Neutral Citation Number: [2026] CIGC (Civ) 1

IN THE GRAND COURT OF THE CAYMAN ISLANDS
CIVIL DIVISION

IN THE MATTER OF THE STALKING (CIVIL JURISDICTION) ACT 2018

G 2025-0205

BETWEEN:

JULIE ARNALL

APPLICANT

AND

BILIKA SIMAMBA

RESPONDENT

Before:	**Walters J. (Acting)**
Appearances:	**Mr Colm Flanagan and Ms Sarah Dick of Nelsons for the Applicant** **Mr Bilika Simamba acting in person (via Videolink)**
Heard:	**2 December 2025**
Ex tempore decision:	**2 December 2025**
Draft written Judgment circulated:	**24 December 2025**
Judgment Delivered:	**7 January 2026**

Exercise of direction whether to make a Protection Order pursuant to The Stalking (Civil Jurisdiction) Act 2018. Whether a claim for damages should be a separate civil action. Limited costs jurisdiction.

REASONS FOR DECISION

1. This is an application by the Applicant ("Ms Arnall") for an order against the Respondent ("Mr Simamba") under *The Stalking (Civil Jurisdiction) Act* 2018 (the "*Act*").

2. At the hearing on 2 December 2025, I gave a short ex tempore judgment finding in favour of the Applicant with detailed written reasons to be provided shortly thereafter. These are the written reasons for that decision.

The Act

3. Stalking is defined in section 3 of the *Act* as follows;

> *"3 (1) A person stalks another person if the first-mentioned person intentionally engages in a course of conduct specified under subsection (2), which -*
>
> (a) *is directed towards the second-mentioned person;*
>
> (b) *occurs on two or more occasions within a period of twelve months;*
>
> (c) *causes the second-mentioned person to fear for the second mentioned-person's safety or the safety of someone known to second-mentioned person;*
>
> (d) *would cause a reasonable person to fear for the second-mentioned person's safety or the safety of someone known to the second-mentioned person; and*
>
> (e) *the first-mentioned person knows or ought to know would cause that second-mentioned person to fear for the second-mentioned person's safety or the safety of someone known to the second-mentioned person.*
>
> (2) *For the purposes of subsection (1), a course of conduct in relation to a person includes -*
>
> (a) *watching, besetting or loitering near that person;*
>
> (b) *approaching or entering a place where that person resides, works or visits;*
>
> (c) *preventing or hindering access to or from that person's place of residence, business, employment, learning or any other location which that person visits;*
>
> (d) *following or accosting that person;*
>
> (e) *entering or interfering with that person's property;*
>
> (f) *engaging in verbal, written, electronic or any other form of communication with that person;*
>
> (g) *giving offensive, abusive or threatening material to that person or leaving it where it will be found by, given to, or brought to the attention of that person;*

(h) *sending, delivering or showing to that person letters, images telegrams, packages, facsimiles or electronic messages;*

(i) *acting covertly in a way that could reasonably be expected to arouse apprehension or fear in that person; or*

(j) *intimidating, harassing or molesting that person.*

(3) *A course of conduct under subsection (2) may be the same course of conduct or different courses of conduct pursued on each occasion in a public or a private place."*

4. Section 4 provides that an application can be made under the *Act* for a protection order ("Protection Order") by a person who is being or has been stalked.

5. Section 7 sets out the considerations for the Court and the power to make a Protection Order:

"7.(1) The court shall, as soon as is reasonably practicable, consider an application submitted to it for a protection order and may consider any additional evidence it deems fit, including oral evidence or evidence by affidavit, which forms part of the record of proceeding section

(2) *If the court makes a protection order against a respondent, the court may direct that the order also apply against any other person if it is satisfied that the respondent has counselled or procured that other person in the stalking of the complainant.*

(3) *A direction shall not be made under subsection (2) unless the court is satisfied that -*

(a) *the person is stalking or has stalked the complainant; and*
(b) *the making of a direction is necessary to protect the complainant from further stalking conduct.*

(4) *A protection order may be made for the same course of conduct, or different courses of conduct, committed on each occasion in a public or a private place."*

The Court clearly has a discretion when considering the relevant facts and whether or not to make a Protection Order.

6. The nature of the order that the Court can make is set out in Section 9:

"9(1) A protection order shall, for the purpose of protecting the complainant or any other person mentioned in the order from conduct which amounts to stalking, prohibit the respondent from -

(a) *engaging in or attempting to engage in a course of conduct which constitutes stalking;*
(b) *enlisting the help of another person to engage in a course of conduct which constitutes stalking;*
(c) *approaching or otherwise making contact with the*

complainant;

(d) *committing any other act as specified in the protection order.*

(2) The court may impose any additional conditions on the respondent which it deems reasonably necessary to protect and provide for the safety of the complainant or a person known to the complainant."

7. If a Protection Order is made then the period of its duration and discharge are covered by section 10 which, in part, provides that:

"10 (1) A protection order may be made for such period as the court considers necessary to protect the complainant from further stalking and continues in force until the expiry of that period or in the absence of a specified period, after the expiry of one year from the date on which the order is made.

