Editorial note: Certain information has been redacted from this judgment in compliance with the law.

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

(1) Reportable: No

(2) Of interest to other Judges: No

(3) Revised: No

Date :13/06/2022

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Δ Maier-Frawley

CASE NO: 2021/21609

In the matter between:

JR Applicant

and

TR First Respondent

AL Second Respondent

J U D G M E N T

MAIER-FRAWLEY J:

1. This is the return day of a rule *nisi* in which the applicant seeks final relief against the first and second respondents. The application is opposed. On 13 June 2021, Matojane J granted an *ex parte* interim interdict in favour of the applicant against the respondents in the urgent court pursuant to the matter being found to be urgent and duly so enrolled. A *rule nisi* was issued, calling on the respondents to show cause why the interim order should not be

made final. The rule was extended from time to time until the eventual hearing of the matter in the ordinary opposed motion court.[1]

2. *Inter alia*, in terms of the order of 13 June 2021 (*the urgent order)*:

" 2.1 The first and second respondents are interdicted and restrained from:

2.1.1 Without lawful cause, making unsolicited contact, in person, telephonically or in writing, including electronically or on social media platforms, with the applicant;

2.1.2 Publishing any communications, including electronically or on social media platforms, about the applicant which contain allegations and/or insinuations regarding any alleged impropriety , be it personal, professional or fiscal;

2.1.3 Making any communication, whether in writing, telephonically or in person that threatens, insults and/or seeks to undermine or harm the applicant's reputation and dignity;

2.1.4 Making attempts to have the applicant arrested without good cause, or threatening to do so;

2.1.5 Harassing, threatening, intimidating or verbally or physically abusing the applicant.

2.2 The first respondent is:

2.2.1 Interdicted and restrained from entering the former matrimonial home situated at […], Westcliff;

2.2.2 Interdicted and restrained from entering the farm L[…] in T[…] District, Western Cape;

2.2.3 Authorised, *pendent lite* the divorce action under case number 24248/2021, to occupy one of the matrimonial homes, known as H[…], situated at […], Midrand.

2.3. The second respondent is interdicted and restrained from entering and/or approaching:

2.3.1 The applicant's residence at […], Westcliff, Gauteng;

2.3.2 The applicant's farm known as L[…] in the T[…] district, Western Cape;

2.3.3 The applicant's property known as H[…], […], Midrand; and

2.3.4 The applicant's offices of […], Sandhurst, Gauteng

2.4 That the first and second respondents pay the costs of this application on an attorney and client scale, in the event of opposition.

[1] On 29 July 2021 the rule was extended to 1 September 2021, then further extended to 23 November 2021 and then again extended to the opposed motion roll of 14 March 2022.

3. Pending the return day, the orders in paragraphs 2.1, 2.2 and 2.3 above shall have immediate effect. ”

3. The applicant (*Mr R*) and the first respondent (*Ms R*) are presently married to each other. It is common cause, however, that they no longer reside together as husband and wife and that their marriage has irretrievably broken down.[2] Since the grant of the urgent order, they also no longer co-habit together in the same matrimonial home. They are currently embroiled in a divorce action which is pending in this division. Preceding the launch of the urgent application on 13 June 2021, Mr R held the belief that Mrs R was conducting an extramarital affair, which he considered to be irreconcilable with the continuation of a marriage relationship. This comprises one of the grounds for the irretrievable breakdown of the marriage in Mr R's particulars of claim. In his founding affidavit in the urgent application, Mr R expressed the belief that Ms R was conducting an extramarital affair with the second respondent (*Mr L*).

4. Mr L has challenged the jurisdiction of this court to entertain this application against him on grounds that he resides outside the territorial jurisdiction of the court and in M[...], Western Cape; that the electronic correspondence addressed by him to Mr R and/or his erstwhile attorney of record (Ms Clarke of Clarkes attorneys, hereinafter '*Ms C'*)) was addressed from his residence situate in the district of M[...]; in addition, Mr L alleges that he has never threatened to enter or approach any of Mr R's properties or offices in Gauteng and also never did so; and finally, because the doctrine of effectiveness is not satisfied in *casu*.

5. It is convenient to deal first with the jurisdictional challenge.

[2] Since the grant of the urgent order, Mr R and Ms R no longer reside together in the same home. Mr R resides in the Westcliffe home whilst Ms R resides in the H[...] home *pendent lite* the conclusion of the divorce action.

Jurisdictional challenge

6. It is common cause that Mr L resides on a farm known situate in the district of M[...], Western Cape.

7. During the period 5 May 2021 to 13 June 2021,[3] Mr L addressed 54 unsolicited emails (most of which were addressed to Mr R and some of which were addressed to Ms C) in which he *inter alia* referred to Mr R as a liar, thief, a woman abuser, 'dodgy beyond note'[4], a 'little japper'[5], a disgrace to the legal profession, a 'bully', a 'coward having no guts', 'genetic waste',[6] whilst holding himself out as Ms R's 'benevolent protector', supporter and financier, and in which Mr L *inter alia*, threatened to expose Mr R for 'who and what he is' in the press, with the expressed intention and commitment of taking Mr R 'from hero to zero', including bringing an application to have Mr R disbarred as a lawyer for 'woman abuse'. Mr L sent the emails from his farm in M[...].

8. In his founding affidavit, Mr R alleges that Mr L and Ms R acted in concert and with a common purpose in addressing and sending a barrage of threatening and defamatory emails and in carrying on a campaign of unrelenting harassment, intimidation and defamation against him. At the time that the urgent application was instituted, Mr R resided at Westcliff, Johannesburg and Ms R was also in residence thereat. It is not in dispute that Ms R is both resident and domiciled within this court's jurisdiction.

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[3] This period preceded the grant of the urgent order.
[4] The Cambridge English dictionary defines 'dodgy' as *dishonest.*
See: https://dictionary.cambridge.org/dictionary/english/dodgy
[5] The Cambridge dictionary defines 'japper' as a small dog having a high-pitched bark. See: https://dictionary.cambridge.org/dictionary/french-english/japper
[6] The Urban dictionary defines 'genetic waste' as a waste of genes – when used in reference to a person, it connotes a person who is such an utter failure that his parents' genes (which probably weren't very good to begin with, given the outcome) were wasted. See: https://www.urbandictionary.com/define.php?term=Waste%20of%20Genes

9. In terms of section 21 (1) of the Superior Courts Act, 10 of 2013, a division of the High court has jurisdiction over 'all persons residing or being in, and in relation to all causes arising … within its area of jurisdiction.' In terms of s 21 (2), a division also has jurisdiction over any person residing or being outside its area of jurisdiction who is joined as a party to any cause in relation to which such court has jurisdiction or who in terms of a third party notice becomes a party to such a cause, if the said person resides or is within the area of jurisdiction of any other Division.

10. Thus, this court is endowed with jurisdiction in relation to (i) all persons residing or being within its area of jurisdiction; and (ii) all *causes arising* within its jurisdiction; and (iii) over any person residing or being *outside* its area of jurisdiction when such person is joined as a party to any cause in relation to which the court has jurisdiction if such person resides or is within the area of jurisdiction of any other division.

11. In *Cordient Trading*,[7] the Supreme Court of Appeal considered that '*causes arising'* within the jurisdiction of a division of a Superior Court did not to refer to causes of action but to all factors giving rise to jurisdiction under the common law.

12. In *Zokufa*,[8] a case in which a mandatory interdict was sought, Alkema J considered the meaning of 'causes arising' as these words appeared in s19(1) of the Supreme Court Act, 59 of 1959. Section 19(1) was substantially identical in wording to section 21(1) of the Superior Courts Act, providing as it did, that a local or provincial division of the high court had jurisdiction over 'all persons residing or being in and in relation to all causes arising…within its

[7] *Cordient Trading CC v Daimler Chrysler Financial Services (Pty) Ltd* 2005 (6) SA 205 (SCA), para 11.
[8] *Zokufa v Compuscan (Credit Bureau)* 2011 (1) SA 272 (ECM)

area of jurisdiction'. Relying on, *inter alia*, cases such as Cordient Trading *supra* and *Gulf Oil Corporation*,[9] Alkema J concluded at paragraph 32 of the judgment that ' *The issue, therefore, is whether the legal proceedings in this application can be seen to have arisen within the area of jurisdiction of this court. The legal proceedings are based on facts from which legal inferences may be drawn. These facts are often referred to as the 'jurisdictional connecting factors' and I will continue to use this description when referring to these facts.'* At par 38, he stated that '*a court will have jurisdiction to grant an interdict if the jurisdictional connecting facts supporting the requirements for an interdict are present within its area of jurisdiction.*' The learned judge went on to state at paras 62 and 63 of the judgment that '*in interdict proceedings a court will have jurisdiction if the requirements for the grant of an interdict are satisfied by facts within the territorial area of jurisdiction of that court. The next step is to establish the facts supporting the three requirements for an interdict and then to establish whether or not those facts originated or exist within the territorial jurisdiction of this court*.'

13. In *Road Accident Fund v Legal Practise Council and Others*,[10] a Full Court in this division had occasion to consider a jurisdictional challenge in respect of certain of the respondents who resided outside the court's area of jurisdiction and within the area of jurisdiction of various other divisions of the High Court. Having embarked on an extensive analysis of the authorities, the court concluded that where the relevant jurisdictional connecting factors are present within the seat of a division of the High court, such court would be vested with jurisdiction apropos those respondents who are outside the

[9] *Gulf Oil Corporation v Rembrandt Fabrikante en Handelaars (Edms) Bpk* 1963 (2) SA 10 (T) at 17D-H where Trollip J stated that 'cause' means an action or legal proceeding and that 'a cause arising within its area of jurisdiction' means 'an action or legal proceeding which, according to the law, has duly originated within the court's area of jurisdiction.

[10] *Road Accident Fund v Legal Practise Council and Others* 2021 (6) SA 230 GP

territorial jurisdiction of the court and that the court would not need, in such circumstances, to consider the principle of *causa continentia*. [11]

14. Although Mr R initially placed reliance on the principle of *causa continentia* for a finding that this court has jurisdiction to determine the issues between Mr R and Mr L in this application, this ground was not pursued at the hearing.

15. As pointed out in Zofuka *supra*, the jurisdictional connecting factors are a matter of substantive law. The three requirements for a final interdict are: (i) a clear right; and (ii) a threat to or a breach of such right; and (iii) the absence of an adequate alternative remedy.[12]

16. The applicant submits that all the jurisdictional connecting facts pertaining to the grant of a final interdict arose within the area of jurisdiction of this court. I agree. Mr R, who lives and works within the jurisdiction of this court in Gauteng, *inter alia*, sought to enforce his constitutionally guaranteed rights to dignity (which includes reputation), privacy, freedom and safety, including the right to live free from harassment. These rights vest in Mr R where he resides in Johannesburg, being within the jurisdiction of this court.[13] The alleged breach of Mr R's rights took place in Gauteng where Mr R (and other third parties to whom such electronic communications were published) received the alleged insulting, derogatory, abusive and defamatory emails of and concerning Mr R.[14] The alleged acts of harassment, which included

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[11] For a full discussion of the principle of *causa continentia* see: *Road Accident Fund v Legal Practise Council and Others,* cited in fn 10 above.
[12] See: *Setlego v Setlego* 1914 AD 221 at 227.
[13] Ibid *Zokufa*, cited in fn 8 above, at para 42. At para 43, the court went on to say that ' *Generally, a breach of a right occurs at a place where the right vests. The act of setting the breach in motion may occur somewhere else, but the breach usually takes place where the right vests.*
[14] An 'email' is defined in the Electronic Communications and Transactions Act, 25 of 2002 as '*electronic mail, a data message used or intended to be used as a mail message between the originator and addressee in an electronic communication*' and in terms of s 23, a data message must be regarded as having been sent from the originator's usual place of business or residence and as

threats of arrest and imprisonment of Mr R, occurred in Gauteng, where complaints of Mr R's alleged breach of an interim protection order (procured by Ms R against Mr R in the Worcester Magistrates Court) and that of criminal conduct on the part of Mr R were laid by Ms R at the Parkview and Midrand police stations respectively.[15] The legal proceedings by means of which Mr R is seeking to protect his personality rights (which include rights to dignity, privacy and freedom) were instituted in Gauteng, where protection from a further threat to and breach of those rights was sought to be procured.

