

Editorial note: Certain information has been redacted from this judgment in compliance with the law.



**IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE DIVISION, GQEBERHA)**

CASE NUMBER.: 4327/2016

In the matter between:

C[...] R[...] (previously V[...]) Applicant

And

T[...] N[...] Respondent

IN RE:

T[...] N[...] Applicant

And

C[...] R[...] Respondent

JUDGMENT

Beshe J

[1] This is an application for the appointment of Advocate Hannelie Bakker as the curator ad litem for a minor child I shall refer to as AM, and that the curator ad litem be directed to investigate the best interest of the child and any other relevant factor the curator may deem fit. Further that the office of the Family Advocate be directed to assist the curator in her investigation. The application is a prelude to Part B thereof. In Part B the applicant, who is the

mother of the minor child will be seeking, inter alia, an order granting her sole parental rights and responsibilities as well as sole guardianship over the child as contemplated in Section 18 of the Children's Act.¹ That the applicant be permitted to amend the names of the minor child without the consent of the respondent in terms of Section 24 (1) and 25 (1) (c) of the Births and Deaths Registration Act.²

Parties

[2] The applicant and the respondent are the biological parents of the minor child who were never married.

The application

[3] The matter appears to have a long-convoluted history. I do not think it will serve any purpose to go through the history for purposes of this judgment. The application itself seems to be a simple and straight forward one. Simply the appointment of Advocate Bakker as a curator ad litem to investigate what will be in the best interest of the minor child in respect of the orders the applicant will be seeking in Part B of the application. The office of the Family Advocate is normally requested to conduct investigations into what will be in the best interest of the minor child. Applicant, and this seems to be common cause, points to difficulties the Family Advocate's office has encountered in dealing with this matter, hence the application for a person not attached to the Family Advocate's office, who will nonetheless be assisted by the Family Advocate. Advocate Bakker has consented to act as a curator ad litem for the minor child.

The opposition to Part A of the application

¹ Act 38 of 2005.

² Act 51 of 1992.

[4] Respondent's main reason for opposing the application (Part A thereof) is that a curator ad litem was appointed for the minor child by the Children's Court in respect of case number 14/1/4-01/2023. Respondent however complains that that curator ad litem does not act in the best interest of the minor child. Further that that curator as litem should have been cited as a party and given an opportunity to respond to the proposal that they should be replaced. And furthermore, that this application should be serving before the Magistrates' Court where the curator ad litem was appointed. In his opposing affidavit, respondent states that:

'49.1. I personally do not have any faith in the legal fraternity. I have many reasons. Any investigation undertaken by Hannelie Bakker whereby I am involved/included, I oppose.'³

Applicant's reply

[5] I will in this regard also confine myself to those parts of the affidavit that relate to relief sought in Part A. According to the applicant, the curator ad litem appointed for purposes of the Children's Court matter is irrelevant. This application relates to an investigation for purposes of Part B of the application. It is further contended that Advocate Bakker is a well respected and senior legal practitioner with more than 30 years legal experience.

Submissions of an alternative curator ad litem

[6] During argument counsel for the applicant mentioned that should the court not be amenable to appointing Advocate Bakker in light of respondent's objection to his appointment, Attorney Judy Theron is suggested as a suitable alternative to Advocate Bakker.

[7] Respondent's counsel had during argument pointed out that Advocate Bakker was involved at the New Law Court when the applicant was wrongfully

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brought before court as an accused. Respondent raised other reasons why this application is, according to him, an abuse of the court process. Namely previous “extant orders” etc. In my view, if a curator ad litem is appointed he/she will investigate all those aspects.

[8] Having heard the parties, I reserved judgment intending to make a ruling the following day. Applicant’s counsel addressed a letter to the Deputy Judge President regarding the alternative curator ad litem suggested. The correspondence was forwarded to me. I then invited the parties to submit supplementary/submissions in respect of the suggested curator ad litem candidate. Ms Theron, who was suggested as an alternative curator ad litem has consented to being appointed as one. Her Curriculum Vitae has also been filed together with applicant’s supplementary submissions.

[9] In his supplementary submissions, respondent states that he stands by his opposition to the application, mainly that the Children’s Court is the right forum to deal with the 2013 matter until it is finished. He also states that: ‘When it comes to who to appoint, I do not deal with legal people except in a hostile way Obviously while the process is on and going forward the kid is entitled to and will be better off having a separate representative’ Regarding Ms Theron, he does not raise any objection save to state that her Curriculum Vitae is one thing, for him it is about how she applies it.

[10] I am also satisfied that it will be appropriate for a curator ad litem to the minor child to be appointed for purposes of conducting an investigation as to what will be in the best interest of the minor child vis-à-vis the relief sought in Part B of the application. I am however of the view that in light of the concerns or misgivings expressed by the respondent about Advocate Bakker’s appointment, she will not be an appropriate person to appoint as a curator ad litem. Ms Theron has deposed to an affidavit wherein she states that she does

not know the applicant or respondent and has not had any dealings with any of the parties or the minor child concerned. I am satisfied that Ms Theron will be an appropriate person to be appointed as a curator ad litem for the minor child and conclude the investigation described in the notice of motion in Part B.

[11] Accordingly, an order in the following terms will issue:

1. That Attorney Judy Theron, an admitted attorney of the High Court of South Africa, practising as such and in her capacity as director of Rushmere Noach Incorporated Attorneys, with premises situated at Greenacres, Gqeberha and is appointed as the curator ad litem for A[...] N[...] (the minor child born on 12 June 2010) and she is hereby requested and directed to investigate the best interest of the minor child and any other factor which she may deem relevant as contemplated in sections 6, 7, 10 and 21 of the Children's Act, 38 of 2005 read with sections 24 and 25 of the Births and Deaths Registration Act, 51 of 1992 and to report in writing to this Honourable Court on the relief sought in Part B of the Notice of Motion dated 9 May 2022 on a date to be allocated in the future by the Registrar of Court for the hearing of Part B of the application.
2. That the office of the Family Advocate is hereby requested and directed to assist the curator ad litem in her appointment and investigation into the relief sought in Part B of the Notice of Motion dated 9 May 2022.
3. That, upon conclusion of the report of the curator ad litem, prayer 3.1 supra, and after considered the report and recommendation of the curator ad litem, the office of the Family Advocate is hereby requested and directed to investigate the relief sought in Part B of the Notice of Motion dated 9 May 2022 and to report and make a recommendation on it to this Court, addressing specifically the best interests of the minor child, A[...] N[...], born [...] 2010.

4. That leave is granted to the applicant to supplement her founding affidavit, within 3 (three) weeks upon the receipt of the curator ad litem's report and recommendation and the report and recommendation of the office of the Family Advocate. It is further ordered that the period of 3 (three) weeks is to be calculated from date of receipt of the Family Advocate's report.

5. That leave is granted to the respondent to supplement his answering affidavit, within 3 (three) weeks upon the receipt of the applicant's supplementary affidavit. It is further ordered that the period of 3 (three) weeks is to be calculated from date of receipt of the applicant's supplementary affidavit.

6. That the relief sought in Part B of the Notice of Motion, dated 9 May 2022 is herewith postponed sine die pending the investigation and recommendation of the curator ad litem and the office of the Family Advocate, as ordered hereinabove.

7. Costs of the hearing on 15 February 2024 are ordered to be costs in the main application.

N G BESHE
JUDGE OF THE HIGH COURT

APPEARANCES

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Date Heard : 15 February 2024

Date Reserved : 15 February 2024

Date Delivered : 19 March 2024