(2) A complainant or a respondent may, upon notice to the other party and the court, apply for the variation or discharge of a protection order.

(3) If the court is satisfied that circumstances have materially changed since the granting of the original protection order and that good cause has been shown for the variation or discharge of the protection order, it may issue an order to this effect."

8. There is provision in section 14 for the Court having regard to the interests of any person and to the public interest to make an order prohibiting the publication of proceedings under the *Act*.

9. Section 21 of the *Act* provides that the Court "may only" make an order as to costs against any person of it is satisfied that the person acted frivolously or vexatiously or abused the process of the court. Section 22 provides that:

"*(1) A person who is being or has been stalked by another person may institute civil proceedings in 0rder to claim damages for any-*

(a) anxiety of distress caused by the stalking;
(b) financial loss resulting from the stalking;
(c) harm resulting from the stalking; or
(d) other matter which the court believes justifies an award of damages.

(2) A person who has been the subject of frivolous or vexations proceedings involving allegations of stalking may institute civil proceedings in order to claim damages for any –

(a) anxiety or distress caused by the stalking;
(b) financial loss resulting from the stalking;
(c) harm resulting from the stalking; or
(d) other matter which the court believes justifies an award of damages."

10. Section 23 provides that a person aggrieved by the making or refusal to make an order of issue a direction under the *Act* may appeal, where applicable to the Grand Court or Court of Appeal. There is no automatic stay of an order under the *Act* pending an appeal.

Ms Arnall's application

11. Ms Arnall (who is 68 years old) issued proceedings in August 2025 and seeks a Protection Order against the Respondent (who is 70 years old) and any third party acting on his behalf prohibiting him from:

10.1 Engaging or attempting to engage in a course of conduct which constitutes stalking as defined in Section 3 of the *Act*;

10.2 Enlisting the help of another person to engage in a course of conduct which constitutes stalking;

10.3 Approaching or otherwise making contact with the applicant by any means whatsoever, whether directly or indirectly, including but not limited to letter, text message, e-mail, social media, telephone, any third party, or any electronic or online platform, save through legal representatives;

10.4 Attending at or being within 100 yards of the Applicant's residence.

Background and evidence

12. The background to these proceedings is set out in the three affidavits[1] sworn by the Applicant, the affidavit of Respondent as well as being outlined in the parties' respective written and oral submissions, all of which I have considered.

13. The Applicant was, until recently, the owner of a unit at a strata complex[2] on South Sound (the "Strata"). The Applicant was also the former chairman of the Executive Committee for the strata corporation (the "Strata Corporation") which oversaw the running of the complex. The Respondent also owns a unit at the Strata which is rented out.

14. The Respondent is an attorney at law. He stated in his oral submissions that he is still licenced to practice in at least one jurisdiction but he did also add that he is now retired.

[1] The first affidavit of the Applicant purports to have been amended in similar fashion to a pleading. This should have been dealt with by way of a supplemental affidavit rather than trying to amend sworn evidence.

[2] Registered under the Strata Titles Registration Act.

15. It appears from the Applicant's first affidavit that in or around 2021 the Respondent fell into arrears with his strata fees. The Strata Corporation took debt recovery proceedings against the Respondent in the Summary Court, seeking to recover the sum of CI$10,005.82. In November 2022, the Strata Corporation obtain a charging order over the Respondent's unit. The Strata Corporation subsequently took steps to enforce the charging order and sell the Respondents unit to recover the sum owed. As part of that process the Strata Corporation sought an order to access the Respondent's unit in order to obtain a valuation for the purposes of sale. That application was dismissed by the Summary Court for procedural reasons.

16. Separately, apparently the Respondent commenced proceedings seeking an order restraining the Strata Corporation and the Applicant personally from proceeding with the sale of his unit. I understand that those proceedings were dismissed in October 2024 with an order for costs against the Respondent. There also appear to have been proceedings relating to a default judgment that the Respondent obtained against the Strata Corporation which was subsequently set aside. I further understand that costs were awarded to the Respondent against the Strata Corporation.

17. What seems to have triggered the issues leading to the current application is the inclusion of the Strata Corporation's legal costs in the monthly strata statements sent to the Respondent. The Respondent's reaction to that step is the material issue for this application. I set out below the content of his email messages sent to the Applicant but do caution readers about the explicit nature of the language used.

18. On 27 December 2024 the Respondent wrote to the Applicant as follows:

> *"Subject: Remove legal fees*
> *Julie Arnall*
> *You stupid asshole Kenyan bitch! Remove those legal charges. The charges relating to the summary court are supposed to be fixed charges. All those fees including teh [sic] Grand Court fees are not legal until approved by the court. There is a challenge on constitutional and other legal basis and it is with the Chief Justice for allocation of a judge to hear it. You have to wait for that. Clearly, you are doing this deliberately you fucking dog because I told you before to remove them. You clearly have head problems. Get care for it. They do wonderful things in institutions these days. Ponciana is now open. You will have a very arduous time with me if you continue this way.*
> *Bili Simbamba"*

19. The Applicating says that she stepped down as chairman of the Executive Committee in January 2025 but continued to oversee the Strata's accounts.

