



**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

Case No: 538/2022

In the matter between:

CF Applicant

and

SG Respondent

Coram: Justice J Cloete

Heard: 22 and 29 August 2022, supplementary notes delivered 15 and 29 September 2022

Delivered electronically: 20 October 2022

JUDGMENT

CLOETE J:

Introduction

[1] This is an opposed application in which the applicant (“the mother”) seeks the court’s leave to relocate to the United Kingdom (“UK”) with the parties’ minor daughter M born on 17 April 2021. The respondent (“the father”) opposes the

relief sought essentially on two bases, namely that (a) the relocation is not *bona fide*; and (b) it is in any event premature since the bond of attachment between himself and M at this stage is such that it will be severed should the mother be allowed to relocate.

- [2] As is invariably the case in matters such as these the papers are voluminous and are replete with allegations and counter-allegations. For purposes of this judgment I will focus on the matters that are common cause or not seriously disputed as well as the pertinent expert evidence.

Relevant background facts

- [3] The mother was born in Cape Town and emigrated with her family to the UK in 1993 when she was 7 years old. After completing her schooling she studied for a BSc Psychology degree at Leeds Metropolitan University and obtained an honours degree in 2007. She worked in the UK from 2007 until 2016 as a media strategist and accounts manager until being promoted and seconded to run a major business account which entailed her relocating to Singapore where she remained for two years.

- [4] In 2018 she decided to return to Cape Town where she secured a position at a well-known advertising agency and thereafter a digital marketing company. She met the father, who is South African, soon after her arrival and they became romantically involved in April 2018. She moved into the father's Constantia home in September 2018. In November 2019 they acquired a

restaurant business in Cape Town through a close corporation of which they became equal members, and the mother left her employment to work with the father in that business.

- [5] From early on in their relationship the parties experienced interpersonal difficulties which became exacerbated over time, particularly after M's birth. The mother ultimately vacated the former common home permanently on 6 June 2021 when M was 8 weeks old. There is no dispute, given this factual matrix, that the parties are co-holders of parental responsibilities and rights in terms of s 18 read with s 19(1) and s 21(1) of the Children's Act.¹ There is also no dispute that the mother is M's primary attachment figure.
- [6] Since the mother vacated the former common home the parties have been embroiled in various acrimonious legal proceedings. These include how their business relationship should terminate, maintenance for M (the father has no obligation to contribute towards the mother's maintenance given their unmarried status) and the father's contact with M.
- [7] Insofar as contact is concerned, various experts and supervisors have been involved. The father has only exercised supervised contact with M. It is undisputed, both by the parties and all experts, that the mother and father are unable to communicate meaningfully and are locked in an ongoing, protracted array of serious disagreements about virtually everything, in particular aspects of M's care. Expert intervention has not eased the problem, and indeed the

¹ No 38 of 2005.

deep-rooted mutual mistrust which the parties have for each other has spilt over in this litigation into allegations of bias, hidden agendas and bad faith against the experts as well.

- [8] However after argument, and with the intervention of their respective legal representatives, the parties agreed on a parenting plan in the event of this court granting a relocation order.² The plan includes provision for parenting plan co-ordinators who shall *inter alia* jointly have the power to issue directives in respect of the father's contact with M post any relocation.

Expert involvement and opinions

- [9] After the mother vacated the former common home with M the parties agreed to the appointment of Dr Mathilda Smit ("Smit"), a social worker, to conduct a care and contact assessment. Although she has produced various interim recommendations regarding the father's supervised contact, it is unclear whether Smit in fact conducted a full assessment. The mother maintains she did not, and the father simply denies this allegation without more. Be that as it may, it would seem that the parties have generally followed Smit's recommendations on contact (despite the mother's misgivings at times) and neither party has relied solely on Smit's "reports" for purposes of this application.

- [10] The mother appointed Ms Leigh Pettigrew ("Pettigrew") an educational psychologist specialising in the field of child forensic psychology, to conduct

² In light of *TC v SC* 2018 (4) SA 530 (WCC).

an assessment as to whether relocation would be in M's best interests. Because the father made serious allegations about the mother's mental health, Pettigrew in turn referred her to clinical psychologist Mr Martin Yodaiken ("Yodaiken") for a psychological and diagnostic assessment.

