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

**REPUBLIC OF SOUTH AFRICA**

**IN THE HIGH COURT OF SOUTH AFRICA**

**(GAUTENG DIVISION, JOHANNESBURG)**

CASE NO : **37209/2016**

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| DELETE WHICHEVER IS NOT APPLICABLE<br>(1) REPORTABLE YES/NO<br>(2) OF INTEREST TO OTHER JUDGES YES/NO<br>(3) REVISED<br><br>.....<br>SIGNATURE<br>DATE |

In the matter between:

**R[…], S[…] (born T[…])** Applicant
**(ID No. […])**

And

**B[…], M[…]** Respondent

**(ID No. […])**

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**JUDGMENT**

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**FRANCK AJ:**

[1] This application was launched on an urgent basis by the Applicant, for an order authorising the permanent relocation of two minor children born from the marriage between the Applicant and Respondent, to New Zealand.

[2] The application concerns two minor daughters, KB, currently aged 14 and CB, currently aged 11, who will collectively hereinafter be referred to as “the minor children”.

[3] The Applicant seeks the following relief:

[3.1] That the matter be heard as one of urgency in terms of Uniform Rule 6(12).

[3.2] That leave is granted to the Applicant to remove the minor children from the Republic of South Africa and relocate them to

New Zealand upon the granting of this order.

[3.3] The requirements that the Respondent consent to the minor children being permanently removed from South Africa for purposes of the intended relocation to New Zealand is dispensed with.

[3.4] The Respondent shall upon demand and timeously sign all documents to facilitate the relocation of the minor children to New Zealand, failing which the Applicant is authorised to do so.

[3.5] The Applicant is authorised without the necessity of the Respondent consenting thereto and/or signing any documents, to apply for and sign any and all documentation required and do all things necessary to obtain passports for the minor children and all necessary visas and/or travel documentation for the minor children.

[3.6] The appointment of Leonie Henig, a social worker, or another suitably qualified and experienced social worker nominated by the Chairperson of the Gauteng Family Law Forum as the parenting co-ordinator to:

[3.6.1] liaise with the various therapists of the Applicant, the Respondent and the minor children;

[3.6.2] to facilitate and regulate the Respondent's reunification with the minor children as well as him having contact virtually and in person with the minor children.

[3.6.3] The minor children and the parties to continue with therapy for such time as the parenting co-ordinator deems it necessary.

[3.6.4] That the Respondent be afforded rights of contact with the minor children post-relocation subject to the recommendation of the parenting co-ordinator as to the extent of the contact having due regard to the progress made by the minor children and the parties in therapy.

[3.7] That each party pay the costs of their own therapy and that the parties each pay half of the costs of the parenting co-ordinator and the children's therapy.

[3.8] That the Respondent be ordered to pay the costs of the

application on a punitive scale of attorney and client.

[4] The Applicant and Respondent were married on 3 October 2008 and became divorced on 18 November 2016. Between the period 2016 until January 2022, the Respondent exercised contact to the minor children in terms of the provisions of the settlement agreement concluded between the parties which was made an order of court upon the granting of the decree of divorce.

[5] Both minor children refuse to have contact with the Respondent. The Respondent last had contact with KB on 30 January 2022 and with CB on 2 July 2022.

[6] During or about 15 August 2022, the Respondent launched an application relating to his contact with the minor children, praying that:

[6.1] his contact in respect of the minor children be reinstated;

[6.2] a forensic psychologist be appointed by agreement between the parties to produce a report;

[6.3] alternatively that the office of the Family Advocate investigate and report to the court *inter alia* regarding care and contact of the minor children;

[6.4] that a parenting co-ordinator be appointed;

[6.5] that Ms Tanya Kriel, a social worker in private practice provide her report to her investigation relating to the best interests of the minor children.

[7] The Respondent's application for contact, was opposed by the Applicant.

[8] On 16 January 2023, a *curatrix ad litem* was appointed in respect of the minor children. The *curatrix ad litem* produced her report on 5 September 2023, which report made reference to a report provided to the *curatrix* by Ms Kriel (although same was not attached), a psycho-legal report prepared by Belinda de Villiers, an educational psychologist and psychological reports relating to both parties prepared by Ms Sharon Maynard, a clinical psychologist.