20. On 22 January 2025 at 07.56:

> *"Subject: You Dog*
> *Julie Arnall:*
> *You stupid smelly Kenyan asshole bitch. You have no right to send me bills for things that have no court order for, you dog. You failed to get the order you wanted now you have egg on your face and you do not know what to do you skunk.*
> *Bili Simamba"*

21. 22 January 2025 at 08.01:

> *"Subject: Worthless Dunderhead*
> *Julie Arnall:*
> *You sick sociopath. You will have an arduous time you sick mongrel.*
> *Bili Simamba"*

22. 24 January 2025 sent to the Applicant and a number of other recipients:

> *"Subject: Duty to Reflect Lawyers' Costs in Accounts etc*
> *Julie Anal:*
> *I attach the Bill of Costs that I prepared in relation to the default judgment I obtained against the strata. Since the current rule is that whenever a member of the strata incurs legal bills they should be reflected in the accounts even of there is no court order, I would like mine to be reflected and billed to each unit. Each unit owes me about $1,150.*
> *Also, I have to see the law or strata by-laws that says that those who are not up to date with payments cannot receive copies of the accounts.*
> *For the knowledge of the owners, the Chief Justice has allocated the matter of costs to a judge to determine a constitutional matter relating to the legality of costs incurred by the strata committee who are the ones who authorized you to engage a lawyer.*
> *You cannot continue to run the strata as if it is your personal property. You have to respect people and accept decisions of the majority.*
> *Bili Simamba"*

23. The same day at 10.51 the Applicant wrote back to the Respondent in the email chain as follows, commenting on highlighted extracts from the previous email:

> *"Dear BS*
> *Since the current rule is that whenever a member of the strata incurs legal bills. They should be reflected in the accounts even if there is no court order. Please provide the particular part of the Act you refer to!*
> *Also, I have to see the law or strata by-laws that says that those who are not up to date with payments cannot receive copies of the account. No idea where you got this from. I provide everything to the Strata Committee Who can then pass on the information to the Strata Members, or can instruct mw [sic] To pass on the information to the Strata Members."*

24. The Respondent replied at 10.57:

> *"You piece of shit! You sent a notice to say that you will only prepare the accounts for those who are paid. that is what you said. Can you say where you got that rule from, you Kenyan dog? You are the one who said that."*

25. He sent a following email at 11.15, again copied to the group, as follows:

> *"This is your emai [sic] below. Those who can vote means those who are fully paid. you are worse than worthless you numskull piece of shit.*
> *Julie Arnall*
> *From: Julie [email]*
> *To" [group]*
> *Wed, 15 Jan at 11.09*
> *Hi Sophia*
> *I'll provide financial statements and details of those Units that can vote. Shall I prepare a budget for you to review?*
> *Cheers*
> *Julie"*

26. On 4 March 2025 the Respondent received a general email with his then latest strata fee statement. His response to the Applicant was as follows:

> *"After I am done with you through the court Anal you will be drinking your own fluids. You will find out that there are some people you do not mess with."*

27. On 27 April 2025, again replying to a general email with his latest strata fee statement the Respondent wrote to the Applicant as follows:

> *"Anal:*
> *You stupid Kenyan bitch: You will never get your costs without a court order. Until you drink the juice from your vagina. From now on, I will be sending the monthly*

bill of my costs to each member of the strata. You had two orders for costs and I had two orders for cost. None of them have been assessed.
BHS"

28. Again, on 27 April 2025:

> *"Anal:*
> *Until you stick your head into your anus and breathe normally, you will never get court costs which have not been assessed by the courts. You were trying to target my apartment and you failed. Get used to the idea that you will be paying these costs. You asshole.*
> *If you do not respect the law, this is what you will get.*
> *BHS"*

29. The final email exhibited by the Applicant and sent on 27 May 2025 reads as follows:

> *"Subject: You Kenyan Smelly Bitch Anal*
> *You stupid bitch. I will pay the legal fees after you pay my legal fees and after you start drinking the juices from your smelly vagina, you piece of shit. I am not done with you. You will find out that there are some people you do not mess with."*

30. The Applicant says in her first affidavit dated 21 August 2025 that these emails have caused her significant emotional distress and anxiety. She says that "*[t]he language used is degrading, dehumanizing and racially and sexually abusive. The continued receipt of such emails, which have been increasingly aggressive and threatening, has had a profound impact on my emotional and psychological well-being. I now live in a constant state of fear and distress, feeling unsafe in both my personal and professional life. I am deeply concerned about the Respondent's escalating hostility".* She says that the nature of the conduct directed at her has led her to fear for her safety. The Applicant goes on to say that she has been informed by the Royal Cayman Islands Police ("RCIP") that the Respondent is currently residing in Canada. She says that she is aware from media sources that the Respondent is involved in various legal proceedings in the Cayman Islands. She understands that the Respondent continues to own property here. The Applicant says that she is fearful that the Respondent may return to the jurisdiction and act on his threats or engage third parties to harm her on his behalf.

