



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

Case No: 18862/2023

**THE AD HOC CENTRAL AUTHORITY FOR
THE REPUBLIC OF SOUTH AFRICA**

First Applicant

ML

Second Applicant

and

DM

Respondent

Coram: Justice J Cloete

Heard: 20 May 2024, supplementary notes 28 May 2024 and 31 May 2024

Delivered electronically: 19 June 2024

JUDGMENT

CLOETE J:

Introduction

[1] The second applicant (father) and respondent (mother) are the unmarried parents of two minor children, L and P, both boys who are currently aged 10 and 8 years old respectively. The father is German and the mother South African. The first applicant (Central Authority) has made common cause with

the father in the relief sought. The children were represented *pro bono* by Ms Anderssen, an advocate in private practice in terms of an agreed order dated 15 April 2024. She filed a report dated 26 April 2024 which included helpful and well-considered recommendations on interim contact pending final determination by another court on the long term arrangements for the children, and also made submissions during argument. This court is indebted to her for her assistance.

[2] On 25 October 2023 the applicants launched an urgent application against the mother in terms of the Hague Convention on the Civil Aspects of International Child Abduction¹ (“Convention”) in this court in two parts. In Part A they sought specified interim contact for the father; certain orders pertaining to the children’s passports; and a prohibition on the mother permanently removing the children from this court’s jurisdiction while at the same time compelling her to keep them informed of her whereabouts, pending the determination of Part B. That resulted in an agreed order of 30 November 2023 granted by Goliath AJP which included a timetable for the further conduct of the matter.

[3] In Part B, which came before me,² the applicants seek the following: (a) the immediate return of the children to what is alleged by them to be the children’s habitual place of residence, namely the Federal Republic of Germany (“Germany”) in accordance with article 12 of the Convention; and (b) ancillary

¹ Incorporated as Schedule 2 to the Children’s Act 38 of 2005 by virtue of Chapter 17 thereof.

² There were further interim orders granted on 23 February 2024, 4 April 2024 and 8 April 2024 by Goliath AJP and Gamble J respectively which largely dealt with revised further conduct timetables and an interlocutory application brought by the mother in respect of the children’s legal representation, which fell away as a result of the order I made on 15 April 2024.

relief which includes a tender by the father to purchase airtickets for the children as well as for the mother to accompany them if she so wishes.

[4] Relevant for present purposes are the following articles of the Convention:

'Article 3

The removal or the retention of a child is to be considered wrongful where—

- (a) it is in breach of rights of custody attributed to a person, an institution or any other body, either jointly or alone, under the law of the State in which the child was habitually resident immediately before the removal or retention; and*
- (b) at the time of removal or retention those rights were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention...*

Article 12

Where a child has been wrongfully removed or retained in terms of Article 3 and, at the date of the commencement of the proceedings before the judicial or administrative authority of the Contracting State where the child is, a period of less than one year has elapsed from the date of the wrongful removal or retention, the authority concerned shall order the return of the child forthwith...

Article 13

Notwithstanding the provisions of the preceding Article, the judicial or administrative authority of the requested State is not bound to order the return of the child if the person, institution or other body which opposes its return establishes that...

- (b) there is a grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation.*

The judicial or administrative authority may also refuse to order the return of the child if it finds that the child objects to being returned and has attained an

age and degree of maturity at which it is appropriate to take account of its views...'

- [5] It is common cause that for purposes of the Convention, if it is found to apply: (a) the father has rights of custody in respect of the children together with the mother; (b) this court has jurisdiction since the mother and children currently reside in Paarl in the Western Cape; and (c) the children have been retained in South Africa without the father's consent or acquiescence, and were so retained for a period of less than one year prior to the date of commencement of proceedings in this court.
- [6] For sake of clarity, and although the mother attempted to raise defences of consent or acquiescence in her answering papers, she ultimately admitted during the hearing (in which she represented herself) that when the children arrived in South Africa during 2023 for a visit '*my problem was solved*' since she was then able to keep them here despite the father's immediate and consistent demands that they be returned to him in Germany.
- [7] It is accordingly the requirement of habitual residence in Germany prior to the children's unlawful retention in South Africa upon which this case falls to be determined in order for the Convention to apply. Further, if habitual residence in Germany is established, it must be decided whether the mother's belated article 13(b) defence (not advanced in her papers but only in her heads of argument and annexures thereto) withstands scrutiny.

