

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: 060071/23

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| (1) | <u>REPORTABLE: YES / NO</u> |
| (2) | <u>OF INTEREST TO OTHER JUDGES:</u>
<u>YES/NO</u> |
| (3) | <u>REVISED.</u> |

.....
DATE

In the matter between:

M V N

Applicant

And

M N

Respondent

JUDGMENT

MAKUME, J:

[1] On the 21st June 2023 the Applicant deposed to an affidavit in support of her application brought on urgent basis in which she seeks the following orders:

- 1.1 That the Respondents parental responsibilities and rights as provided for in Section 18(3) (c) (iii) and (iv) of the Children Act 38 of 2005 in respect of the minor children namely B N born [...] May [...] and K N born [...] February [...] be and are hereby terminated.
- 1.2 That the Respondent's consent be and is hereby dispensed with in respect of the youngest child (K N) passport/visa application for the Republic of Ireland.
- 1.3 That the Respondent's consent be and is hereby dispensed with in respect of the permanent removal of the minor children from RSA to Ireland.
- 1.4 That the Applicant is granted leave to permanently relocate to Ireland with the minor children.
- 1.5 That the Respondent be granted contact with the minor children whilst they live in Ireland via telephone; video call and zoom/teams.

[2] The application was issued on the 21 June 2023 and the Respondent was called upon to file his Answering Affidavit by not later than Friday the 23 June 2023.

[3] The Applicant in dealing with the issue of urgency says that she has been offered employment in the Republic of Ireland which employment requires her to report by the 26 September 2023. As a result, she needs between 8 to 12 weeks to finalise applications for passports and visa for the minor children.

- [4] It is common cause that the parties are in the process of a divorce which is pending in the Regional Court, Springs. In that matter the Respondent has launched a Rule 58 application seeking contact and visitation rights in respect of the minor children. That application is to be heard during August this year.
- [5] An appointment has been fixed for the parties to consult with a Family Advocate who will compile a report in respect of the best interest of the minor children with the intention to assist the Court hearing the Rule 58 application in Springs.
- [6] The Respondent has argued that this application is not only premature it is not urgent. The Applicant has attached a document issued and sent to her by the "Nursing and Midwifery Board of Ireland" which is dated the 26th September 2022.
- [7] The Applicant is a professional nurse and now wishes to take up employment on a permanent basis in Ireland. In her affidavit on urgency she says that she is required to commence employment in Ireland by the 26th September 2023 and hence this urgent application to enable her to solely be responsible for getting travel documents for the minor children.
- [8] The document referred to above does not prove any confirmation of employment it is a general document informing the Applicant what steps to follow in order to qualify and be registered as a professional nurse in Ireland. This information has been with her since September 2022 and yet she decided to come to Court on extremely urgent basis on the 21 June 2023.
- [9] Secondly the basis for the urgent application is not supported by any information. This application is not urgent it is also premature for the reason that there is a pending Rule 58 and Divorce Action in the Regional Court, Springs.

[10] A Family Advocate still has to compile a report about the best interest of the minor children it will therefore not be correct procedurally to overlook the process that has already commenced.

[11] In the result I have concluded that this application is not urgent and should have been struck off the roll for lack of urgency. Secondly even if I had to deal with the merits my finding is that the application is premature because of the custody and access application before the Magistrate Court and the outstanding Family Advocate report.

[12] In the result I make the following order:

ORDER

1. The Application is dismissed.
2. The Applicant is ordered to pay the Respondent taxed party and party costs.

Dated at Johannesburg on this day of June 2023

**M A MAKUME
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, JOHANNESBURG**

Appearances:

DATE OF HEARING : 27 JUNE 2023
DATE OF JUDGMENT : 30 JUNE 2023

FOR APPLICANT : ADV E FURSTENBERG
INSTRUCTED BY : MESSRS SASSENBERG ATTORNEYS

FOR 1ST TO 8TH RESPONDENTS: ADV FERNANDOS
INSTRUCTED BY : MESSRS T SHIRINDZI ATTORNEYS