31. The Applicant continues in her first affidavit to state that apparently the RCIP has issued a "Stop Notice" against the Respondent pursuant to the *Information and Communications Technology Act (2019 Revision)* ("*ICTA*"). Section 90 of *ICTA* makes it an offence for a person to defraud, abuse,

annoy, threaten or harass any other person using an information and communications technology ("ICT") network or service. Apart from the reference to this in the Applicant's affidavit there is no evidence or authority relating to this process. Presumably, it is as a result of the Applicant making a complaint against the Respondent pursuant to *ICTA*. The Applicant goes on to state that she believes that the consequence of this is that the Respondent will be arrested upon his return to the jurisdiction, although she says that this does not prevent him from continuing to send her threatening emails. The Applicant says that in May 2025 the RCIP recommended that she block the Respondent from sending her emails or making phone calls to her. Since then, she has not received any further communications from the Respondent but she is not confident that this will be the end of the matter and is fearful that his conduct will escalate.

32. Mr Simamba filed an affidavit dated 8 September 2025 in response to Ms Arnall's evidence. A copy was sent by the Respondent by email to Nelsons, attorneys for the Applicant on 9 September 2025. The subject line for the email was "*Anal v Simamba Protection Order*".

33. The second paragraph of his affidavit reads:

> *"2. These proceedings are an abuse of process in that Arnall technically stalked me for about 18 months, ignored my requests to stop sending me bills I did not owe, until I got fed up with her and used some choice words just to get her off my back. Now that she has obtained a warrant of arrest against me, I will seek to have her charged for stalking as soon as I have filed this affidavit."*

34. Indeed, during the course of his submissions the Respondent confirmed that he has in fact made a complaint to the RCIP. Apparently, this was done by him via email on 24 September 2025 alleging that the Applicant has committed an offence under section 88A of the *Penal Code*. Section 88A makes it an offence for a person who with intent to cause another person harassment, alarm or distress uses threatening, abusive or insulting words or behaviour thereby causing that or another person harassment, alarm or distress.

35. Mr Simamba's claims that it is the Applicant that has stalked him. He refers to the various strata fee bills that were sent to him including the Strata Corporation's legal costs. He says that, without authority, the Applicant brought proceedings seeking an order for possession of his unit. He says that there were attempts to persuade other members of the Executive Committee to sign a document

authorizing the sale of his unit. He goes on to say that he started to get irritated with the Applicant and on 20 April 2024 sent the Applicant an email that read as follows:

> *"You crook! You are trying to sell my apartment on the basis of a debt of $10,000. You are working with a group of predators. You are also the one who gave my email address to a valuation surveyor without my consent. I am going public today on the talk shows and mention your name. There is no power to sell on the basis of strata fees without a court order. Mortgages are different. Why are you not trying to do the same form [sic] other owners who owe money."*

36. The Respondent goes on to say that in May 2025 he was contacted by a valuation surveyor from JEC Consultants. He says that the surveyor attended his unit and took measurements from outside "peeking" in through the windows causing anxiety to his then tenants. He says that the resulting valuation was under market value.

37. He says that the issue relating to the inclusion of legal fees on his strata fee invoices continued despite his complaints. He says that his responses started off as conciliatory with an offer to pay off the arrears monthly but that the Applicant persisted in sending the invoices. He says that the subsequent emails that have been set out above were sent in response to the Applicant's incessant course of conduct. He says that he did not send any emails "gratuitously". He says that *"[a]ll in all, Arnall's attitude has been supercilious, arrogant, persistently annoying*".

38. The Respondent says that as a result of her conduct, the Applicant has acted contrary to section 3 of the *Act*. In particular:

38.1 Section 3(2) (b) - by virtue of sending the valuation surveyor to his unit without his consent or a court order.

38.2 Section 3(2) (e) - by virtue of the surveyor attending his unit and causing the "trepidation" of his tenants.

38.3 Section 3(2)(f) - by virtue of sending him strata fee invoices for 18 months and ignoring his request to stop.

38.4 Section 3(2)(i) - by virtue of the Applicant continuing to try to get members of the Strata Corporation to agree to sell his unit despite the court dismissing the application by the Strata Corporation for access to carry out a valuation.

38.5 Section 3(2)(j) - by virtue of *"…the valuation surveyor, the bills I did not owe and attempts to get strata committee members to sign an authorization to sell and misrepresenting that if they did not authorize it, they might incur legal liability."*

39. The consequence of the Applicant's conduct he says provides him with the basis for a counterclaim for damages to be assessed pursuant to section 22 (2) of the *Act* on the basis of:

39.1 subsection (a) - suffering anxiety about whether he could keep his unit or not;

39.2 subsection (b) - his tenants refusing to sign a long lease and being forced to leave;

39.3 subsection (c) - anxiety about his rental income;

39.4 subsection (d) - losing income as he searches for a new tenant.