Whether habitual residence established

- [8] The founding and replying affidavits were deposed to by Ms Saravani Pillay, Family Advocate, in her capacity as delegate of the Chief Family Advocate (the designated Central Authority for South Africa) in terms of s 276(1)(a) of the Children's Act.³ Both were accompanied by the father's confirmatory affidavits. Given that Ms Pillay relied on information provided to her by the father in respect of habitual residence I will only refer hereafter to the father's allegations.
- [9] In the founding papers the father alleged that prior to permanently relocating from South Africa to Germany during March 2020, he and the mother had resided together as a couple in Cape Town for about 15 years. Accordingly, the father's case that the mother was called upon to meet was based on permanent, and not habitual, residence in Germany (although self-evidently permanent residence would include habitual residence).
- [10] The couple separated in August 2022 and subsequently shared care of the children on the basis that they would reside for one week with the father and one week with the mother. During February 2023 the mother travelled from Germany to South Africa to visit her ailing father, arriving here on 25 February 2023. The children remained in Germany with the father since it was still school term. Subsequently the children (with the mother's consent) travelled to South Africa to visit her accompanied by the father, arriving here on 30 March 2023. The mother's written consent for purposes of the German authorities was provided a few days earlier on 25 March 2023 and read that '*hereby give consent that their father... may travel with our children to South*

³ fn 1 above.

Africa and back. They will leave March and return April'. Return tickets were purchased by the father for himself and the children to return to Germany on 20 April 2023.

[11] During the period 30 March 2023 until 19 April 2023 the father resided at the family's former home (which is registered in his name) in Muizenberg, Cape Town and had contact with the children while they stayed with the mother at her parents' home in Paarl. On 19 April 2023 the mother informed the father via WhatsApp call that she intended to remain in South Africa and would not be handing over the children to him for them to return to Germany. The father approached the Central Authority in Germany for assistance on 20 April 2023 and on 9 May 2023 instituted proceedings for sole custody of the children in the German Family Court, which it appears are still pending.

[12] In her answering affidavit the mother disputed that the family relocated permanently to Germany. She alleged that in 2008 (two years after their relationship began) she and the father chose South Africa as their primary place of residence. They first resided in the Bo-Kaap, then Vredehoek, then Observatory and in 2017 moved to Muizenberg (all of which are suburbs in Cape Town) where they lived until their departure for Germany in March 2020. She contended that had it not been for the Covid-19 pandemic they would not have relocated to Germany '*temporarily and indefinitely*' as a result of the uncertainty that prevailed at the time due to the pandemic.

[13] The father is a freelance cinematographer by profession and the mother holds a Masters degree in Social Development. The mother maintains it was at the

father's insistence that the family left South Africa in March 2020. She gave two reasons. The first was for him to pursue employment opportunities which were not available in South Africa at the time given the hard lockdown. The second was the incentive provided by the German government to pay for flights for German nationals to return to Germany (the so-called repatriation flights). She insisted that it was never part of the plan to remain there permanently. The family did not pack up their belongings for transport to Germany. They took very few items with them such as clothing. However when it later became apparent that they would be '*stuck there indefinitely*' the family home in Muizenberg was rented out. She claimed that against this backdrop '*the next logical step was to remain in Germany and create a new life*'.

[14] Her version is further that after their arrival in Germany while the pandemic was rampant, both she and the father were unemployed and dependent on his mother with whom they stayed as a family. This continued until March 2021 when the mother managed to secure a 12 month contract at Goethe University in Frankfurt which enabled her to support the family financially and for them to move into their own accommodation. She did not obtain long term employment given the couple's mutual intention when they left South Africa to return here once it became feasible to do so.

[15] In addition the mother's undisputed evidence was that it is only because German law requires one's residential address(es) to be registered with the local authority that this occurred, and the children had to attend local schools,

since home schooling is prohibited there (they previously attended a school in South Africa which provided remote learning during the hard lockdown periods of the pandemic and which would have been her preference to continue in Germany). In addition the home in Muizenberg was retained throughout the period they were in Germany and at all material times she only had a temporary visa. The mother submits that all these factors support her case that there was never an intention to relocate permanently from South Africa to Germany.

