

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



**IN THE HIGH COURT OF SOUTH AFRICA**  
**FREE STATE DIVISION, BLOEMFONTEIN**

Reportable: YES/NO
Of Interest to other Judges: YES/NO
Circulate to Magistrates: YES/NO

Application no: 347/2024

In the matter between:

**D[...]** **F[...]**

Applicant

and

**M[...]** **F[...]**

1<sup>st</sup> Respondent

**THE OFFICE OF THE FAMILY ADVOCATE,**  
**RUSTENBURG**

2<sup>nd</sup> Respondent

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**CORAM:**

VAN ZYL, J

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**HEARD ON:**

8 FEBRUARY 2024

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**DELIVERED ON:**

16 FEBRUARY 2024

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- [1] This is an urgent application which, *inter alia*, entails a dispute in respect of the minor children`s primary residence and contact rights pending a divorce action, together with ancillary relief.
- [2] Adv. HJ van der Merwe appeared on behalf of the applicant and Adv. N Nortjé on behalf of the first respondent (“the respondent”).

**Background:**

- [3] The application papers are very voluminous and include other court applications as annexures thereto, which would necessitate lengthy arguments. Due to time constraints as a result of a very busy schedule of urgent applications which were due to be heard on the same day (Thursday) and the following day, I suggested that the matter be postponed for a week, which would also grant the parties the necessary time to draft detailed supplementary heads of argument in addition to the concise heads which they have already filed, on the basis that I will request the Judge President that the matter again be allocated to me, since I have already perused the papers.
- [4] After counsel took instructions, Mr Van der Merwe indicated that the applicant agrees to such an arrangement. Ms Nortjé, however, indicated that it is her instructions to request that two of the points in *liminé* raised by the respondent, *lis pendens*

and *res judicata*, be argued, without going into the merits of the application, so as to at least utilize the available time. She further submitted that since it will be the end of the matter should one of the two points be upheld, there will be no necessity that the matter be postponed for purposes of the hearing of the merits thereof.

[5] Mr Van der Merwe expressed his reservations whether the said two points can be argued and adjudicated without at the same time dealing with the merits of the application.

[6] However, because both parties were present in court, one of which is from out of town, I ruled that the said two points *in liminé* be argued and should one not be upheld, I will postpone the application for two weeks calculated from the date of the hearing and make a specific order regarding the filing of supplementary heads of argument.

### **The two points in *liminé***

[7] I have duly considered the arguments presented to me in respect of the points of *res judicata* and *lis pendens*. However, I have come to realize that I indeed cannot properly adjudicate the two points without also taking certain aspects of the merits of the application into consideration.

[8] In my view the application consequently needs to be postponed for the adjudication thereof in totality.

### **Order:**

[9] I consequently make the following order:

1. The application is postponed to the opposed motion roll of Thursday, 22 February 2024, at 9h30.
  2. The parties are requested and ordered to file supplementary heads of argument in order to address the issues in dispute in detail, especially the merits of the application, and other issues which they have not dealt with in detail in their respective concise heads of argument previously filed.
  3. The aforesaid heads of argument are to be filed at court via email to [hvanvuuren@judiciary.org.za](mailto:hvanvuuren@judiciary.org.za) as follows:
    - 3.1 The applicant on or before Monday, 19 February 2024, at 12h00; and
    - 3.2 The respondent on or before Wednesday, 21 February 2024, at 15h00.
  4. The applicant's attorney of record is to ensure that the application papers in the court file, which will be available at the chambers of Van Zyl, J, be properly filed, paginated and indexed on or before Monday, 19 February 2024, at 15h00.
- [5] The costs of 8 February 2024 stand over for later adjudication.

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**C. VAN ZYL, J**

On behalf of the applicant: Adv. H. J. van der Merwe  
Instructed by:  
Symington & De Kok Attorneys  
BLOEMFONTEIN

On behalf of the 1<sup>st</sup> respondent: Adv. N. Nortjé  
Instructed by:  
McIntyre & Van der Post  
BLOEMFONTEIN