40. The Respondent then deals in his affidavit with his defence to the Applicant's allegations of stalking. He does so in part in reliance on his claim that she stalked him. In summary, he puts his defence as follows:

40.1 He seeks to invoke the legal maxim *"volenti non fit injuria"*[3] which is a defence generally limited to claims in tort. It means that if someone willingly places themselves in a position where harm might result, knowing that some degree of harm might result, they are not able to bring a claim against the other party in tort. In other words, a voluntary assumption of risk. The Respondent says that *"[w]hen you initiate conduct that constitutes stalking, you cannot later allege that the person who was trying to get you to stop the stalking to be the one who needed to be prevented from the behaviour you now complain of."*

40.2 A "spat" between people that goes both ways cannot legally constitute stalking.

40.3 Without prejudice to his defence, even if the court were to be of the view that there was stalking on his part, there is no reasonable apprehension of it continuing because he has not tried to contact the Applicant since May 2025, because the Applicant is no longer a member of the Executive Committee and, he believes, has now sold her unit. He says that "*stalking is preventative and not punitive*".

40.4 At no point, he says, did he threaten her, although this is contradicted by later comments. He says that he showed that he was angry and needed the Applicant to stop. He says that even when he was really frustrated and said *"...after I am done with you through the court, [Arnall] you will be..."*[4] he was making threats to use the law/legal process to protect himself.

40.5 Finally, he argues that since there is now action by the RCIP under *ICTA* which he says may result in him being arrested when he returns to the jurisdiction, it would be

[3] Translated as "*to a willing person, injury is not done*".

[4] Email of 14 March 2025. It is notable that in his affidavit he uses the Applicant's surname rather that "Anal" which is in the email in question.

disproportionate for the Applicant to also obtain a protection order under the Act. In that regard he refers to the case of *Sandra Hill v R*[5] which I will come back to when dealing with the parties' submissions.

41. In her third affidavit, the Applicant responds to the Respondent's affidavit, in summary, as follows:

41.1 Her actions as a member of the Executive Committee of the Strata Corporation were lawful and authorized. She denies doing any act that could constitute stalking.

41.2 The Strata Corporation obtained a charging order over the Respondent's unit which gave it power to sell that unit. She says that the Strata Corporation (of which she is no longer a member) has not taken any further steps to do so because of what she understands are threats from the Respondent.

41.3 The addition of legal fees to the Respondent's strata invoices was in accordance with the Strata Corporation's by-laws.

41.4 She remains fearful of the Respondent and what action he may take in relation to her regardless of the Stop Notice, particularly as he has now made a criminal complaint about her to the RCIP.

41.5 Since these proceedings were issued, the Applicant has become aware that the Respondent has spoken publicly about dispute over the strata fees describing it as frivolous and alleging that the Applicant (who was not named by the Respondent) has cost the strata unnecessary legal fees.

41.6 The Applicant urges the dismissal of the "counterclaim".

Submissions of the parties

The Applicant

42. The submissions on behalf of the Applicant reflect much of what is in her affidavit evidence. In relation to section 3 of the *Act* and the intention of the person alleged to have stalked, reference is made to the case of *Dowson v Chief Constable of Northumbria Police*[6] which dealt with claims that a senior police office in England acted in such a way that his actions amounted to harassment of officers under his command, contrary to the Protection from Harassment Act 1997 and for which the defendant was vicariously liable. The judge summed up the relevant law as follows:

[5] [2025] CICA (Crim) 1.
[6] The Applicant's citation is [2011] EWHC 3454 (TCC), which seems to be incorrect. The correct citation appears to be [2010] EWHC 2612 (QB). Hopefully not an AI halluicantion.

> *"142. I turn then to a summary of what must be proved as a matter of law in order for the claim in harassment to succeed.*
> *(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'."*

The Applicant relies on the reference to objectivity as being the same test to apply in the case of actions alleged to infringe section 3 of the *Act*. This was not disputed by the Respondent.

43. Section 17 of the *Act* requires that a question of fact arising in any proceedings under the *Act*, other than criminal proceedings shall be decided on a balance of probabilities. The civil standard of proof was explained in *In re H (Minors) Sexual Abuse: Standard of Proof)* [7]:

> *"The balance of probability standard means that a court is satisfied an event occurred if the court considers that, on the evidence, the occurrence of the event was more likely than not. When assessing the probabilities the court will have in mind as a factor, to whatever extent is appropriate in the particular case, that the more serious the allegation the less likely it is that the event occurred and, hence, the stronger should be the evidence before the court concludes that the allegation is established on the balance of probability."*

44. In relation to the question of the Stop Notice issued against the Respondent, it is argued that if the Respondent does return to the jurisdiction, he may be stopped and arrested but the likelihood is that he will be released, possibly on bail. In such circumstances, it is argued that he would still represent a risk to the Applicant. On that basis it is said that the existence of a Stop Notice is not a good ground for the Respondent to rely on when opposing the making of a Protection Order.

45. During the course of Mr Flanagan's submission I had asked him about the meaning of section 22 of the *Act.* Subsection 22 (1) provides for the institution of civil proceedings by a person who "*is being or has been stalked*" in order to claim damages. As I indicated to Mr Flanagan, this seems to me to require a preliminary finding by the Court to that effect before that subsection is engaged.

[7] [1996] AC 563 referred to in para 61 of *Hipgrave & Anor v Jones* [2004] EWHC 2901 (QB).

