

Freedom of expression upheld in Hofmeyr/Koch battle

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In November 2014 actor and singer Steve Hofmeyr, supported by his friend Dan Roodt, obtained an interim protection order against comedian and ventriloquist Conrad Koch in terms of the Harassment Act, 17 of 2011. The order prohibited Koch from using his puppet, Chester Missing, to harass Hofmeyr.



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The Randburg Magistrates Court has set aside the protection order and strongly criticised Hofmeyr's conduct and public advancement of racism. The court's ruling confirmed that the Protection of Harassment Act 17 of 2011 cannot be used to stifle legitimate expression.

How the battle began

A socio-political satirist, ventriloquist and public performer, Conrad Koch, utilises comedy and satire to convey an anti-racism message, using a puppet called Chester Missing who gives political commentary on a range of issues. Chester has become well known in South Africa, appearing on 'Late Night News' on e-TV and writing a regular column for the City Press newspaper.

Steve Hofmeyr is a prominent singer and actor in South Africa and a self-proclaimed Afrikaner-rights activist. He is known for making controversial, and often racist, public statements and supporting right-wing politics. It was Hofmeyr's tweet on 23 October 2014, which set the proceedings in motion: "Sorry to offend, but in my books Blacks were the architects of Apartheid. Go figure."

Koch vehemently disagreed with this statement and launched a civil campaign to denounce and criticise Hofmeyr publicly. Using the Twitter account of Chester Missing, which has over 200,000 followers, Koch urged companies and members of the public to reject Hofmeyr's statements. He also used the social media platform to shame the companies sponsoring Hofmeyr.

Hofmeyr obtains a protection order against Koch

On 5 November 2014, Hofmeyr, supported by fellow Afrikaner activist Dan Roodt, applied to the Randburg Magistrate's Court and obtained an interim protection order against Koch. The order was granted in terms of the Harassment Act and prohibited Koch from harassing, intimidating or threatening Hofmeyr; barred Koch from publishing defamatory threats about Hofmeyr; or contacting his sponsors or business associates.

The Harassment Act allows a victim to obtain a protection order against any person who is harassing them. Harassment is widely defined in the Act as any conduct that a person knows, or should know, will cause mental, psychological, physical or economic harm to the victim. It includes instances where the victim believes that they, or someone close to them, are in danger of being harmed. It also takes account of conduct on the internet, including the use of Twitter and Facebook. While the Act does not specify how serious the conduct must be for someone to apply for a protection order, a person who breaks its terms is guilty of a criminal offence and may be arrested.

Magistrate's Court overrules protection order

A protection order is a drastic interference with freedom of expression. It has the effect of a prior restraint on certain expression and is a form of 'censorship' as it prohibits someone from saying certain things for fear of being arrested. Koch opposed the confirmation of the order and the same court heard his opposition on 27 November 2014.

According to South African law, all statutory provisions that limit expression must be 'understood through the prism of the Constitution and specifically that of the free expression guarantee'. The Magistrate's Court held that in granting the protection order against Koch, the magistrate should have interpreted the Harassment Act in line with the Constitution's protection of freedom of expression.

The court found that although some of Chester's statements were "crude, robust and perhaps vulgar in nature," it did not amount to unreasonable behaviour, ethnic hatred or incitement of violence against Hofmeyr or any sector of society. It also found that Hofmeyr's tweet was "racist and provocative in the sense that it tends to advocate racism and deny the social and other ill effects of apartheid."

As a result, the court found that Koch's behaviour was legitimate. His engagement with Hofmeyr's sponsors was nothing more than moral persuasion in endeavouring to enquire whether they wanted to be associated with Hofmeyr. The effect of the protection order was to silence Koch from engaging with Hofmeyr or his sponsors (not all of which were known) on any level through social media or other public platform. Yet, Hofmeyr failed to show that he had suffered any harm because of Chester's statements.

Neither Hofmeyr nor Roodt had disclosed Hofmeyr's controversial tweet in their application. The court strongly criticised this, found their application was vexatious and unreasonable and awarded punitive costs against them, ordering them to pay the costs of the application on an attorney-client scale.

It is clear from the court's ruling that the ability to openly debate, confront and oppose racism lies at the heart of the right of freedom of expression and will be protected by Section 16 of the Constitution. Public engagement with racism is a legitimate and necessary form of expression in South Africa and our courts will not tolerate abusive proceedings, which attempt to stifle legitimate freedom of expression.

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