[9] The Applicant became remarried to her husband, Mr R[…], on 23 September 2018.

[10] Both parties filed extensive papers in the urgent application. This included a supplementary answering affidavit, which was considered.

[11] In a nutshell, the Applicant avers that the Respondent's conduct *vis-à-*

*vis* the minor children, led to their estrangement from him and their unwillingness to have contact. These averments include verbal abuse, physical abuse in the form of corporal punishment as well as disclosures made by KB relating to sexual abuse. The Respondent accuses the Applicant of parental alienation.

[12] The parties agree that reunification therapy should take place as recommended by Ms de Villiers. The main dispute, as distilled in the Respondent's answering affidavit is that the Respondent avers that such reunification therapy should take place prior to the minor children relocating to New Zealand and that such reunification therapy cannot take place virtually.

[13] The Respondent states in paragraph 337 :

> *"I understand that the children's relocation will occur in the future. My opposition to this application must not be construed as a blanket refusal, which is the case that the Applicant tries to make out. My concerns are reasonable, valid and bona fide. In order to help resurrect, so to speak and then preserve, as best as possible, my relationship with the children, that existed prior to it being damaged. The reunification therapy, if held virtually, will not improve existing state of the existing relationship that I have with the children, and given the damage that has already been done will sever it completely. Such therapy is not only impractical but also completely inappropriate and not supported by any expert. It also cannot protect a relationship which is already so badly strained, unless that damage is addressed immediately and head-on. I understand that this is the reasoning behind the concerns and views already expressed by the relevant professionals against the children relocating at this*

*stage."*

[14] When a court sits as upper guardian, it has extremely wide powers in establishing what is in the best interests of the minor children and is not bound by procedural strictures of by the limitations of the evidence presented or contentions advanced by the respective parties.[1]

[15] A court will not lightly refuse leave for children to permanently relocate to another country, if the decision has been taken by the custodian parent and such decision is shown to be *bona fide* and reasonable. This is so even if the contact by the non-custodian parent would be materially affected.[2]

[16] The Applicant's reasons for the relocation are briefly the following:

[16.1] The Applicant has been offered employment in Auckland, New Zealand with V[…] ("V[…]") with effect from 30 October 2023. In order to take up this employment, the Applicant intends to leave South Africa together with her husband and the minor children on 27 October 2023.

[16.2] The Applicant is the primary caregiver of the minor children and they permanently reside with her.

[16.3] The minor children have a strong bond with the Applicant as their mother as well as with her husband, Mr R[…].

[16.4] Mr R[…] has been the primary breadwinner of their family (presumably since their date of marriage in 2018) and his employment with F[…] has been terminated with effect 30 September 2023, as his position has been rendered redundant.

[16.5] The Applicant makes payment of the vast majority of the expenses relating to the minor children and cannot afford the family's current living expenses in South Africa on her income alone without being assisted financially by Mr R[…].

[16.6] The Applicant's employment in New Zealand would be sufficient to cover all of the family's financial expenses including those of the minor children, even if Mr R[…] does not find immediate employment in New Zealand.

[16.7] Mr R[…] is actively searching for employment in New Zealand and has several promising opportunities.

[16.8] The employment of the Applicant by V[…] is a once in a lifetime

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1 **Terblanche v Terblanche** 1992 (1) SA 501 (W)

2 **Jackson v Jackson** 2002 (2) SA 303 (SCA) [23] and **F v F** 2006 (3) SA 42 (SCA) [10] and [11]

opportunity.

[16.9] The Applicant, Mr R[…] and the minor children will have a support structure in New Zealand comprising of friends, family as well as friends of the minor children who emigrated recently.

[16.10] The minor children are currently attending online schooling based on a curriculum, which would facilitate the minor children's introduction into the New Zealand schooling system.

[16.11] The current home of the Applicant and Mr R[…], owned by Mr R[…], has been sold and the Applicant, Mr R[…] and the minor children are currently living in rented accommodation pending relocation. The home was placed on the market on the 9th of August 2023.

[16.12] The Applicant was offered employment with V[…] which she accepted on 14 September 2023 with the stipulation that the Applicant must report for duty on 30 October 2023.