17. In his heads of argument, Mr L relied on the general rule enunciated in *Sciacero*,[16] where it was said that *'The general rule with regard to the bringing of actions is actor sequitur forum rei. The plaintiff ascertains where the defendant resides, goes to his forum and serves him with the summons there'*. What this argument overlooks, however, is established law regarding *other* recognised grounds of jurisdiction, such as the principle of *causa continentia* (now entrenched in s 21(2) of the Superior Courts Act)[17] and that based on *causes arising* within the area of the court's jurisdiction (now entrenched in s 21(1) of the Superior Courts Act.)[18] At the hearing of the matter, counsel appearing for Mr L did not pursue any serious challenge to the fact that that all the relevant jurisdictional connecting factors in relation to the interdict/s sought arose within this court's jurisdiction. Instead, relying on *Bisonboard*,[19] he pursued the argument that the doctrine of effectiveness is not satisfied in *casu*.

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having been received from the addressee's usual place of business or residence.

[15] On Mr L's version, he assisted Ms R to procure the arrest of Mr R based on information provided to Mr L by Ms R to the effect that Mr R was breaching the terms of the interim protection order, by way of speaking telephonically to members of the SAPS at Parkview Police Station on 12 June 2021.

[16] *Sciacero & Co v Central South African Railways* 1910 TS 119.

[17] Id *RAF v LPC and Others* (cited in fn 10 above).

[18] Id *Zokufa* (cited in fn 8 above)

[19] *Bisonboard Ltd v K Braun Woodworking Machinery (Pty) Ltd* [1991] ALL SA 201 (A) at 222, where the following was said: "*The inquiry is a dual one: (1) is there a recognised ground of jurisdiction; and if there is, (2) is the doctrine of effectiveness satisfied – has the Court power to give effect to the judgment sought'*

18. As I understand the argument for Mr L, should Mr R wish to enforce any court order granted in favour of Mr R in these proceedings by means of committal proceedings in the future, this court would lack the jurisdiction to order such relief, as a court has no jurisdiction to order committal where the person is beyond the territorial limits of the court. Reliance was placed on cases such as *James*, [20] and *Di Bona*,[21] for the proposition that no court has coercive jurisdiction beyond its territorial limits and even within South Africa, the various Provincial and Local Divisions of the Supreme court can only, by virtue of special statutory authority enacted for the purpose, order the committal for contempt of Court of a person resident in the area of jurisdiction of another Provincial or Local Division in South Africa.

19. Mr L's argument aforesaid loses sight of the fact that the cases relied on were decided prior to the advent of the Superior Courts Act. The argument also ironically presupposes that any order granted by this court would be disobeyed by Mr L in future and that such disobedience, if found to constitute contempt of court, would be punished by means of committal to jail, a proposition that remains entirely speculative at this juncture. Moreover, in terms of section 42(2) of the Superior Courts Act, the civil process of a Division runs throughout the Republic and may be served or executed within the jurisdiction of any Division. Any order which may be granted against Mr L in this division will thus be executable against him in the Western Cape where he resides.[22]

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[20] *James v Lunden* 1918 WLD 88

[21] *Di Bona v Di Bona and Another* [1993] 3 All SA (C) at 633

[22] The papers refer to the fact that a contempt of court application was instituted against Mr L in this division after the grant of the urgent order, in terms of which he was found guilty of contempt of court. *Inter alia, a* coercive order for committal, suspended on certain conditions, was granted against him in those proceedings. Leave to appeal against the order was refused by the court a quo. A petition for leave to appeal was made to the Supreme Court of Appeal, which succeeded, but only apropos the amount of an additional penalty (a fine of R70,000.00) imposed by the court *a quo* upon Mr L for being in contempt of court. Leave to appeal was not granted on the basis of any lack of jurisdiction on the part of the court *a quo* to entertain the matter.

20. I accordingly find the jurisdictional challenge lacks merit and falls to be dismissed.

21. I now turn to the merits of the matter.

Backround factual matrix

22. Mr R and Ms R occupied three matrimonial homes from time to time during the subsistence of their marriage. All three homes are owned by Mr R.[23] The three matrimonial homes are referred to in the urgent order, namely, the former matrimonial home situated at [...], Westcliff (*Westcliff)*, a farm known as L[...]in the T[...] district in the Karoo, Western Cape (*L*[...]) and a property known as H[...], Midrand (*H*[...]). The H[...] residence is situated adjacent to a property owned by Ms R in Kyalami, from which property she previously (at least prior to the advent of the covid pandemic) conducted a dog hotel and pet rehabilitation business.

23. Although it is not clear from the papers when exactly the marriage between Mr and Ms R broke down irretrievably, it seems fairly clear that this would have occurred prior to 30 April 2021, being a time when Mr R's attorneys first corresponded with Ms R concerning the institution of divorce proceedings.

24. There is no dispute that Mr and Ms R have not shared a residence, whether at Westcliff (save for the weekend of 12 June 2021), H[...] or L[...], since about 25 April 2021. Ms R had travelled between Cape Town, T[...] (Karoo) and Johannesburg during 2021. According to Mr R, Ms R vacated L[...] by her own choice on 5 May 2021 when she left the farm with two loads of her

[23] The farm in the Karoo and the Westcliff property were acquired by Mr R prior to his marriage to Ms R.

belongings. On 7 May 2021, three more loads of Ms R's personal belongings were delivered to her at a neighbouring farm. Thereafter arrangements were made between the parties' respective attorneys for her collection or the delivery of any of her remaining personal belongings on the farm. By Mid-May 2021, Ms R had also removed several of her belongings from the Westcliffe home, leaving only a few rarely used items such as evening clothes and jewellery in the safe at Westcliffe. It is undisputed on the papers that Mr L had assisted Ms R in removing packed boxes containing her personal belongings from the Westcliffe home during May 2021. On 18 May 2021, the divorce summons was served personally on Ms R in Johannesburg.

25. Although Ms R's account of the circumstances under which she vacated the farm on 5 May 2021 differs from that of Mr R,[24] the fact of her evacuation of the farm in May 2021 is not in dispute, given that she did not again reside at the farm thereafter. Indeed, on 21 May 2021, Ms R's attorney (Mr Chris Steyn) (*Mr Steyn*) addressed a letter to Ms C in which he requested that Ms R be allowed to *visit* L[...] to collect her remaining belongings.[25]

26. As earlier indicated, during the period 5 May 2021 until the grant of the urgent order on 13 June 2021, Mr L had sent no less than 54 unsolicited emails, the majority of which were addressed to Mr R and some of which were addressed to Ms C and sent other persons. Most, if not all, of the emails addressed to Mr R were published, *inter alia*, to Ms R, Mr Steyn and Ms C, and Mr L's attorneys, who were copied in on the various emails

[24] According to Ms R, she was told by Mr R's brother, one A[…] (*A…*) to vacate L[...] farm on 5 May 2021 as Mr R was due to arrive at the farm later that day. Being 'threatened and fearful' she vacated in haste, packing and taking what she could with her. On 13 May 2021 some but not all of her belongings were dropped off at the neighbouring farm. According to Mr R (as confirmed by his brother […] under oath) A[…] did not order or instruct Ms R to leave the farm on 5 May 2021. A[…] merely asserted that it would be best if she were not present at the farm when Mr R arrived so as to avoid any altercation between the parties. She did not flee from the farm and there was no reason for her to have felt threatened or fearful.

[25] Per Annexure 'B9' at 003-60

transmitted by Mr L. It is not by coincidence that Mr L sent his first email, addressed to Mr R and Ms R's respective attorneys (with Mr R and Ms R being copied in on the correspondence) on 5 May 2021, being the date on which Ms R vacated L[…], in which he stated: '*Hi Chris, What surprises me is that one looks in Brakpan, Boksburg and Benoni for cases of Woman Abuse, but never in Westcliff, Kyalami or the Karoo…'.*

27. Emails that followed thereafter escalated in frequency and *inter alia* contained profanities and insults directed against Mr R's character, reputation, integrity and dignity. The content of only a few of the emails deserve mention at this juncture.[26] On 13 May 2021, Mr L wrote: '*…jy moet stadig gaan, jy fok nou met die verkeerde boer…eerstens, ek kan nie verstaan dat jy met 'n stukkie goud so gemors het…tweedens, jy gaan nie daarmee wegkom nie…noudat jy my betrek het, is jou 'kak-in-die-pos', ek is jou nagmerrie…ons kan die pad stap…'.* Later the same day, Mr L wrote*: 'O…ek het vergeet om te noem…ek gaan jou ontbloot vir wie and wat jy is…'.* On 14 May 2021 Mr L wrote: '*Dis net die begin…jy het nie die geringste idee wat ek kan doen nie…'.* On 15 May 2021 Mr L wrote: '*I am considering bringing an application to have you disbarred as A Lawyer for Woman Abuse…'.* On 16 May 2021 Mr L wrote: ' *…you are a disgrace to the Legal Profession'.* On 20 May 2021 Mr L wrote: '*…what a coward you are, clearly no guts…*' On 20 May 2021 Mr L wrote: '*…jy fok no met die verkeerde boer…jy het nie 'n fokken idee met wie jy te doen het nie – het jy - maar jy gaan uitvind…'* On 20 May 2021 Mr L wrote: '*…ek speel nou my koerant kaart…jy gaan soooo op die voorblad beland…*'. On 20 May 2021 Mr L wrote: '*…From Hero to Zero… that is where I intend to take you…yet again, not a threat, but this time a commitment…'.*On 12 June Mr L wrote to Ms C*: ' …Your client has many problems coming his way, 1, He's a liar, 2, He's a thief, 3, He's a woman*

[26] The content of each of the 54 emails is set out in the applicant's timeline at 033-22 to 033-39 of the papers.

Abuser…As T…'s [a reference Ms R] '*Benevolent Protector' I'll be part of this till it's over…O, and kindly inform your client that she's not going to run out of money to finance her case…'*. On 13 June 2021 Mr L wrote to Ms C: '*…Your client is dodgy beyond note…I'll go to L*[…] *tomorrow and get the Original Protection order from Nola, if she won't give it to me…I'll get another 'Original' from Worcester on Monday…but just so you know, your client is now on 'Speed-Dial' at the Police Station'*. Later, on 13 June 2021, Mr L wrote: *'O…forgot to mention…Legal Council* (sic) *Police, Interim Protection Order, Police, SARS, Police, Newspapers, Police…I'm having a 'jol'…*'. Again, on 13 June 2021, Mr L wrote to Ms C: '*…the word on the street is that you client intends to bring a Defamation claim against me and T…* [Ms R]*…kindly tell the little 'japper' to stop his shit, catch a wake up, get another life…BULLY TIME IS SO OVER…O…forgot to mention, the Police agree.'*

28. Mr R, who had been staying at L[…] for some time, returned to Johannesburg to take up residence at Westcliffe on 6 June 2021. Upon leaving the farm, he requested his staff to lock the house and gates and to ensure that no-one enters. This instruction was given, says Mr R, because Ms R had vacated L[…] and he believed that she had no reason to return thereto.[27] On 7 and 8 June 2021, however, he was informed by members of staff that Ms R had returned to L[…], had unlocked the gates with keys obtained from the farm office and had gained entry to the farmhouse through an open window. On this occasion, Ms R put some of her belongings into the closet in the main bedroom and switched off certain of the security cameras, which, according to Mr R, negatively affected the security on the farm. Ms R did not return to the farm on 9 and 10 June 2021.

[27] It is not in dispute on the papers that Ms R had been staying at a neighbouring farm whilst the Karoo after 5 May 2021.

29. As early as 30 April 2021, Mr R (through his attorneys) proposed to Ms R that she take up residence at H[...], given that their marriage had irretrievably broken down and divorce proceedings were contemplated. In a letter addressed by Mr R's attorney to Ms R's attorney on 12 May 2021, Mr R again proposed that Ms R take up residence at H[...] as an interim arrangement.[28] Various letters followed upon this proposal with no meaningful response received from Ms R's attorneys concerning the finalisation of the parties' interim living arrangements.[29] Instead, on 10 June 2021, Ms R sought and obtained an *ex parte* interim domestic violence protection order (*IPO*) against Mr R at the Worcester magistrate's court. In terms thereof, Mr R was ordered, *inter alia*, not to prevent Ms R from entering the shared matrimonial homes at L[...], H[...] and Westcliff. On 11 June 2021, Ms R returned to L[...] and left a copy of the court order with one of the farm's staff members, Ms Chungu. According to Ms R, she served the original IPO on Chungu, however, nothing turns on this.