Subsection (2) also provides for the institution of civil proceedings to claim damages in a case where allegations of stalking are frivolous or vexatious. That too seems to me to require a preliminary finding to that effect. In either case, the wording of the section suggests that such proceedings under section 22 are to be separate from an action commenced under section 4 of the *Act*. This would mean that if the Applicant is successful and wanted to bring a claim for damages under section 22 (1), it would have to be by way of a separate action. Similarly, if the Respondent is successful arguing that the Applicant's claim is frivolous or vexatious, then any consequential claim for damages would have to be brought by way of a separate action.

46. In summary, it is argued on behalf of the Applicant that on the balance of probabilities, the requirements of section 3 of the *Act* are made out and that a Protection Order should be made in favour of the Applicant.

47. It is denied that the Applicant has engaged in any conduct which could amount to stalking by her of the Respondent and the Court is urged to dismiss or disregard any such allegations and the associated counterclaim made by the Respondent.

The Respondent

48. The Respondent opened his oral submissions by stating that the application by the Applicant was frivolous and vexatious. He said that the Applicant uses expressions in her evidence that are "*dog whistles*" suggesting that an "*angry black man is threatening a white woman*". I assume the implication being that these proceedings are racially motivated which seems to be contradicted by the language used by the Respondent in the emails sent to the Applicant.

49. The Respondent also went on to say that he is an attorney at law licensed in at least one jurisdiction. He said that any order made against him will have to be disclosed by him in any visa applications and when renewing his practicing certificates. He said that the issue is therefore very serious.

50. He argued that any Stop Notice will result in him being arrested if attempting to return to the jurisdiction so it is not open to the Applicant to say that she does not have sufficient protection. He also made the point that the first that he had heard about a Stop Notice was when reading the Applicant's evidence and said that he had not been contacted by the RCIP in that regard.

51. Mr Simamba dismissed the notion that a counter claim under section 22 would have to be by way of a separate proceeding. I again expressed my views about the meaning of section 22 as I had with Mr Flanagan.

52. Although Mr Flanagan stated in his submissions that his client was not seeking an order under section 14 of the *Act* prohibiting publication of material relating to these proceedings, the Respondent made it clear that in his view the Court should be careful about making any order under that section. He stated that as far as he is concerned he is free to discuss this case publicly and will do so.

53. Mr Simamba then took me through his written submissions which largely followed what was contained in his affidavit. Mr Simamba submitted that:

53.1 It is the Applicant who engaged in stalking and provocative conduct and that it is not open to her to complain that she got a reaction and to say that she is concerned about being stalked.

53.2 The Applicant has sold her unit and moved house. The "spat" between them, has ended. The Respondent says that he has not tried to contact the Applicant for 5 months so she cannot come to court and say that she is in fear and that therefore there is no reasonable basis for this application.

53.3 Although he did not feel threatened or in fear as a result of what he says was the Applicant's conduct and the attendance of the valuation surveyor at his unit, he said that his tenants and his rental agent did fear for themselves and that those are people who represent him and are "under his protection". He also suggested that the conduct of the Applicant that he complains of was not so much stalking but more like harassment.

53.4 His tenants had moved out of his unit as a result of the issues with the Strata Corporation and that he had lost rental income as a result.

53.5 His emails to the Applicant were sent for a legitimate purpose, dealing with strata related affairs. He says that the fact that the emails were "firm" does not change the character of the communications. He says that the *"...level of passive-aggressiveness [on the part of the Applicant] and the period for which it sent on[sic] made it a reasonable response."*.

53.6 There was no pattern of behaviour on his part that could amount to stalking.

53.7 As the *Dowson* case states, the assessment of fear is objective. He states that *"In this case, objectively speaking, there was* ***absence of reasonable fear****: Arnall did not, objectively, actually experience reasonable fear or emotional distress. This is because I specifically*

stated that I would use the courts to fight my case so all emails should have, objectively, have been understood in that context [sic].” In that regard, the Respondent accepted that he had threatened the Applicant but only in the context of the legal proceedings with the Strata Corporation, making it clear to the Applicant that he would use the legal process to make her life difficult.

54. Mr Simamba did draw my attention to the case of *Hill v R* which I mention above although a copy of the judgment was not available at the hearing. He argues that the Court must take account of his human rights (his freedom of movement) and act proportionately. Beyond that, he makes no detailed submissions on the point.

55. Having heard from both parties, I asked if there had been any thought given to the provision of undertakings as a means to resolve the issues in the case. There was a short adjournment for the parties to discuss that. Upon the hearing resuming, Mr Flanagan indicated that agreement had not been reached. The Respondent had only been willing to give undertakings if they were reciprocal and the Applicant was not willing to provide any. A further issue was that the Respondent required that any agreement would require consideration of the withdrawal of the two criminal complaints and that as the Applicant submitted, that might raise the question of impermissible compounding of the offences.

Analysis and decision

56. As I mentioned earlier, the question of making a Protection Order involves consideration of the relevant facts and the exercise of the Court’s discretion.