[16.13] The Respondent does not contribute substantially to the maintenance of the minor children and makes a nominal contribution of R2 000,00 per month in total, to such

maintenance.

[17] The Respondent disputes that the matter is urgent and maintains that it should be struck from the urgent roll. In the event that the matter is heard as one of urgency, the Respondent proposes an order in terms of the recommendations of the appointed *curatrix ad litem*.

[18] For the reasons set out above, including the fact that, the Applicant is required to take up employment in New Zealand on 30 October 2023, I regard this matter as one of urgency.

[19] The Respondent avers that:

[19.1] The Applicant is in a position to leave for New Zealand and should leave the minor children with Mr R[…], in order for reunification therapy to proceed in the Applicant's absence.

[19.2] Disputes that reunification therapy conducted on a virtual platform will be efficient.

[19.3] The Applicant has not proceeded with a maintenance enquiry in order to obtain increased maintenance from him. However, the Respondent admits in various paragraphs in his answering affidavit, including paragraph 74, that he would not be in a

financial position to make further contributions towards the maintenance of the minor children.

[19.4] The Respondent avers that, he contributes more than R2 000,00 per month in respect of payment towards other expenses including medical expenses towards the minor children.

[19.5] The Applicant should be in a position to obtain employment in South Africa at a higher salary in order to make payment of all the financial requirements of her family and the minor children.

[20] It would not be in the minor children's best interests, for the Applicant to relocate without them and to leave them in the care of Mr R[…], especially considering that, the family home has been sold, the children are living in rented accommodation, and the proceeds from the home, will be used in order to purchase a new home in New Zealand.

[21] Mr R[…] is also actively searching for employment in New Zealand. It is particularly not in the minor children's best interests for the Applicant to relocate without them, since it is clear that the Applicant is the minor children's primary caregiver and in circumstances, where the

Respondent has not had contact with KB since January 2022, some 22 months, and no contact with CB since July 2022, some 15 months.

[22] It would further not be in the minor children's best interests, to force the Applicant to forego a *bona fide* job employment offer, which would enable the Applicant to continue to look after the financial needs and requirements of the minor children by forcing the Applicant, to remain in South Africa in a position, where her salary will not cover the family's expenses.

[23] In the report of the *curatrix ad litem*, the *curatrix* provides a detailed analysis of the report of Ms de Villiers as well as the reports from Ms Maynard. Reference is also made to a report from Ms Kriel, although this is not disclosed to the court or attached to the *curatrix ad litem*'s report.

[24] The *curatrix* was mandated and authorised, in terms of a court order granted by agreement between the parties on the 16th of January 2023 to:

[24.1] conduct interviews with the minor children, the parents of the minor children and whomever else in the opinion of the *curatrix* can provide her with information to assist her to establish what

is in the best interests of the minor children;

[24.2] investigate the maturity of the minor children as well as the extent that the minor children comprehend the current proceedings and then to obtain their views as to the current proceedings;

[24.3] consult and co-operate with Tanya Kriel, the appointed social worker and any other expert appointed in the matter with either the Applicant or the Respondent individually or jointly to determine the minor children's best interests, state of mind and mental, psychological and physical well-being;

[24.4] consult with any other professional or expert, or the persons involved with the parties and/or the minor children with specific reference to their medical and/or mental healthcare and that any medical records and reports in relation thereto be made available to the *curatrix* to assist in her investigation;

[24.5] consult with the minor children in her investigation into the minor children's best interests, well-being and state of mind, more specifically with regards to their relationship with the Applicant and the Respondent;

[24.6] investigate the minor children's domestic circumstances when shared residency was exercised by the Applicant and Respondent and the minor children's current domestic circumstances post 2 February 2022;

[24.7] to approach this court to amend the powers and duties of the *curatrix ad litem* if necessary;

[24.8] record her findings including but not limited to the children's views and any recommendations in her report that is to be furnished to the Honourable Court, as upper guardian, as to what would be in the best interests of the minor children as soon as same is available, having due regard to the urgency of the matter.

