

CITATION: RAS v MAS [2026] NTLC 7
PARTIES: RAS
v
MAS
TITLE OF COURT: LOCAL COURT
JURISDICTION: CIVIL
FILE NO(s): 22550641
DELIVERED ON: 17 April 2026
DELIVERED AT: Darwin
HEARING DATE(s): 13 March 2026
DECISION OF: JUDGE AUSTIN

CATCHWORDS:

DOMESTIC VIOLENCE - *Domestic and Family Violence Act* – Assessing the credibility and reliability of evidence

Domestic and Family Violence Act 2007 (NT) ss 18(1), 19(1), 19(2)(e), 48
AB v Hayes & Anor [2019] NTSC 13

REPRESENTATION:

Counsel:

Applicant: Mr Hubber

Defendant: Mr Fernandez

Decision category classification:	C
Decision ID number:	[2026] NTLC 7
Number of paragraphs:	67

IN THE LOCAL COURT
AT DARWIN IN THE NORTHERN
TERRITORY OF AUSTRALIA

No. 22550641

BETWEEN:

RAS
Applicant

AND:

MAS
Respondent

REASONS FOR DECISION

(Delivered 17 April 2026)

JUDGE AUSTIN

The Application for a DVO

1. The applicant MAS, and the respondent RAS are sisters and in a domestic relationship.
2. RAS is currently restrained from causing domestic violence to MAS pursuant to an Interim Domestic Violence Order (IO) under the *Domestic and Family Violence Act 2007* (NT) ('the Act') which was granted by the Court on 16 December 2025. The IO was initially granted in full non-contact terms on 21 October 2025; however, the conditions were varied on 16 December 2025 to remove the non-contact conditions.
3. The applicant is seeking the court make a final Domestic Violence Order (DVO) against the respondent in effectively full non-contact terms. A hearing was conducted before me on 13 March 2026.
4. At the conclusion of the hearing, I adjourned the matter for decision and ordered the IO remain in force until it is either varied, revoked or confirmed by this court.

IO – Protected Person AA

5. The applicant has included another protected person (PP) AA in her application for a DVO. This person is included in the IO made by the court. During the proceedings for a final DVO no mention of this PP is made in the evidentiary material relied on by the applicant.
6. Whilst this matter was not raised by the parties at the hearing, no submissions were made by the applicant at the hearing that a DVO should be made for this person. No legal basis exists upon which this court could make a DVO against the respondent for AA.

7. As such, I revoke the IO against this PP, and I decline to make a DVO against the respondent for AA.

The Law

The Domestic and Family Violence Act 2007 (NT):

8. A protected person, police or a defendant are all granted the right to apply for a DVO.¹ The matters to be considered and given due weight under the Act, when a Court is asked to make a DVO are those set out in ss 18 and 19 of the Act.

18 When DVO may be made

- (1) The issuing authority may make a DVO only if satisfied there are reasonable grounds for the protected person to fear the commission of domestic violence against the person by the defendant.

19 Matters to be considered in making DVO

- (1) In deciding whether to make a DVO, the issuing authority must consider the safety and protection of the protected person... to be of paramount importance.

9. I may only make a DVO if I am satisfied on the balance of probabilities that there are reasonable grounds for the protected person to fear the commission of domestic violence by the defendant.
10. The test is an objective test where proof of past domestic violence can be relied on to ground a reasonable fear or apprehension of future domestic violence.²
11. Section 3 of the Act sets out the Objects of the Act and Section 19(1) of the Act requires the Court to apply a paramountcy principle. The section provides that:

In deciding whether to make a DVO, the issuing authority must consider the safety and protection of the protected person to be of paramount importance.
12. Other matters provided for in the Act relevant to this application I must consider when deciding to make a DVO are the accommodation needs of the protected person, the defendant's criminal record and previous conduct and any other matter the Court considers relevant.³
13. To determine the content of the DVO, the Court may impose restraints it considers desirable and necessary to prevent the commission of domestic violence against the protected person.

