

Short notes on:

KNOW YOUR RIGHTS WHEN YOU ARE BEING HARASSED

Harassment will probably not be a topic unknown to most readers of this article. The fact it is, all of us at some stage of our lives has been subjected to harassment in some form whether directly or indirectly and when it happens, it can be difficult to resolve. Difficult to resolve, a person being subjected to harassment may not know, that what they are experiencing is actual harassment or they are just too afraid to stand for their constitutional rights. For interest sake, when being subjected to harassment, the rights that are being violated are the right to privacy, physical integrity or a combination thereof.

Fear no more, we will break it down in small chunks to digest, and so it is clear when your rights are being violated and when you need to act upon it.

What is harassment?

The legislation that regulates acts of harassment is the Harassment Act 17 of 2011 “The Act”. In terms of this Act, harassment is clearly defined, the process for lodging a complaint by the complainant is set out and lastly, it underwrites the powers of the court to enforce the provisions of the Act. What is harassment? Section 1 of the act states that:

“harassment” means directly or indirectly engaging in conduct that the respondent knows or ought to know— (a) causes harm or inspires the reasonable belief that harm may be caused to the complainant or a related person by unreasonably—(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; (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, 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; or (b) amounts to sexual.¹”

As it appears from the above definition of the Act; firstly, an act of harassment is given a very wide definition. Harassment can be direct by carrying out an act or omission or indirectly through another medium or by manipulating a situation to cause harassment. Secondly, it is not necessary for the conduct to cause actual harm, this means sending one Whatsapp *sic* or saying hello to your next-door neighbour will not constitute harassment.

Causes harm or inspires the reasonable belief that harm may be caused assertion

A mere allegation of fact does not constitute a fact. This is particularly the case where there is a dispute of fact in the papers in relation to a protection order application, whether the application is decided on papers or

¹ S(1) of the Protection against Harassment Act

in open court on a balance of probabilities, the test remains the same. Where a protection order is sought in prevention of harassment it is important that the applicant lays the basis for his/her assertions and basis must be raised sufficiently so as to enable the court, in considering the objective evidence, is satisfied that there is a reasonable possibility of harm or fear. The mere assertion of fear is not sufficient as the court indicated in Scott and other v Scott 2018:

“Mere assertions of her fears are insufficient and it is therefore my view that the interim protection order under 871/2015 is hereby set aside in total.”²

Conclusion

Of importance is that applicants should avoid misusing the protection afforded in terms of the Act to advance personal vendettas or attempting to intimidate a respondent by making superfluous allegations as this may result in the applicant being faced with a cost order as the court states in the above case that:

“The same goes for the costs order. In terms of section 16 of the Act the court may only make an order as to costs against any party if it is satisfied that the party in question has acted frivolously, vexatiously or unreasonably”³

Contact us at SchoemanLaw Inc should you require any assistance with harassment

² Para 4 of De Buys Scott and Others v Scott (A100/2018) [2018] ZAFSHC 205

³ Para 29

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