[25] Whilst aligning herself with the recommendations by Ms de Villiers and Ms Maynard, the *curatrix ad litem* unfortunately delves into the issue of parental alienation, which was not a finding made by either Ms de Villiers or Ms Maynard. Any findings by the *curatrix ad litem* relating to parental alienation, not only fell outside the scope of her powers but also her field of expertise.

[26] What this court finds striking in all the reports, is that, whilst the experts

and the *curatrix ad litem*, all accepted, as largely corroborated by the Respondent himself, that the Respondent utilised corporal punishment as a form of a discipline in either hitting or slapping the minor children with his hands or with implements such as a garden hose, verbally abused the minor children by screaming and shouting at them, swearing at them and in one instance, pushing KB to the floor as well as confiscating the minor children's cellphones as a form of punishment thereby terminating their communication, when in need of same, with the Applicant, none of the experts or the *curatrix ad litem* deal with this abuse as forming part of the reasons why the minor children became estranged from the Respondent and verbalised as part of their views and wishes, that they no longer wish to have contact with the Respondent. In this regard, it is the court's view, that the views and wishes of the minor children were not given their due weight especially in circumstances, where both children expressed their fear of the Respondent.

[27] It is on the basis of the alleged parental alienation, as indicated by the *curatrix*, that the *curatrix* recommends that reunification therapy first takes place whilst the minor children remain in South Africa, prior to their relocation. Regrettably, the report of the Family Advocate, simply echoes the sentiments of the *curatrix ad litem*'s report dated 20 October 2023 and comes to the conclusion that the minor children may

not relocate without the Respondent's consent.

[28] Fortunately, the *curatrix ad litem* appeared at court and made brief submissions to the court regarding her report. They can be summarised as follows:

[28.1] She did not make any finding of parental alienation and is not qualified to do so.

[28.2] Her recommendation is not based on parental alienation; it was a concept briefly referred to in her report.

[28.3] She recommends re-integration therapy and supports the children's views not to have immediate contact with the Respondent.

[28.4] She acknowledges that the conduct of the Respondent in respect of the children was abusive, but that this does not justify the termination of all contact.

[28.5] She recommends that Dr Lynette Roux be appointed to attend to the re-integration therapy and should guide the parties.

[28.6] Regarding the views and wishes of the minor children, they are

excited to relocate and have been making power point presentations.

[28.7] The minor children have a tremendous amount of fear towards the Respondent as well as feelings of guilt.

[28.8] She cannot comment on the effectiveness of on-line therapy or the effectiveness of it.

[28.9] If relocation is granted, a mirror-order should be sought in New Zealand to ensure that the Applicant complies with the order and to ensure that the process of re-unification takes place.

[29] The Applicant's counsel indicated that the Applicant has no objection against a mirror order being made an order of Court in New Zealand or to the appointment of Dr Roux in principle, subject to a consideration of the suitability of Dr Roux to perform the therapy whilst the minor children reside in New Zealand. The Court was referred to a letter attached to the Applicant's replying affidavit dated 7 September 2023, after receipt of the report of the *curatrix ad litem,* advising the Respondent that Dr Roux should be appointed without delay.

[30] Whilst Ms de Villiers states in paragraph 12.26 of her report that Ms

Kriel does not believe it is in the children's best interests to emigrate with the Applicant *"as this may damage their psychological functioning and long-term inter-personal relationships"*, Ms Kriel conversely, stated in a document requested from her by the Respondent and attached to the Respondent's supplementary answering affidavit, that she was not consulted regarding the relocation and offers no view on same.

[31] What is plain from both the *curatrix ad litem*'s report as well as Ms de Villiers' report, is that both children are very excited to emigrate together with the Applicant and Mr R[…] and wish to relocate with them.

[32] Ms de Villiers found that there was no validity in KB's disclosure about being sexually abused by the Respondent *"as her disclosures were inconsistent, and she could not provide detailed information"*.

[33] This court makes no finding regarding the veracity of KB's disclosures.

[34] Ms de Villiers states in conclusion:

> *"Potential risk factors that might threaten the children's physical and psychological well-being if contact between Mr B[…] and his daughters is reinstated have been thoroughly investigated. The assessment did not find substantial evidence that K[…]'s allegations against her father are valid. On a psychological level, he does not present with severe psychopathology, which*

*might be a risk factor for his parenting abilities. Mrs R[…]'s possible influence, manipulation of her children and frustration related to their contact with their father is of grave concern."*

[35] No finding of parental alienation is made.