¹ Domestic and Family Violence Act (NT) s 48

² see *AB v Hayes Anor* [2019] NTSC 13 (Southwood J)

³ Domestic and Family Violence Act (NT) s 19(2)(e)

Outline

14. The evidence of the applicant is effectively that pursuant to s 6 of the Act, the respondent has engaged in conduct that is intimidatory and harassing and causes a reasonable apprehension of violence and has the effect of unreasonably controlling a person or causing them mental harm.
15. The applicant alleges the respondent has variously made threats of harm to her directly and indirectly, but no allegations of actual violence or harm by the respondent to the protected person are made.
16. The applicant also asserts the respondent has used third party family members to convey threats and intimidate and harass her as a form of coercive control.
17. The applicant's case is predicated on proof of the alleged conduct and that the conduct alleged even if proven is attributable to the respondent.
18. Significantly the court must accept on the Balance of Probabilities the applicant has proven:
 - the conduct occurred as alleged and that it was intimidation or harassment.
 - the respondent either directly threatened harm to the applicant or engaged in the alleged conduct; or
 - the respondent indirectly threatened harm to the applicant as she was complicit or a party to threats made to the applicant by another family member; or
 - the respondent indirectly threatened harm to the applicant by getting her sister and brother to convey threats to the applicant on her behalf.
19. The applicant alleges and therefore must prove the respondent made threats to harm her and engaged in this conduct in order to influence her to desist from contesting the will and to desist from pursuing the DVO application.
20. If the applicant cannot prove the factual allegations, or that the conduct alleged is attributable to the respondent, then there is no basis for a DVO to be made by the court.
21. The onus rests on the applicant to satisfy the court that a DVO should be made on the Balance of Probabilities.

The Evidence

22. The protected person and the respondent were both represented at the hearing.
23. The applicant gave evidence at the hearing and was cross-examined with the assistance of an interpreter.

24. The applicant's evidence is as follows:

A1 – DVO application and affidavit of 14 October 2025

A2 – affidavit of 21 October 2025

A3 – affidavit of 12 February 2026

A4 – annexure 'C' from A2 affidavit of 21 October 2025– translation of phone call of 25 August 2025 between applicant and respondent

25. The respondent strongly contests the making of a final DVO. Her affidavits were tendered at the hearing and she was cross examined.

26. The respondents' evidence is as follows:

R1 – affidavit of 11 December 2025

R2 – affidavit of 13 December 2025

R3 – affidavit of 20 January 2026

R4 – affidavit of 27 February 2026

The Issues

Applicant's Case:

27. The allegations against the respondent arise in the context of an acrimonious dispute between the parties over the estate of their deceased brother. The applicant is unhappy with the will of the deceased brother and seeks to contest his will in Germany. She asserts that the respondent has acted improperly and illegally in some manner involving the brother's will and distribution of his estate.

28. For the purposes of these proceedings, the terms of the will were that the parties' brother, MS, left his small estate to the respondent as the sole inheritor⁴. I find the evidence is that the applicant is not a beneficiary under the will. The brother's executor is a Mr FL.⁵

29. The exact nature of the applicant's complaint about the will against the respondent is difficult to ascertain on the applicant's evidence; suffice to say it is apparent from the evidence she is very unhappy about the terms of the will and how the brother's estate is to be distributed. I

⁴ R1 paragraph [8]

⁵ Ibid

find that she believes the respondent is responsible in some capacity for how the will was drafted.

30. The applicant gave evidence she intends to contest the will.
31. The context of the alleged communications the applicant relies on to assert the respondent threatened her harm arise as a result of discussions about the deceased brother's will and the distribution of his estate.
32. Following the death of the parties' brother, the applicant asserts the respondent threatened to cause her harm directly and through family members. She asserts those threats occurred on the following occasions in the following context:

First:

17 June 2025 - a direct death threat from her brother SS during a family phone call where the respondent was present. She alleges her brother said "we will kill MAS if she returns to Iraq. She alleges that the respondent said "we do not trust MAS" during the same phone call.

(The applicant asserts she recorded this phone call and reported this call to the German police but did not produce a copy of the recording or the recording in evidence in these proceedings.)

The applicant alleges that because the respondent was present during the phone call and did nothing to intervene or stop the brothers' threat, she was a party to the threat and complicit in it.

Second:

25 August 2025 - a direct threat to harm her by the respondent during a phone call where the respondent told her there would be serious consequences and 'the path would be filled with blood' or 'the way would be bloody for all' if the applicant chose to contest the will.

(This phone call is recorded and in evidence and a translation of the words has been agreed by the parties however the meaning of the words is disputed by the parties).

The applicant asserts the meaning of the words are a threat to cause her physical harm.

Third:

19 June 2025 - a hearsay threat communicated to the applicant through the sister GG that the respondent said, "if I see MAS I will tear her to pieces".