[11] The father appointed Dr Joan Campbell ("Campbell"), a forensic and clinical social worker, for the same purpose as Pettigrew. During the course of her assessment, and given allegations by the mother about the father's *'parental competency'* Campbell referred him to clinical psychologist Mr Louis Awerbuck ("Awerbuck") for a psychological and diagnostic assessment. At a subsequent stage in the litigation Yodaiken also assessed the father for this purpose.

[12] Yodaiken found that the mother did not present with any personality disorder as alleged by the father; what the father had described as the mother's hateful and vengeful attitude towards him as well as her rages and mood swings are more likely to have been a reaction to what the mother described as her experiences with the father, i.e. that he is controlling and abusive towards her; there was no depressive symptomatology but the mother is suffering from a generalised anxiety disorder which requires treatment; and she has post traumatic stress disorder and is also likely suffering from battered woman syndrome. As Yodaiken put it:

'...her presentation and symptomatology is consistent with someone who has been extensively abused... Furthermore, and of considerable importance is that collaterals who have known her prior to the relationship with [the father]

and during the relationship, have without exception indicated the change in her personality from a bubbly, intelligent, social and strong person, to an anxious person who does not seem to know who she is and who became very uncertain and withdrawn. While this has improved since she has left the relationship [the father] still exerts a powerful impact on her well-being and any time she receives a communication from him she moves into a heightened state of arousal and fear.'

- [13] Although Awerbuck did not assess the mother, he was also requested by Campbell to comment on Yodaiken's report. Awerbuck found there was no objective reason to doubt Yodaiken's methodology of assessment; his general clinical impressions of the mother; or his observations of her as fully functional on a cognitive and behavioural level. He also had no criticism in relation to Yodaiken's other findings save for taking issue with the diagnoses of generalised anxiety disorder, PTSD and possible battered woman syndrome.
- [14] Awerbuck's comments in this regard may immediately be discounted for the simple reason that he did not assess the mother himself. The same applies to Awerbuck's opinion that Yodaiken's diagnosis of PTSD was not supported by '*objective corroborative evidence*'; as well as his view that the diagnosis of possible battered woman syndrome was '*unconvincing*' because of the mother's '*choice*' to remain in the relationship with the father for a lengthy period of time. Frankly, the latter opinion expressed by Awerbuck only needs to be stated to be rejected, given that it is well-established that abused women often remain in abusive relationships for the simple reason that they are abused and lack the confidence, courage and strength to leave.

- [15] Both Yodaiken and Awerbuck diagnosed the father with alcohol dependency and autism spectrum disorder level 1. They agreed that the father generally exhibits higher narcissistic traits and a higher level of aggression than the average person of his '*peer group/culture/context*', and his symptomatology is most clearly seen, and is most problematic, in close interpersonal relationships.
- [16] It was also their joint opinion that co-parenting of M with the mother is likely to be very difficult '*in the future*' given the parties' personalities and the father's autism diagnosis; and there are concerns how the father's interaction with M might impact on his bond with her in future, especially if he does not receive both psychotherapy and pharmacological treatment for his condition. In this regard it is significant that, although the joint minute of these two experts was made available on 7 June 2022, by the time the matter was argued before me in the second half of August 2022, the father had taken no steps to obtain this treatment.
- [17] Yodaiken and Awerbuck agreed there should at least be continuous monitoring of the father's alcohol dependency, including that he continues to be breathalysed (by the contact supervisor) prior to each contact period with M. Yodaiken explained what the father's autism diagnosis translates into in practical terms.
- [18] The father is unable to take the views of others into consideration or respond to social cues. He considers his behaviour – experienced as rigid, aggressive

and controlling – to be a justified reaction to what he perceives to be unacceptable behaviour or reactions (including emotional ones) in others. He does not heed reasonable instructions (in particular, for present purposes, those requested by the mother in relation to M's care during his contact periods) unless he regards them to be reasonable himself which, given his attitude towards the mother, is invariably not the case. As Yodaiken put it:

'With his rigidity and inflexibility in his thinking and his expectation that he and others follow the rules whether set up by him or the context [he] is able to function well in a structured environment that would enable and reinforce this type of behaviour. In such an environment his decision-making and ability to solve problems appears to be faultless. The descriptions of how he has solved problems in the work environment have indicated this.

However, when he brings the same processes to bear on his interpersonal relationships, it results in him appearing menacing, persuasive and combative.'

