument: p 22, para 66.
- [42] Record: p 186, para 2.
- [43] Appellants Heads of Argument: p 22, para 67.
- [44] Respondents Heads of Argument: p 17, para 7.1.
- [45] (9)(a) The court may on application order to be struck out from any affidavit any matter which is scandalous, vexatious or irrelevant,
- with an appropriate order as to costs, including costs as between attorney and client. (b) The court shall not grant an application referred to in paragraph
- unless it is satisfied that the applicant will be prejudiced in his or her case if it be not granted.

[45] (9)(a) The court may on application order to be struck out from any affidavit any matter which is scandalous, vexatious or irrelevant,

with an appropriate order as to costs, including costs as between attorney and client.

(b) The court shall not grant an application referred to in paragraph

(a) unless it is satisfied that the applicant will be prejudiced in his or her case if it be not granted.

[46] Record: p 3, para 4.2; p 4, para 5.

[47] Founding Affidavit: para 6 relating to urgency.

[48] Appellants Heads of Argument: p 15, para 43.

[49] Appellants Heads of Arguments: p 16, para 47.

[50] Record: p 19, para 7.7.

[51] Record: p 13, paras 24-27.

[52] Record, pp 13-14.

[53] Record: pp 14-16.

[54] Record: p 14, para 5.4.

[55] Record: p 14, para 5.6.

[56] Record: pp 14-15, para 5.7.

[57] Record: p 16, para 5.13.

[58] Record: p 15, para 5.9.

[59] Record: p 16, para 6.1.1.

[60] Record: p 17, para 6.1.2.

[61] Record: p 17 para 6.1.4.

[62] Record: p 18 para 7.4.

[63] Record:

p. 18, para 7.5.

[64] Record: 19 para 7.10.

[65] Record: p 19, para 7.10.

[66] Record: p 20, para 7.11; Respondents Heads of Argument: p 29, para 9.4.17.

[67] Record: Annexure H, pp 42-45.

- [68] Record: pp 117-125.
- [69] Appellants Heads of Argument: p 18, para 49.
- [70] Appellants Heads of Argument: p 18, para 50.
- [71] Appellants Heads of Argument: p 19, para 55.
- [72] The word "stalking" was deleted by the DVAA. Although the word does not appear in the DVA anymore, the act of stalking now technically forms part of the revised definition of "harassment").
- [73] Looking at Section 2(c) and (d) - Coercive and Controlling Behaviour; the New Act seemingly broadens the idea of domestic abuse in a relationship by the introduction of two new definitions: "coercive behavior" and "controlling behavior." "Coercive behaviour" is described as abusive conduct or acts of force, intimidation or undue pressure intended to cause a complainant or a related person to act, not to act, or be subjected to certain acts against his or her will. "Controlling behaviour" is described as causing the complainant or a related person to be dependent on or subordinate to the respondent by: a. isolating him or her from sources of support; b. exploiting his or her resources for personal gain; c. depriving him or her of the means needed for independence, resistance, or escape; or d. regulating his or her everyday behaviour.
- [73] Looking at Section 2(c) and (d) - Coercive and Controlling Behaviour; the New Act seemingly broadens the idea of domestic abuse in a relationship by the introduction of two new definitions: "coercive behavior" and "controlling behavior." "Coercive behaviour" is described as abusive conduct or acts of force, intimidation or undue pressure intended to cause a complainant or a related person to act, not to act, or be subjected to certain acts against his or her will.
- "Controlling behaviour" is described as causing the complainant or a related person to be dependent on or subordinate to the respondent by:
- a. isolating him or her from sources of support;
 - b. exploiting his or her resources for personal gain;
 - c. depriving him or her of the means needed for independence, resistance, or escape; or
 - d. regulating his or her everyday behaviour.
- [74] J.G v A.N (A3132/2021)
- [2024] ZAGPJHC 45 (26 January 2024).
- [75]
- [1984] ZASCA 51; 1984

(3) SA 623 AD.

[76] Appellants Heads of Argument: p 19, para 55.

[77] (CA: 280/2010) [2011] ZAECGHC 9 (11 April 2011), para 17.

[78] S v Baloyi (Minister of Justice and Another Intervening) [1999] ZACC 19; 2000

(2) SA 425 (CC) para 17.

[79]

[2008] ZASCA 6; 2008

(3) SA 371 SCA par 13.

[80] Record: p 182.

[81] Record: pp 167, 168, 170, 171.

[82] Record: p 183, para 26.

[83] (A3132/2021)

[2024] ZAGPJHC 45 (26 January 2024).

[84] Neuhoff v York Timbers ltd 1981

(l) SA 666 (T).

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