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No, you cannot do and say whatever you feel like! Even if you are the scorned lover or wife

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The internet and digital platforms have significantly impacted privacy rights and the legal landscape. Social media, blogs, and other online forums, the cyber landscape, has left victims of revenge porn amidst a tapestry of laws through which they have to navigate when they aim to protect themselves and hold the perpetrators accountable for online privacy violations and defamation.

On 12 November 2024, Mia J issued a judgement succinctly addressing the position of a victim of revenge porn[1].

KS approached the High Court seeking general and special damages against AM and SHM following the creation of an imposter social media profile, the recording of intimate images, the non-consensual publication and distribution of intimate depictions on a fake Facebook account created by AM and SHM as well as communications by SHM with various colleagues of KS and a senior colleague at the company where KS was employed. Also, AM threatened KS to send videos he described as *"porno videos"* to the attorney representing KS, her family and friends.

But what is revenge porn, and through which legislative lens do you judge it?

In *FGX v Gaunt**[2]*** the term revenge porn was referred to as the term commonly used to describe the conduct of AM. This is the publication of non-consensual intimate images, recordings, or depictions and is recognised as a violation against persons. The United Nations Special Rapporteur on Violence Against Women[3] observed that the publication or posting online without consent of intimate photographs or photoshopped images that are sexualised violates the subject's right to privacy and dignity and to live a life free from violence.

The publication of non-consensual intimate images is a recognised form of violence, also in terms of the Criminal Law Amendment Act 32 of 2007. The South African legal landscape also provides for the Domestic Violence Act 116 of 1998. The preamble recognises that domestic violence takes many forms and that it can be committed in a wide range of domestic relationships. The preamble also references the constitution and international obligations, including the United Nations Convention on the Elimination of All Forms of Discrimination Against Women and the Rights of the Child.

The court was also called upon to consider the Cyber Crimes Act 19 of 2020, which criminalizes the disclosure of data messages of intimate images where the intimate image violates or offends the sexual integrity or dignity of the person or amounts to sexual exploitation. To add complexity to the interpretation of the matter, the court also had to take note of the Films and Publications Amendment Act 11 of 2019, which provides penalties for knowingly distributing private sexual photographs and forms in any medium, including the Internet and social media, without the prior consent of the individual.

This complex tapestry of legislation points to one central fact – that the publishing of intimate videos of a person without that person's consent constitutes a recognised form of violence. This intersects with the infringement of a person's privacy and dignity and the defamation occasioned by the publication.

Defamation refers to the act of damaging someone's reputation. In the digital age, defamation often occurs through online platforms, where harmful content can spread rapidly and reach large audiences.

Privacy is under constant threat in the digital landscape.

The increasing prominence of online platforms has expanded the scope of privacy and defamation concerns, necessitating robust legal protection for individuals in the digital age. This judgement in the claim for damages brought by KS and the successful award thereof points

to the complexities involved in addressing cybercrime, defamation, and privacy violations.

It also emphasizes how far-reaching the impact caused by these grave violations can be on a victim's life – such that a complex tapestry of legislation is required to for their protection.

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[1] Case No: 2021/28121

[2] 2023 EWHC 419 KB

[3] 'Report of the Special Rapporteur on violence against women, its causes and consequences on online violence against women and girls from a human rights perspective (2018)

Ahmore Burger-Smidt

Head of Regulatory

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