[16] The mother described how she increasingly felt powerless during her '*exceptionally difficult*' stay in Germany. She ascribed this to being unemployed for a considerable period (whereas in Cape Town she was mostly financially sound); being isolated from friends and family; having a strained relationship with her mother-in-law; being without transport; the breakdown of her relationship with the father; and periods after their separation in August 2022 when for weeks on end the father travelled for work, leaving her the children's sole caregiver. In addition one of the children who suffers from Attention Deficit Hyperactive Disorder was struggling at school. Notwithstanding the breakdown in their relationship and their mutual intention not to remain there permanently, the father nonetheless insisted that she and the children continue to live in Germany and in fact secreted away the children's passports.

[17] In reply to these allegations the father changed tack, focussing on factors such as registered residential addresses, attendance by the children at local

schools, and the ultimate length of their stay in Germany, to contend the mother's attempt to suggest that Germany was not the children's place of habitual, as opposed to permanent, residence has no merit since it is belied by the '*circumstances*' and moreover is directly contradicted by the mother's own '*concessions*' that she and the father '*decided to move there indefinitely and create a new life*'. It was accordingly submitted that her version is inherently improbable and must be rejected.

[18] For the first time the father alleged that from inception of their relationship there was an '*ongoing debate*' whether to live permanently in South Africa or Germany. The couple stayed with the father's mother for at least 3 months each year from 2014 to 2018, and for 3 months in 2019 (the father did not elaborate on what he meant by the words '*at least*'). Their younger son P was born in Germany. With the outbreak of the pandemic '*the debate was settled*' since the father could not find work in the film industry and the mother was unemployed at the time.

[19] The mother had no opportunity to deal with these allegations since they were made only after she addressed the case made out by the father in the founding papers. The father did not however take issue with the mother's evidence about the repatriation flights offered by the German government; the fact that the contents of the Muizenberg home were left behind; her motivation for obtaining a 12 month fixed contract of employment; and why it was necessary for residential addresses to be registered and for the children to physically attend school. Insofar as the Muizenberg property is concerned

(which he still owns) he merely alleged that the market *'has not been such that he would profit as he wished. It serves as an income generating investment due to the rental he receives.'*

[20] The applicants bear the onus – i.e. are obliged to establish – the jurisdictional fact in article 3 that the children were habitually resident in Germany immediately before their retention in South Africa by the mother.⁴ In determining whether they have done so, the well-established *Plascon-Evans* rule (or test)⁵ must be applied. Accordingly, in motion proceedings where a court is confronted by disputes of fact, a final order may only be granted if those facts averred in the applicant's affidavits that have been admitted by the respondent, together with the facts alleged by the respondent, justify such an order.

[21] A respondent's version in motion proceedings can only be rejected where the allegations made:

'...fail to raise a real, genuine or bona fide dispute of fact... [or] are so far-fetched or clearly untenable that the Court is justified in rejecting them merely on the papers...

Practice in this regard has become considerably more robust, and rightly so. If it were otherwise, most of the busy motion courts in the country might cease functioning. But the limits remain, and however robust a court may be inclined to be, a respondent's version can be rejected in motion proceedings only if it is "fictitious" or so far-fetched and clearly untenable that it can confidently be

⁴ *Smith v Smith* 2001 (3) SA 845 (SCA) at para [11].

⁵ *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* 1984 (3) SA 623 (A) at 634E-635C; *Pennello v Pennello (Chief Family Advocate as Amicus Curiae)* 2004 (3) SA 117 (SCA) at paras [40] to [41].

said, on the papers alone, that it is demonstrably and clearly unworthy of credence.⁶

(my emphasis)

[22] The Appeal Court in England⁷ has held that:

'...A young child cannot acquire habitual residence in isolation from those who care for him. While A lived with both parents, he shared their common habitual residence or lack of it. Lord Brandon in Re J (A Minor) (Abduction) [1990] 2 AC 562 said at p578:

"The first point is that the expression 'habitually resident', as used in art 3 of the Convention, is nowhere defined. It follows, I think, that the expression is not to be treated as a term of art with some special meaning, but is rather to be understood according to the ordinary and natural meaning of the two words which it contains. The second point is that the question whether a person is or is not habitually resident in a specified country is a question of fact to be decided by reference to all the circumstances of any particular case. The third point is that there is a significant difference between a person ceasing to be habitually resident in country A, and his subsequently becoming habitually resident in country B. A person may cease to be habitually resident in country A in a single day if he or she leaves it with a settled intention not to return to it but to take up long-term residence in country B instead. Such a person cannot, however, become habitually resident in country B in a single day. An appreciable period of time and a settled intention will be necessary to enable him or her to become so. During that appreciable period of time the person will have ceased to be habitually resident in country A but not yet have become habitually resident in country B."'

(my emphasis)

[23] In *Senior Family Advocate, Cape Town, and Another v Houtman*⁸ the court held that:

'Habitual residence

⁶ *Fakie NO v CCII Systems (Pty) Ltd* 2006 (4) SA 326 (SCA) at paras [55] to [56].

⁷ *In Re F (A Minor) (Child Abduction)* [1992] 1 FLR 548.

⁸ 2004 (6) SA 274 (CPD).

[8] *The first matter at issue is whether the father has established that the child was habitually resident in the Netherlands at the time of her removal to South Africa, on 19 September 2002. Every case that is brought pursuant to the Hague Convention on the Civil Aspects of Child Abduction requires the Court to determine the habitual residence of the child in question. This concept is key to the operation of all aspects of the Convention, and yet, it is not defined by the Convention itself. Consequently, the expression habitual residence has been interpreted according to “the ordinary and natural meaning of the two words it contains, [as] a question of fact to be decided by reference to all the circumstances of any particular case”. The intention being to avoid the development of restrictive rules as to the meaning of habitual residence “so that the facts and circumstances of each case can be assessed free of presuppositions and presumptions”.*

[9] However, the fact that there is “no objective temporal baseline” on which to base a definition of habitual residence requires that close attention be paid to subjective intent when evaluating an individual’s habitual residence. When a child is removed from its habitual environment, the implication is that it is being removed from the family and social environment in which its life has developed. The word “habitual” implies a stable territorial link; this may be achieved through length of stay or through evidence of a particularly close tie between the person and the place. A number of reported foreign judgments have established that a possible prerequisite for “habitual residence” is some “degree of settled purpose” or “intention”.

[10] *A settled intention or settled purpose is clearly one which will not be temporary. However, “it is not something to be searched for under a microscope. If it is there at all it will stand out clearly as a matter of general impression”. Where there is no written agreement between the parties and where the period of residence fails to indicate incontrovertibly that it is habitual, it is accepted that the Court may look at the intentions of the person concerned. In practice, however, it is often impossible to make a distinction between the habitual residence of a young child and that of its custodians – it cannot reasonably be expected that a young child would have the capacity or intention to acquire a separate habitual residence. In *Re F (A Minor) (Child Abduction [1992] 1 FLR 548 at 551 Butler-Sloss J* stated “a young child*

cannot acquire habitual residence in isolation from those who care for him.”

Consequently,

“although it is the habitual residence of the child that must be determined, the desires and actions of the parents cannot be ignored...The concept of habitual residence must...entail some elements of voluntariness and purposeful design”.⁹

(footnotes omitted and my emphasis)

[24] Citing *Houtman* the court in *Central Authority for the Republic of South Africa and Another v C*⁹ stated:

[63] Three basic models of determining habitual residence of a child have developed from judicial interpretation of habitual residence, namely: the dependency model, the parental rights model and the child centred model. In terms of the dependency model, a child acquires the habitual residence of his or her custodians whether or not the child independently satisfies the criteria for acquisition of habitual residence in that country. The parental rights model proposes that habitual residence should be determined by the parent who has the right to determine where the child lives, irrespective of where the child actually lives. Where both parents have the right to determine where the child should live, neither may change the child's habitual residence without the consent of the other. In terms of the child-centred model, the habitual residence of a child depends on the child's connections or intentions and the child's habitual residence is defined as the place where the child has been physically present for an amount of time sufficient to form social, cultural, linguistic and other connections. South African Courts have adopted a hybrid of the models in determining habitual residence of children. It appears to be based upon the life experiences of the child and the intentions of the parents of the dependent child. The life experiences of the child include enquiries into whether the child has established a stable territorial link or whether the child has a factual connection to the state and knows something culturally, socially and linguistically. With very young children the habitual residence of the child is usually that of the custodian parent.’