(GG was not called by the applicant to give evidence and there is no recording of this conversation).

The applicant asserts the respondent made a threat to harm her through the sister.

Fourth:

26 August 2025 – a ‘What’s App’ message to GG from the respondent where the respondent told GG, the sister, that she no longer had to involve herself in the dispute and the applicant was the one who had begun the harm and transgression and was the one who must bear the consequences and had brought it upon herself.

(The What’s App message is in evidence.)

The applicant alleges this was an instruction to the sister GG to keep out of the matter and used threatening language directed at the applicant through a third party with the intention that the sister would pass this on to the applicant.

Fifth:

After the IO was served on the respondent, the applicant alleges that her sister GG communicated to her:

- (a) threats GG allegedly received from the respondent against the applicant allegedly intended to be passed on to the applicant;
 - i. that if she did not withdraw the DVO the respondent would do something to the applicant that she does not see coming (there is no supporting evidence that the respondent said this to the sister only a hearsay account from the applicant); and
- (b) threats GG allegedly received against the applicant from her brother SS, allegedly intended to be passed on to the applicant which were allegedly instigated by the respondent that;
 - i. if the applicant continues with the DVO the brother would build a wall between her house and her mother’s house isolating her from her family support.

(there is no supporting evidence that the respondent told the brother to tell the sister to tell the applicant this other than the hearsay account from the applicant).

These are second and third party hearsay communications alleged to have been made by the respondent to her brother and to her sister telling them or expecting them to communicate threats to the applicant on her behalf. Neither the sister nor brother was called by the applicant to give evidence.

Sixth:

A request from Mr FL, the deceased brother's executor, for her residential address, is alleged to not be a genuine request but made under a suspicious context linked to the respondent to intimidate her.

26. The applicant asserts the respondent has engaged in a concerted campaign of domestic violence including intimidation and harassment and coercive control to stop her contesting their brother's will and, since the IO was made by the court, to influence her to withdraw the DVO application.
27. The applicant asserts that this conduct has had a real effect including fear, anxiety, nightmares, sleep disturbance, distress and adverse effects on her diabetes and capacity to function. She asserts a DVO should be made to protect her from future risk of harm.

Respondent's Case:

28. The respondent denies making any threats of harm to the applicant directly or indirectly. The respondent asserts it is the applicant who is the person who has made threats against her which are very serious by accusing her of acting illegally and fraudulently in relation to their brother's will and that she will go to prison.
29. The respondent's evidence is that this is a family dispute where the applicant is unhappy about the brother's will and distribution of his estate and the application for a DVO is sought to damage her reputation.
30. The respondent is a medical Doctor and an upstanding member of the community. The respondent asserts the DVO application and the allegations could damage her reputation and are significantly impacting her mental and physical health in the context of a cancer diagnosis and treatment.
31. The respondent asserts that the phone call of 25 August 2025 and the other allegations are not to be considered in isolation. She asserts that in fact during that phone call the applicant intimidates her and harasses her and threatens her reputation because she is angry and upset about the terms of the brother's will.
32. She asserts that phone call was preceded by a phone call the day before that lasted 2 hours where the applicant was angry and hostile and aggressive and demanding.
33. The respondent does not deny saying the words alleged in the phone call but denies the meaning sought to be attributed by the applicant. She states the meaning of the words in Iraqi Arabic are 'you chose the bloody way for all' and it is a turn of phrase not a death threat. It refers to the applicant choosing family conflict rather than respecting their brother's wishes as to how he chose to distribute his estate in his will.

34. The respondent does not deny being present during a phone call on 17 June 2025 when her brother said things to the applicant but denies being complicit or responsible for her brother's words.
35. The respondent's evidence regarding this phone call and the familial relationships generally is detailed and comprehensive. Significantly she provides evidence of a voice mail message purported to be from the deceased brother⁶ where the brother appears to request the respondent assist him with the applicant given her behaviour in Germany. This evidence is inconsistent with the applicant's claims against the respondent of the background and nature of the familial relationships leading up to the phone calls she relies on as threats against her.
36. The respondent's evidence contradicts the applicant's that the applicant was the person who was close to the brother and had a good relationship with him. The terms of the will itself, which is not in dispute, also contradict the applicant's evidence in this regard.
37. Whilst I appreciate the terms of the brother's will goes to the heart of the familial dispute and it is not something I can or need to resolve in these proceedings, it appears to be a significant matter that the applicant asserts that the respondent is a person who has acted in such a manner that she is an unreliable and uncredible witness in these proceedings. I cannot and do not find that the evidence in the hearing supports the applicant's assertions in this regard.

