



justice

Department:
Justice and Constitutional Development
REPUBLIC OF SOUTH AFRICA

Eng Ms .M.Muller
Or
Ms .I Nel

Date

TO: The Station Commander

OR To whom it may Concern
SAPS



MERITS DO NOT FALL UNDER SECTION 17 OF DOMESTIC VIOLENCE ACT, 2011 (ACT NO 17 OF 2011)

The carrier of this letter came to my office to apply for a Protection Order. It was not granted by the Magistrate.

He/she was referred to their nearest police station *to open a criminal case against the Respondent.

Kindly assist him/her to open a case of

Attempted Housebreaking

Yours faithfully

CLERK OF THE COURT



**If the merits of the case institutes defamation of character claims, the carrier of this letter was informed it is a civil matter and advised to seek legal assistance from any legal practitioner and not the police.*

harassment...

- (1) There must be conduct which occurs on at least two occasions,
- (2) which is targeted at the Claimant,
- (3) which is calculated in an objective sense to cause alarm or distress, and
- (4) which is objectively judged to be oppressive and unacceptable.
- (5) What is oppressive and unacceptable may depend on the social or working context in which the conduct occurs.
- (6) A line is to be drawn between conduct which is unattractive and unreasonable, and conduct which has been described in various ways: "torment" of the victim, "of an order which would sustain criminal liability".

64.2 *Majrowski v Guy's and St Thomas's NHS Trust*²⁹

[18] I turn to the material provisions of the 1997 Act. The purpose of this statute is to protect victims of harassment, whatever form the harassment takes, wherever it occurs and whatever its motivation. The Act seeks to provide protection against stalkers, racial abusers, disruptive neighbours, bullying at work and so forth.'

[30] ...Courts are well able to separate the wheat from the chaff at an early stage of the proceedings. They should be astute to do so. In most cases courts should have little difficulty in applying the 'close connection' test. Where the claim meets that requirement, and the quality of the conduct said to constitute harassment is being examined, courts will have in mind that irritations, annoyances, even a measure of upset, arise at times in everybody's day-to-day dealings with other people. Courts are well able to recognise the boundary between conduct which is unattractive, even unreasonable, and conduct which is oppressive and unacceptable. To cross the boundary from the regrettable to the unacceptable the gravity of the misconduct must be of an order which would sustain criminal liability under s 2.

²⁸ [2010] All ER (D) 191 para 142.

²⁹ [2006] 4 All ER 395. In this case the House of Lords considered whether an employee had been unlawfully harassed by his departmental manager in breach of s 1 of the Protection from Harassment Act 1997.

cause a person distress that could not possibly be described as harassment. It seems to me that section 7 is dealing with that element of the offence which is constituted by the effect of the conduct rather than with the types of conduct that produce that effect.

[30] The Act does not attempt to define the type of conduct that is capable of constituting harassment. "Harassment" is, however, a word which has a meaning which is generally understood. It describes conduct targeted at an individual which is calculated to produce the consequences described in section 7 and which is oppressive and unreasonable. The practice of stalking is a prime example of such conduct.'

[65] It is apparent from these cases 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 is serious fear, alarm and distress. The legal test is always an objective one: the conduct is calculated in an objective sense to cause alarm or distress, and is objectively judged to be oppressive and unacceptable.

[66] In *SATAWU obo Dlamini / Transnet Freight Rail, a Division of Transnet Ltd & Another*³³ the arbitrator held that harassment is a form of unfair discrimination, and that although harassment is generally understood to denote repeated conduct a single extremely serious slur on the grounds of race could constitute harassment. He held further that although the test for establishing discrimination is objective, the Constitution requires that the primary focus be on the effect on the complainant of the action complained of, and that the proper test for assessing whether the conduct constituted harassment is by reference to the "reasonable victim."

[67] In my view this construction of the Act runs contrary to the application of the objective legal test as it shifts the evaluation from the conduct of the perpetrator to the impact on the victim. The test to be applied ought to remain consistent. But as the oppressive and unacceptable conduct 'may depend on the social or working context in which the conduct occurs',³⁴ the determination of allegations of harassment based on racial slurs may take place within the relevant social context

³³ [2009] JOL 24429 (TOKISO).

³⁴ *Dowson v Chief Constable of Northumbria Police supra*.