(my emphasis)

⁹ 2021 (2) SA 471 (GJ).

- [25] There is a factual dispute on the papers about whether there was a mutual intention to relocate permanently to Germany. Given the factual matrix put forward by the mother, much of which is undisputed by the father, and the absence of any other objective evidence by the father to support his version of a permanent move to Germany, this is not a case where this court can safely reject the mother's version as *'so far-fetched and clearly untenable that it can confidently be said... that it is demonstrably and clearly unworthy of credence'*.
- [26] Cut to its core, the father's belatedly constructed case of habitual, as opposed to permanent, residence in Germany is squarely underpinned on a finding in his favour of a mutual intention to relocate permanently there, since all of the other evidence such as registered residential addresses and attendance at local schools does not, on its own, establish the children's habitual residence in the particular circumstances. Another factor militating against a finding in favour of the father on habitual residence is the absence of any evidence that steps were taken to secure permanent residence for the mother, and the *ex post facto* explanation by the father (in a supplementary note after argument) as to how this might be achieved is unhelpful, since this explanation emerged for the first time after a 3 year period in Germany and more than a year after the mother returned to South Africa and thereafter retained the children here.
- [27] As I see it the father has also quoted the mother's use of the words *'indefinitely'* and *'create a new life'* out of context. *'Indefinite'* is defined in the Chambers Twentieth Century Dictionary as *'without clearly marked outlines or*

limits; not precise; undetermined; not fixed in number'. The mother also prefaced this word with '*temporarily and*', which lends support for an interpretation that the stay in Germany was intended to be of temporary, albeit uncertain, duration. Moreover the mother explained in her answering papers that the idea to '*create a new life*' only came about as a result of the realisation that the temporary stay was becoming one of being '*stuck there indefinitely*'. It seems to me that any sensible, resourceful person would have adopted the attitude she did, namely to obtain a fixed term contract of employment to earn an income to support the family, thus making the best of their circumstances at that time. This does not necessarily imply a shift of intention to one of habitual residence.

[28] It also does not assist the father to place emphasis on when South African travel restrictions were relaxed from 1 October 2020 until 22 June 2022 when they were lifted since, apart from a holiday to South Africa in December 2021, the couple and their children were not present in this country, and the father has not disclosed what the German travel restrictions were insofar as South Africa is concerned. But in any event after the couple's relationship terminated in August 2022 the father made clear that the children were to remain in Germany as is evidenced by his hiding away of their passports. Given that the children could not travel without them, travel restrictions are a neutral factor.

[29] Another consideration to be taken into account is why the father genuinely believed it necessary to hide the children's passports from the mother if there had always been a mutual intention to remain permanently in Germany until

she changed her mind in April 2023. Indeed he himself alleged in the replying papers that once the couple separated in August 2022 he was concerned that the mother might leave Germany with the children and thus asked his own mother to keep the children's passports from her.

[30] Having carefully considered the parties' respective cases and in light of what I have set out above, I am compelled to conclude that the applicants have failed to discharge the onus of establishing the jurisdictional fact of habitual residence of the children in Germany for purposes of article 3, and I therefore find that the Convention does not apply in the present matter. However, if I am wrong in this regard, it is nonetheless necessary to consider whether the mother has established her so-called article 13(b) defence.¹⁰

Whether article 13(b) defence established

[31] As previously stated the mother did not raise article 13(b) as a defence in her answering affidavit. This emerged for the first time in her heads of argument accompanied by various affidavits from third parties. The Constitutional Court in *Ad Hoc Central Authority for the Republic of SA and Another v Koch NO and Another*¹¹ recently confirmed that:

[161] Article 13(b) sets a high threshold. In Re C (Abduction: Grave Risk of Psychological Harm), Ward LJ held:

"There is . . . an established line of authority that the court should require clear and compelling evidence of the grave risk of harm or other intolerability which must be measured as substantial, not trivial, and of a severity which is much more than is

¹⁰ *Spilhaus Property Holdings (Pty) Ltd and Others v MTN and Another* 2019 (4) SA 406 (CC) at para [44].

