

**IN THE MAGISTRATES COURT FOR THE DISTRICT OF SEKHUKHUNE  
HELD AT PRAKTISEER**

**CASE NUMBER: 516/2023**

**In the matter between**

**NKGADIMA THOMO**

**APPLICANT**

**AND**

**MACHUBENG MAMPURUBURU**

**RESPONDENT**

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**JUDGMENT ON SETTING ASIDE AND/OR VARIATIO OF A FINAL PROTECTION  
ORDER IN TERMS OF THE PROTECTION FROM HARASSMENT ACT.**

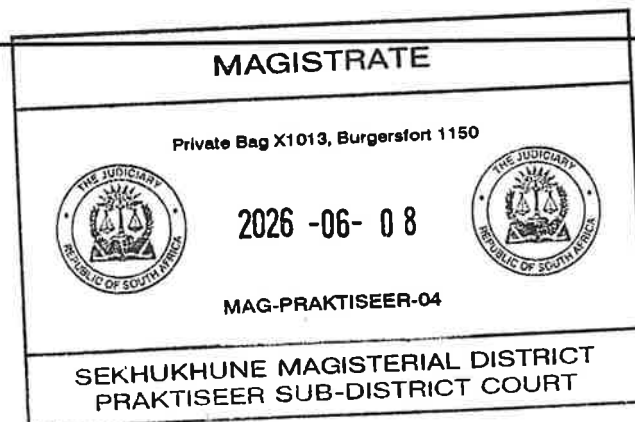
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**MORABA LB:**

Heard on: 13 November 2025



Delivered: 18 November 2025.

**FACTS AND INTRODUCTION**



1. On 02 November 2023, the Respondent in this matter applied for a protection order in terms of the Protection from Harassment Act 17 of 2011 against the Applicant. The Respondent alleged that the Applicant is harassing him by tarnishing his name on social media, insulting him and disrupting his meetings. The Respondent is self-employed in the construction industry and liaises between the government and community members on community projects.

2. A notice to show cause why the court should not issue a final protection order was served on the Applicant on 02 November 2023. The terms of the application were that the Applicant:
  - a. Is to distance himself from the Respondent;
  - b. To stop tarnishing the name of the Respondent on social media; and
  - c. For the Applicant to stop insulting the Respondent.
  
3. A protection order was granted against the Applicant on 22 November 2023. The Applicant then applied for a variation or setting aside of the protection order on 14 May 2025 requesting that the court set aside the protection order granted against him on 22 November 2023.
  
4. The Applicant alleged that he is a journalist, which was not disputed by the Respondent, and that the protection order infringes on his rights to freedom of expression as protected by section 16 of the Constitution of the Republic of South Africa. The grounds of variation or request to set aside the final protection order by the Applicant was that the Respondent is a local government official and that the job requires him to write articles and comments on service delivery and community related issues.
  
5. The Applicant further alleged that the Respondent abuses the protection order by reporting the Applicant to the local police station for violation of the protection order. The Applicant was arrested on a few occasions however no conviction was made against him.
  
6. It is common cause that a protection order was granted against the Applicant on 22 November 2023. There is no dispute that the Applicant is a journalist. The Applicant's submissions that he is employed by the media house Daily Maverick and Sowetan was not disputed nor was the submission that he has been a journalist for over fifteen years with a national diploma in commercial practice and intern law and journalism. The Applicant applied for the setting aside of the protection order on 14 May 2025. The Respondent filed a notice of

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intention to oppose the setting aside or variation of the protection order on 08 July 2025.

7. The matter was set down for 29 July 2025 for hearing which hearing was postponed to 02 October 2025 as the legal representation of the Respondent stated that they were not ready to proceed with the hearing. The Respondent filed an answering affidavit on 30 July 2025. The Respondent expressed his rights afforded to him in terms of the Constitution of the Republic of South Africa and further alleged that the Applicant wants to utilize his profession to run a smear campaign against him. Moreover, the Respondent alleged that the Applicant wants to tarnish his name in the community for his own benefit and to fulfil his personal vendetta against the Respondent.
8. The Respondent is an entrepreneur and/or contractor and works with the local community and municipality, which the Applicant does not dispute. In the replying affidavit of the Applicant filed on 02 October 2025, the Applicant raised points in limine in that the Respondent failed to file his answering affidavit as per the court's directives to file his affidavit ten days before the hearing date.
9. The Applicant prayed to the court that his points in limine be upheld, that the matter proceed on an unopposed motion and that furthermore prayed that the court set aside the protection order granted against him. The late filing of the Respondent's answering affidavit was condoned and the matter proceeded on a defended basis. The Applicant moreover alleged that the Respondent is a member of interest within the community and local government, worthy of being mentioned in publications.
10. On 02 October 2025, the matter was postponed to 06 October 2025 for hearing which was further postponed by agreement between the parties to 09 October 2025. On 09 October 2025, it was common cause that a number of criminal cases were initiated against the Applicant for alleged violation of the protection order against him.



