


REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

CASE NO: A091314/2024

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES / NO
(3)	REVISED. ✓
	02/07/2025
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In the matter between:

GARTH ROBERTS

Appellant

And

NONHLANHLA GCEBILE MABUZA

Respondent

CORAM: MABESELE AND MOTHA JJ

J U D G M E N T

MABESELE J: (Motha J, concurring)

[1] This is an appeal against the judgment and order of the Court below, dated 09 April 2024. The judgment flows from an application for protection order brought by Ms. Nonhlanhla Mabuza against Mr. Garth Roberts. Ms. Roberts was the Line Manager of Ms. Mabuza in the company known as Africa Rainbow Minerals (ARM). This appeal is not opposed.

[2] It is common cause that Mr. Roberts told Ms. Mabuza that she signed a "F.....ing" paper because she is an "asshole". The issue in this appeal is to determine whether these utterances constitute harassment, justifying the order granted by the Court below.

[3] I pause to mention that my brother, Motha J, enquired from junior counsel for Mr. Roberts whether it is proper for a white man to call a black woman an "asshole" in this racially charged society. The answer was a clear 'no'. Although the question raised with counsel is legitimate, I may add, though, that we are alive to the fact that the emphasis should not be placed on race in the matter before us. Instead, the emphasis should be placed on 'power'. Harassment at the workplace knows no race. It is about misuse of power, thereby violates a person's right to dignity, and, a right not to be subjected to psychological torture.

[4] Ms. Mabuza joined the ARM company around 2019. Upon joining the company she was placed on three months' probation, at a salary of R 30 000.00 (Thirty Thousand Rand). After serving her probation, she was confirmed on a permanent basis, but her salary was reduced to R27,000.00 (Twenty Seven

Thousand rand). No reasons were given to Ms. Mabuza for this reduction. This discrepancy necessitated a meeting between Mr. Roberts and Ms. Mabuza. Present, also, at the meeting was HR employee, Mr. Merenca. The proceedings were recorded. At the meeting, the following transpired:

[5] "Garth : She accepted it. Okay and we also understand that with that acceptance there were other legacy issues that were hanging in limbo.

Merenca : Yes, so, technically she did it, technically she did it.

Garth : What?

Merenca : Signature means I accept.

Garth : Yes, that we agree

Nonhlanhla : but then we are accepting query. That is why we are here to fix the query so that we can formally accept this letter. You see we are still negotiating here because you cannot just sign something that you do not know.

Garth : all right we can resolve this matter ones and for all.

Nonhlanhla : sorry, and do not try and be technical with me

Garth : but you know what my concern is now, you signed the fucking paper you know

Nonhlanhla : no, no, I do

Garth : asshole

Nonhlanhla : no, no,

Garth : no, you are an asshole for signing it

[6] Two years later Ms Mabuza laid a criminal charge against Mr. Roberts for crimen injuria. A year later she approached the Randburg Magistrate Court for a protection order against Mr. Roberts.

[7] Mr. Bokaba's argument is that the utterances made by Mr. Roberts, objectively viewed, were not of such an overwhelming oppressive in nature as to make them oppressive and unreasonable, resulting in the tormenting or inculcating serious fear or distress in the person of Ms. Mabuza. He argued that Mr. Roberts was, at the time, attempting to assist Ms. Mabuza with a salary situation and that, Ms. Mabuza thanked Mr. Roberts for attending the meeting. Mr. Bokaba took issue with Ms. Mabusza's testimony and address in the Court below where he says Ms. Mabuza jettisoned reliance on the words that were uttered by Mr. Roberts during the recorded conversation as a basis for seeking protection. He took issue, also, with Ms. Mabuza's long delay in taking the matter to Court.

[8] In terms of section 1 of the Protection from Harassment Act¹ "harassment" means, among others, directly or indirectly engaging in conduct that the respondent knows or ought to know, causes harm or inspires the reasonable belief that harm may be caused to the complainant or a related person by unreasonably engaging in verbal, electronic or any other communication aimed at the complainant or related person, by any means, whether or not conversation ensues.

¹70 of 2011

[9] In *Mnyandu V Padayach*² the court took the view that the offence of harassment is not merely constituted by a course of conduct that is oppressive and unreasonable but that the consequences or effect of the conduct ought not cause a mere degree of alarm, the contemplated harm in serious fear; alarm and distress. The Court went further to say that, the conduct engaged in must necessarily either have repetitive element which makes it oppressive and unreasonable, thereby tormenting or inculcating serious fear or distress in the victim. Alternatively, the conduct must be such an overwhelming oppressive nature that a single act has the same consequences.

[10] In his argument, Mr. Bokaba emphasized the point that, the word "asshole" is regarded as a workplace banter and could not have caused Ms. Mabuza serious distress. This argument lacks merit. The word 'asshole' should be regarded as an insult³ in circumstances where a female is accused of wrongdoing by a male person. The word becomes extremely disturbing and causes serious fear and distress when uttered simultaneously with the 'F' word, as it transpired in the meeting between Mr. Roberts and Ms. Mabuza. It is apparent from the entire recorded conversation that the word "asshole" was uttered more than once and 'F' word uttered three times, despite protest by Ms. Mabuza who was pleading for salary adjustment. Her problem was not resolved except being told by Mr. Roberts about his many girlfriends. This, is recorded as follows: "I got 50 fucking girlfriends". Ms. Mabuza's right to dignity was clearly violated.

² 2017(1) SA 151(KZP) para. 65 and 68

³anus: if translated in some of the African languages the word "anus" means "lesoba la sebono" or imbobo yo mdidi

[11] Ms. Mabuza laid a charge of *crimen injuria* against Mr. Roberts because she was seriously distressed. The fact that she approached the Court long after the incident had occurred, is irrelevant. She represented herself in Court. It is clear from the appeal record that she struggled to present her case. She testified as follows:

“.....clearly from what transpired later he just wanted to embarrass me because he did not want to assist me. He would call me the fucking word or something and it is okay. And me obtaining a protection is not because of those incidences that happened, it is not because of the “Fucking asshole”. This is just to show how Mr. Robert is”

[12] The issue in this appeal is to determine whether the utterances made by Mr. Roberts constitute harassment. Not whether the evidence of Ms. Mabuza was persuasive or not, for granting protection order. Since Ms. Mabuza did not withdraw her application for protection order, logic dictates that the words that were uttered to her must have caused her serious distress. Therefore, the argument that she jettisoned reliance on the words that were uttered by Mr. Roberts as a basis for seeking protection, has no merit. Ms. Mabuza wanted to give the Court a bigger ‘picture’ of Mr. Roberts insofar as he conducted himself whenever he spoke to her⁴ The Magistrate considered all evidence and documents presented to him(including recorded conversation) and correctly

⁴Uttering words such as “f...king’ 50 girlfriends, in addition to other insults

granted the order in favour of Ms. Mabuza. The result is that this appeal cannot succeed. Since the appeal is not opposed, it will not be just for us to grant costs against the appellant.

[14] Therefore, the following order is made:

14.1 The appeal is dismissed.

14.2 No order as to costs.


[REDACTED]

M.M MABESELE

(Judge of the High Court Gauteng Local Division,
Johannesburg)

Date of hearing : 12 June 2025

Date of judgment : 2 July 2025

Appearances

On behalf of the appellant : Mr Bokaba SC
Instructed by : Le Roux Attorneys
Hamlin Street, Waverly
Johannesburg

On behalf of the respondent : No appearance