

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

**IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, JOHANNESBURG)**

Case No: 2024-063373

In the matter between:

KATHARINE AROKIAM

APPLICANT

And

KESANDRAN NAICKER

RESPONDENT

(1) REPORTABLE: YES/NO
(2) OF INTEREST TO OTHER JUDGES: YES/NO
(3) REVISED: YES/NO

27 JUNE 2024

Signature

Date

JUDGMENT

Van Aswegen AJ

INTRODUCTION:

[1] This application came before me as one of urgency in the Family Court.

- [2] The Applicant seeks an order in terms of Rule 45A of the Uniform Rules of Court suspending the operation and execution of the order granted by the Randburg Children's Court under case number 14/1/4/2-369/2022 on 11 May 2023 ("the Children's Court Order"), pending the receipt of a comprehensive report from a court-appointed forensic psychologist regarding the best interests of the minor child.
- [3] Dr Lynette Roux, a Clinical Psychologist, was jointly appointed by the Applicant and the Respondent to conduct a comprehensive assessment of the minor child's best interests. She will provide a written report containing findings and recommendations regarding the issue of care, contact and the best interests of the minor child. Dr Roux has undertaken to furnish this report by no later than mid-August 2024, a period of two months from date of this application.

BACKGROUND FACTS:

- [4] At the outset it is vital to give a detailed outline of the parties involved, the facts of this matter and the various applications in both the Children's- and High Court which led to the launching of this application.
- [5] On 14 December 2021 the minor child, K[...], was born from the relationship between the Applicant and the Responent. K[...] is currently 2 years and 6 months old.

- [6] The Applicant and the Respondent was neither married nor did they ever cohabit.
- [7] Since 2022 the Respondent's contact rights to K[...] have been the proverbial elephant in the room. These contact rights formed the basis of all litigation in this case.
- [8] As early as 4 August 2022, when K[...] was approximately eight months old, the Respondent instituted proceedings in the Randburg Children's Court under case number 14/1/4/2-369/2022, seeking increased and unsupervised contact with K[...].
- [9] On 12 September 2022 the Randburg Children's Court ("the Children's Court") granted the Respondent interim contact with K[...] on Mondays and Wednesdays from 16:00 to 18:00 and on Saturdays from 10:30 to 13:30.
- [10] During November 2022, the Children's Court requested the parties to attend mediation with Families South Africa ("FAMSA") to explore the possibility of creating a parenting plan in terms of Section 33(5) of the Children's Act, Act 38 of 2005.
- [11] The Children's Court on 1 March 2023 issued a revised interim order, extending the Respondent's contact periods with K[...].

[12] Subsequently, on 20 April 2023, the Family Advocate submitted its recommendations to the Children's Court after a court-ordered investigation and a report by the Family Counsellor. A copy of the Family Advocates recommendation, together with the recommendation of the Family Counsellor, is set out in Annexure "FA1".¹

[13] The recommendation from the Family Counsellor, accepted by the Family Advocate, is stipulated here in below:

"2nd PHASE, FROM JANUARY 2024 to FEBRUARY 2024

7.3.9. The Applicant to have contact with the child every weekend Saturday or Sunday at 09h00 to 17h00

7.3.10. Midweek contact to continue.

3rd PHASE, FROM 01 MARCH 2024-31 MAY 2024

7.3.11. The Applicant to have contact one night sleep over from Saturday at 09h00 to Sunday at 17h00 on alternate weekends.

7.3.12. Midweek contact to continue.

7.3.13. If practical, the Applicant to have contact on public holiday, 21 March 2024 and weekend hours to be applicable.

7.3.14. The Applicant to have contact on his birthday 17 April 2024.

7.3.15. If practical, the Applicant to have contact on public holidays, 27 April 2024 (weekend hours to be applicable).

¹ 02-37

4th PHASE. FROM 1 JUNE 2024-31 AUGUST 2024

7.3.16. The Applicant to have contact full weekend sleep over from Friday at 17h00 to Sunday at 17h00 on alternate weekends.