**ISSUES BEFORE THE COURT.**

11. The court was tasked with deciding whether:

- a. The actions of the Applicant amount to harassment;
- b. Whether the application of the protection order by the Respondent passed the satisfactory requirements to be made a final order; and
- c. Whether the Applicant's grounds for setting aside of the protection order should be upheld

**RULE OF LAW**

**12. SECTION 9(1) OF THE CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA:**

- a. *"Everyone is equal before the law and has the right to equal protection and benefit of the law."*

**13. SECTION 10 OF THE CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA:**

- a. *"Everyone has inherent dignity and the right to have their dignity respected and protected."*

**14. SECTION 16 (1) AND (2) OF THE CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA:**

- a. *"(1) Everyone has the right to freedom of expression which includes –*
  - (a) freedom of the press and other media;*
  - (b) freedom to receive or impart information or ideas;*
  - (c) freedom of artistic creativity; and*
  - (d) academic freedom and freedom of scientific research."*

*"(2) The right in subsection 1 does not extend to –*

- i. (a) propaganda for war;*



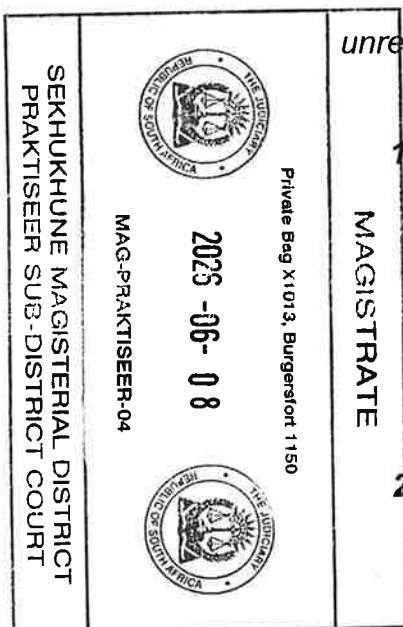
- ii. (b) incitement of imminent violence or
- iii. (c) advocacy of hatred that is based on race, ethnicity, gender or religion and that constituted incitement to cause harm.”

**15. SECTION 36 (1) OF THE CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA:**

- a. “The rights in the Bill of Rights may be limited only in terms of law of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors including –
  - i. (a) the nature of the right;
  - ii. (b) the importance of the purpose of the limitation;
  - iii. (c) nature and extent of the limitation;
  - iv. (d) the relation between the limitation and its purpose; and
  - v. (e) less restrictive means to achieve the purpose.

**16. PROTECTION FROM HARASSMENT ACT 17 OF 2011**

- a. “The Act defines harassment as directly or indirectly engaging in conduct that the Respondent knows or ought to know –
  - i. (a) causes harm or inspires the reasonable belief that harm may be caused to the complainant or a related person by unreasonably



- 1. (i) following, watching, pursuing or accosting of the complainant or a related person or loitering outside of or near the building or place where the complainant or a related person resides, works, carries on business, studies or happens to be;
- 2. (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

3. (iii) sending, delivering or causing the delivery of letters, telegrams, packages, facsimiles, electronic mail or other objects to the complainant or a related person or leaving them where they will be found by, given to or brought to the attention of the complainant or a related person.