Credibility Findings

38. I do not accept the applicant's evidence on the Balance of Probabilities ('BOP'). I find generally the respondents' evidence, especially Exhibit R4 is comprehensive in nature and gives background and context to the family dispute and how the alleged communications arise. I find that the respondent's accounts are not selective whereas the applicant's accounts are.
39. The hostile and acrimonious nature of the familial relationships outlined in the respondent's affidavit R4 sheds significant light and context on not just the communication of 17 June 2025 and 25 August 2025 but on all the other communications alleged by the applicant as threats made by the respondent.
40. I do not accept the applicant's evidence on the BOP as credible or reliable. I find she has been selective and has sought to put a version of events before the court which she believes would paint her in a favourable light. However, I find that the selective nature of the evidence has resulted in this court not being able to accept her evidence that the context and meaning she attempts to attribute to the communications are proven.
41. Given the strenuous denials of the respondent and her explanations and clarification of the alleged incidents, I am not satisfied to the requisite standard that the allegations of the applicant are proven on the BOP.

⁶ R4 para 8-9(a) to (n)

42. Most importantly most of the allegations made by the applicant cannot be directly attributed to the respondent.
43. For example, regarding the First allegation, I find that being part of a conversation through presence is not a sufficient basis to find that the respondent is complicit in any words spoken by the brother SS to the applicant in the phone call of 17 June 2025. Importantly, despite asserting she recorded this phone call the applicant has not produced it. I find that this is selective given she has chosen to produce the phone call of 25 August 2025 she relies on to prove the Second allegation.
44. I cannot be satisfied that the version of events she gives about the phone call of 17 June 2025 is accurate, though it is not in dispute that the brother made the threat and not the respondent. The words spoken by the brother cannot be attributable to the respondent nor can it be proven that the respondent is complicit or a party to those threats. I do not find this allegation is proven by the applicant on the BOP.
45. I do not find that the Second allegation is proven of a threat of harm made during the phone call of 25 August 2025. The recorded phone call and translation do not support the meaning the applicant seeks to attribute to the phrase is proven, that it is a threat to cause her harm. The applicant herself acknowledges that the meaning is different to the translator's meaning, but she doesn't agree with it. I give no weight to her hearsay claim that her sister in Iraq shares her opinion of the meaning of the words given it is a hearsay assertion.
46. I find "the path will be bloody" or "filled with blood for all" is a turn of phrase said by the respondent in reference to the choice to create family conflict and trouble in the context of an acrimonious family dispute. This acrimony arises before the brother dies and escalates when the applicant discovers that her sister is the sole beneficiary of her deceased brother's estate.
47. I find the evidence is the applicant becomes angry and hostile and intent on contesting the will. When it becomes apparent to her during the phone call of 25 August 2025 that her sister will not change the estate distribution, the applicant accuses her sister of acting illegally and threatens that she will go to prison. I agree with the respondent's submission, and I find these are serious threats made against the respondent which could be seen as intimidatory having the potential to damage the respondent's reputation.
48. I have considered the evidence in the context of all the evidence and the background leading up to the phone call as set out by the applicant and respondent and I am not satisfied the applicant has proven on the BOP that this is a threat to harm as opposed to a turn of phrase given the family dispute and acrimony.
49. I do not find the Third allegation is proven that the respondent told the sister GG to communicate to the applicant 'If I see MAS I will tear her to pieces.' This threat was allegedly made to the sister in Iraq by the respondent then communicated to the applicant as a threat. This is second hand hearsay. The sister GG was not called to give evidence. The applicant gave evidence in cross-examination that she did not ask her sister GG to give evidence as she believed she would not agree to do so.