7.3.17. Midweek contact to continue.

7.3.18. Contact to occur on Father's Day.

7.3.19. If practical, the Applicant to have contact on public holidays, 16 June 2024, and 09th August 2024."

[14] According to the aforesaid recommendation the Respondent had to have sleepover contact with K[...], when he was just over 2 years of age. This has not occurred.

[15] The children's court after a hearing was held granted a final order concerning contact and care of the minor child on 16 May 2023, substantially adopting the Family Advocate's recommendations. *Inter alia*, a measured phased-in contact regime was recommended introducing sleep-over contact on certain terms.

[16] In her reasons for judgment, the *court a quo* stated:

"The court took into account the comprehensive Family Advocate's Report, and found no cogent nor compelling reasons to deviate from the recommendations".²

² 02-248

[17] I pause to emphasize that the children's court order was only granted after a hearing where the children's court magistrate duly considered submissions made by the Applicant outlining the deficiencies in the Family Advocate's and Family Counsellor's reports. Of significance is the fact that the Applicant at this point in time already canvassed issues like for instance:

- i) K[...]’s tender age,
- ii) his attachment to the Applicant and
- ii) the disruption of K[...]’s winter schedule.

[18] The Applicant was discontent with the children's court order and elected on 8 June 2023 to note an appeal against the said order to the High Court.³ The main concern was the failure of the children's court to apply section 7 of the Children's Act, Act 38 of 2005 – the best interest of the child standard. The Applicant sought the setting aside of the court a quo's order and a remittance of the matter back to the Children's Court for a hearing *de novo*.

[19] On or about 21 June 2023 the Respondent launched an urgent application under section 18 of the Superior Courts Act, Act 10 of 2013 seeking the enforcement of his contact rights in terms of the children's court order pending finalisation of the Applicant's appeal.

[20] This application was regarded by Wright J as not urgent. Yet, interim contact arrangements were made awaiting the hearing in the normal course.

³ Annexure FA2 02-221

- [21] On 30 August 2023 the matter came before Carrim AJ in the opposed motion court. This court refused to enforce the children's court order yet extended the contact regime.
- [22] The Applicant thereafter applied for leave to appeal the order by Carrim AJ, indicating that the court could not extend the contact rights without hearing evidence. The application before Carrim AJ was under section 18 of the Superior Courts Act, 10 of 2013.
- [23] The Respondent thereafter applied under case number 2023-055941 to hold the Applicant in contempt of Carrim AJ's order. He further sought declaratory relief and the enforcement of the interim contact order.
- [24] The aforesaid application resulted in a consent order being granted by Liebenberg AJ on 12 October 2023 pertaining to an interim contact arrangement pending finalisation of the appeal or the provision of a forensic report, whichever occurred first (the Liebenberg Order)⁴ The aforesaid order was crafted having the input of both parties' legal representatives as well as the respective parties.
- [25] The Liebenberg order pertaining to contact rights would only, as agreed between the parties, be operational pending:
- i) the finalisation of the Applicant's leave to Appeal *or*

⁴ Annexure FA3 02-223

- ii) the existence of the forensic report whichever occurred first. (my underlining)

[26] The Liebenberg order further provided for the appointment of a forensic psychologist. Verbatim the order reads as follows:

"3. *A forensic psychologist ("the expert") shall be appointed to conduct a forensic assessment of the minor child and to provide the Court with a written report ("the report", containing findings and recommendations regarding the issue of care and contact ...*

6. *The mandate of the expert shall not be restricted in any way, and he/she will be entitled to follow such procedures and processes as he/s deems necessary."*

[27] At the time of the Liebenberg AJ order, the appeal had not yet been set down for hearing. Neither the Respondent nor the Applicant had any idea of when the appeal would be finalised. However, the appeal was finally set down for 1 February 2024.