[36] A letter from Dr Penny Webster dated 20 October 2023 attached to the Applicant's replying affidavit indicates that the Applicant commenced (and continued) with therapy in March 2022, mainly to receive guidance on how to best maintain the children's relationship with their father. The parties co-parented from date of divorce until January 2022. This militates against parental alienation.

[37] Ms de Villiers' recommendations are the following:

[37.1] The minor children's best interests will be served if they and the Respondent commence with structured phased-in reintegrative relationship therapy. A reunification plan needs to be implemented to assist the Respondent and the children to re-establish a healthy parent/child relationship.

[37.2] KB must receive psychotherapy to assist her in dealing with the emotional difficulties and maladaptive defence mechanisms. The treatment plan should also consider her unhealthy

perception of her father to avoid the long-term psychological impact this may have.

[37.3] CB should also engage in a psychotherapeutic process to deal with her emotional challenges.

[37.4] The Respondent should receive psychotherapy with a psychologist to address the issues identified in his assessment by Ms Maynard, which is supported.

[37.5] She agrees with Ms Maynard's recommendation that the Applicant continues psychotherapy with a psychologist to address the issues identified in this assessment.

[37.6] The Applicant and Respondent should receive parental guidance to address their difficulties in parenting their daughters.

[38] No finding or recommendation is made by De Villiers, to the effect that such reintegration cannot take place after relocation to New Zealand.

[39] The Applicant made a with prejudice tender, prior to the launching of the urgent application and on the 28th of September 2023, regarding the implementation of a detailed reunification plan between the

Respondent and the minor children, which was rejected.

[40] Ms Maynard *inter alia* recommends *vis-à-vis* the Applicant that she should continue to receive psychotherapy with Dr Penny Webster to address the issues identified in her assessment relating to her anxiety and unresolved trauma.

[41] Ms Maynard's report dated 4 November 2022, states, *vis-à-vis* the Respondent:

[41.1] The Respondent to receive psychotherapy to address issues identified in the assessment.

[41.2] Psychotherapy which includes parental guidance may be highly beneficial to the Respondent. He was perceived to be highly open to advice and demonstrated that he has the potential to achieve insight.

[41.3] ***"Once Mr B[…] has become aware of and addressed his underlying resentment and anger and well as rigidity, a reunification plan needs to be put in place to assist Mr B[…] and the children concerned to re-establish a healthy relationship."***

[42] Ms Maynard does not venture an opinion that the reunification therapy would not be sustainable after relocation. In fact, her recommendations indicate that, the Respondent must first attend therapy to address his underlying resentment and anger as well as rigidity, which are all issues, that contributed to the minor children's estrangement from him. Only once this has been addressed, would a reunification plan be put into place. This time period is uncertain.

[43] It is not in the best interests of the minor children, to remain in South Africa with such an uncertain timeline and in circumstances, where they are either left without a mother (who has to relocate to New Zealand in order to provide for them from a financial perspective and after relocation, cannot return to South Africa for a period of two years) or left with a mother, who is struggling financially and cannot make payment of all of the financial needs and requirements of herself, Mr R[…] and the minor children.

[44] The Respondent maintains that he has been attending therapy and the Court was referred to a document attached to the Respondent's affidavit in the contact proceedings indicating that he attended 1 anger therapy session in the beginning of 2022. There is no indication that this therapy has progressed to the point that the re-unification can commence.

[45] It is regrettable, that the *curatrix ad litem*, made reference to parental alienation in the absence of findings in that regard by either Ms De Villiers or Ms Maynard, and in doing so, cast the proverbial cat amongst the pigeons. Whilst it is, of course, part of the duties of the *curatrix*, to report to the court regarding the best interests of the minor children, a *curatrix* cannot assume the role of an expert. As stated above, it is fortunate that the *curatrix ad litem* appeared at the hearing to clarify her position and recommendations.

