

The Boundaries of Expression in the Digital Age: Lessons from Harman v Strydom

By **Tshiamo Tabane** (Candidate Attorney),
Thiavna Subroyen-Govender (Associate),
and **Robert January** (Senior Associate)

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INTRODUCTION

The rise of social media has created new challenges for the law, particularly where perception and emotion may override individuals' consideration of facts and legal boundaries.

The recent case of *Francois Jurie Nicolaas Harman v Pieter Hendrik Strydom*¹ in the Supreme Court of Appeal ("the SCA") illustrates a clear example of how online communication can cross into unlawful territory and the courts' willingness to intervene when it does.

BACKGROUND

The Respondent, Mr Strydom, is an insolvency practitioner and attorney whose firm ("Strydom and Bredenkamp Attorneys") represents, among other, the Land and Agricultural Development Bank of South Africa ("the Land Bank") and its financial agent Unigro Financial Services (Pty) Ltd ("Unigro"). These institutions provide loans to farmers, which are normally secured by mortgage bonds registered over their farms. In the event of default, Strydom and Bredenkamp Attorneys (as their panel attorneys) may be appointed to institute legal proceedings to recover the debt.

The Appellant, Mr Francois Harman, and his company, Redlex 321(Pty) Ltd ("Redlex"), were sued in their capacities as surety and principal debtor respectively, due to Redlex's default of its obligations under its loan agreement with the Land Bank. Following Redlex's liquidation, judgment in the amount of R3,038,324.46 plus interest was granted against Mr Harman in favour of the Land Bank. Thereafter, Mr Harman posted his discontent on Facebook — accusing Mr Strydom and the Land Bank officials of unethical and partial conduct.²

What followed was a flood of emotionally charged, offensive, life threatening, defamatory and, at times, verbally abusive posts of and concerning Mr Strydom being published by Mr Harman and his friends and followers of his Facebook account.

Mr Strydom initially obtained a protection order against Mr Harman from the Pretoria Central Magistrates Court³. Despite being served with the protection order, Mr Harman continued to post defamatory content against Mr Strydom. Mr Strydom approached the Pretoria High Court on an urgent *ex parte* basis and was granted an interim order, which was confirmed on the return date.

COURT FINDINGS

Before the SCA, Mr Harman challenged the High Court's orders primarily relying on the following constitutional grounds: access to courts; freedom of expression and privacy in terms of sections 34, 16 and 14 of the Constitution⁴, read with the Protection of Personal Information Act ("POPIA")⁵.

The SCA found that Mr Harman's constitutional right to be heard before a court of law had not been violated. Although the initial relief was granted on an urgent and *ex parte* basis, the SCA held that Mr Harman had alternate and sufficient procedural avenues to challenge the order.

To the extent that the relief was final in nature, a contention of Mr Harman which the SCA rejected, he could have appealed against it, applied for its reconsideration (in the same urgent court), or lodged a rescission application (in terms of Rule 42). The SCA further confirmed that the High Court's order clearly distinguished between interim and final relief, and held that Mr Harman had ample opportunity to oppose its confirmation but failed to make use of the remedies available to him.

In addition, the SCA dismissed Mr Harman's argument that the order was impossible to comply with. It found no evidence that he had made any meaningful attempt to gather or disclose the information required, nor did he provide any detailed legal basis to support his reliance on POPIA or his right to privacy in terms of section 14 of the Constitution. The SCA also pointed out that, by voluntarily complying with the order to remove the online content, Mr Harman had effectively rendered his complaint on that point moot.

Finally, the Court affirmed that the right to freedom of expression, while protected under section 16 of the Constitution, does not extend to speech that defames, harasses, or incites harm. In this case, the nature and tone of the Facebook posts were found to have seriously undermined Mr Strydom's dignity, personal safety, and professional reputation. As such, the appeal was dismissed with costs, including the costs of two counsel.

CONCLUSION

This case highlights the constitutional boundaries of freedom of expression, particularly in the context of social media. While section 16 of the Constitution protects the right to free speech, section 36 makes it clear that this right is not absolute and may be limited when it infringes on other fundamental rights, such as the rights to dignity, privacy, and life. The digital space is not a legal free-for-all.

Individuals who use social media platforms to defame, harass, or threaten others must be aware that such conduct can attract serious legal consequences. This case stands as a cautionary example of how digital misconduct can lead to real-world accountability.

Please note: Each matter must be dealt with on a case-case basis, and you should consult an attorney before taking any legal action.

¹*Francois Jurie Nicolaas Harman v Pieter Hendrik Strydom* (285/2024) [2005] ZASCA 108 (18 July 2025).

²*Ibid* note 1 at para 6.

³Section 3(2) of the Protection from Harassment Act 17 of 2011.

⁴The Constitution of the Republic of South Africa (1996).

⁵Protection of Personal Information Act 4 of 2013.



Robert January
(Senior Associate)



Thiavna Subroyen-Govender
(Associate)



Tshiamo Tabane
(Partner)