30. On 10 June 2021, Mr Steyn emailed a copy of the IPO to Ms C, stating that '*We are aware that the protection order still has to be served on your client but we expect him to abide thereby in the meantime.*'[30] In a further letter addressed by Mr Steyn to Ms C on 11 June 2021, Mr Steyn acknowledged that the IPO had not been served in the correct way and further indicated that Ms R was on her way to Johannesburg and that she would be moving into the Westcliff home on 12 June 2021.

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[28] Annexure 'B5' at 003-54 to 003-55.

[29] On 21 May 2021 Ms R's attorney wrote to Mr R's attorney stating that '*Our client is currently staying at Westcliff. As her mother stays there, she prefers to remain at Westcliff at least until the interim arrangements have been finalized.'*

[30] The IPO was never served on Mr R, whether prior to or pursuant to the launch of the urgent application. By the time the present matter was heard in this court, the IPO had in fact been withdrawn by Ms R in the Worcester Magistrates Court.

31. On 12 June 2021, Mr R's attorney (Ms C) replied to Mr Steyn's letter of 11 June 2021, *inter alia*, indicating that:

> "2. As you have acknowledged, the order has not yet been served on our client. In terms of section 5(6) of the Domestic Violence Act, 116 of 1998 ("the Act') the order is of no force or effect until it has been served in the prescribed manner (on the respondent, by the clerk of the court, a sheriff or a peace officer)…
>
> …
>
> 8. Furthermore, as is evident from the letters we have sent you (to which you have failed to respond), your client has never been barred from entering any of our client's properties. Your client has vacated the properties of her own accord and the parties no longer cohabit, and have not done so at the very latest since 23 April 2021.Your client has setup and has been occupying alternative accommodation in the Karoo. In any event, our client has made the eminently reasonable proposal that, pendente lite, she resides in the Kyalami property. This property comprises a very comfortably appointed main house with two en suite bedrooms, two fully appointed kitchens, dining room, lounge, study and ample outdoor entertainment areas and gardens. There is also a luxurious one bedroom en suite cottage with a lounge and dining area, comfortably furnished and appointed. It would appear, however, that for no other reason than to be provocative, your client insists on returning to the Westcliff property, notwithstanding that:
>
> 8.1 There is a luxurious alternative available to her;
>
> 8.2 Our client is in residence in Westcliff;
>
> 8.3 She and L[…], acting with common purpose, have relentlessly harassed, provoked and threatened our client, making the resumption of cohabitation between your client and ours utterly intolerable.
>
> …
>
> 9. We have addressed you on a number of occasions about reasonable interim arrangements, but you have failed to respond meaningfully or to engage with us.
>
> …
>
> 11. In that the application and order have not yet been served on our client, the order is of no force and effect. However, our client has not committed and will not commit any act of domestic violence against your client, and nor will he — without an order of the court — prevent her from entering the Westcliff property. However, he will put in place practical, sensible and reasonable arrangements until such time as

> further agreement is reached or a court order has been granted. Specifically, our client will continue to occupy the main bedroom suite, and your client will have access to the west wing of the house, comprising a downstairs en suite bedroom and dressing room (private and exclusive), the kitchen (non-exclusive) and the western verandah. This is where her remaining belongings are stored (in that, as previously recorded, she has already removed the bulk of her belongings).
>
> …
>
> 13. We require your URGENT WRITTEN UNDERTAKING, before 15h00 today — in light of the above undertaking from our client and the sensible arrangements he has put in place - that your client will not attempt to cause the police to have him arrested (which would be unlawful and would constitute malicious prosecution for which she will face the consequences), or to solicit the assistance of anyone else (including but not limited to L [a reference to Mr L]) to do so, and that she will in fact not engage our client in any manner whatsoever for so long as she insists on staying in the Westcliff property. …"

32. On 12 June 2021 Mr Steyn replied to the above letter, indicating, *inter alia*, that the IPO would be served on Mr R 'ASAP' and that Ms R was 'not comfortable' to stay in the Kyalami property due to a lack of proper security.'

33. Upon her arrival at Westcliff on 12 June 2021, according to Ms R, her gate remote was not working and no-one opened when she rang the bell. As she could not gain entry, she drove to the Parkview police station to enforce the IPO which she steadfastly maintains was valid and enforceable. She returned to Westcliff accompanied by the police. On her return, A[…] (Mr R's brother) opened the gate and informed the police that she had not been locked out. A staff member later handed her a new programmed remote. She went into the main bedroom to see if any of her belongings were there but found that they had been placed in a guest room downstairs. Mr R was not present at the property when this occurred.

34. At the time, Mr R's brother and his wife were house guests at Westcliff. They were occupying an upstairs guest bedroom. It is common cause on the papers that Ms R removed their luggage and belongings from the upstairs guest room and deposited same in the downstairs guest room without as much as discussing this with either Mr R or his relatives, whether beforehand or at all.

35. Later that evening, members of the South African Police force attended at the property on two further occasions. According to Ms R, she did not summon them or have any discussions with Mr R that evening.

36. In the meanwhile, Mr R had received an email from Mr L in which he threatened that Mr R would be arrested. The email reads, in relevant part, as follows: "… *Time to grow up and smell the roses… T…* [Ms R] *just now got to Westcliff and was Locked Out…She's at the Police Station as I write to exercise her Rights…Enjoy your night in jail…'*

37. According to Mr R, he was present when the police arrived at 19h25 for the second time at Westcliff on 12 June 2021. The police mentioned to him that they had been informed that the IPO had been served on Mr R. The police arrived at Westcliff for the third time at 24h00 that evening. On this occasion, Mr R heard Ms R telling the police that Mr R is a bully and that she felt unsafe. Prior thereto, Mr R had retired to his bedroom and had locked the security gate located outside his bedroom. Ms R denies she told the police that Mr R was a bully or that she felt unsafe in the home and maintained that she did not know why the police had arrived for the second and third time on 12 June 2021. Be that as it may, Mr L sent an email to Ms C thereafter in which he stated, *inter alia*. that: '…*T* [Ms R] *has been locked out of her Matrimonial bedroom'…fuck, when is this shit going to end, has your*

client no pride, is he going to ride this into the gutter…looks like it.' A further email from Mr L addressed to Ms C followed, wherein Mr L stated: '… *your client is soooo out of control…he has now locked T* [Ms R] *out of the 'Marital Bedroom' at Westcliff…I have informed the Police and they are on their way to assist…'* Ms C replied stating:*' …Are you seriously suggesting that J* [Mr R] *move out the bedroom he lives in so that T* [Ms R] *can move into it? This conduct is malicious and vexatious in the extreme, and you are cautioned in the strongest terms to cease harassing my client…'*. Mr L in turn replied, stating: *'No, T* [Ms R] *is happy to live in the same bedroom and sleep in the same bed with him until this matter is settled.* Ms R, her attorneys, Mr R's attorneys and Mr L's attorneys were all copied in on all the above emails.[31]

38. On 13 June 2021, Mr L addressed an email to Ms R, which he also sent to Mr R's attorneys, Ms R's attorneys and Mr L's attorneys, in which he stated: '*He* [Mr R] *can Huff & Puff, he'll get nowhere, it's your Matrimonial Home and you have all the right to contact the Police and let them in when you feel threatened …. he's all bark, no bite, as all small fat dogs are as a rule ….if you ever feel threatened in the future you phone the Police again, again and again …. I spoke to the Police late last night and early this morning and they confirmed they'll keep a close eye on you whilst at Westcliff, and the Police in T*[…] *assured me they will do the same when you at L*[…] *…. it's time he learns the world at large is bigger than* [Mr R] *…. matter of fact he is a mere irritation, similar to a bug on your windscreen …*'

39. Fearing that he could at any moment find himself in the police cells and/or maliciously defamed in the media, social media or to his friends and colleagues, a situation which Mr R alleged in his founding affidavit was

[31] It is not in dispute that Ms R had been communicating with Mr L in relation to the happenings at Westcliff from the time of her arrival thereat and later when the police attended at such home. Ms R had even sent Mr L a picture of the locked security gate situated on the outside Mr R's bedroom.

intolerable to him, he approached the urgent court for relief and was granted interim relief per the urgent order. He alleged in his founding papers that he was exhausted by the harassment to which he had been subjected and that he was in 'serious fear' for his safety as a result of Mr L's behaviour, aided and abetted by Ms R, and their quest to have him arrested on 'spurious' grounds. He also alleged that Mr L's emails, which contained threats, gross verbal abuse and defamation (directed towards Mr R) had continued despite his attorneys having called upon Mr L to cease contacting Mr R or threatening or defaming him.

40. Since the breakdown of the marriage between Mr R and Ms R, various legal proceedings have been instituted between the parties to the present matter. These include:

40.1. A divorce action – instituted by Mr R against Ms R, which is pending;

40.2. An application for an interim protection order in the Worcester Magistrates court – instituted by Ms R against Mr R, which was subsequently withdrawn or set aside;

40.3. A criminal case involving the alleged theft of documents by Mr R – initiated by of a complaint made by Ms R against Mr R, which was subsequently *nolle prosequied;*

40.4. An application for a protection order in the Johannesburg Magistrates Court – brought by Ms R on behalf of her mother (Mrs S) against Mr R, which was dismissed with punitive costs, which Ms R is seeking leave to appeal, which application is pending;

40.5. An application for a protection order in the Randburg Magistrates Court –brought by Ms R against Mr R, which was dismissed, with no order as to costs;

40.6. An urgent application in the High Court, Johannesburg for interdictory relief against the respondents – brought by Mr R against Ms R and Mr L, which is pending the outcome of the present matter;

40.7. An urgent contempt of court application against Mr L – brought by Mr R on 14 June 2021, which was dismissed with no order as to costs;

40.8. An urgent contempt of court application against Mr L – brought by Mr R, with Mr L being found guilty of contempt of court and sanctioned by means of the imposition of a fine as well as a suspended sentence of incarceration, with punitive costs awarded in favour of Mr R (*the contempt order*);

40.9. An application for leave to appeal against the contempt order – brought by Mr L, which was dismissed by the court *a quo* with costs, followed by Mr L's petition to the Supreme Court of Appeal, in respect of which the Supreme Court of Appeal granted Mr L leave to appeal para 4 of the contempt order to the Full Court of this division, (para 4 related to a fine of R70,000.00 imposed against Mr L by the court *a quo*).

Discussion

Interdict against Mr L and Ms R – para 2.1 of urgent order

41. The final interdict sought in sub-paras 2.1.1 to 2.1.5 is to restrain Ms R and Mr L from:

(i) *Making unsolicited contact* with Mr R *without lawful cause*, whether in person, telephonically, in writing including electronically or on social media platforms;

(ii) *Publishing any communications* (including electronic communications) about Mr R *containing allegations and/or insinuations of alleged personal*, *professional or fiscal impropriety*;

(iii) Making *any communication*, whether written, telephonic or in person *that threatens*, *insults and/or seeks to undermine or harm Mr R's reputation and dignity*;

(iv) Making *attempts to have Mr R arrested without good cause or threatening to do so*;

(v) *Harassing*, *threatening*, *intimidating or verbally or physically abusing* Mr R.

42. Whilst Ms R did not herself write or send the 54 emails alluded to above, Mr R alleges that she acted in concert and/or made common purpose with Mr L in a 'campaign of unrelenting harassment, intimidation and defamation' waged against him. Both Ms R and Mr L have denied in their respective answering affidavits that Ms R was acting in concert or that she made common purpose with Mr L in addressing and publishing the electronic communications

43. Mr L states that he addressed the correspondence to Mr R and/or his attorneys of his own accord, in retaliation to 'intimidating tactics' levelled By Mr R against himself and Ms R; and because of allegations that he (Mr L) was having an affair with Ms R; and because he was branded as 'unstable'[32] and

[32] This is ostensibly a reference to Mr L's email of 18 May 2021 addressed to Mr R in which Mr L stated as follows: "…*O..en as jy weer met jou prokureur praat, kan ju aan haar noem dat* ***ek nie 'unstable' is nie, maar ek deel met sulkes****…****'and I'm having fun'****…"* (emphasis added)
This email followed after Ms C's letter addressed to Mr's L's attorneys on 17 May 2021 wherein she stated as follows:
"*1. Despite our letter of 14 May 2021, your client has continued to incessantly send our client abusive and threatening emails, the content, tone and frequency of which say a great deal more about your client than they do about ours. This* ***behaviour*** *can only be described as* ***unstable****, and your client continues with it at his peril*…"

because of alleged 'bullying tactics' levelled by Mr R against Ms R. He admits sending correspondence threatening to expose Mr R for who he (Mr L) thinks Mr R is, but states that he has not approached any of Mr R's clients, business associates or third parties with the intention of defaming Mr R. As regards attempts to get Mr R arrested, Mr L avers that 'good cause existed, as according to information provided to him by' Ms R, Mr R's conduct amounted to a breach of the IPO. He interacted with the SAPS 'to assist' Ms R in enforcing the IPO, which he 'believed' Mr R did not adhere to.