[46] The views and wishes of the children must be given their due weight. From the reports, both children seem to be of an age and stage of maturity, where their views and wishes would have to be given due regard, as provided for in the Children's Act.

[47] In the matter of **F v F** 2006 (3) SA 42 SCA[3], the following was found:

> *"From a constitutional perspective, the rights of the custodian parent to pursue his or her own life or career involve fundamental rights to dignity, privacy and freedom of movement. Thwarting a custodian parent in the exercise of these rights may well have a severe impact on the welfare of the child or children involved. A refusal of permission to emigrate with a child effectively forces the custodian parent to relinquish what he or she views as an important life-enhancing opportunity. The negative feelings that such an order must inevitably evoke are directly linked to the custodian parent's emotional and psychological well-being. The welfare of a child is, undoubtedly, best served by being raised in a happy and secure atmosphere.*

[3] **F v F** 2006 (3) SA 42 SCA at [11]

*A frustrated and bitter parent cannot, as a matter of logic and human experience, provide a child with that environment."*

[48] In the matter of **AK v LKG** 2021 (4355721) 2021 ZAGPJHC[4] the following was found:

*"[42] In the present case it is clear that the applicant bears the primary responsibilities in relation to A, and that if relocation is refused, it would have a disproportionate impact on her as her own interests and personal choices would be subverted.*

*[43] It is indisputably so that the relationship between the respondent and A would be prejudiced if A were to relocate to New Zealand. That is the inevitable result of parents living on different continents. This prejudice, when weighed against all the other relevant factors cannot however carry the day. Although it is in A's best interests to have a good relationship with both her biological parents, the prejudice to her best interests if the relief sought is not granted in my view by far outweighs the prejudice if the relief is granted. It would be less detrimental to A not to deprive the applicant of the opportunity to relocate to New Zealand. It is open to the respondent to mitigate such prejudice to A by negotiating or obtaining generous access to A, albeit primarily virtually, at least on a day to day basis. If the respondent puts in the effort on a sustained basis and cooperates with the parenting coordinator to achieve a workable solution, the prejudice would be substantially mitigated.*

*[44] In considering all the relevant factors referred to, I conclude that it would be in A's best interests to allow the relocation to New Zealand and to grant the relief sought in the face of the respondent's refusal to consent to her relocation."*

[49] The above echoes the findings in the matter of **JS v CvdW** 31868/2013, Gauteng Division Pretoria.[5]

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[4] **AK v LKG** 2021 (4355721) 2021 ZAGPJHC at [42] to [44]

[5] **JS v CvdW** 31868/2013, Gauteng Division Pretoria, paragraph [198] and [199]

[50] Applicant's counsel, Advocate de Wet SC, argued that the Applicant cannot be kept a geographical prisoner in situations where people are now more mobile than ever. In this regard reference was made to the case of **LW v DB** 2020 (1) SA 169 (GJ)[6] where the court found the following:

> *"[27] What must be understood is that we no longer live in a mind-set where birth, life and death are all played out in one geographic situation surrounded by those same people who were present at each of those important milestones. People move to go to school, to study, to find a job, to follow jobs, to earn something or to earn more, to improve oneself, and to see the wider world. There is nothing unusual or sinister in such mobility. I appreciate that DB chooses to continue to live with his parents and that he sees his life and future there. He cannot be criticised for those choices. But neither can LW be castigated as mala fide or unreasonable when she does no more than seek employment elsewhere with all that that entails."*

[51] In applying the best interests of the child standard, as well as the principles expounded in the case law referred to, it is the view of this court that it would be in the minor children's best interests, to relocate to New Zealand with the Applicant and for re-unification therapy to commence thereafter.

[52] This court, as the upper guardian of the minor children, when coming to the above decision, followed the approach as set out in the Full Bench decision of **RC v HSC** 2023 (4) SA 231 (GJ)[7], which is a child

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[6] **LW v DB** 2020 (1) SA 169 (GJ) at [27]

centred approach, weighed against the best interests of the child standard, which is of paramount importance. In considering the common cause facts together with facts where there were no material disputes[8] the only reasonable conclusion is that the relocation is in the best interests of the minor children.