- [19] When discussing his failed relationships with both his former wife and the mother, Yodaiken asked the father to reflect on his own contribution thereto. He was unable to provide an answer and either blamed it on their behaviour or rationalised away his own from any responsibility. Yodaiken also noted the father's grandiosity about his knowledge and experience, but that the veracity of the father's communicated achievements was questionable, and in at least one instance (that he had played tennis for Western Province) this was demonstrated to be false.

[20] In Yodaiken's opinion, the adequacy of the father's decision-making with respect to his close interpersonal relationships, including with and in relation to M, is problematic. He gave the following significant example:

'He [i.e. the father] has expressed having a knowledge of M's needs through his observations of her body language, which he learned to do in the army as a trainer of the Rekkies, an elite squad of soldiers. While he may be able to do this with adults, to assume that it can be done with a baby fails to understand the functioning of an infant. This is in keeping with his poor social skills and difficulty in responding to cues from other people. In other words, in "inventing" a knowledge of babies' needs, he places M at risk and even in danger of not getting her needs met effectively.'

[21] Although Yodaiken acknowledged that the mother's attitude towards the father does not help and may make it harder for him to be context aware, there can be little doubt that the current situation, particularly since the mother has control over M and her movements, likely exacerbates the father's feelings of being out of control, defensive and judged. His alcohol dependency will also exacerbate the father's difficulties with contextual decision-making and may make it harder for him to appropriately parent M, especially as she grows older and develops a mind of her own.

[22] In turn, Awerbuck explained that it soon became apparent during his interview with the father that the latter struggled to describe the nuances of certain behaviour in contexts, and demonstrated difficulty in interpreting the emotional perspective of others. As an example, when asked to speculate why the mother and his ex-wife reported being scared of him, the father persevered in debating the literal nature of their accusations, and seemed unable to

associate with any possible emotional experience they might have or had.

Notably, Awerbuck commented as follows:

[The father] demonstrated difficulty describing appropriate emotions, or associating with certain emotions within certain contexts. As an example, he reports that he has never had an anger outburst in his life, as he “does not believe in losing his temper”. He states that he does get “disgruntled”, but that he is not an angry person. [He] reports that he “does not have to lose his temper”, as “he knows what he is capable of”. Upon enquiry [he] stated that he “has the physical abilities to take out 5 people”, and that he therefore does not have “anything to prove”.

- [23] Awerbuck also noted that the father denied ever having been intoxicated or abused alcohol in his life. This is against the overwhelming weight of evidence to the contrary, not only from the mother but also a range of independent collaterals. Awerbuck further noted that:

‘Allegations from several individuals in the past, as well as from [the mother], reflect on the interpersonal impact [the father] appears to have on others. Versions from different collateral sources report [him] to often present as forceful, intimidating and persevering, as well as unempathetic and abrasive. It is important to notice that these reports originate from individuals whom have been in longer-term, emotionally closer relationships with [him]. Concern has been raised [about] what is perceived as, amongst others [the father] distorting facts, being unable to judge context, having poor emotional insight and regulation, fixating on certain details, being concrete in thinking, struggling to read nuances of relationships, and other patterns of behaviour as raised by Ms Pettigrew and mentioned in this report...

From the history between [the parties] it shows that various attempts have been made by both parties to theorise about each other’s psychological functioning and motivation for perceived unacceptable behaviour from both sides. As most probably is also relevant for [the mother] it is reasonable to

accept that [the father's] intentions and behaviour are sometimes misunderstood and misinterpreted. However it is unlikely that separate collateral sources would intentionally fabricate a unified version describing a general pattern of behaviour that seems to be consistent with findings of a clinical assessment... Clinical and psychometric assessment of [the father] confirms that he struggles to interpret nuances and motivations of others' behaviour, especially others' emotions, and that it is conceivable that others might experience him as abrasive and self-centred in close relationships... [He] demonstrates his struggle to comprehend the nuances of emotional experience by amongst other examples, point-blank denying any signs of perceived human weakness in himself.' (my emphasis)

[24] Awerbuck neatly put it in context as follows:

'A psychological assessment confirms that [the father's] problematic interpersonal style is not reflected in, or indicative of, his personality structure, but rather as part of a psychiatric condition or impairment. In lay terms [his] apparent inability to interpret emotional nuances and his tendency to act in a persistent, forceful and persevering manner is not explained by the type of person that he is, but rather by a condition that he suffers from...' (my emphasis)

[25] Also importantly, Awerbuck expressed a similar view to Yodaiken's that, due to the father's impaired ability to recognise and interpret certain behavioural clues appropriately, there is concern that he will unintentionally not recognise behavioural indicators when M expresses her needs, particularly as she grows older. Why this is important will become apparent in discussing the evidence of Campbell below.

