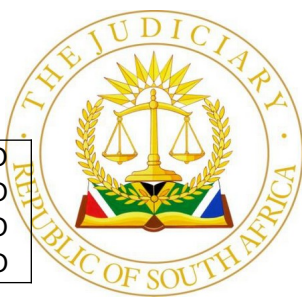


Reportable:	NO
Circulate to Judges:	NO
Circulate to Magistrates:	NO
Circulate to Regional Magistrates:	NO



**IN THE HIGH COURT OF SOUTH AFRICA**  
**NORTH WEST PROVINCIAL DIVISION, MAHIKENG**

**Case No.: DIV117/2022**

**In the matter between:**

**JJV**

**Applicant**

**and**

**JV**

**Respondent**

**JUDGEMENT**

**DIBETSO-BODIBE AJ**

**INTRODUCTION**

[1] Before me is an urgent application for the appointment of a curator ad litem on behalf of the minor children aged 8 and 5 years and a counter-application for the pending divorce proceedings, together with any

pending applications thereto, between the parties to be removed from this Court to the Gauteng Local Division, Pretoria High Court for hearing and determination.

- [2] The applicant instituted a divorce action against the Respondent during August 2022 which proceedings are still pending before this Court. In the meantime the Respondent also instituted a Rule 43 application during March 2023 which matter is still pending before this Court.

### **APPLICATION FOR THE APPOINTMENT OF A CURATOR AD LITEM**

- [3] The Applicant's main reasons for the appointment of a curator ad litem is to investigate and protect the interests of the minor children. The mandate of the curator will of necessity include appointment of experts including clinical psychologists for the purposes of reporting on the best interests of the minor children as far as primary residency and contact rights are concerned. The Applicant is requesting the Court to appoint Advocate MG Hitge as the curator although in his replying affidavit, the Applicant stated that since the Respondent is not amenable to the appointment of Advocate Hitge, that the Chairperson of the North West Bar Association be directed to appoint a curator ad litem from among counsel within the Association.
- [4] The Applicant resides at Stella near Vryburg and must travel to Pretoria where the minor children are currently staying with their mother, the Respondent. According to the Applicant he is only allowed to see his minor children in the presence of third parties, firstly, the Respondent's mother and thereafter, upon him insisting, a social worker. Even then, the social worker gave a positive report that the Applicant does not warrant supervised visits but the situation remains unchanged. The Applicant states further that the girl-child once hid a message in her mirror toy stating that she wanted to go with him.

## **COUNTER-APPLICATION**

[5] In this counter-application, the Respondent is requesting that the pending divorce proceedings, Rule 43 application and the appointment of curator ad litem be removed from this Court to the Gauteng Local Division, Pretoria High Court for hearing and determination as envisaged in terms of Section 27 of the Superior Courts Act, 10 of 2013 (“the Act”).

[6] Section 27 of the Act Provides:

*“(1) If any proceedings have been instituted in a Division or at a seat of a Division, and it appears to the Court that such proceedings-*

*(a) ...*

*(b) would be more conveniently or more appropriately heard or determined-*

*(i) at another seat of that Division, or*

*(ii) by another Division,*

*that court may, upon application by any party thereto and after hearing all other parties thereto, order such proceedings to be removed to that other Division or seat, as the case may be.”*

[7] The Respondent in support of the removal of the divorce proceedings to the Pretoria High Court states that she has been advised that the court has established a specialised Family Court Division which according to its directives, “Practitioners will approach the Family Court Registrar and apply for dates of hearing in Week 1. A date of hearing will be allocated during Week 2. All matters will be allocated for a Monday and a Notice of Set Down is to be filed for a Monday, and where applicable, served on the other party. On the Wednesday of

Week 2, the Registrar will send the entire roll to the senior judge sitting in the Family Court in Week 4. The senior judge for each week will then allocate matter to themselves and the junior Judge. Each judge shall then send out their allocated roll by Tuesday of the week prior to the week of the hearing. Judges with especially family law experience are allocated and rotated in the Family Court. Family Law matters are dealt with swiftly and do not have to compete with corporate matters and other matters for a place in the urgent roll.”

[8] I agree that Family Law matters, especially where minor children are involved, as is the case in this matter, require that issues affecting their rights be resolved speedily and in their best interests. It takes Solomonic wisdom for very few parties in divorce proceedings to compromise their own interests for those of the minor children involved. In the majority of these cases, the minor children are torn apart in the unending conflict, selfish and competing interests of their parents. The establishment of the Pretoria Family Court as a swift vehicle for family law matters is applauded, however, the swiftness of the proceedings in that Court remains in the hands of the litigants who are mainly gunning for a tug of war even for simple issues which are beneficial for the speedy finalisation of the matter like the appointment of the curator ad litem in the present matter.

[9] In **Nedbank Limited v Superious Trading 10CC and Others (50451/2016, 5045/2016, 50453/2016) [2017] ZAGPPHC 1205 (1 December 2017)** at para 34 the court stated:

*“... It has been submitted that the Court will not likely order the removal of a matter which it is competent to decide. The Applicant for a change of venue must satisfy the transferring Court that the proceedings would be more conveniently or more appropriately heard or determined at the transferee Court.”*

[10] The divorce proceedings, the Rule 43 application and now the appointment of curator ad litem are pending before this Court for hearing and determination. I am satisfied that it will be more convenient for the parties to have the actions appropriately heard and determined before this Court. Proper arrangements by experts for interviewing minor children should as far as possible be at or in close proximity with the location where the minor children are residing.

[11] Both parties are in agreement that the curator ad litem should be appointed to investigate and protect the rights and interests of the minor children. To this end, the Chairperson of the North West Bar Association is best suited to facilitate appointment of a suitable counsel as curator ad litem.

[12] Finally, I am of the view that the matter be heard as one of urgency given the fact that issues affecting minor children are inherently urgent, especially that they are only subject to the proceedings and not part of the proceedings.

## **ORDER**

[13] In the circumstances the following order is made:

1. The application in respect of the appointment of the curator ad litem is heard as one of urgency as contemplated in Rule 6(12) of the Uniform Rules of this Court.
2. The Applicant shall pay the legal fees for appointment of the curator ad litem.
3. The counter-application is dismissed.

4. The Chairperson of the North West Bar Association is directed to urgently facilitate the appointment of a suitably qualified legal practitioner to act as curator ad litem with the following powers:
  - 4.1 Investigate and protect the rights and interests of the minor children pertaining to primary residency and contact rights,
  - 4.2 Determine the necessity of therapeutic interventions and/or assistance for the minor children and the parents and any person closely associated with them,
  - 4.3 Interview the parents and/or the minor children,
  - 4.4 Appoint neutral expert(s), including a psychologist for the purposes of investigating the best interests of the minor children, and
  - 4.5 Compile a report advising the Court in respect of matters subject to the investigation including reports of the appointed expert(s).
5. Each party to pay their own costs.

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**O.Y DIBETSO-BODIBE**  
**ACTING JUDGE OF THE HIGH COURT**  
**NORTH WEST DIVISION, MAHIKENG**

*Delivered: This judgement was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the Parties/their legal representatives by email and by release to SAFLII*

**APPEARANCES**

**DATE OF HEARING: 14 SEPTEMBER 2023**

**DATE OF JUDGEMENT: 12 FEBRUARY 2024**

**FOR THE APPLICANT: MR M WESSELS  
ATTORNEY WITH RIGHT  
OF APPEARANCE**

**COUNSEL FOR THE ADV. C VAN DER WESTHUIZEN  
RESPONDENT:**

**Instructed by: F VAN WYK ATTORNEYS**