44. The alleged acts of intimidation relied on by Mr L in his answering affidavit relate to: (i) one occasion when Mr R's brother visited Mr L at his farm and (ii) a single email addressed by Mr R to Mr L on 20 May 2021[33] and (iii) an exchange between Mr R and Mr L that occurred in July 2020.[34] As to the first alleged act of intimidation, Mr L relies on an email sent by him to Mr R on 20 May 2021, wherein the following was said:

> "… Your effort At Intimidation Failed Dismally …. I place on record that your brother, D[…], accompanied by another burly chap, paid me a visit earlier …needless to say, you were Missing ln Action, proves what a coward you are, clearly no guts … D[…] said you sent him to find out if I intend to harm you physically … I pointed out to him that I have never threatened you with physical harm, as it is not my nature and I do not have a history of violent or abuse, physical or verbal, but if any of you set foot on my land against I'm prepared to learn …. this is not a threat, merely a statement … stay off my land and away from me, you and all your followers … or take the consequences …. next time I won't be so nice ….0 …. interesting what your Boet calls you, starts with a "P" …." [35]

and

> "0 … I forgot to mention …. The reason I invited your Boet into my study, muddy boots and all, is because all conversations in my study gets taped, the recorder is voice activated, so he mustn't try and deny anything he said **…"**[36]

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[33] Annexure 'AL2' at 006-18
[34] Annexure 'AL4' at 006-21
[35] Annexure 'C16' at 003-95
[36] Annexure 'C17' at 003-96

45. As to the first and second alleged acts of intimidation, the correspondence relied on by Mr L does not bear out his perceived conclusions of intimidation by Mr R. As to the third alleged act of intimidation, the context in which the exchange occurred pursuant to which Mr R's letter of 5 July 2020 was written, is fully explained in his replying affidavit, which effectively refutes the conclusion drawn by Mr L in his answering affidavit. The incident in any event occurred a year prior to the urgent application and does not advance the case for Mr L. In my view, any belief on the part of Mr L of perceived misconduct on the part of Mr R towards Ms R cannot and does not justify or excuse his unlawful conduct in this matter.

46. The emails which were admittedly addressed and sent by Mr L contained various threats, *inter alia*, to expose Mr R for alleged wrongdoing; to destroy his professional and personal reputation; to have Mr R struck from the roll of legal practitioners; to report Mr R to SARS for alleged fiscal irregularity; to have Mr R arrested with threats of incarceration and deprivation of Mr R's liberty; to publish untested allegations about Mr R in the media; and generalised threats of ill that would befall Mr R.

47. That the content of Mr L's emails was insulting, abusive and derogatory, if not *per se* defamatory,[37] having regard to the natural and ordinary meaning which the words used would have conveyed to the ordinary reasonable reader reading same, permits of no dispute. The emails speak for themselves. Referring to a human being as *inter alia*, a liar, thief, woman abuser, 'dodgy beyond note' implies that the person is involved in criminal conduct or is unethical, dishonest and cannot be trusted. Referring to a

[37] Defamatory statements include statements which injure the reputation of the person concerned in his or her character, trade, business profession or office or which exposes the person to enmity, ridicule or contempt. See: *Chetty v Perumaul* (AR313/2020) [2021] ZAKZPHC 66 (21 September 2021), par 11 and the authority there cited.

person as, *inter alia*, a 'japper', a 'fat dog', an 'irritation' akin to a 'bug on your windscreen' and someone whose DNA would reflect as 'genetic waste', at the very least implies that the person is not worthy of being accorded the basic right of dignity deserving of any human being. Significantly, no evidential proof of the truth of the allegations made by Mr L in the emails was adduced by him in his answering papers. Viewed as a whole, the words used by Mr L impugned the dignity, reputation and integrity of Mr R and were designed to do so and to injure or inflict harm upon Mr R. They point to unconscionable conduct on the part of Mr L, who failed to provide any factual foundation for his subjective conclusions. The communications were unwanted, as was made clear in correspondence addressed to Mr L's attorneys on 14 May 2021,[38] notwithstanding which the communications continued unabated. In my view, such conduct amounts to harassment[39] and an infringement of Mr R's rights to privacy, a sense of safety, dignity and reputation.

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[38] Annexure 'D9' at 003-139 - letter from Ms C to Mr L's attorneys, *inter alia,* stating as follows:
"3. …*the contents of the emails constitute harassment, as defined by the Protection of Harassment Act, 17 of 2011, and such harassment will not be tolerated…*

4. Your client has obviously decided to enter the fray and to involve himself in the divorce proceedings between our client and his wife. By their very nature, these proceedings are intensely personal, and your client's involvement is both unwanted and grossly inappropriate.

5. Our client has no intention of dignifying your client's incoherent rants with a reply, and neither does he intend to descend to the level to which your client appears intent on dragging him…our client has no desire or obligation to interact with your client and…your client should refrain from making contact with him again by any means whatsoever…"

[39] The Protection from Harassment Act, 2011 (*Harassment Act)* defines 'harassment' *inter alia*, as:
"directly or indirectly engaging in conduct that the respondent knows or reasonably ought to know -
(a)causes harm or inspires the reasonable belief that harm may be caused to the complainant…by unreasonably-

(i) …

(ii) engaging in verbal, electronic or any other communication aimed at the complainant or a related person, by any means, whether or not conversation ensues; or

(iii) sending, delivering or causing the delivery of letters… electronic mail to the complainant or a related person…

(b) …"

'Harm' in turn means 'any mental, psychological, physical or economic harm'.

48. The question to be answered is whether Ms R was complicit in the sending of these emails or made common purpose with Mr L in making and publishing such communications. Mr R avers that she was. Ms R denied that she was, as did Mr L in their answering papers.

49. In deciding this question, the following undisputed facts are relevant. On Mr L's own version, he sent the emails in question upon a perceived violation by Mr R of Ms R's rights, based on information conveyed to him by Ms R. In several of these communications, which were copied to Ms R's email address, Mr L portends to speak for an on her behalf.[40] This occurred to her knowledge, yet Ms R allowed this to continue for several weeks without distancing herself from such communications or protesting against the role assumed by Mr L or the manner in which he did so, despite being invited by Mr R's attorneys to do so. Ms R informed Mr L of events as they were unfolding,[41] providing Mr L with photographs and other information pertaining to issues between herself and Mr R, which enabled Mr L to disseminate communications on the subject matter at hand. Incidentally, Ms R also appears to have disclosed correspondence between her attorneys and Mr R's attorneys to Mr L, which precipitated further communications by Mr L to Mr R.[42] Significantly, Mr L recorded that he will remain involved in the issues between Mr R and Ms R until the end of the divorce action.[43] During the weekend of 12 and 13 June 2021, Ms R continued to communicate with

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[40] See, for example: annexure 'C43' - Mr L states that Ms R is happy to live in the same bedroom and sleep in the same bed as Mr R, this notwithstanding that Mr R had by this time made it clear that cohabitation between them was no longer viable, given that their marriage had irretrievably broken down; See further: annexures 'C2" at 003-80; 'C8' at 003-86; 'C29' at 003-15; 'C30' at 003-109; 'C33' at 003-112; 'C39' at 003-118; 'C40' at 003-119; 'C46' at 003-126 & 003-127; 'C53' at 003-137 and email of 13 June 2021 at 017-30.

[41] See, for example, Annexures 'C12' at 003-90; 'C46' at 003-127;and 'C48' at 003-130.

[42] On 12 May 2021, Ms C recorded that ',,,*The summons for divorce will be served on your client while she is in Johannesburg…You will no doubt advise your client that summons is simply a necessary procedural step,* ***and not a declaration of war****…"* (Emphasis added) – annexure 'B5' at 003-53. On 18 May 2021, Mr L sent the following communication: "*Declaration of war…Does This Ring True…See You There…'* – annexure 'C15' at 003-94.

[43] See, for example, annexures 'C8' (003-86); 'C15' (003-94); 'C38' (003-117).

Mr L, which communications either foreshadowed or commented on events as they unfolded, thus actively enabling Mr L to use such information to continue to harass Mr R, undermine his dignity, threaten his freedom and in so doing cause him harm. On each occasion, Ms R was copied in on such communications.[44]

50. Prior to the launch of the urgent application, on 24 May 2021, Ms C addressed a letter to Ms R's attorneys in which she indicated that:

> 'Your client has not dissociated herself from the numerous threats made by [Mr L], which are copied to your client and which to some degree purport to be sent on her behalf and/or in her interests by [Mr L] as some sort of benevolent protector. Our client can only conclude, therefore, that your client makes common cause with the threats and intimidation, and as a result, he is not willing to allow her back on the farm.[45]

51. This letter evoked no response from Ms R or her attorneys until 17 June 2021 (i.e., after the urgent order was granted) when Ms R baldly denied acting in concert with Mr L,[46] notwithstanding that Mr L had expressed views and had taken up a position that included Ms R in his communications.

52. The question arises as to whether or not Ms R's bald denials are such as to raise a genuine dispute of fact on this issue. The method for resolving disputes of fact in motion proceedings has been laid down in *Plascon-Evans.*[47]

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[44] See, for example, annexures 'C36' (003-115); 'C39' (003-118); 'C40' (003-119' C41' (003-120/21); 'C43' (003-123) 'C46'- attaching email from Ms R at 003-126 to 003-127; 'C48' & 'C49' (003-129 to 003-131) and 'C53' (003-137)

[45] Annexure 'B10' at 003-61.

[46] See Annexure 'T4' at 005-26.

[47] *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* 1984 (3) SA 623; 1984 (3) SA 620. See also: *National Director of Public Prosecutions v Zuma* 2009 (2) SA 277 (SCA), where the Supreme court of Appeal held at para 26 that '[m]otion proceedings, unless concerned with interim relief, are all about the resolution of legal issues based on common cause facts. Unless the circumstances are special, they cannot be used to resolve factual issues because they are not designed to determine probabilities. It is well established under the *Plascon-Evans* rule that where in motion proceedings

53. In *Mtolo*,[48] the Constitutional court endorsed what was said by the Supreme Court of Appeal in *Buffalo Freight Systems (Pty) Ltd v Crestleigh Trading (Pty) Ltd* **2011 (1) SA 8** (SCA), par 19:, where the following was said:

> "[I]n *Truth Verification Testing Centre CC v PSE Truth Detection CC* 1998 (2) SA 689 (W) Eloff AJ stated at 698H-J:
>
> > 'I am also mindful of the fact that the so-called "robust, common-sense approach" which was adopted in cases such as *Soffiantini v Mould* 1956 (4) SA 150 (E) in relation to the resolution of disputed issues on paper usually relates to a situation where a respondent contents himself with bald and hollow denials of factual matter confronting him. There is, however, no reason in logic why it should not be applied in assessing a detailed version which is wholly fanciful and untenable.'
>
> I respectfully agree. The court should be prepared to undertake an objective analysis of such disputes when required to do so."

54. In *Wightman t/a JW Construction v Headfour (Pty) Ltd and Another* 2008 (3) SA 371 (SCA), para 13, Heher JA held as follows:

> 'A real, genuine and *bona fide* dispute of fact can exist only where the court is satisfied that the party who purports to raise the dispute has in his affidavit seriously and unambiguously addressed the fact said to be disputed. There will of course be instances where a bare denial meets the requirement because there is no other way open to the disputing party and nothing more can therefore be expected of him. But even that may not be sufficient if the fact averred lies purely within the knowledge of the averring party and no basis is laid for disputing the veracity or accuracy of the averment. When the facts averred are such that the disputing party must necessarily possess knowledge of them and be able to provide an answer (or countervailing evidence) if they be not true or accurate but, instead of doing so, rests his case on a

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disputes of fact arise on the affidavits, a final order can be granted only if the facts averred in the applicant's affidavits, which have been admitted by the respondent together with the facts alleged by the latter, justify such order. It may be different if the respondent's version consists of bald or uncreditworthy denials, raises fictitious disputes of fact, is palpably implausible, far-fetched or so clearly untenable that the court is justified in rejecting them on the papers.' and *Media 24 v Oxford University Press*; 2017 (2) SA 1 (SCA); and *Malan and Another v Law Society Northern Provinces* 2009 (1) SA 216 (SCA).