[26] Although Campbell completed her report after receipt of Awerbuck's, and quoted extensively therefrom, what she singularly – and inexplicably – failed

to address was the autism diagnosis and its impact as considered in detail by Yodaiken and Awerbuck. Indeed, the impression gained is that she simply ignored this fundamental, crucial factor. In addition, in the joint minute of Pettigrew and Campbell compiled by Adv Michelle Bartman (who was appointed by the parties' legal representatives to facilitate the meeting of these two experts) the following was noted:

'Campbell conceded, with some difficulty, that Respondent had a history of prolonged alcohol abuse and she accepted Awerbuck's diagnosis of autism. She was however of the view that notwithstanding these issues Respondent could exercise unsupervised contact with M and that his contact should merely be monitored. Campbell was guided by reports from Nerita Klue ("Klue") a counsellor who has been supervising Respondent's contact with M to form a view of Respondent's ability to parent and develop a meaningful bond with M...

There was thus no agreement on the extent to which Respondent's mental health would impact on, and affect his contact and his ability to develop a bond with, M. The experts held vastly divergent views in this regard.

[27] It was also Campbell's opinion that the mother has intentionally vilified the father and was guilty of gatekeeping his contact with M. She also relied on a comment made by the mother to the father's former wife, in a transcript which the mother herself made available to Campbell, to support her conclusion that the mother seeks to relocate to the UK for the sole purpose of taking M as far away from the father as possible. Given Campbell's failure (or choice) not to consider the autism diagnosis and its impact on co-parenting and contact, her

findings must be viewed with a good dose of circumspection, particularly given what is required of an expert when providing an opinion to a court.³

[28] However what is significant is that despite the criticisms levelled by Campbell against the mother, she was nonetheless of the opinion that M has a *'good bond'* with the father, and that the focus should be *'on how to mitigate against significantly changing her relationship with [him] and how best to ensure a continuation and improvement of the bond and attachment between them'*. Campbell noted too that the mother has *'very good'* insight into M's developmental needs.

[29] Campbell's proposed solution is that since M is currently *'in the attachment phase between 0 and 3 years... [she] is likely, from an attachment point of view, to be psychologically at risk should she relocate now'*. While Campbell freely acknowledges that one needs to be mindful of the level of conflict and litigation to date and the parties' inability to co-parent without professionals *'mediating and supervising almost every step of the way'*, the mother should not be permitted to relocate to the UK until the parties, especially the mother, have demonstrated that they can co-parent.

[30] This ignores the expert opinions of Yodaiken and Awerbuck and the father's failure (or refusal) to heed their joint recommendation that he requires both psychotherapy and medication for his condition if there is to be any hope of improvement. Campbell's recommendations also overlook the fact that, based

³ See *inter alia* *Price Waterhouse Coopers Inc and Others v National Potato Co-operative Ltd and Another* [2015] 2 All SA 403 (SCA) at para [98].

on her own opinions, M has been able to form a bond and attachment with the father. Viewed in proper context, as a matter of logic, this fact dispels Campbell's criticism of the mother and her suggestion of possible alienation.

[31] As for Pettigrew's evidence, it is noteworthy that the very concerns she expressed about the father during her relocation assessment were vindicated by the subsequent diagnostic assessments of Yodaiken and Awerbuck. In her reports, Pettigrew explained in some detail why delaying a possible relocation is unlikely to remedy or alleviate the situation or to be in M's best interests. She expressed the following opinions supported by cogent, in-depth reasoning.

[32] In Pettigrew's view, at best co-parenting and joint decision making is highly likely to result in ongoing legal intervention and lengthy and costly stalemates around M before the child's needs and interests are finally resolved by attorneys and/or the court and/or third parties. There is also a high risk that professional and non-professional support will be '*hired and fired*' by both the father, particularly when he believes that they are not '*on his side*', and by the mother when she feels that they are not hearing her concerns regarding M's care and protection (Pettigrew is alive to the mother's hypervigilance). As she put it:

'M's basic issues such as schooling, to whether she does ballet or tap-dancing or tennis, to whether taking her to consult with a GP should only take place before [the father] has given permission, to whether [the mother] takes M to specialist A or B etc, are all highly likely to end in dispute'.