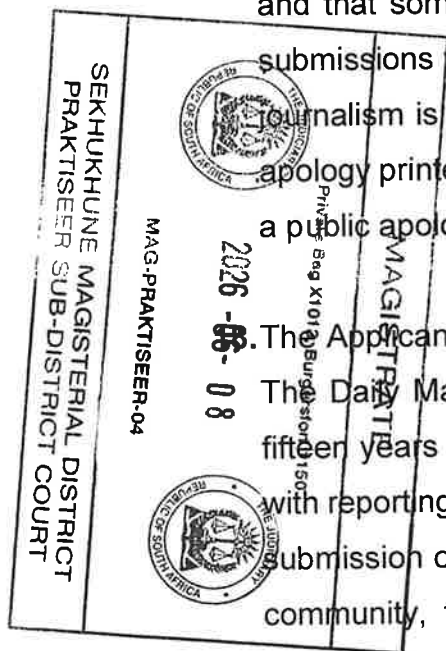
b. (b) amounts to sexual harassment of the complainant or a related person.

c. Harm is defined as any mental, psychological or economic harm.”

### APPLICATION OF THE RULE OF LAW

17. The Respondent was requested by the court to produce documentary or any other evidence relating to the allegation of his name being tarnished on social media by the Applicant. Such evidence was not produced to the court nor could the Respondent provide more information as to what exactly was posted on social media by the Applicant that tarnished his name. The response by the Respondent was that “quite a lot of things were said which endangered my life” and that some of those things were later protracted by the Applicant, which submissions were denied by the Applicant. The Applicant submitted that when journalism is executed in error, audits of print out are conducted and a public apology printed however he was not once required by his media house to issue a public apology nor to retract an article about the Respondent.

The Applicant stated that he is under the employment of two media houses – The Daily Maverick and The Sowetan and has been in the industry for over fifteen years as a journalist. The Applicant further submitted that he is tasked with reporting on local community news, whether good or bad. It was the further submission of the Applicant that the Respondent is a person of interest in the community, that he is influential and prone to critic. The Applicant further



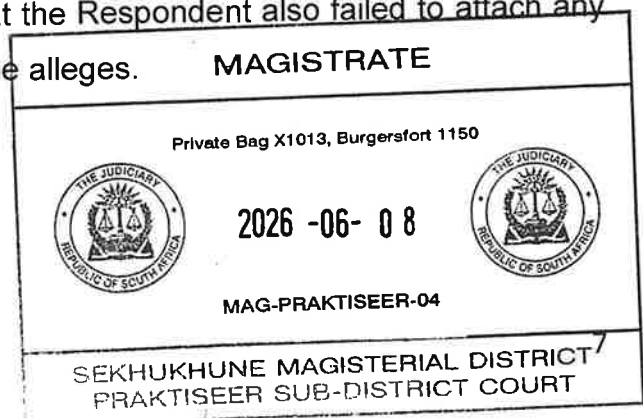
submitted that their work is subject to review before publication and that the print outs are also subject to audits.

19. The Applicant submitted that a journalist such as himself, is responsible for researching, writing and editing news stories, features and articles, often interviewing sources and attending events to ensure accuracy and keep the public informed on a wide range of topics.

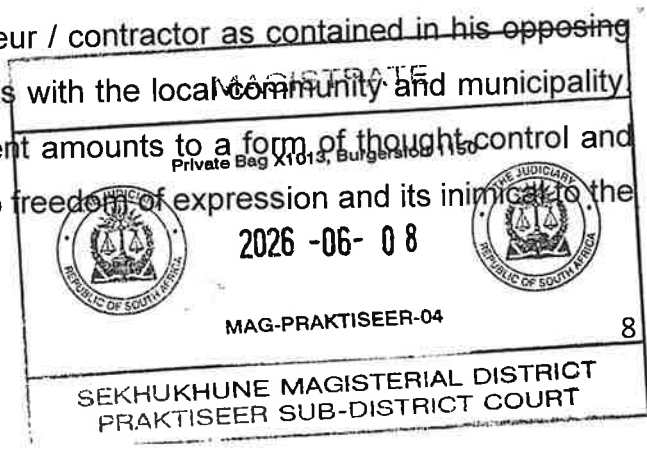
20. The Respondent cited the case law of Bogoshi and submitted that the courts decided in that case that journalists are required to act reasonable and truthful. Upon careful scrutiny of the case law, the court learned that in that Supreme Court of Appeal decision, National Media v Bogoshi [1998] ZASCA 94, the court ruled that journalists will no longer be forced to prove the truth of allegedly libelous information to escape liability in defamation actions, they need to only show that they were reasonable or careful in their work.

21. The Bogoshi case represents an unprecedented acknowledgement by South Africa's highest common law court of the importance of freedom of expression as expressed in section 16(1) of the Constitution. The court acknowledged that the media have a duty to provide information that is in the public interest in that "we must not forget that it is the right, and indeed a vital function of the press to make available to the community information and criticism about every aspect of public, political, social and economic activity and thus to contribute to the formation of public opinion."