[28] On 6 December 2023, the Respondent was arrested by law enforcement authorities for alleged possession of illegal substances while exercising scheduled contact with K[...]. The Respondent faced criminal proceedings under CAS 108/12/2023 at the Douglasdale Police Station, stemming from this arrest.

- [29] In response to the Respondent's arrest, the Applicant instructed her attorneys to bring an urgent application on 12 December 2023, seeking to vary the contact arrangements as per the order of Liebenberg AJ dated 12 October 2023.
- [30] The urgent matter came before Senyatsi J who struck the application from roll due to lack of urgency.⁵ The contact regime pertaining to K[...] therefore remained unchanged.
- [31] The Applicant's appeal was heard on 1 February 2024 and judgment was handed down on 21 February 2024 by Dippenaar J and Goodman AJ. The appeal court found that the appeal was moot in that a forensic expert had already been appointed who had to finalise her report.⁶
- [32] The appeal court rightly commented that the Applicant and the Respondent had extensively litigated in the High Court after the proceedings in the children's court.
- [33] The appeal court had also importantly hit the nail on the head when it commented that the Applicant's primary complaint was aimed at the commencement of sleepover contact when K[...] was two years old. In terms of the children's court order sleepover contact was to commence during March 2024.⁷

⁵ FA4 02-244

⁶ FA5 02-257

⁷ Paragraph 24 at 02-252

[34] On the 29th of February 2024, Respondent's attorneys recorded in writing that the contact order came into immediate effect after the dismissal of the appeal. The Applicant was being promptly alerted to the fact that the Respondent would insist on the contact rights in respect of K[...].

[35] it is therefore abundantly clear that:

35.1 the care and contact of K[...] was the subject of several High Court proceedings and

35.2 more so that the parties have/had remedies at their disposal to have these issues determined for instance by amendment and supplementation of their papers.

[36] After the dismissal of the Applicant's Leave to Appeal the Applicant thereafter sought special leave to appeal from the Supreme Court of Appeal as she was in disagreement with the fact that her appeal was moot.

[37] On 9 May 2024 the Supreme Court of Appeal dismissed the Applicant's special leave to appeal. The judgment was handed down on 13 May 2024. This date is of the utmost importance as the Applicant on this date had to accept that the contact arrangements would revert to the contact rights as ordered by the children's court order.

[38] More significantly on 17 May 2024 the Respondent's representatives delivered a letter to the Applicant's representatives addressing the dismissal of the Applicant's application for special leave to appeal. The said letter's contents sought to revert to the terms of the Respondent's contact with the minor child which were echoed in the Randburg Children's Court order.⁸ The Respondent's request for phased-in sleepover contact was accordingly renewed.

[39] The relevant, material and essential parts of the letter are referred to herein under:

"8.2. Whilst our client is fully entitled to enforce the terms of the Order, as they currently stand and insist on commencing with sleep over contact in May 2024, our client remains amenable to following the Family Advocate's suggested phased-in approach. His amenability in this regard however is not to be taken as an admission of his inability to exercise sleep over contact with the minor child, or of any belief that the minor child is not ready to exercise sleep over contact.

8.3. Our client is merely focused on following the guidance of the Office of the Family Advocate in ensuring that the minor child's best interests are always cared for regardless of both his and your client's personal views.

⁸ Annexure FA6 02-258

8.4. As such, our client is willing to 'shift' the months applicable to the phasing in of contact with the minor child. Accordingly, the phased in contact is to commence with phase 2 in May 2024 and phase 3, allowing for sleepover contact, in June 2024.