[48] *Motolo and another v Lombard and Others* (CCT 269/21) [2021] ZACC 39 (8 November 2021), at para 38 (read with fn 29).

bare or ambiguous denial the court will generally have difficulty in finding that the test is satisfied.' (Own emphasis)

55. At no stage did Ms R state that Mr L was not authorised by her to speak on her behalf or that his views did not represent her views. Ms R was specifically called upon on to disassociate herself with the conduct of Mr L in correspondence addressed to her attorneys by Mr R's erstwhile attorneys, which she chose not do either proactively, seriously or substantively. A bare denial does not suffice in the circumstances. If Ms R did not agree with the content of Mr L's disparaging communications or if she did not align herself with his views or agree with his methods, one would have expected her to have said so specifically and unequivocally. One would also have expected her to stop feeding Mr L with information that he, to her knowledge, continued to utilise as a weapon with which to continue to attack the character of Mr R and to harass, intimidate insult, threaten and verbally abuse Mr R. The inference is inescapable that she joined forces against Mr R with a common purpose to harass, intimidate, verbally abuse and undermine Mr R's dignity with defamatory utterances, and not least of all, to try and procure, with the assistance of Mr L, the arrest of Mr R over the weekend preceding the grant of the urgent order.

56. As regards the attempts by Ms R and Mr L to secure the arrest of Mr R on 12 June 2021, the papers illustrate that Ms R proceeded to lay charges against Mr R at the Parkview Police station, spurred on by Mr L, on grounds that Mr R had allegedly breached the terms of the IPO, this, after she did not manage to gain immediate access to the Westcliff property upon her arrival thereat. She seemingly immediately jumped to the conclusion that she was deliberately being prevented from entering the property without as much as a phone call to Mr R to enquire as to why the gate would not open or a staff member was not answering his phone immediately. This, in circumstances

where her own attorneys had previously conceded in their correspondence that the IPO had not yet been served on Mr R and had also not been correctly served, in consequence whereof the order was simply not enforceable at that juncture. This is because in terms of s 5(6) of the Domestic Violence Act 116 of 1998, '*An interim protection order shall have no force and effect until it has been served on the respondent.*' [49] Ms R does not contend that she was *not* in fact informed of the prevailing legal position by her attorneys, nor does she explain in her answering papers why and on what basis she could thus possibly have 'believed' that the order was of full force and effect, given that her attorneys would at all material times have been acting on her instructions. It bears mention that at no stage preceding the grant of the urgent order or thereafter did Ms R attempt to serve the IPO on Mr R, as was required for it to have force and effect. The unexplained wrong belief under which Ms R or Mr L were labouring, is simply not defensible on the facts and falls to be rejected as untenable. After all, Mr R was expecting her to arrive at Westcliff on 12 June 2021, as borne out by the correspondence which passed between the parties' attorneys preceding Ms R's arrival at Westcliff. Mr R had also specifically made arrangements for Ms R to occupy the downstairs west wing of the residence in order to maintain a practical distance between them, so as to avoid unpleasantness or strife during her stay. Mr R had also made it plain in correspondence addressed to Ms R's attorneys that Ms R would not be prevented from gaining entry to the property. Given these circumstances, there would have been no reason for Mr R to have prevented Ms R from accessing the premises.

57. The facts point to the conclusion that Mr L was being fed with one-sided information from Ms R upon her arrival and during the period of her stay at

[49] In terms of s 13(1) of the Domestic Violence Act, service is to be effected in the prescribed manner by the clerk of the court, the sheriff or a peace officer, or as the court may direct. It appears from a perusal of the IPO that the court gave no directions to an alternative form or manner of service.

Westcliff prior to the grant of the urgent order. On his own version, Mr L believed that Mr R had breached the terms of the IPO based on information supplied to him by Ms R, hence his involvement in the matter by speaking to the SAPS on her behalf thereafter. As a result of his interventions, the SAPS arrived at Westcliff on two further occasions during the evening of 12 June 2021. Mr R says he was worn out and traumatised by all of this, plagued by a constant fear of arrest because of false accusations and complaints made by Ms R and Mr L to the SAPS without just cause. Ultimately, they were seeking to enforce an unenforceable order on the supposition that Ms R was denied entry to Westcliff or was unsafe during her stay there, where the objective facts did not support such conclusions. This vindictive conduct was the proverbial final straw that prompted him to launch the urgent application.

58. The version of Ms R and Mr L s must also be viewed in the light of the fact that Ms R had been forewarned on 12 June 2021 (prior to Ms R's arrival at Westcliff) that Ms R and Mr L were considered to be acting with a common purpose in relentlessly harassing, provoking and threatening Mr R, making the resumption of cohabitation between Mr R and Ms R 'utterly intolerable'.[50] In the same letter of 12 June 2021, a written undertaking was sought from Ms R, namely, that '*…in light of the above undertaking from our client and the sensible arrangements he has put in place - that your client will not attempt to cause the police to have him arrested (which would be unlawful and would constitute malicious prosecution for which she will face the consequences), or to solicit the assistance of anyone else (including but not limited to [Mr L]) to do so, and that she will in fact not engage our client in any manner whatsoever for so long as she insists on staying in the Westcliff property'*. The undertaking sought was not provided.

[50] See Annexure 'B15' (003-73 to 003-76) – letter dated 12 June2021 from Ms C to Mr Steyn.

59. For these reasons, I conclude that Ms R and Mr L's denials about their complicity do not create a genuine dispute of fact. On this issue, Mr's R's version, namely, that Ms R and Mr L joined forces against Mr R and acted in concert or with a common purpose *inter alia* to harass, intimidate, abuse and attempt to procure the arrest of Mr R, should be accepted as correct.

60. After the grant of the urgent order, Ms R attempted again to procure the arrest of Mr R by laying a criminal complaint of theft against Mr R at the Midrand police station. She alleged that Mr R had stolen what certain files or documents belonging to her from the H[...] property, where she took up residence pursuant to the urgent order. Mr R denied stealing the documents, contending that he had only removed company documents belonging to him from his office situated on the property. In so far as he may have inadvertently removed documents belonging to Ms R, he invited Ms R to identify which of her alleged documents were missing, whereupon such documents would be returned. This invitation met with no response from Ms R, rather, she upped the ante in pursuing criminal charges against Mr R and desiring his arrest. Ultimately, the State declined to prosecute, issuing a certificate of *nolle prosequi*, thereby signifying that the charges were unsustainable. By that time, however, Mr R had been compelled to expend money, time, effort and energy in defending his honour. The entire matter could more appropriately have been resolved in line with the majestic principle of *Ubuntu*, had Ms R simply co-operated with Mr R by identifying which documents allegedly belonging to her she required be returned to her.

61. I am inclined to agree with the submission of counsel for Mr R that the conduct of the respondents, acting in concert, constitutes to a threat to as well as a violation of Mr R's constitutionally entrenched fundamental human rights that include his rights to freedom, dignity, reputation and good name,

as well as an unlawful invasion of his privacy. Their conduct further constitutes harassment, as earlier mentioned.

62. As pointed out in Mr R's heads of argument, our Constitution provides that our democratic state is founded on *inter alia* human dignity, the advancement of human rights and freedoms and the supremacy of the Constitution and the rule of law.[51] In terms of s 10 of the Constitution, everybody, including Mr R, has inherent dignity and the right to have their dignity respected and protected. The provisions of section 12 of the Constitution make it abundantly clear that everyone has a right to freedom and security of the person,[52] which includes the right not to be deprived of freedom arbitrarily without a just cause. It is trite that the right to dignity, which includes the right to a good reputation (*fama*) is a fundamental human right and any infringement thereon is unlawful and will not be countenanced.[53]

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[51] Section 1 of the Constitution of the Republic of South Africa, 1996 (*the Constitution)*
[52] Including the right to bodily and psychological integrity.
[53] See *Greef en Andere v Protection 4U t/a Protect International en Andere* 2012 (6) SA 392 (GNP) , para 53;]

In *Khumalo and Others v Holomisa* 2002(5) SA 401 (CC) at paras 26-27, the Constitutional court held as follows:

"…Under our new constitutional order, the recognition and protection of human dignity is a foundational constitutional value.[30] As this Court held in *Dawood and Another v Minister of Home Affairs and Others* [2000] ZACC 8; 2000 (3) SA 936 (CC); 2000 (8) BCLR 837 (CC) at para 35:

> *"The value of dignity in our Constitutional framework cannot . . . be doubted. The Constitution asserts dignity to contradict our past in which human dignity for black South Africans was routinely and cruelly denied. It asserts it too to inform the future, to invest in our democracy respect for the intrinsic worth of all human beings. Human dignity therefore informs constitutional adjudication and interpretation at a range of levels."*[31]

In the context of the actio injuriarum, our common law has separated the causes of action for claims for injuries to reputation (fama) and dignitas. Dignitas concerns the individual's own sense of self worth, but included in the concept are a variety of personal rights including, for example, privacy. In our new constitutional order, no sharp line can be drawn between these injuries to personality rights. The value of human dignity in our Constitution is not only concerned with an individual's sense of self-worth, but constitutes an affirmation of the worth of human beings in our society. It includes the intrinsic worth of human beings shared by all people as well as the individual reputation of each

63. An infringement against a person's dignity not a trivial matter.[54] Mr R describes himself as a senior practising attorney who has built up an unimpeachable reputation of integrity over the course of his career. In *Chetty*,[55] the court stated that 'impugning the good name of an attorney remains a serious matter. The most valuable assets that a legal practitioner possesses are repute and integrity. Once either is lost, it is seldom recovered.' As the saying goes:

"*Words are like eggs dropped from great heights; you can no more call them back than ignore the mess they leave when they fall*."[56]

64. In paragraph 59 of the founding affidavit, the contents of certain emails that were sent by Mr L are set out. In paragraph 60 of the founding affidavit, Mr R avers that *'Manifestly*, [Mr L's] *emails constitute threats*, *gross verbal abuse and defamation (directed towards both me and my attorney)*, *all of which is evident from Bundle C annexed hereto. This has continued despite my attorneys writing three letters to* [Mr L's] *attorneys calling upon him to cease*

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person built upon his or her own individual achievements. The value of human dignity in our Constitution therefore values both the personal sense of self-worth as well as the public's estimation of the worth or value of an individual. It should also be noted that there is a close link between human dignity and privacy in our constitutional order.[32] The right to privacy, entrenched in section 14 of the Constitution, recognises that human beings have a right to a sphere of intimacy and autonomy that should be protected from invasion.[33] This right serves to foster human dignity. No sharp lines then can be drawn between reputation, dignitas and privacy in giving effect to the value of human dignity in our Constitution…"

[54] See *Matiwane v Cecil Nathan, Beattie & Co* 1972 (1) SA 222 (N) at 229, where the following was said: "*I do not regard a deliberate aggression upon personal dignity as being a trivial matter. As INNES CJ said in Botha v Pretoria Printing Works Ltd 1906 T.S. 710…'If courts of law do not intervene effectively in cases of tis kind then one of two results will follow- either one man will avenge himself for an insult to himself by insulting the other, or else he will take the law into his own hands."*

[55] *Chetty v Perumaul* (AR 313/2020) [2021] ZAKZPHC 66, para 46.
See too: *Gelb v Hawkins* 1960 (3) SA 687 (A) where the court held that: '… *it is a grave and ugly thing falsely to say of an attorney that he deliberately deceived the Court, and to that end was party to the leading of perjured testimony. It is worse when it is said of an attorney who, according to the evidence, was trained in the strict observance of professional ethics and for thirty years has jealously guarded his good name."*

[56] Quote by Jodi Picoult – which holds true in the context of this matter.

contacting me, threatening me and defaming me. Copies of letters appear in Bundle "D" hereto.'

