

SOUTH AFRICA / JUDGMENT

M.P.T.M and Another v Minister of Justice and Constitutional Development and Others (2025-018563) [2025] ZAGPJHC 325 (28 March 2025)

[2025] ZAGPJHC 325

COURT

South Gauteng High Court, Johannesburg

BEFORE

S D J Wilson

CASE / FILE NUMBER

2025-018563

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IN

THE HIGH COURT OF SOUTH AFRICA

(GAUTENG

DIVISION, JOHANNESBURG)

Case

No. 2025-018563

(1)

REPORTABLE: NO

(2)

OF INTEREST TO OTHER JUDGES: NO

(3)

REVISED.

SIGNATURE

DATE:

28 March 2025

In

the matter between:

M[...]
P[...] T[...]
M[...]
First Applicant
S[...]
E[...]
M[...]
Second Applicant
and
MINISTER
OF JUSTICE AND
CONSTITUTIONAL
DEVELOPMENT
First Respondent
THE
DIRECTOR, OFFICE OF WITNESS PROTECTION,
LIMPOPO
REGION
Second Respondent
NATIONAL
DIRECTOR OF PUBLIC PROSECUTIONS
Third Respondent
DIRECTOR
OF PUBLIC PROSECUTIONS,
GAUTENG
LOCAL
DIVISION
Fourth Respondent
MINISTER
OF
POLICE
Fifth Respondent
JOHN
HENRY FFENNEL NICHOLAS
Sixth Respondent

JUDGMENT

WILSON J:

1 On 25 February 2025, the applicants, the M[...], approached me in person in my urgent court seeking a range of relief against the

respondents. The relief sought included a claim for unliquidated damages for what the M[...] say was their unlawful removal from the State's witness protection programme; an order setting aside the rescission of an order restraining their discharge from that programme, which was apparently granted by the Limpopo High Court on 30 June 2017; an interdict restraining the respondents from killing them, or threatening to kill them and their family; and an order staying the execution of a Magistrates' Court order evicting them from their home in Blairgowrie,

Johannesburg.

2 Neither the damages claim nor the relief concerning the M[...]’ discharge from the witness protection programme is urgent. There is also no basis on which I can grant judgment for unliquidated damages on motion, or interfere with an order granted in another division of the High Court. However, because there was clear prima facie evidence that a police officer had threatened to kill the M[...], and because the M[...] face imminent eviction from their home, I was inclined to exercise my discretion to treat the interdictory relief, and the relief claiming a stay of the eviction order, as urgent. I stood the matter down until 27 February 2025 to allow the respondents an opportunity to deal with the M[...]’

application.

3 On 27 February, the relief claiming a stay of the eviction order was settled between the parties. The M[...] undertook to leave their Blairgowrie home by 31 March 2025, and the sixth respondent, Mr. Nicholas, who owns the property, agreed not to execute the order before then.

The interdict sought

4 Only the interdictory relief remained live. I was not convinced that I had sufficient information to decide whether to grant it on the papers before me at that stage. Accordingly, I postponed the application to 27 March 2025 in order to allow the parties to file further papers dealing with that relief, and with any other matter they thought necessary. Having reviewed those papers, I have come to the conclusion that some interim relief should be granted on an urgent basis. I now set out the nature of that relief,

and the basis on which it is justified.

5 The M[...] are married to each other and presently reside together with their son at the Blairgowrie property. By order of the Randburg Magistrates’ Court, the M[...] must vacate that property, and have undertaken to do by 31 March 2025. While it is not clear where the M[...] will go, they accept the Magistrates’ Court order, and have not sought to challenge it by way of review or

appeal.

6 The M[...] are accordingly presented with a future of uncertainty and insecurity. But the problems they face on vacating their home extend further than might usually be expected. This is because Mr. M[...]’s involvement as a State witness in a murder case has triggered a series of events which resulted in him being the subject of a large number of threats on his life. On the papers

before me, it has been established, at least prima facie, that those threats were issued by a police officer – one Lieutenant Colonel Fatima Gafoor – who is currently posted to the Parkview Police Station.

7 The threats take the form of text messages to Mr. M[...]’s phone. They are as pungent as they are numerous. The messages

placed before me span a period of just under two years, and were sent from seven different cell phone numbers. They repeatedly say that Mr. M[...] and his family will be killed “like dogs”. They are punctuated with the words “bang bang” in a context which obviously implies gunfire. In one of the messages, the author appears to identify herself as Lt. Colonel Gafoor by telling Mr. M[...], in an apparent attempt at rhyme, that she is “GAFFOOR” and that Mr. M[...] is just a “K****R”. Mr. M[...] is of African descent.