8.5. For ease of reference, our client proposes that the phased-in contact schedules with the minor child commences as follows as it will be in the best interest of the minor child and ultimately in line with the Honourable Magistrate Rughoonandan's Order dated 16 May 2023:

SECOND PHASE, 20 MAY 2024 TO 23 JUNE 2024

8.5.1. Our client is to have unlimited telephonic and/or electronic communication by means of an electronic device at least five times a week

8.5.1.1. Such contact should be subject to the minor child's daily routines.

8.5.2. Our client to have contact every weekend on a Saturday or a Sunday from 09h00 to 17h00; and

8.5.3. Midweek contact to continue (Monday and Wednesday from 16h00 - 18h00) excluding travel time.

8.5.4. If practical, our client to have contact on:

8.5.4.1. *17 June 2024 (being the day on which the public holiday of 16 June 2024 is observed).*

8.5.4.2. *Father's Day
with weekend hours being applied.*

THIRD PHASE 24 JUNE 2024 TO 30 SEPTEMBER 2024

8.5.5. *Our client is to have unlimited telephonic and/or electronic communication by means of an electronic device at least five times a week.*

8.5.5.1. *Such contact should be subject to the minor child's daily routines.*

8.5.6. *Our client to have contact one night sleepover from Saturday at 09h00 to Sunday at 17h00 on alternate weekends."*

(my underlining)

URGENCY

[40] In the letter of 17 May 2024 the Respondent's attorneys, after two unsuccessful appeal applications by the Applicant, addressed the elephant in the room – the contact rights and sleepover contact to K[...]. As per agreement between the parties the Liebenberg order was no longer

operational due to the dismissal of the special leave to appeal application. The Respondent's attorney in this letter draws a line in the sand by stating the obvious:

- "6. Thus, your client has exhausted all remedies available to her and her overt and malicious attempts to frustrate our client's contact with the minor child, more specifically his sleep over contact, will no longer be entertained by our client nor any further attempts to delay, frustrate and/or otherwise deny our client contact with the minor child.
7. As a result of the Supreme Court of Appeal's application for leave to appeal being dismissed as well as the Leave to Appeal application being dismissed, the Honourable Magistrate Rughoonandan's Order dated 16 May 2023 in the court a quo comes into effect immediately and the recommendations by the Family Advocate and Family Counsellor pertaining to our client's phased in contact with the minor child proceed without further ado. For ease of reference, the Honourable Magistrate Rughoonandan's Order is attached hereto marked as "D".(my underlining)

[41] The Respondent furthermore in the aforesaid letter stressed that both the Applicant's Applications for Leave to Appeal - and Special Appeal delayed the implementation of the phased in contact. It is stated that sleepover contact specifically had to commence during March 2024, but that it was postponed because of the Applicant's applications.

[42] The letter addresses the bone of contention between the parties, namely the sleepover contact in respect of K[...].

[43] The letter of 17 May 2024 cannot in my mind make it any clearer and more certain that:

- i) the phasing in of the contact rights was delayed due to the Applicant's applications for leave to appeal and special leave to appeal and
- ii) that the Respondent would persist in seeking phasing in of contact rights with sleepover contact.

[44] It is crystal clear that the Applicant and her legal representatives, after the letter of 17 May 2024, ought to have known without any doubt, that the Respondent intended to have sleepover contact commencing from phase 3 being from 24 June 2024 to September 2024.

[45] The Respondent further expressed his view that the implementation of the phased in contact as per the Children's Court Order dated 16 May 2023 will best serve the minor child's best interests. The Applicant was called upon to confirm in writing, that she would abide by the proposition of phasing in before 10:00 am on Monday 20 May 2024. The Applicant was also forewarned that if she failed to provide the Respondent with the said written confirmation, the Applicant's attorneys hold instructions to proceed with the implementation of

the Children's Court Order as it stands, and to hold the Applicant in contempt thereof.

[46] The letter clearly dictates and specifically defines the ambit of the parameters set by the Respondent in respect of contact with K[...]. Contact rights in respect of K[...] with sleepover contact had become a stark reality.

[47] On 17 May 2024 the contact rights in respect of K[...] with phased in sleepover contact were cast in stone. It was clear that any opposition by the Applicant would result in legal action, namely enforcement of the children's court order and seeking an order for the Applicant's contempt.