65. Ms R's response to these paragraphs in her answering affidavit is telling. She merely denied that she is intent on having Mr R arrested and averred that she had disassociated herself with the *alleged harassment* by Mr L, referring in this regard to her attorney's letter of 17 June 2021 addressed to Ms C after the grant of the urgent order. In that letter, her attorney recorded that "*Also, where you refer to* [Mr L] *our client denies that she 'seems to have relished it and made common purpose with him.'"* As can be gleaned from what Ms R said in her answering affidavit, she did not acknowledge that Mr L's conduct indeed constituted harassment, nor did she acknowledge that Mr L's conduct was wrongful or unlawful. *Which* conduct on the part of Mr L that she purported to disassociate herself with, is simply not understood. Her professed disassociation is at worst contrived and at best meaningless under the circumstances.

66. Mr L's response to these paragraphs in his answering affidavit is equally telling - he did not deal with paragraphs 59 and 60 of the founding affidavit at all in his answering affidavit. In paras 13 to 15 of his answering affidavit, he maintains that he was justified in sending the communications in retaliation to (i) Mr R's alleged 'attempt to intimidate' him; (ii) because of allegations levelled against him of having an affair with Ms R; and (iii) because of alleged 'bullying tactics' levelled by Mr R against Ms R but which tactics were not specified by him. Mr L also maintained that good cause existed to have Mr R arrested; however, as indicated earlier, the evidence does not support such conclusion. Mr L further contended that his conduct was motivated by his decision to render emotional assistance to Ms R as he deemed Mr R's conduct towards her as inappropriate. Yet none of his communications

appear to have advanced the interests of Ms R, on the contrary, they were directed at violating Mr R's fundamental human rights.

67. To succeed with a claim for a final interdict, Mr R is required to prove: (i) a clear right, being a legal right to be protected against infringement; (ii) infringement of the clear right, which includes an injury actually committed or a reasonable apprehension of such infringement; and (iii) the lack of an adequate alternate remedy.[57]

68. As regards the relief set out in para 2.1 of the urgent order, I am persuaded that Mr R has established a clear right not to be subjected to a campaign of unrelenting harassment, verbal abuse, intimidation, ongoing insults, threats of incarceration, threats of defamation, defamatory utterances, threats of arrest or attempts to have him arrested without just cause. As set out earlier, Mr R has both constitutional and common law rights to live free from harassment, threats of harm, intimidation and verbal abuse. He is also entitled to live free from the fear of being deprived of his liberty without just cause. As regards the other requirements for final relief, these are discussed later in the judgment.

Relief against Ms R in para 2.2 of the urgent order (occupation of former matrimonial homes)

69. The evidence put up by Mr R shows that he attempted in a dignified manner to reach an agreement with Ms R concerning future interim living arrangements, given that their marriage had irretrievably broken down, as a result whereof co-habitation between them was no longer viable. The evidence surrounding Ms R's vacation of L[...] in early May 2021 and the

[57] See *V&A Waterfront Properties (Pty) Ltd and Another v Helicopter & Marine Services (Pty) Ltd and Others* 2006 (1) SA 252 (SCA); *Masstores (Pty) Ltd v Pick 'n Pay Retailers (Pty) Ltd* 2017 (1) SA 613 (CC).

events that preceded the grant of the urgent order point to the fact that Mr R and Ms R were not on speaking terms at all over this period or thereafter. They communicated only through their attorneys. I have earlier described how Ms R reacted to invitations to agree to alternate accommodation arrangements. She attempted to re-establish a presence at L[...] by climbing through a window and depositing some of her clothing in the main bedroom closet. She then obtained the IPO interdicting Mr R from denying her access to any of the shared matrimonial homes. This was followed by her attempt to re-establish her occupation of the Westcliff property, when on 11 June 2021, her attorney informed Mr R's attorney that she would be *moving into* the Westcliff house the following day. Thereafter, Mr L informed Mr R that Ms R was happy to live in the same bedroom and sleep in the same bed with Mr R at Westcliff.

70. The unrefuted evidence is that H[...] is an up-market luxurious equestrian estate, worth approximately R10 Million. There is nothing to suggest that Ms R had not gladly occupied this home during happier times in the marriage. H[...] is equipped with grand security, is spacious and has a fully furnished separate cottage which Ms R's mother could occupy, if she chose to do so. By the time this application was heard, Mr R had accommodated all of Ms R's numerous requests to upgrade the security at H[...], including *inter alia* installing a generator to ensure an ongoing supply of electricity, reinstating security lights and more.[58] On 23 June 2021,[59] Mr R tendered to attend to any additional concerns and to pay the reasonable costs associated therewith.

71. The orders contained in sub-paragraphs 2.2.1 and 2.2.2 of the urgent order are tantamount to eviction orders apropos the Westcliff and L[...] matrimonial homes.

[58] See para 34 at 007-35 to 007-36.
[59] Annexure 'RA16' at 007-136 to 007-138.

72. In *Cattle Breeders*,[60] the court endorsed what was said by Lord Upjohn in the case of *National Provincial Bank, Ltd. v. Ainsworth,* [1965] UKHL 1; (1965) 2 All E.R. 472 at p. 485:

> "A wife does not remain lawfully in the matrimonial home by leave or licence of her husband as the owner of the property. She remains there because, as a result of the status of marriage, it is her right and duty so to do and, if her husband fails in his duty to remain there, that cannot affect her right to do so. She is not a trespasser, she is not a licensee of her husband, she is lawfully there as a wife, the situation is one *sui generic*."

73. In *Cattle Breeders* the court recognized that a spouse occupying a matrimonial home may be ejected from the matrimonial home provided that she is offered 'suitable alternative accommodation' or 'a means of acquiring such suitable accommodation'. The court held at 292:

> 'A long line of cases seem to have laid down the proposition that even if the husband may be the defaulting party he may eject the wife from the matrimonial home, provided he offers her suitable alternative accommodation or offers her the means of acquiring such suitable accommodation.'

74. Our courts have also recognized the right of one spouse to obtain the eviction of the other is where co-habitation is undesirable. [61] Ultimately the court retains a discretion to grant such an order, having regard to all the facts and circumstances.[62]

75. Ms R's version is simply that she was acting within her rights by seeking co-habitation at Westcliff upon her return to Johannesburg from the Karoo on

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[60] *Cattle Breeders Farm (Pvt) Ltd v Veldman* [1974] 1 All SA 289 (RA) at 291. See too *Badenhorst v Badenhorst* 1964 (2) SA 676 (T) at 679 C-E, where the court accepted that the non-owner spouse's right to remain in the matrimonial home was based on rights flowing from the marriage. The court held that the owner spouse's right to eject the other spouse from the matrimonial home flows 'from considerations which to a great extent must depend on the merits of the matrimonial dispute…The mere fact that the wife owns the property does not entitle her to an order, but the Court can in a proper case exercise its discretion in her favour.'

[61] B[....] v B[....] (D951/2020) [2020] ZAKZDHC 67 (30 December 2020)

[62] See *SGB v SB* (D951/2020) ZAKZDHC 67 (30 December 2020) at paras 9 & 14

12 June 2021, contending in paragraph 21.11 that Mr R had no right to evict her therefrom. For Ms R, it was submitted that she should not be finally evicted from the Westcliff and T[...] homes because: (i) her elderly mother still resides in a garden cottage on the Westcliff property and she needs to visit her mother; (ii) The T[...] home, with its bed and breakfast, stabling and olive oil businesses, is subject to a counterclaim brought by Ms R in the divorce proceedings and she has an interest in these businesses which require upkeep and maintenance; and (iii) she has a *sui generis* right to occupy all matrimonial homes, including the Kyalami property, pending finalisation of the divorce and thus does not require any authorisation from court to occupy the Kyalami property.

76. Mr R's version is encapsulated in his attorneys' letter of 12 June 2021, addressed to Ms R's attorneys, where the following was said:

"*8. Furthermore, as is evident from the letters we have sent you (to which you have failed to respond), your client has never been barred from entering any of our client's properties. Your client has vacated the properties of her own accord and the parties no longer cohabit, and have not done so at the very latest since 23 April 2021. Your client has set up and has been occupying alternative accommodation in the Karoo. In any event, our client has made the eminently reasonable proposal that, pendente lite, she resides in the Kyalami property. This property comprises a very comfortably appointed main house with two en suite bedrooms, two fully appointed kitchens, dining room, lounge, study and ample outdoor entertainment areas and gardens. There is also a luxurious one bedroom en suite cottage with a lounge and dining area, comfortably furnished and appointed. It would appear, however, that for no other reason than to be provocative, your client insists on returning to the Westcliff property, notwithstanding that:*

8. I There is a luxurious alternative available to her;

8.2 Our client is in residence in Westcliff;

8.3 She and [Mr L]*, acting with common purpose, have relentlessly harassed, provoked and threatened our client, making the resumption of cohabitation between your client and ours utterly intolerable.*" (own emphasis)

77. On behalf of Mr R, it was submitted that the following facts militate against a resumption of co-habitation between the parties at Westcliff or L[...]: (i) All attempts by Mr R to arrange reasonable alternative accommodation in a dignified manner were ignored by Ms R, who instead sought and obtained the IPO only for purposes of accessing all the matrimonial homes and not because of any allegations of abuse or other acts of domestic violence (as defined in the Domestic Violence Act 116 of 1998) on the part of Mr R. Having indeed obtained access to Westcliff, the SAPS were called to attend the property on two further occasions during the evening of 12 June 2021, ostensibly based on accusations or complaints made either by Ms R or Mr L (on information supplied by Ms R) to the effect that Mr R was a bully who abused and threatened Ms R, so much so that she felt unsafe and required assistance on two occasions during the night from the SAPS.[63] No allegations of abuse or bullying on the part of Mr R towards Ms R or any threats towards Ms R had featured in the IPO, which dealt only with Ms R being afforded access to the matrimonial homes. Mr R stated that the threat of his arrest and incarceration, precipitated by attempts by Ms R to enforce the unenforceable IPO was so traumatising to him that he sought urgent recourse against what he describes as a 'campaign of terror' that was mounted by Ms R and Mr L, acting in concert against him, which conduct was

[63] According to Ms R, she minded her own business during the evening of 12 June 2021. She never confronted Mr R about him locking himself in the main bedroom and in fact had no discussions with him that evening. She also never told the SAPS that Mr R was a 'bully'. Mr R's version on the other hand is that he overheard Ms R telling the police that he was a bully. Ms R's version, namely, that the SAPS attended at the property on two further occasions likely 'of their own accord as a follow-up' and that the police themselves suggested to her that it was not safe for her to stay in the home is, in my view, palpably untenable and should be rejected. There was no reason for Ms R to feel unsafe at all, considering Mr R had locked himself in his main bedroom precisely because he wanted to avoid any interaction or confrontation with Ms R and because he feared false allegations of domestic abuse being made against him. Why the SAPS members would have formed the impression that Ms R was unsafe, is not explained at all by her at all. On Mr L's version, he contacted the police based on information provided to him by Ms R. Ms R did not dispute providing the information to Mr L. The police could only have formed their impressions based on what they were told. And on Mr L's version, he informed them of what Ms R told him. On 13 June 2021, Ms R sent an email to Mr L concerning a telephone call she had received from the SAPS to enquire if she was 'ok' (per annexure 'C48' at 003-129 to 003-130). Mr L thereafter published the said email to Mr R and his attorneys and others. Ms R's said email followed after Mr L's 48th email wherein he informed Ms C that '*your client is now on 'Speed-Dial at the Police Station'* (per Annexure "C47 at 003-128).

malicious and vindictive and calculated to harm him, thus making the resumption of co-habitation intolerable;

(ii) co-habitation at any of the matrimonial homes is not desirable or feasible due to the peculiar, disrespectful and malicious conduct exhibited by Ms R, *inter alia*, her conduct at Westcliff in evicting house guests from the upstairs main bedroom in order to occupy same herself; her inexplicable actions when she resorted to climbing through a window, tampering with security cameras and depositing some of her clothes in the main bedroom cupboard in an attempt to re-establish a presence at Lettas K[...]; her relentless pursuit of vexatious litigation against Mr R, evidenced by the numerous domestic violence cases brought and pursued by her against him in different courts (Worcester, Randburg and Johannesburg Magistrates courts), which cases (save for one which is still pending) were either withdrawn or dismissed on their merits;[64] the laying of spurious criminal charges against Mr R, evidenced by the certificate *of nolle prosecui* issued by the State; and last but not least, her continued disclosure to Mr L of personal information pertaining to Mr R, in breach of Mr R's right to privacy;[65] which conduct Mr R says has caused him ongoing intolerable trauma and suffering;

(iii) the fact that the marriage has irretrievable broken down with no possibility of restoring any harmonious relationship between the parties;

(iv) the fact that luxurious reasonable accommodation was available to Ms R at H[...], which residence she has been occupying since the grant of the urgent order;

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[64] This includes threats to seek further domestic violence orders against Mr R - On 12 June 2012, Mr L wrote: "*I place on record that I just spoke to T* [Ms R] *and that* [Mr R's] *brother A*[...] *has been verbally abusing her on* [Mr R's] *instructions. Should this continue she'll go to the local police station and get another 'Interim Protection Order' against him*." (emphasis added)

[65] Evidenced, *inter alia,* by Ms R sending a photo to Mr L of the inner sanctity of the house, depicting a locked security gate outside the main bedroom; Ms R's email to Mr L on 13 June 2021 (at 003-127) in which she accused Mr R of lying to the SAPS, which Mr L then utilized to send his 47th email on 13 June 2021 (annexure 'C46' at 003-126 to 003-127).