22. The onus remains on the Applicant to prove that he was not negligent and that the publication was reasonable. The Applicant submitted that the Respondent is a public figure who is prone to critic and journalism reports on good and bad. The Applicant further submitted that the Respondent also failed to attach any proof of defamatory attacks which he alleges.



23. The Respondent's response to the points in limine raised by the Applicant was that the office file pertaining to this matter was only given to the legal representative last month and they extended an apology to the opponent for late filing of their replying affidavit. They conceded that it has been the same law firm on record from the commencement of the proceedings however they have poor admin management.
24. In light of the definition of harassment in terms of the Protection from Harassment Act, the Respondent failed and/or neglected to provide evidence in support of his allegations of harassment by the Applicant. The Respondent could not substantiate that the publications by the Applicant were outside the ambit of being covered by qualified privilege, being a substantial accurate or true for the public benefit and/or reasonable reportage in the circumstances.
25. This court recognizes that freedom of expression is not an isolated right but is part of a web of mutually supporting rights including dignity, equality and freedom of religion and assembly and limitations are sometimes necessary to protect these other fundamental rights.
26. The Respondent alleged that the Applicant is running a smear campaign against him to fulfil a personal vendetta however the court was not provided with clarity with regards to the smear campaign or the personal vendetta when probed into. The alleged insults by the Applicant to the Respondent were not laid out to the court nor could the Respondent provide an explanation what the insults are and when exactly they were said. No timeline was produced to the court regarding the harassment of the Respondent by the Applicant. The Respondent merely replied that it has been happening for a long time.
27. The Respondent is an entrepreneur / contractor as contained in his opposing affidavit, and on often basis works with the local community and municipality. The allegations by the Respondent amounts to a form of thought control and has a chilling effect on the right to freedom of expression and its inimical to the



Constitution. The shortcomings of the requirement of mere containment cause impermissible overbreadth and vagueness. Any expression which is not excluded from protection under the Constitution, benefits from the preserve of the right.

28. Section 16(2) of the Constitution provides and exclusionary list of the varieties of expression not protected by the right. Section 16(1) is merely illustrative of the kinds of protected expression and is non-exhaustive in character.

### CONCLUSION

29. In light of the Constitution and the Protection from Harassment Act, the actions of the Applicant do not amount to harassment. The Respondent could not prove and clarify to the court what the Applicant did or said or wrote about him on social media that harmed him or tarnished his name. The Respondent moreover could not place before court which actions of the Applicant, directly or indirectly, amounted to harassment as defined in the Act. The Respondent furthermore, failed to adduce evidence, documentary or viva voce, regarding the alleged personal vendetta which the Applicant is attempting to settle with him.

30. The Respondent's application for a protection order did not pass the satisfactory requirements to be made a final order. The Respondent conceded to working with the local government sphere thus conceding with the averments of the Applicant that he is a person of interest and as a journalist, the Applicant is bound to publish material about him and his involvement in the local community. The Respondent could not furnish the court with particulars pertaining to the alleged insults and tarnishing of his name by the Applicant. The Respondent, moreover, failed to adduce any evidence proving the elements of harassment in line with its definition as contained in the Act.

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31. The Applicant's application for variation and/or setting aside the final protection order are on grounds that the final protection order granted against him are infringing on his rights to freedom of expression as expressed in the Bill of Rights and that the Respondent is abusing the final protection order. When one considers the limitation clause as contained in section 36 of the Constitution, the media exist to serve society. Their freedom provides for independent scrutiny of the forces that shape society and is essential to realizing the promise of democracy. It enables citizens to make informed judgments on the issues of the day, a role whose centrality is recognized in the South African Constitution.

### ORDER

32. On the premise, I make the following order:

a. The application for setting aside and/or variation of the final protection order is granted.

b. The protection order granted on 22 November 2023 is set aside.



**LB MORABA**

**ACTING MAGISTRATES OF THE PRAKTISEER MAGISTRATES COURT**



### **APPEARANCES:**

For the applicant: Mr. NW Magagula  
Instructed by: Everton Dankuru Attorneys

For the Respondent: Mr. MP Ralethe  
Instructed by: KG Mogofe Attorneys.