[48] Notwithstanding the letter of 17 May 2024, serving as a clear indicator of the Respondent's contact rights in respect of K[...], the Applicant then on 22 May 2024 – two days after being requested to - sent a letter⁹ to the Respondent's attorneys. The Applicant then purposefully intended to shift the goal posts of the ordered contact rights by welcoming the phasing in of the contact but wanting to keep the sleepover contact in abeyance pending a report by Dr. Lynette Roux. The Applicant's reasoning for no sleepover contact was that she nurses K[...] and that he co-sleeps with her. The same reasons proffered by the Applicant - were also previously mentioned, canvassed and assessed by the courts. It is also noteworthy that the Applicant previously claimed that she would breastfeed until K[...] was 24 months. K[...] is however now clearly older than two years and drinks formula milk.

⁹ FA7 at 02-297

- [49] Any suggestion by the Applicant to disallow sleepover contact was merely in my mind an opportunistic, but doomed and futile request. The Respondent's opinion was articulated with detailed precision in the letter of 17 May 2024 - namely that any further delay of sleepover contact would be vehemently opposed. There was no room left for any doubt.
- [50] The Applicant's letter of 22 May 2024¹⁰ - seeking to suspend K[...]s sleepover contact and wanting an undertaking to this effect - was a calculated attempt to avoid sleepover. Nevertheless, the Applicant knew the answer to this undertaking in advance. The answer was simply no. The Respondent was not open to any negotiations or suggestions which catered for no sleepover contact.
- [51] Thereafter, the Applicant allowed for two weeks to lapse before the Applicant sent a follow-up letter on 6 June 2024. In this letter the Applicant threatened the Respondent with an urgent application.¹¹
- [52] On 6 June 2024 the Respondent's attorneys in a letter - as expected and without any surprises, drew the Applicant's attention back to the content of the Respondent's letter of 17 May 2024.¹² The Respondent in this letter of 6 June 2024 insists on his contact rights in terms of a court order. The Respondent also refers to the application for leave to appeal and special leave to appeal which were utilised by the Applicant to delay and frustrate the contact rights to K[...]. I am of the firm opinion that this letter merely reiterates and accentuates

¹⁰ Annexure FA7 at 02-297

¹¹ FA 11 at 02-307

¹² FA12 at 02-308

what was already known to the Applicant on 17 May 2024, namely that phased in contact will proceed with sleep over contact.

[53] The present application was then served on 10 June 2024 at 11H48. The said application allowed for severely truncated time periods.

[54] The Applicant on 17 May 2024 knew without a doubt that the Respondent wanted phased in contact with sleepover and that the Respondent would not tolerate any delay thereof. It was evident that any delay would be met with legal action by the Respondent. Yet the Applicant waited until 10 June 2024 to serve this urgent application.

[55] The Respondent's argument that the Applicant's letter - seeking an undertaking on 22 May 2024 and which remained unanswered until 6 June 2024 – accounted for the ticking of the clock between 22 May 2024 until 6 June 2024 can simply not stand. The Applicant's letter of 22 May 2024 was merely a futile and opportunistic attempt to alter the boundaries set by the Respondent in his letter of 17 May 2024. The Applicant had known that her letter of 22 May 2024 would not have a positive outcome. Sleepover contact has always been and is also currently the elephant in the room.

[56] To exacerbate and worsen matters further, despite the Applicant's acute and detailed knowledge of the Respondent's position regarding sleepover contact, confirmed in his letter dated 17 May 2024, the Applicant elected not to pursue her application to vary the Respondent's contact rights which she initiated

during December 2023. To the contrary, the Applicant withdrew this application on 14 June 2024.

[57] It is abundantly clear that the Applicant had to act on receipt of the letter dated 17 May 2024 and ought not to have waited until 10 June 2024. The Applicant's letter seeking an undertaking to keep sleepover in abeyance did furthermore not extend the Applicant's period within which to act, as this was merely an opportunistic request without any hope of success. The mere request was doomed to failure and this the Applicant knew since 17 May 2024.