[33] In Pettigrew's opinion the longer the mother remains in South Africa the more traumatised she becomes. Pettigrew noted the competing tension between the mother's personal need to put physical space between herself and the father, and her incongruent need to be constantly assured that M is safe and protected in his care. This perpetuates her emotional and psychological trauma, which is also not helped by the father's refusal (or perhaps more appropriately, inability) to acknowledge his diagnoses and seek treatment. This in turn increases the mother's hypervigilance (or gatekeeping) and in turn the father's behaviours escalate. In other words, as I understand Pettigrew, this is a vicious cycle which will continue until it is brought to an end.

[34] It is also her view that the profound negative impact that the father has on the mother's mental wellbeing means that for so long as she remains here, it is highly unlikely that she will recover from her PTSD and reduce her anxiety levels, even with treatment. Allied to this is that, while M may not knowingly have been exposed directly to professional interventions and assessments (given that she is only 18 months old) it cannot reasonably be gainsaid that the conflict has had a profound impact on both her parents, leaving them stressed and emotionally preoccupied.

[35] Should the mother have to remain in South Africa for at least another 18 months (until M is 3 years old), as her growing awareness of the world around her develops, M will become increasingly aware and more detrimentally affected by the stress and emotional preoccupation of her parents as well as the conflict between them.

[36] Moreover, Pettigrew reasoned as follows:

'Given concerns already raised previously regarding the attachment difficulties that the writer has already observed between [the father] and M, it is likely improbable that a secure attachment between father and daughter will develop. Should [the father] fail to address all of his issues, there is a high probability that the attachment between them may ultimately be an insecure attachment. In other words, forcing M to remain in SA at present may in fact expose her to a number of other potential emotional difficulties as contact is increased. In a word, the risk of M developing a poor attachment to her father far outweighs [Pettigrew obviously meant is far outweighed by] the potential of her developing a pathology by remaining in Cape Town.

It is the writer's conclusion that the best place for M right now is in the UK with her mother. In this way, M will be protected from day-to-day conflict between her parents, the negative impact of her father's drinking, his personality difficulties and his poor decision-making. She will also have the benefit of an involvement with a more contented mother, who can start to address her mental health wellbeing...'

[37] Pettigrew acknowledged that *'interruptions to the attachment bond prior to the age of three years will significantly compromise the previous attachment even if it was a secure one'*. However she is of the view that in the particular circumstances of this matter such compromise should yield to the other significant factors weighing in favour of a relocation.

Other relevant factors

[38] The mother, who has no support system in Cape Town other than her maternal uncle and his family, is currently working online for an overseas company. She has been offered a permanent position at a company in the UK

which confirmed as recently as 4 July 2022 that, while they are now having to advertise for other candidates, they are holding the position open for her in the interim and in the hope that she will be permitted to relocate. She will earn the equivalent of R100 000 per month, whereas during the period April to June 2022 she earned a total of £4 265.52 or around R28 400 per month. At present the respondent only pays maintenance of R6 500 per month for M.

[39] The mother and M will reside temporarily with the mother's parents in the UK until alternative accommodation is secured. The mother's parents, siblings and their families as well her grandfather all reside there and they are a close-knit, upper middle-class family. Campbell and Pettigrew agree that the mother and M will have access to excellent medical and similar treatment and the same applies to M's education. Additional relevant factors are that the mother has only been in South Africa for the past 4 years, and M is too young to have formed peer attachments.

[40] The father, despite his protestations to the contrary, is clearly an individual of considerable financial means. He owns the former common home in Constantia which is one of the most affluent suburbs in Cape Town. In June 2021 he had in excess of R3 million available to him in an Absa investment account. He will, on his own version, also have an additional amount of R20 000 to R30 000 per month available to him post-relocation since he maintains that this is what he is spending (at least until June 2022) on a supervisor for his contact periods with M.

[41] The mother has also made a tender for reduced payment of maintenance for M, which will result in an additional saving to the father of around R43 000 per annum. His financial ability to exercise contact to M in the UK is thus not an issue. Moreover the mother's evidence is that supervision of his contact with M by a social worker in the UK should be free of charge if there is a court order making it clear that contact must be supervised. The mother has also tendered to pay the costs of air travel for herself to South Africa annually so that the father can exercise supervised contact here as well, subject to conditions which I consider to be eminently reasonable.