78. When considering the factual chain of events in this matter, the conduct of Ms R and Mr L and the escalating acrimony that it spawned, juxtaposed against the conduct of Mr R, I cannot but conclude that co-habitation between Mr R and Ms R is highly undesirable. I agree with counsel for Mr R that there is no measure of civility, goodwill or reasonableness on the part of Ms R that can be drawn upon to ensure that future contact and co-habitation between Mr and Ms R will be without hostility or further litigation. Significantly on 17 June 2021, Ms R's attorneys informed Mr R's attorneys that Ms R was not interested to return to the Westcliff property. The fact that L[...] forms the subject matter of R's counterclaim in the divorce proceedings does not assist her case. In the counterclaim, she seeks the dissolution of an alleged partnership that came into existence between the parties. The farm is alleged to form part of the partnership assets. Ms R, *inter alia*, seeks that a liquidator be appointed to realise all partnership assets and to liquidate liabilities and to make payment to her of half the net assets of the partnership.[66] In my considered view, Ms R has not made out a case for residing *pendent lite* at L[...], nor for accessing the property. Mr R resides at Westcliff and conducts his law practice in Johannesburg. There appears to be no real impediment to Ms R's mother visiting her at H[...] whenever she wants. I am also not persuaded that H[...] comprises anything but reasonable alternative accommodation on the facts of this case. The amenities offered thereat, are extensive, as more fully set out in the papers.[67]

Relief envisaged in paragraph 2.3 of the urgent order

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[66] See counterclaim at 009-87

[67] See, for example, annexure "RA15" at 007-133 to 007-135, wherein Ms C placed on record, the following in paras 13 and 14 of her letter to Ms R's attorneys: " *In respect of the Kyalami property which your client alleges is unsafe, our client instructs that it is protected by beams, electric perimeter fencing, impenetrable security shutters, and 24/7 armed response… There is a spare generator which our client is happy to make available to your client…"* See too: annexures 'RA16' at 007-136 to 007-139 and 'RA5 at 007-111 to 007-112 – *Inter alia*, Mr R arranged for the installation of a generator and effected various repairs, installed an internal alarm system and delivered a washing machine to H[...], all at his cost.

79. Mr R seeks a final order interdicting and restraining Mr L from entering an/or approaching any of the three matrimonial homes including his law office in Sandhurst.

80. The relief is premised on a threat made by Mr L on one occasion that he intended to go to L[...] to uplift the IPO that was incorrectly served on a member of staff at L[...]. No evidence has been provided to show that Mr L made good on such threat or that he has ever in fact entered or approached or attempted to enter or approach any of the properties in question. In as much as this relief was premised on grounds that Mr L's behaviour is unpredictable, with no telling what he may do at any given moment, such as to give rise to a reasonable apprehension that Mr L would seek to enter or approach such premises, no factual foundation exists for such an inference to be drawn. Accordingly, in respect of paragraph 2.3 of the order, the rule nisi falls to be discharged.

Entitlement to final relief

81. As regards the relief envisaged in paragraph 2.1 (against both respondents) and paragraph 2.2 (against Ms R) of the urgent order, I am persuaded that Mr R has established a clear right to such relief. Apropos the relief envisaged in para 2.1 of the urgent order, I am likewise persuaded that Mr R has established a breach or infringement by the respondents of his clear rights, as earlier discussed in the judgment. Apropos the relief envisaged in para 2.2 of the urgent order, I am persuaded, for all the reasons provided, to exercise my discretion in confirming the rule. All that remains to consider is whether there is an adequate alternative remedy available to Mr R in respect of the relief provided for in paragraph 2.1 of the urgent order.

82. In reference to the interdict provided for in paragraph 2.1.4 of the order (restraining the respondents from making attempts to have the applicant arrested without good cause, or threatening to do so) Ms R contends that Mr R has an adequate alternate remedy in the form of a damages claim based on malicious proceedings. Reliance for such a claim was placed on, *inter alia*, cases such as *Beckenstrater*, *Rudolph*, and *Holden*,[68] where the requirements of such a claim are discussed. In Moleko,[69] the requirements were said to be: (i) that the defendants set the law in motion (instigated or instituted the proceedings);(ii) that the defendants acted without reasonable and probable cause; (iii) that the defendants acted with 'malice' (or *animo injuriandi*);[70] and (iv) that the prosecution has failed.

83. In *Holden*, it was said that:

> "A claim for malicious prosecution can ordinarily only arise after the successful conclusion of the criminal case in a plaintiff's favour. In a criminal matter, such a favourable conclusion in the plaintiffs' favour would occur on acquittal or the withdrawal of the charges. The institution of a civil claim based on a malicious prosecution before such prosecution has been finalised in the plaintiff's favour, may amount to prejudging the result of the pending proceedings. There is no discernible distinction between pending criminal proceedings and proceedings before statutorily created professional tribunals. The HPCSA is such a tribunal. The cause of action applies to both civil and criminal proceedings and not only the latter."

84. In *Beckenstrater*, at p135 D-E, the court pointed out that '…the requirement of proof of absence of reasonable and probable cause seems to be a most

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[68] *Beckenstrater v Rottcher and Theunissen* 1955 (1) SA 129 (A) at 135A-136B;
Rudolph and Others v Minister of Safety and Security and Another 2009 (5) SA 94 (SCA at para 16; *Holden v Assmang Ltd* 2021 (6) SA 345 (SCA) at para 10.

[69] *Minister of Justice and Constitutional Development and Others v Moleko* 2009 (2) SACR 585 (SCA) at para 8

[70] See *Relyant Trading (Pty) Ltd v Shongwe* [2007] 1 All SA 375 (SCA) para 5, referring to *Lederman v Moharal Investments (Pty) Ltd* 1969 (1) SA 190 (A) at 196G–H; *Thompson v Minister of Police* 1971 (1) SA 371 (E) at 373F-H and J Neethling, JM Potgieter & PJ Visser *Neethling's Law of Personality* 2 ed (2005) pp 124-125 (see also pp172-173 and the authorities there cited). Cf 15 *Lawsa* (*sv* 'Malicious Proceedings' by DJ McQuoid-Mason) (reissue, 1999 para 441; François du Bois (General Editor) *Wille's Principles of South African Law* 9 ed (2007) pp 1192-1193; LTC Harms *Amler's Precedents of Pleadings* 6 ed (2003) p 238-239.

sensible one. For it is of importance to the community that persons who have reasonable and probable cause for prosecution should not be deterred from setting the criminal law in motion against those whom they believe to have committed offences, even if in so doing they are actuated by indirect or improper motives.'

85. The interdict in paragraph 2.1.4 is geared towards deterring the respondents from setting the criminal law in motion against those whom they believe to have committed offences (i.e., Mr R) without just (reasonable and probable) cause, even where no prosecution eventuates. It is geared towards preventing conduct such as that which took place over the weekend of 12 June 2021 (when false complaints were laid against Mr R for allegedly breaching the IPO, which at that stage lacked force and effect) and conduct such as that which occurred after the grant of the urgent order when Ms R laid a spurious complaint of theft against Mr R. On the authority of *Holden*, an action for damages would not be available to Mr R unless and until he was charged by the prosecution and the charges withdrawn or the prosecution has been finalised.

86. Mr L contends that Mr R has an alternative remedy in terms of the Harassment Act. He argues that, Mr R ought to have applied for relief against him in the relevant Magistrates Court having territorial jurisdiction in the Western Cape, even on an urgent basis,[71] instead of approaching the urgent High Court in Johannesburg for interdictory relief, when sufficient protection from Mr L's conduct could have been sought in the lower court in terms of the Harassment Act, which provides for protection against mental, psychological, physical or economic harm. In addition, in terms of section

[71] In terms of section 2(5) of the Act, an application for a protection order against harassment may be brought outside ordinary court hours or on a day which is not an ordinary court day, if the court has a reasonable belief that the complainant or a related person is suffering or may suffer harm if the application is not dealt with immediately.

10(1)(c) of the Harassment Act, a court is empowered to make an order prohibiting a respondent from committing any other act as specified in the protection order. In terms of section 10(2) of that Act, the court may impose any additional conditions on a respondent which it deems reasonably necessary to protect and provide for the safety or well-being of a complainant. In the result, so it was contended, Mr R has failed to demonstrate an absence of similar protection by any other ordinary remedy.

87. The Harassment Act was promulgated to provide for the issuing of protection orders against harassment and to afford victims of harassment an effective remedy against such behaviours. This is apparent from the foreword to and preamble of the Act. In terms of the Act, harassment consists *inter alia* of conduct whereby the respondent unreasonably (i) engages in any form of communication aimed at the complainant or a related person, whether or not conversation ensues; or (ii) conduct involving sending, delivering or causing delivery of electronic mail to the complainant or a related person, which conduct the respondent knows or ought to know causes *harm* (defined as mental, psychological, physical or economic harm) or inspires the reasonable belief that harm may be caused to the respondent or a related person.

88. In terms of section 3(2), where the application is brought without notice to the respondent, the court must be satisfied that there is *prima facie* evidence that the respondent is engaging or has engaged in harassment (as defined in the Act) and that harm is being or may be suffered by the complainant or a related person as a result of that conduct if a protection order is not issued immediately.

89. Counsel for Mr R submitted that whilst it is correct that Mr R could approach a court for relief in terms of the Harassment Act, the Act does not provide a remedy for all the unlawful conduct perpetrated by Mr L, acting in concert with Ms R, which includes threats of defamation against Mr R's person and character, threats against Mr R's liberty and other vexatious conduct. Having regard to the definition of harm in section 1 of the Act, it does not cater for relief against reputational harm resulting from the uttering and publication of defamatory statements about the complainant. Nor does the Act cater for the type of relief envisaged in paragraph 2.1.4 of the urgent order which is designed to avert threats against Mr R's liberty. Moreover, the unlawful and vexatious[72] conduct of Mr L is such that Mr R is defamed, maligned and suffers and will continue to suffer reputational harm including impairment to his dignity. Such conduct also causes Mr R substantial distress as well as ongoing economic harm in that he continuously has to take legal steps to defend himself against such conduct, incurring, on each occasion, substantial legal costs.[73]

90. The facts show that in the various emails:-

90.1. Mr L threatened to report the applicant for "*improper conduct unbecoming of a Legal Practitioner, not to mention a legal practitioner with the status of 'Lawyer of the Year 2020*' ";[74]

[72] Albeit discussed within a different context, the court in *Marib Holdings (Pty) Ltd v Parring NO and Oth*ers (22058/2019) [2020] ZAWCHC 74 (7 August 2020) held that 'Vexatious' may refer to proceedings instituted by a litigant which is designed to frustrate and harass a defendant or proceedings instituted to cause annoyance to a defendant. *See too: ABSA Bank Ltd v Dlamini* 2008 (2) SA 262 (T) where the meaning of vexatious was dicussed in relation to claims *that were 'frivolous, improper, instituted without sufficient ground, to serve solely as an annoyance to the defendant.'*

[73] Evidenced by the numerous domestic violence proceedings instituted by Ms R in the various courts; the unfounded criminal complaint laid by Ms R; and the various unfounded complaints laid by Mr L with SARS and the LPC.

[74] Per email of 11 June 2021 addressed by one of Mr L's attorneys to Mr R's attorney at 003-145. See too Mr L's email of 15 May 2021 (annexure 'C7" at 003-85). Seen in the context of this matter, the 'unbecoming conduct' related to Mr R being a 'woman abuser' based on untested and unsubstantiated allegations and which, in the climate of gender based violence in this country, is to be considered per se defamatory, connoting as it does that Mr R is guilty of domestic violence or criminal conduct and is not a fit and proper person to practice his profession.