57. I have considered the relevant evidence and heard from Mr Flanagan and from Mr Simamba. With that in mind, reviewing the requirements of section 3 and using the same sub numbering and lettering my views are as follows:

57.1 Section 3 (1) – The Respondent readily accepts that he intentionally engaged in a course of conduct (correspondence) with the Applicant.

57.2 (a) – The conduct was therefore directed towards the Applicant.

57.3 (b) – The conduct occurred on two or more occasions within a period of twelve months.

57.4 (c) – The conduct caused the Applicant to fear for her safety. In that regard I accept her evidence. I have noted that the position of the Respondent is that the threats that he accepted that he made were in his mind limited to using the legal process against the Applicant. That

is still threatening behaviour. However, a number of his emails (27 December 2024, 22 January 2025, 27 May 2025) contain what are, in my view, open ended threats to the Applicant.

57.5 (d) – The conduct was such that in my view a reasonable person with an objective perspective would fear for the Applicant's safety. When writing the emails to the Applicant, the Respondent describes himself as an "angry black man". I can say without hesitation, that I regard the content of those emails as generally being shockingly gross, highly offensive and highly abusive. As intended by the Respondent, they were in my view, threatening. When all those factors are combined, I am of the view that a reasonable person would fear for the Applicant's safety.

57.6 (e) – The Respondent knew or ought to have known that the conduct would cause the Applicant to fear for her safety. The Respondent has accepted that he intentionally threatened the Applicant. He also knew that he was writing using language that was shockingly gross, highly offensive and highly abusive. In the circumstances, I have no doubt that the Respondent knew or ought to have known that his conduct would cause the Applicant to fear for her safety.

58. In relation to section 3(2), it is largely self-evident in my view that the conduct of the Respondent falls within subsections (f), (g), (h) and (j).

59. Mr Simamba has referred me to the case of *Hill v R* the details of which were unfamiliar to me. That case related to a criminal prosecution of Ms Hill for an alleged offence under section 90 of ICTA. The material in question was included in a podcast broadcast by Ms Hill and made available publicly. During the trial at first instance, the judge accepted that section 11 of the Bill of Rights[8] was engaged. Section 11 protects freedom of expression.

60. Mr Simamba raised the case in oral submissions and in his Skeleton Argument in the context of his freedom of movement.

61. Section 13 of the Bill of Rights reads as follows:

> *"13.(1) No person shall be hindered by government in the enjoyment of his or her freedom of movement, that is to say, the right to move freely throughout the Cayman Islands, the right to reside in any part of the Cayman Islands,*

[8] The Cayman Islands Constitution Order 2009,Schedule 2, Part 1.

> *the right to enter the Cayman Islands, the right to leave the Cayman Islands and immunity from expulsion from the Cayman Islands.*
>
> *(2) Nothing in any law or done under its authority shall be held to contravene this section to the extent that the law in question makes provision—*
>
> *(a) for the imposition of restrictions on the movement or residence within the Cayman Islands or on the right to leave the Cayman Islands of persons generally or any class of persons that are reasonably justifiable in a democratic society—*
> *(i) in the interests of defence, public safety, public order, public morality or public health; or*
> *(ii) for the purpose of protecting the rights and freedoms of other persons;…"*

62. As set out above, section 9 (1) of the *Act* provides that if a Protection Order is made *"…it shall, for the purpose of protecting the complainant … from conduct which amounts to stalking, prohibit the Respondent from - …(c) approaching or otherwise making contact with the complainant…"* (emphasis added). A Protection Order made under section 9 of the *Act* would extend to a restriction on a respondent's freedom of movement. That then raises the qualifications in section 13 of the Bill of Rights as set out in section 13 (2) (a) (i) – (ii) above. Although relating to freedom of expression, the Court of Appeal in *Hill v R* said:

> "As we have said, under section 11 of the Bill of Rights, it is not a contravention of a person's "*enjoyment of his or her freedom of expression*" if the restriction "*is reasonably justifiable in a democratic society…for the purpose of protecting the rights, reputations and freedoms of other persons…*"

The fact that the legislature drafted section 9 in a prescriptive way including section 9(c) as a component part of any Protection Order made in my view demonstrates that it was the intention that if a court makes a finding on the balance of probabilities that stalking has occurred, a proportionate response is to restrict the respondent's movement, prohibiting them from approaching the complainant.

63. That consequence will be a factor that the court must take into account when assessing the relevant facts and the basis for an application for a protection order. I do not regard the existence of the Stop Notice and whatever implications it may or may not have as having any bearing on whether an order should be made under section 3 of the Act in this case.

64. Addressing some of the points raised/made by the Respondent:

64.1 I find it a singularly unattractive argument to suggest that the emails that he sent to the Applicant were somehow provoked and therefore a justified response. To suggest that the Applicant effectively "got what she deserved" is in my view a wholly misplaced and troubling approach.

64.2 I also find it disconcerting that the Respondent at no time appears to acknowledge the shockingly gross, highly offensive and highly abusive nature of the emails that he sent to the Applicant. Indeed, he seemed somewhat dismissive of them by referring to them as "choice words" and "firm".