Summary

[42] In *MH v OT*⁴ I summarised the applicable legal principles as follows:

[45] Where a court sits as upper guardian of a minor child, there is no onus in the conventional sense.⁵ What is required is to take an overall view of the situation in order to determine whether the decision of the parent who wishes to relocate is a reasonable one. This involves a weighing up of all relevant considerations:

“[2] It is trite that in matters of this kind the interests of the children are the first and paramount consideration. It is no doubt true that, generally speaking, where, following a divorce, the custodian parent wishes to emigrate, a Court will not likely refuse leave for the children to be taken out of the country if the decision of the custodian parent is shown to be bona fide and reasonable. But this is not because of the so-called rights of the custodian parent; it is because, in most cases, even if the access by the non-custodian parent would be materially affected, it would not be in the best interests of the children that the custodian parent be thwarted in his or her

⁴ (16858/2017) [2018] ZAWCHC 191 (4 July 2018).

⁵ *Shawzin v Laufer* 1968 (4) SA 657 (A) at 662H-663A; *B v S* 1995 (3) SA 571 (AD) at 584I-585A and 585D-E; *M v M* (15986/2016) [2018] ZAGPJHC4 (22 January 2018) at para [24].

endeavour to emigrate in pursuance of a decision reasonably and genuinely taken. Indeed, one can well imagine that in many situations such a refusal would inevitably result in bitterness and frustration which would adversely affect the children. But what must be stressed is that each case must be decided on its own particular facts...⁶

[46] As Maya AJA (as she then was) put it in *F v F*⁷:

“[11] 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. A frustrated and bitter parent cannot, as a matter of logic and human experience, provide a child with that environment. This being so, I cannot agree with the views expressed by the Full Court that ‘the impact on S of the appellant’s feelings of resentment and disappointment at being tied to South Africa, or the extent to which her own desires and wishes are intertwined with those of S’ did not deserve ‘any attention’ and that ‘[i]n arriving at a just decision [a Court] cannot be held hostage to the feelings of aggrieved litigants’”.

[47] *The paramountcy principle enshrined in s 28 of the Constitution does not mean that every relocation case must be approached from the position only of the child. Nor will the child’s best interests always trump all other rights. The Constitutional Court in S v M (Centre for Child Law as Amicus Curiae)⁸ confirmed that:*

“[25] ...This cannot mean that the direct or indirect impact of a measure or action on children must in all cases oust or override all other considerations. If the paramountcy principle is spread too thin it risks being transformed from

⁶ *Jackson v Jackson* 2002 (2) SA 303 (SCA).

⁷ 2006 (3) SA 42 (SCA).

⁸ 2008 (3) SA 232 (CC) at paras [25] and [26].

an effective instrument of child protection into an empty rhetorical phrase of weak application, thereby defeating rather than promoting the objective of s 28(2)...”

[26] This court, far from holding that s 28 acts as an overbearing and unrealistic trump of other rights, has declared that the best-interests injunction is capable of limitation... Accordingly, the fact that the best interests of the child are paramount does not mean that they are absolute. Like all rights in the Bill of Rights their operation has to take account of their relationship to other rights, which might require that their ambit be limited.” ’

[43] Upon careful evaluation of all the relevant evidence as set out above, I am compelled to conclude that the application must succeed since it is clearly in M's best interests. As far as costs are concerned, it is my view that it would be unduly punitive to order the father to pay the mother's costs. He has psychiatric issues and must also have been advised by his legal representatives to rely on Campbell's opinions to defend the relocation. In the circumstances, it is appropriate that each party pay their own costs. The order that follows incorporates the mother's tender provided after conclusion of argument with a few amendments. For privacy reasons a duplicate order containing the names of M and the parties as well as the parenting plan as an annexure is granted as a separate order.