50. There is a recording in evidence which purports to be between the sister GG and the brother SS in Iraq where he purports to physically assault GG during a conversation about their mother and the estate.
51. Whilst hearsay evidence can be admitted proving the truth of the allegations in a DVO application, the court has the discretion to admit such evidence. I do find that there is independent objective evidence, taking that recording with the brother at its highest, that the sister GG may indeed fear for her own safety should she participate in the proceedings, however I confine that to a fear of the brother SS not the respondent.
52. I also find the evidence from the applicant is the sister GG may have formed a particular view regarding the applicant and the respondent.
53. However, in the absence of direct evidence from the sister GG regarding any alleged conversations with the respondent where threats of harm were made by the respondent to the applicant or about the applicant, I decline to admit the evidence of those conversations to prove the truth. I have taken into account that any such threats are strongly denied by the respondent,
54. The reliability of such evidence is tenuous and not supported by any independent evidence. The nature of the communications, the context and what exactly was alleged to have been said cannot be tested or proven through a second-hand hearsay account given by the applicant who has a vested interest in the proceeding.
55. I do not find that the Fourth allegation is proven. Whilst there is independent evidence of the What's-App message from the respondent to the applicant, which is not disputed, I do not find that it proves what the applicant alleges. It is open to be interpreted as a message which is consistent with the respondent telling her sister in Iraq that she does not need to interfere or intervene in the dispute and that whatever transpires is a result of the applicants' actions and choices. I do not accept, in light of the respondent's evidence, that it is coercive control whereby the respondent is attempting to exert control over the applicant through the sister by attempting to stop the sister communicating with the applicant as alleged or that the language used was threatening towards the applicant as asserted. Whilst the language is strong, it refers to the applicant beginning the harm and transgressions and bearing the consequences.
56. I find that this meaning must be interpreted in the context of the applicant seeking to contest the will and accusing her sister of acting unlawfully. I am not satisfied that the applicant has proven the respondent is threatening her harm in the message, but rather it is open to accept the respondent on her evidence is referring to the harm the applicant's actions are causing the family. Given the respondent's evidence and her explanations, I am not able to accept the applicant's interpretation of this message on the BOP.
57. I do not find the Fifth allegations are proven on the BOP, as they also rely on second and third hand hearsay accounts allegedly communicated to the applicant by the sister. The applicant asks the court to find that the respondent either directly or indirectly influenced the sister GG to communicate threats to the applicant via the sister and also persuaded, coerced or acted in

concert with her brother SS in Iraq for him to get his sister GG in Iraq to contact the applicant and warn her and threaten her not to pursue the DVO or she would be isolated from her family as he would build a wall between her and her mother's house.

58. The tenacity and unreliability of such inferences to be drawn from the applicant's hearsay accounts of second and third hearsay conversations allegedly had with her sister who allegedly had conversations with other people i.e. the brother, who had conversations with the respondent, is such that I cannot accept or give any weight to these allegations.
59. The sister in Iraq GG, as already discussed, is a witness who was not called in the proceedings or made available for cross examination. Whilst there may be good reasons why the applicant anticipated a lack of cooperation and a genuine fear for her sister's safety from other family members, there is no independent evidence that any such fear can be attributed to the respondent. The respondent's evidence refutes any such allegation and seeks to clarify the complex family dynamics. The respondent denies any complicity in any threats of harm to the applicant or any other family member.
60. As such I will not admit or rely on the hearsay evidence to prove the applicant's claims, especially in the face of the respondent's denials.
61. I note the claims made by the applicant and the allegations of death threats and threats of harm are particularly serious. If true on the BOP, they would cause this court concern for the applicant's safety, however the reliability of the evidence as second-hand and third hand hearsay is such that the links are too tenuous for the court to rely on the applicant's account to attribute them to the respondent in the absence of supportive or corroborative evidence.
62. I also take into account the respondents' explanations about the risk to her personal and professional reputation and standing should she engage in such conduct or seek to influence or recruit other family members to threaten her sister harm. I find the damage to her professionally and personally would be significant. Regardless, people often take such risks, but in this case the evidence falls short of proving the respondent's culpability on the BOP.
63. I do not find the Sixth allegation is proven. I let counsel know during the hearing that this was a very weak and tenuous argument regarding the Executor seeking information from the applicant. I find this is not something that has any sinister or suspicious undertones and there is no link proven to the respondent.
64. In summary I find the applicant has not proven the allegations against the respondent on the BOP.

Findings and Orders

65. *The issue is – should a DVO be made to prevent the commission of domestic violence against the protected person and what restraints/conditions should be imposed if a DVO is necessary?*

66. In this case I find there is no evidentiary basis to make a Domestic Violence Order against the respondent as I have found the applicant has not proven the allegations.
 67. The court should not make a DVO to prevent the commission of domestic violence against the protected person.
 68. As such I revoke the Interim Order and dismiss the application against the respondent.
 69. The respondent is discharged.
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