8 The threats are incessant. Mr. M[...] is told that he is being followed, that he will be “hunted” down, and that the

author of the messages will not rest until Mr. M[...] and his “stupid family” are dead. There are threats to kill the second applicant, who is referred to as Mr. M[...]’s “pathetic wife”. The messages say that various cases Mr. M[...] has opened with the police will be closed. There are details about the car Mr. M[...] drives and Mr. M[...]’s movements. One of the messages says that Mr. M[...] had been followed from “Parkview to [his] residence”. The messages say that their author will be protected by a “new” station commander, presumably at Parkview, “who is an Indian like myself and not a K****r like [Mr. M[...]]”.

9 At least one of the cell numbers from which the threats emanated was registered using Lt. Col. Gafoor’s identity number. That, together with the fact that the author of one of the messages identifies themselves as “GAFFOOR” is good prima facie evidence that Lt. Col. Gafoor is in fact the source of the threats. The fifth respondent, the Minister, does not dispute that Mr. M[...] actually received the messages. Nor does he dispute that one of the cell numbers that sent them was registered under Lt. Col. Gafoor’s identity number. Nor can the Minister deny that the M[...] have obtained a final protection order under the Protection from Harassment Act 17 of 2011 against Lt. Col. Gafoor. It is perhaps noteworthy that, two and a half weeks after the protection order was granted, the author of the text messages told Mr. M[...] that “no court in this country is gonna stop me from getting u killed”.

10 The Minister does not accept, however, that Lt. Col. Gafoor actually sent the messages. Lt. Col. Gafoor, though not a party to these proceedings in her own right, apparently denies that she is the source of the messages. The Minister alleges that she has opened a case of fraud against whomever used her identity to obtain the cell number that sent one of the messages. The Minister also alleges that the owner of the store that sold the SIM card corresponding to the number registered in Lt. Col. Gafoor’s name denies having sold the card to Lt. Col. Gafoor. The basis for this denial is apparently that most of his customers are not of Lt. Col. Gafoor’s race.

11 Lt. Col. Gafoor does not herself depose to an affidavit dealing with the M[...]’ allegations. Nor does the Minister produce the statement allegedly given by the owner of the store that sold the SIM card registered in Lt. Col. Gafoor’s name. The Minister’s affidavit, deposed to on his behalf by a Colonel Desre Grobler, deals with Mr. M[...]’ case in fairly laconic

terms. She does not produce copies of the various dockets under which Mr. M[...]’ claims of intimidation and Lt. Col. Gafoor’s

claims of fraud have been investigated. Nor is it clear to me on the papers what motive Lt. Col. Gafoor would have to embark upon what was obviously a sustained attempt to terrorise the M[...]. It does appear, though, from the M[...]’ founding affidavit, that Mr. M[...] was dissatisfied with Lt. Col. Gafoor’s handling of various complaints he laid at the Parkview Police Station. These complaints appear to have concerned the way he was treated in, and ejected from, the witness protection programme.

The requirements for interim relief

12 The upshot is that there is a clear evidentiary chain linking Lt. Col. Gafoor to the threats contained in the text messages of which the M[...] complain. Though the Minister denies that there is any such link, his papers do not cast serious doubt upon the evidence

the M[...] put up. On the well-known test set out in *Webster v Mitchell* 1948 (1) SA 1186 (W) at 1189, the M[...]’ papers sustain a prima facie right to an interdict directing the Minister to take such steps as may be necessary to ensure that Lt. Col. Gafoor refrains from making threatening contact with the M[...] or from carrying out any of the threats that appear, at least prima facie, to have emanated from her. Since the threatening messages annexed to the M[...]’ papers clearly imply that Lt. Col. Gafoor was not the only police officer involved in following the M[...] or issuing threats against them, it seems to me that the Minister ought to be placed under a duty to ensure that the M[...] are not harmed or threatened by any other police officer either.