64.3 There does not appear to be any evidence that the Applicant engaged in conduct that could possibly fall within section 3 of the Act. As I have said, I accept her evidence that she was acting at all times as a member of the Executive Committee of the Strata Corporation, taking steps to facilitate the collection of unpaid strata fees. Indeed, the Respondent was clear that at no time did he fear for his safety in the context of the *Act*.

64.4 In relation to the question of contact with the Applicant, the Respondent says that he has not tried to contact the Applicant since May 2025. He says that as a result of the end of the "spat" between them there is no continuing conduct that might justify the making of a Protection Order. As the Applicant has said, she blocked the Respondent from sending her emails so whether the Respondent did try to contact her is unknown. I do find it significant however that when sending his affidavit to the Applicant's attorneys in September 2025, the Respondent in his email again substituted the Applicant's surname with "*Anal*". I regard that as a continuation of the content of the previous email exchange with the Applicant and a continued use of offensive and abusive language directed at the Applicant. I also take account of the recent criminal complaint that the Respondent has made against the Applicant which will again cause there to be a continuing adversarial relationship between the parties.

64.5 Finally, I am of the view that section 22 (2) is clear and that it is only if there is a finding that a person has been the subject of frivolous or vexatious proceedings involving allegations of staking that they can institute separate civil proceedings in order to claim damages. I do not read the *Act* as meaning that the separate proceeding would be within the same action as the stalking allegations. In my view the *Act* envisages an entirely separate claim. On that basis there was no basis for the Respondent to assert a counterclaim in these proceedings as he has sought to do.

65. Therefore, taking into account the above, as indicated in my oral decision on 2 December 2025, I am of the view that the Applicant has demonstrated that, on the balance of probabilities, the Respondent embarked on a course of conduct that constituted stalking for the purposes of section 3 of the *Act.* In view of the nature of the communications, the attitude of the Respondent towards them and his continued offensive substitution of her surname, I am of the view that a Protection Order should be made in the terms sought by the Applicant and that, as envisaged by section 7, it includes an order that the Respondent be prohibited from approaching the Applicant.

66. On the basis of the above, the claim by the Applicant is not frivolous or vexatious.

67. I asked the parties to make separate written submissions on the question of costs.

68. The Applicant argues as follows:

68.1 The Respondent should have known at an early stage that his case was essentially indefensible amounting to improper, unreasonable or negligent conduct which would warrant an order for indemnity costs against him[9].

68.2 Section 21 of the *Act* overrides the usual rule that costs follow the event in that it requires that in order to make an award of costs the Court has to be satisfied that a party (a) acted frivolously or vexatiously; or (b) abused the process of the court. The Applicant argues that in *Murphy and Slutsky v Hacet and Montgomery*[10] Williams J considered the law on the meaning of frivolous and vexatious conduct and held that a *"frivolous pleading was one which trifled with the court's processes, while a vexatious one contained an element of impropriety."* Reference is also made to the Supreme Court Practice 1999, vol. 1, para. 18/19/16 at 350 which notes that frivolous and vexatious means *"cases which are obviously frivolous or vexatious or obviously unreasonable."*

68.3 The Applicant argues that the Respondent's "counterclaim" was frivolous in that it was devoid of any serious prospect of success from the outset.

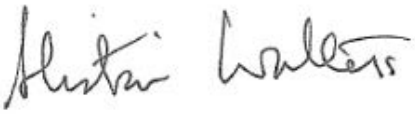
68.4 It is contended that the only reason that the Respondent made a criminal complaint against the Applicant was to retaliate for the bringing of these proceedings. It is further stated that prior to this hearing the Respondent offered (I assume on an open basis) to withdraw his complaint if the Applicant withdrew these proceedings and the Stop Notice with each side

[9] See e.g. *Keith Myers v Arek Joseph J.P. and the Commissioner of the Royal Cayman Islands Police Service* [2025] CIGC (Civ) 34.
[10] [2020 (1) CILR 47] page 4.

bearing their own costs. The Applicant suggest that such an arrangement could amount to a criminal offence and argues that such conduct displays a flagrant disregard for the Court's process and the administration of justice.

69. The Respondent simply refers to the criminal complaint that he has made against the Applicant and states that he was provoked by the Applicant by sending him strata fees invoices including the Strata Corporation's legal costs and that this would somehow not justify an order for costs against him.

70. Having considered those submissions, I am of the view that the approach taken by the Respondent by reference to a purported counterclaim was frivolous and unreasonable from the outset and sufficiently unreasonable to justify an order for indemnity costs. In my view, section 22(2) does not make provision for a counterclaim to be brought and the Respondent's arguments in that regard were entirely misplaced. I also regard the substance of what the Respondent has said about the alleged stalking of him by the Applicant has no basis in fact and tantamount to an abuse of the process of the court. However, that is not to say that the Respondent was not entitled to conduct a simple defence of the Applicant's claim which could have been limited to testing the elements of the Applicant's claim under section 3. On that basis, I order that the Respondent pay the Applicant's costs of and associated with responding to and opposing his "counterclaim" and responding to the allegations that the Applicant stalked the Respondent to be taxed on an indemnity basis if not agreed.



Hon. Justice Alistair Walters
Acting Judge of the Grand Court