90.2. Mr L threatened to cause Mr R reputational harm by defaming him to third parties, including Mr R's legal clients[75] and including the LPC, where after he did in fact lay a complaint against Mr R for alleged 'unethical ' conduct;[76]

90.3. Mr L threatened to report Mr R for fiscal irregularities to SARS and did in fact do so;

90.4. Notwithstanding Mr R's request to Ms R not to attempt to execute the ineffective IPO over the weekend of 12 June 2021, Ms R and Mr L did exactly that, actively seeking his arrest, leaving Mr R with no alternate remedy but to approach the urgent court for relief against both parties in one forum (as opposed to instituting proceedings in in different courts having different territorial jurisdiction over the persons of Mr L and Ms R, which, from a logistical perspective, would have precluded the obtaining of urgent relief against both on 13 June 2021) on the basis that the urgency of the situation necessitated urgent protection from further invasion of Mr R's rights, which ultimately impelled the urgent court to grant immediate interim relief. The urgent court considered the matter to be of sufficient urgency so as to be enrolled as an urgent application and its decision in this regard cannot be faulted.

91. I am inclined to agree that Mr L's contentions that Mr R has adequate alternate remedies available are flawed. Firstly, no provision in the Harassment Act limits Mr R's common law and other remedies to approach the High court for appropriate relief. Secondly, the Harassment Act does not

[75] The identities of Mr R's clients (referred to by Mr L in his email of 15 may 2021 (Annexure 'C6' at 003-85) could only have been revealed to Mr L by Ms R. This email contained a veiled threat to inform them of Mr R's abuse of women. See to Mr L's email of 8 October 2021 at 031-159 - His threats did not abate despite the grant of the urgent order.

[76] On the ground that Mr R obtained the bank statements of Ms R, notwithstanding that Mr R had lawfully obtained such bank statements under subpoena and no unethical conduct was present.

provide relief against threats of defamation or defamation and reputational harm[77] or aginst vexatious conduct. Thirdly, as was pointed out by the Constitutional Court in *Masstores*,[78] *'The mere existence of other remedies is not enough to tilt the scale against the granting of an interdict. The other remedy which must be ordinary should afford protection that is equally or more effective to the one provided by an interdict*.' Fourthly, the interdict sought in para 2.1 of the urgent order is designed to protect the clear rights of Mr R[79] from unlawful invasion by putting a stop to Ms R and Mr L conducting or continuing to conduct themselves in a manner that involves breaking the law. In the circumstance of this case, I am inclined to agree that the only ordinary and more effective remedy which provides Mr R with the necessary protection is an interdict.

Need for final relief

92. Mr R submits that the relentless and ongoing unlawful conduct of both Ms R and Mr L prior to and after the grant of the urgent order unequivocally demonstrates Mr R's genuine and well-founded apprehension that if this court does not confirm the *rule nisi* and grant the final relief sought, the harassment, invasion of his fundamental rights and persecution to which he has been subjected since May 2021 will continue unabated.[80]

93. It is true that further emails were sent by Mr L after the grant of the urgent order, which formed the basis of a contempt application in which he was found guilty of contempt of court. The judgment of Opperman J in this

[77] Threats to publish defamatory matter to the public or third parties or making unfounded reports to authorities (SARS) or Mr R's regulatory professional body do not fall within the definition of harassment in the Harasment Act.
[78] *Masstores (Pty) Ltd v Pick 'n Pay Retailers (Pty) Ltd* 2017 (1) SA 613 (CC) at para 104.
[79] To have his dignity respected and protected (s 10 of the Constitution); to have his freedom and security of person protected (s 12 of the Constitution), and to have his right to a good reputation, which is part of the right to dignity, protected.
[80] Mr R's evidence in this regard is set out in his papers, inter alia, at 008-7; and 007-22 to 007-25

regard[81] deals fully with the content of the emails and Mr L's ongoing unlawful conduct in breach of the urgent order.

94. What is also true is that neither respondent has taken accountability for his or her actions, contenting themselves with bare denials of facts that fell within their knowledge or pursuing unsustainable defences in justification of their conduct. Apropos paragraph 2.2 of the urgent order, they have not acknowledged the unlawfulness of their conduct, nor has either one undertaken to desist from perpetuating such unlawful conduct in the future. As the old adage goes, 'you can't change what you won't acknowledge'. Mr L arrogated to himself the right to embark on an unlawful smear campaign in which he (assisted by Ms R) denigrated the person, character and reputation of Mr R and in so doing, he exhibited a profound lack of restraint and/or temperance, all under the guise of defending his own honour and offering support and assistance to Ms R purportedly in defence of her honour. Yet no measured or legally responsible approach was adopted. There is nothing to suggest that such conduct will not continue, unless restrained by a final interdict.

Costs

95. Ms R and Mr L seek the discharge of the rule and concomitant dismissal of this application with costs.

96. Mr R seeks a punitive costs order against the respondents on the basis, *inter alia*, that it is solely the unlawful conduct of the respondents that necessitated and precipitated the urgent application. Further, the ongoing conduct by the respondents after the grant of the urgent order justifies such an award. This, juxtaposed against Mr R's conduct where he did not engage

[81] See: ***JR v AL* (21609 of 2021) [2021] ZAGPJHC 21 (25 October 2021).**

in any communications with the respondents; did all in his power to conduct the divorce litigation in a dignified manner, made numerous attempts to arrange interim alternate accommodation with Ms R in a dignified manner (which attempts were rebuffed and met rather with Ms R obtaining an IPO); including his attempt to resolve the issues herein with a tender that the rule be confirmed with each party to pay his/her own costs, which tender was rebuffed by Mr L (speaking also on behalf of Ms R) in his email of 27 August 2021, in which he said the following:

"*Hi* [Ms C]… *Kindly inform your client that the deal he facilitated…and was paid 15 Million commission is going to look like a walk in the park to what he is facing now, I'm going to make this offer only once…if* [Mr R] *withdraws his sideshows, so will* [Ms R] and I, if not, we'll both go the distance, at *[Mr R's] peril…*"

97. Later, on the same day, Mr L wrote: "*Hi* [Ms C]… *COB…No reply…So noted. Now we'll go the distance…trust your client has enough money for this…I have… Trust me on this one…He is in for a big shock…*"

98. Mr L's conduct escalated thereafter, culminating in a finding of contempt of court by Opperman J, following his continued harassment and unlawful communications, with the learned Judge finding that Mr L intentionally sought to undermine and harm the reputation and dignity of Mr R in contravention of the urgent order. Ms R too exhibited vexatious conduct in her ongoing attempts to have Mr R arrested by laying unfounded criminal charges against Mr R and persisted with ill-considered domestic violence applications that were either withdrawn of dismissed, with yet a further application pending in the magistrates court. This has caused Mr R to incur substantial legal costs. This must be viewed against the backdrop of Mr L being cautioned to desist from his unlawful conduct as long ago as 14 May 2021.[82] and Ms R being cautioned against any attempts by her (assisted by

[82] See: letter from Mr R's attorneys to Mr L's attorneys at 003-139 wherein he was cautioned as follows: "*…the contents of* [Mr L's) *emails constitute harassment as defined in the Protection of*

Mr L) to attempt to enforce an unenforceable IPO over the weekend of 12 June 2021.

99. In *Plastic Converters*,[83] the court cautioned that the scale of attorney and client is one which should be reserved for cases where it can be found that a litigant conducted itself in a clear and indubitably vexatious and reprehensible matter. The term 'vexatious' was considered in the context of a punitive costs award in *Johannesburg City Council*.[84] The court held that proceedings may be regarded as vexatious when a litigant puts the other side to unnecessary trouble and expense which it ought not to bear. The Constitutional Court affirmed this approach in *Public Protector v SARB*,[85] stating that a punitive costs order is appropriate 'in circumstances where it would be unfair to expect a party to bear any of the costs occasioned by the litigation'[86] and is designed 'to mark the court's displeasure at a litigant's conduct, which includes vexatious conduct and conduct that amounts to an abuse of the process of court'.[87] Mr R was obliged to launch the application to protect himself from a violation of his human rights and to obtain respite from unlawful conduct to which he was subjected, which Mr L described sardonically as 'fun'.

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harassment Act, 17 of 2011…Your client has obviously decided to enter the fray and to involve himself in the divorce proceedings between our client and his wife. By their very nature, these proceedings are intensely personal, and your client's involvement is both unwarranted and grossly inappropriate…Furthermore, our client is a very senior and respected attorney and should your client make any attempt to contact his clients, colleagues, friends or business associates about him – as threatened in his emails- our client will not hesitate to seek the appropriate interdictory relief…"

[83] *Plastic Converters Association of South Africa on behalf of Members v National Union of Metalworkers of SA* [2016] ZALAC 39; [2016] 37 ILJ 2815 (LAC) at para 46.
[83]

[84] *Johannesburg City Council v Television & Electrical Distributors (pty) Ltd and Another* 1997 (1) SA 157 (A) at 177D-E.

[85] *Public Protector v SARB* [2019] ZACC 29; 2019 (9) BCLR 1113 (CC) at para 144.

[86] *Public Protector v SARB,* para 221.

[87] *Public Protector v SARB,* para 223.

100. The recalcitrant and unreasonable approach adopted by the respondents in this matter and their ongoing violation of Mr R's rights pursuant to the urgent order, in my view, warrants the imposition of a punitive costs order.

101. Although Mr L has succeeded in discharging the rule in respect of paragraph 2.3 of the urgent order, Mr R has achieved substantial success in this matter. The relief envisaged in paragraph 2.3 of the urgent order occupied very little attention in the papers or in the written or oral arguments presented by the parties in this matter. I see no reason to depart from the general rule that costs follow the result. The jurisdictional challenge having failed, there is no merit in Mr L's argument that costs be awarded on the magistrates court scale.

102. Accordingly, the following order is granted:

ORDER:

1. Paragraphs 2.1 (inclusive of sub-paragraphs 2.1.1 to 2.1.5) and 2.2 (inclusive of sub-paragraphs 2.2.1 to 2.2.3) of the *rule nisi* granted on 13 June 2021, subsequently extended on 29 July 2021, 1 September 2021 and 3 November 2021, is confirmed

2. The first and second respondents are interdicted and restrained from:

    2.1. Without cause, making unsolicited contact, in person, telephonically or in writing, including electronically or on social media platforms, with the applicant.

2.2. Publishing any communications, including electronically or on social media platforms, about me which contain allegations and/or insinuations regarding any alleged impropriety, be personal, professional or fiscal.

2.3. Making any communication, whether in writing, telephonically or in person that threatens, insults and/or seeks to undermine or harm the applicant's reputation and dignity.

2.4. Making attempts to have the applicant arrested without good cause, or threatening to do so.

2.5. Harassing, threatening, intimidating, or verbally or physically abusing the applicant.

3. The first respondent is:

3.1. Interdicted and restrained from entering the former matrimonial home situated at [...], Westcliff.

3.2. Interdicted and restrained from entering the farm L[...] in M[...] District, Western Cape.

3.3. Authorised, pendente lite the divorce action under case number 24248/2021, to occupy one of the matrimonial homes, known as H[...], Midrand.

4. Paragraph 2.3 (inclusive of sub-paragraphs 2.3.1 to 2.3.4) of the *rule nisi* is discharged.

5. The first and second respondents shall pay the costs of this application, jointly and severally, the one paying the other to be absolved, on an attorney and client scale, including the costs previously reserved on 13 June 2021, 29 July 2021, 1 September 2021, and 23 November 2021, and including the costs of two counsel.

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AVRILLE MAIER-FRAWLEY
JUDGE OF THE HIGH COURT,
GAUTENG DIVISION, JOHANNESBURG

Date of hearing:	16 March 2022
Judgment delivered	13 June 2022

This judgment was handed down electronically by circulation to the parties' legal representatives by email, publication on Caselines and release to SAFLII. The date and time for hand-down is deemed to be have been at 10h00 on 13 June 2022.

APPEARANCES:

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Counsel for First Defendant:	Adv E. Furstenburg
Attorneys for First Defendant:	CHM Steyn Attorney c/o Craig Baillie Attorneys
Counsel for Second Defendant:	Adv JC Bornman
Attorneys for Second Defendant:	Van Zyl and Hofmeyr Attorneys c/o Fouche Attorneys