[53] Regarding the issue of costs, the court has a wide discretion. The Respondent was provided with several tenders regarding contact to be exercised, upon relocation as well as the implementation of a reintegration program upon relocation which were all refused. This included a with prejudice tender made on the 28th of September 2023. The Respondent did not offer suitable alternatives and, his refusal to consent to the relocation, is in my view unreasonable. The Respondent further filed overly prolix papers, including an entire practice directive as Annexure "MA1" to his answering affidavit consisting of some 88 pages. The Respondent also uploaded lengthy correspondence to CaseLines, without leave or an affidavit dealing with such correspondence despite filing a supplementary founding affidavit. It is further only on page 140 of the answering affidavit at paragraph 337, that the Respondent admits that the minor children's relocation will occur in the future but that he wishes for reintegration

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7 **RC v HSC** 2023 (4) SA 231 (GJ) at [37], [38], and [40]

8 **Plascon-Evans Paints Limited v Van Riebeeck Paints (Pty) Limited** 1984 (3) SA 623 (A) and **Fakie NO v CCII Systems (Pty) Limited** 2006 (4) SA 326 (SCA) at [54] and [55]

therapy to occur first before such relocation.

[54] In the circumstances, the Respondent is ordered to make payment of 50% of the Applicant's costs as taxed or agreed, on the party and party scale.

I make an order in the following terms:

[1] Leave is granted to the Applicant, S[…] R[…] with identity number […] to remove the minor children, K[…] B[…], with identity number […]; and C[…] B[…], with identity number […] ("the minor children") from the Republic of South Africa ("South Africa") and relocate them to New Zealand upon the granting of this order.

[2] This order dispenses with the requirement that, the Respondent, M[…] B[…], consent to the minor children being permanently removed from South Africa for purposes of the intended relocation to New Zealand.

[3] The Respondent shall upon demand and timeously sign all documents to facilitate the relocation of the minor children to New Zealand, failing which, the Applicant is authorised to do so.

[4] To give relief to the above prayers, the Applicant is authorised, without the necessity of the Respondent consenting thereto and/or signing any

documents, to apply for and to sign any and all documentation required and do all things necessary to obtain:

[4.1] passports for the minor children or the renewal of existing passports from the Department of Home Affairs of South Africa; and

[4.2] all necessary visas and/or travel documentation for the minor children from the relevant foreign authorities to enable the minor children emigrating to New Zealand and to travel outside of South Africa and New Zealand for vacation, leisure travel, educational trips and/or embarking on studies.

[5] Leonie Henig, a social worker, practising as such in South Africa or, in the event of her unavailability, another suitably qualified and experienced social worker nominated by the Chairperson the Gauteng Family Law Forum, South Africa, is appointed as parenting co-ordinator to:

[5.1] liaise with the various therapists of the Applicant, the Respondent and the minor children;

[5.2] to facilitate and regulate the Respondent's reunification with

the minor children, including the appointment of a suitable expert to conduct the reunification or reintegration therapy between the Respondent and the minor children as well as facilitating and regulating the Respondent's contact virtually and in person with the minor children;

[5.3] the minor children and the parties to continue with therapy for such time as the parenting co-ordinator and/or the therapist facilitating the reintegration therapy deems necessary;

[5.4] the Respondent shall be afforded rights of contact with the minor children post the minor children's relocation to New Zealand subject to the recommendation of the parenting co-ordinator as well as the therapist conducting the reintegration therapy as to the extent of the contact, having due regard to the progress made by the minor children and the parties in therapy.

[6] Each party shall pay the costs of their own therapy.

[7] The parties shall each pay half of the costs of the parenting co-ordinator and the children's therapy.

[8] The Applicant shall, within a reasonable period upon relocation to New Zealand ensure that a mirror order is granted in New Zealand, at the Applicant's costs.

[9] The Respondent is ordered to make payment of 50% of the Applicant's costs as taxed or agreed on the party and party scale.

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**FRANCK, A J**

Date of hearing : 24 October 2023

Date of judgment : 25 October 2023

Legal representation :

For Applicant : Adv A A de Wet SC
Instructed by : Jurgens Becker Attorneys

For Respondent : Adv V Vergano
Instructed by: Van Zyl Johnson Inc