[58] The Applicant's delayed reaction is indicative of the fact that there is no real urgency.

[59] The background history of this matter speaks for itself. When the Applicant is initially faced with the children's court order integrating the Family Advocate's and Family Counsellor's reports and faced with contact arrangements including sleepover, she showed her disapproval by launching a leave to appeal application. Upon the application being dismissed she once again beg to differ from the appeal court and turned for special leave to appeal to the Supreme Court of Appeal. This court similarly dismissed her special leave application. The Applicant there after launched an urgent in December 2023 seeking a variation of the Respondent's contact rights.

[60] The Applicant has explored all legal avenues to stop the Respondent's contact rights more specifically in respect of sleepover contact.

[61] It is abundantly clear that the Applicant had purposefully delayed the implementation of the Respondent's contact rights with the main aim to oust sleepover contact.

[62] When now being faced with sleepover contact for one night the Applicant once again reverts to legal action and launched an application

[63] The Applicant in her application relies on the fact that K[...] is a minor of tender age and that sleepover contact is not in his best interests. She suggested that the parties wait for Dr. Roux's report in the hope that same will disallow sleepover contact. If Dr. Roux's report was to incorporate sleepover contact the Applicant's stance remains unclear. The Applicant might then also dispute the expert report delaying the implementation of sleepover contact once again.

[64] I must at this stage emphasize that the right to have contact to the Applicant and the Respondent is a right which belongs to K[...] and not to the Applicant or the Respondent.¹³

[65] The Children's Court Order was granted based upon recommendations by the Family Advocate and Family Counsellor and only after assessing at a hearing the concerns raised by the Applicant which also related to K[...]s age, her

¹³ *Botha v Botha* [2019] JOL 40932 (FB)

breastfeeding K[...] and co-sleeping. The said order was subjected to scrutiny by the High Court and the Supreme Court of Appeal but remained unaltered.

[66] The children's court order was also made only after assessing what was in the best interest of K[...].

[67] Section 28(2) of the Constitution of the Republic of South Africa Act 108 of 1996 entrenches the "*best interests*" principle of children as follows:

"A child's best interests are of paramount importance in every matter concerning the child."

[68] This principle is further enunciated in section 7 of the Children's Act, Act 38 of 2005 and emphasized comprehensively in *McCall v McCall*.¹⁴

[69] The Applicant had known since the 17th of May 2024 that the children's court phasing in of contact and sleepover contact immediately came into play and that any attempt to frustrate the implementation would be vehemently opposed. The Applicant had in the past always sought legal intervention and had ample opportunity to seek legal address by for instance variation. Yet, the Applicant elected to leave it until the 6th of June 2024 and then claims urgency.

[70] This urgent application is launched after the Applicant during December 2023 also instituted an urgent variation application to vary the Respondent's contact

¹⁴ 1994 (3) SA 201 C

rights which was struck from the roll due to lack of urgency. The Applicant had the option to pursue the variation application, but seeks even more radical relief in terms of Rule 45A namely the suspension of the order.

[71] I am of the firm opinion that the children's court order most definitely does not place K[...] in harms way. To the contrary, it was sanctioned by a Family Advocate and Family Counsellor as being in K[...]s best interest.

[72] The Applicant's intention at all times was and is clearly to stop sleepover at all costs. Her easiest and fastest route was to approach the urgent court on the premises of the best interest of K[...]. As the upper guardian of all minors the Applicant knows that the Court must act to ensure that K[...]s best interest are served.