13 I am satisfied that the M[...] have a reasonable apprehension of harm. The messages themselves make that harm clear. The only real

problem on the papers is that the last message alleged to have emanated from Lt. Col. Gafoor is dated in May 2022. Ms. Jara, who

appeared for the first to fifth respondents, accepted that the papers make out a prima facie case that Lt. Col. Gafoor is responsible for sending the threatening messages. She nonetheless argued that, because the messages are so old, the M[...]’ application could not be urgent. Nor, Ms. Jara submitted, could there be a reasonable apprehension of harm.

14 Mr. M[...] says that there are more recent messages that were not attached to the application papers. I obviously have not seen these messages and cannot fairly have regard to them. However, the M[...] face a spell of transience on their vacation of the Blairgowrie property. They believe that Lt. Col. Gafoor and other unknown police officers may take the eviction as an opportunity to carry out their threats. In all the circumstances of this case, I am inclined to accept, at least prima facie, that this apprehension falls within the bounds of reasonableness, and that the M[...]’ application is urgent.

15 The balance of convenience favours the grant of interim relief. Whether or not Lt. Col. Gafoor presents a threat to the M[...], there can be no real inconvenience to the Minister from placing him under a duty to ensure that the threats are not repeated and that the M[...] do not come to harm at the hands of his officers. If that fear turns out to have been far-fetched, then the Minister need do nothing at all to allay it. If, however, there is a credible threat to the M[...]’ safety on their vacation of the

Blairgowrie property, then the inconvenience those threats pose clearly outweighs any inconvenience caused to the Minister by the

relief I intend to grant.

16 If, as I have accepted, there is at least a prima facie basis to accept that Lt. Col. Gafoor is the source of the threats made to the M[...], then there can be no effective legal remedy,

other than an interdict, to restrain her from carrying them out.

Joinder of Lt. Col. Gafoor

17 It seems to me that, other than the relief I intend to grant, the matter cannot proceed further without joining Lt. Col. Gafoor to

these proceedings in her own right. The M[...]’ application supposes that Lt. Col. Gafoor is using the trappings of her office to intimidate them. They seek to compel the Minister to prevent her from doing so. It is, however, possible that Lt. Col. Gafoor is on a frolic of her own, and ought to be joined in her personal capacity. Moreover, since she is the focus of so much of the interim relief I intend to grant, she ought to be placed in a position to oppose its finalisation in her own right.

18 Ms. Jara confirmed that Lt. Col. Gafoor is a police officer on active duty, and that she is stationed at Parkview. She may be served

care of the Parkview Police Station’s address.

Order

19 For all these reasons –

19.1 Lieutenant Colonel Fatima Gafoor is joined as the seventh respondent in these proceedings. The State Attorney is directed to serve a copy of this judgment on her at the SAPS Parkview Police Station, 7[...]

D[...] Ave, Parkview, Randburg, 2[...], and to ensure that she is given access to the Caselines file for this case.

19.2 A rule nisi is issued calling on any interested party to show cause before Wilson J on Wednesday 4 June 2025 (“the return day”) why the following orders should not be granted –

19.2.1 The fifth respondent is directed to take such steps as may be necessary to ensure that Lieutenant Colonel Fatima Gafoor ceases, whether herself or through the agency of any other SAPS officer, to harass, threaten or intimidate the applicants in any manner whatsoever.

19.2.2 The fifth respondent is directed to take such steps as may be

necessary to ensure that Lieutenant Colonel Fatima Gafoor refrains from carrying out, whether herself or through the agency of any other SAPS officer, any of the threats made in the messages marked as annexures 2 to 20 to the applicants' founding affidavit, or from harming the applicants in any other way.

19.2.3 The seventh respondent (Lt. Col. Gafoor) is interdicted and restrained, whether herself or through the agency of any other person, from harassing, threatening or intimidating the applicants in any manner whatsoever, and from carrying out, whether herself or through the agency of any other person, any of the threats made in the messages marked as annexures 2 to 20 to the applicants' founding affidavit, or from harming the applicants in any other way.

19.3 The relief set out in paragraphs 19.2.1 to 19.2.3 above is to operate as an interim interdict pending the return day.

19.4 The question of costs is reserved.

S D J WILSON

Judge of the High Court

This judgment is handed down electronically by circulation to the parties or their legal representatives by email, by uploading to Caselines, and by publication of the judgment to the South African Legal Information Institute. The date for hand-down is deemed to be 28 March 2025.

HEARD ON: 27 February and 27 March 2025 DECIDED ON: 28 March 2025 For the Applicants In person For the Respondents: P Jara Instructed by the State Attorney

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