[44] **The following order is made:**

- 1. The applicant is granted leave to remove the parties' minor child, M, from South Africa and to relocate with her to the United Kingdom.**
- 2. The respondent's signature will be dispensed with, if required, for the signing of:**

- 2.1. any documents that may be required for M to emigrate to the United Kingdom;
 - 2.2. all such necessary documents as may be required by M from time to time in relation to any travel visas and/or renewal of her British and South African passports to enable her to travel to other countries from the United Kingdom on holiday;
 - 2.3. all necessary documents relating to M's schooling in the United Kingdom; and
 - 2.4. all necessary documents in relation to all or any medical procedures that may be required by M.
3. The respondent is awarded rights of co-guardianship in respect of M save to the extent that his consent will not be required to enable M to relocate to the United Kingdom or for her to travel on holiday to other countries from the United Kingdom provided that such countries are signatories to the Hague Convention and the respondent shall be given reasonable notice of such travel.
4. The respondent's parental responsibilities and rights in respect of M shall be curtailed such that the applicant shall be entitled to make all major decisions in regard to M's education, extra-mural, medical procedures or medication and her religious needs provided that the applicant shall take into account the respondent's views before making such decision.

- 5. The applicant shall inform the respondent via email of the following:**
 - 5.1. Her physical address, should she move from her parent's home in London;**
 - 5.2. The name and contact details of the various schools that M attends;**
 - 5.3. M's school reports and furnish him with copies thereof;**
 - 5.4. M's hospitalization or any major surgery.**
- 6. The respondent is granted reasonable rights of supervised contact with M as follows:**
 - 6.1. Two two-week holidays in London each year on the basis that such each two-week period shall be broken up into three periods of four consecutive days with a day off in between and for a period of 4 hours each day or such time as determined by the PCs appointed in the parenting plan referred to in paragraph 10 below. The applicant shall be responsible for arranging a suitable social worker to supervise the respondent's contact at such time, the costs of which, if any, shall be borne by the parties in equal shares. The respondent shall give the applicant 60 days' notice of his intention to visit prior to each two-week period;**
 - 6.2. Provided that the respondent has visited M in London as provided for in paragraph 6.1, then the applicant will visit South**

Africa with M for a period of two weeks at the end of each year when the respondent shall have contact with M on the basis provided for in paragraph 6.1 above. The applicant shall nominate a suitable social worker to supervise the respondent's contact at such time, the costs of which shall be borne by the respondent. The applicant will be responsible for her own costs for this travel and the respondent will be responsible for the costs of M's return airfare to South Africa. The applicant shall book all the tickets and the respondent shall deposit the funds in respect of M's flight in such bank account as nominated by the applicant, within 72 hours of notification;

6.3. Video contact with M three times per week for periods up to 15 minutes which video contact shall be supervised by the applicant or an adult approved of by her;

6.4. The respondent's visits with M may be increased over time to a maximum of 8 hours by the PCs appointed by agreement between the parties having regard to M's best interests and who are referred to in the parenting plan in paragraph 10 below.

7. The applicant shall make reservations and pay the costs of the respondent's airfare to London for his two visits to M in 2023 and the costs of accommodation for a period of two weeks during the two visits that he is there. The respondent shall be liable for all other costs pertaining to said visits. The respondent shall pay the

costs of accommodation for any additional time that he is in the United Kingdom. From 2024 the respondent shall be liable for the costs of his airfares and accommodation in the United Kingdom and the applicant shall only be responsible for such costs for her visit with M to South Africa at the end of each year on the basis set out in paragraph 6.2 above.

8. The respondent shall be breathalyzed, at his cost, prior to each contact session with M until such time as an alcohol addiction specialist has certified that the respondent is rehabilitated and that he needs no longer be breathalyzed. The PCs shall be entitled to call for random breathalyzing should they so require even in circumstances where an alcohol addiction expert confirms that the respondent is rehabilitated.
9. The respondent's maintenance obligations in respect of M will reduce to an amount of R3 250,00 per month payable on or before the first day of each month following the applicant's relocation with M, without deduction or set-off, into a bank account nominated by the applicant from time to time. The amount shall increase annually on the first day of the month following the date of the first reduced payment in accordance with such rise as has occurred in the Headline Inflation Rate for the Republic of South Africa (as notified by the Central Statistical Service from time to time) for the preceding 12 months (using the most recent figures available at the time of calculation).

10. The terms of the parenting plan entered into between the parties on 13 September 2022 annexed marked "A" are made an order of this Court.
11. Each party shall pay their own costs.

J I CLOETE

For applicant: **Adv L Buikman SC** together with **Adv L Bezuidenhout**

Instructed by: Werksmans Attorneys (R Gootkin)

For respondent: **Adv R J Steyn**

Instructed by: Bellingan Muller Hanekom Attorneys (S Nelson)