[73] The Applicant argues that granting a temporary stay of the sleepover contact provisions is necessary to safeguard K[...]s best interests and will prevent potentially irreparable harm to his emotional and psychological well-being. She relies on the welfare of a child (K[...]) as a ground of urgency without substantiating how sleepover will affect the person of K[...] as opposed to sharing a generalised view. In this respect I refer to the opinion of both Ms. Rachel Tiller¹⁵ and the confirmatory affidavit by Ms. Annale Krogh¹⁶ in respect of overnight visits which in my mind is not K[...] specific, but generalise the impact of such visits. None of these professionals had any interaction with the

¹⁵ FA13 at 02-312

¹⁶ FA15 at 02-324

Respondent or K[...] and the extend of the information provided to them is unknown.

[74] A matter is not merely urgent because it relates to a child.¹⁷ The Applicant has to still make out her case for urgency.

[75] Yet, the Applicant did not place any factual evidence before the court to support allegations of potential risk and harm. The views of Tiller and Krogh, alluded to here in before, do not relate to K[...] and his personal circumstances. It generalises and shares the professionals' personal views.

[76] In *AR v SS 2019 JDR 0699 (GJ)* the following is stated where urgency is based simply on the fact that an application concerns a minor child:

"I view this sweeping allegation an arrogant abuse of the process in the absence of any further substantiation. Such abuse trades on the assumption that judges will be reluctant not to assess a matter involving a child despite a failure by a litigant to do justice to the court process."

[77] In assessing the grounds for the urgent application it seems to be premised upon breastfeeding and co-sleeping. When confronted with the fact that she informed the Family Advocate that she would breastfeed until K[...] was two years old, the Applicant changes her tune in her reply and then relies upon the difference between nutritional- and comfort breastfeeding. This distinction was

¹⁷ *AR v SS - 2019 JDR 0699 (GJ)*

never previously raised by the Applicant and the impression is left that the Applicant would pull out all the stops so to speak to stop sleepover contact.

[78] The Applicant further alleged that co-sleeping was never considered by the Family Advocate. However, the High Court and Supreme Court of Appeal found that the children's court exercised its discretion judicially in the best interest of K[...].

[79] The fact that the Applicant and the Respondent were legally represented and in agreement that the children's court order will be implemented if the appeal was dismissed and in the event of no report, also poses a problem in respect of both urgency and potential harm and risk.

[80] The Liebenberg order also did not provide for the suspension of sleepover contact, which was on the Applicant's version now proffered and a real concern throughout. If sleepover contact was a real concern the Applicant would not have consented to the Liebenberg Order and that it be pending the result of the appeal or the receipt of the expert report.

[81] The Applicant cannot blow hot and cold. She cannot claim that sleepover contact poses a real harm and risk on the one hand and on the other hand agree to an order which allows for sleepover contact.

[82] The Applicant's inconsistency in her views is indicative of wanting to delay extended contact between father and son.

[83] Judge Kollapen in the case of *2021 JDR 121 GP* refers to Kahlil Gibran, the Lebanese poet, in his seminal work *The Prophet*, and offers the following observation about children:

'Your children are not your own

They are life's longing for itself

They come through you but not from you

And though they are with you yet they belong not to you'.

[84] K[...] is still a little boy but he has a right to contact with both the Applicant and the Respondent. This is a right which nurtures his ultimate relationship with his father and mother. This right extends to both parents and should be protected at all costs.

[85] As parents the Applicant and the Respondent should place all their energy in creating lasting bonds with K[...] and not in endless litigation.

[86] I am of the firm opinion that having considered the matter as a whole that this matter is not urgent. Unfortunately the history of this matter points to a delay of contact rights.

[87] The application is struck from roll due to a lack of urgency with costs.

Delivered: This judgment was prepared and authored by the Judge whose name is reflected on 27 June 2024 and is handed down electronically by circulation to the parties/their legal representatives by e-mail and by uploading it to the electronic file of this matter on CaseLines. The date for hand-down is deemed to be h00 on 27 June 2024

S van Aswegen

Acting Judge of the High Court,

Johannesburg

APPEARANCES:

For the Applicant: Adv SJ Mushet

Instructed by: AKA Attorneys

For the Respondent: Adv F Bezuidenhout

Instructed by: URA and Associates