¹¹ 2024 (3) SA 249 (CC).

inherent in the inevitable disruption, uncertainty and anxiety which follows an unwelcome return to the jurisdiction of the court of habitual residence”.

[162] The harm must be grave. In Sonderup, this Court held that the words “otherwise place the child in an intolerable situation” is indicative of the harm contemplated in Article 13(b) being of a serious nature. The Court refrained, however, from defining that concept or considering “whether in the light of the provisions of our Constitution, our courts should follow the stringent tests set by courts in other countries”.

[163] As the first judgment indicates, in other jurisdictions the threshold is set very high and Article 13(b) is construed narrowly. Apart from the United States of America, other countries like England, Canada, Australia also set a high threshold. Nonetheless, I accept the approach adopted in the first judgment that it is not necessary to afford Article 13(b) a more restrictive meaning than that conveyed by its plain meaning.

[164] Courts vigilantly ensure that the parent who has removed the child should not be able to rely on the consequences of that removal to create a risk of harm or an intolerable situation on return. An example is Re C (A Minor) Abduction, where the Court of Appeal in England had to determine whether an Article 13(b) defence was proved by the mother who had left Australia for England with the child without informing the father or obtaining his consent. The mother raised as defences in Hague Convention proceedings that neither the removal nor the retention were wrongful and, in any event, if they were, there was grave risk that the return of the child would expose him to psychological harm. In rejecting the Article 13(b) defence, Butler Sloss LJ stated:

“The grave risk of harm arises not from the return of the child, but the refusal of the mother to accompany him. The Convention does not require the court in this country to consider the welfare of the child as paramount, but only to be satisfied as to the grave risk of harm. I am not satisfied that the child would be placed in an intolerable situation, if the mother refused to go back. In weighing up the various factors, I must place in the balance and as of the greatest importance the effect of the court refusing the application under the Convention because of the refusal of the mother to return for her own reasons, not for the sake of the child. Is a parent to create the psychological situation, and then rely upon it? If the grave risk of psychological harm to a child is to be inflicted by the conduct of the parent who abducted him, then it would be relied upon by every mother of a young child who removed him out of the jurisdiction and refused to return. It would drive a coach and four through the Convention, at least in respect of applications relating to young children. I, for my part, cannot believe that this is in the interests of international relations. Nor should the mother, by her own actions, succeed in preventing the return of a child who should be living in his own country and deny him contact with his other parent” ’

[32] The mother relied on two affidavits, one of L's previous teacher and the other his soccer coach. Of course the father had no opportunity to deal with either but, be that as it may, the upshot of both is that it would be in L's best interests to remain in his current school at Paarl, which is not the test. Of more assistance is the report of the children's legal representative, Ms Anderssen, who also consulted with the children's school counsellor to whom I shall refer as Mark. Ms Anderssen reported that during her consultation with the children she was struck by their maturity and insight into the dispute between their parents and how this was affecting them. Mark confirmed that both children are mature beyond their years.

[33] During the course of her discussion with the children it became clear that neither child has any preference towards South Africa or Germany as being their country of choice. Both spoke positively about these countries and Ms Anderssen has no doubt that they feel completely at home in each. The only possible preference was expressed by L who loves the school he currently attends. In her discussion with Mark he confirmed this. The children were however clear in their wish that their parents live in the same country so that they could resume the shared care arrangement. Not that this is relevant for purposes of determining this application, but the father has been visiting the children on a monthly basis in South Africa so that they have been able to maintain a close relationship with him. Put simply, the mother has thus failed to establish an article 13(b) defence.

[34] Three final aspects. First, none of the parties expressed any objection to the interim contact regime recommended by Ms Anderssen and I shall therefore incorporate it in the order that follows. Second, given that the recommended interim contact includes provision for the children to travel to Germany for holiday purposes, their passports should continue to be retained by the Central Authority and only released for this specific purpose (or such other destination as the mother and father agree to in writing). This must remain in place until a South African court makes an order concerning the long term care and contact arrangements in the children's best interests. Third, it is appropriate that, taking into account all of the events giving rise to this application and that neither the father nor the mother were fully frank with the court, each party should pay their own costs.

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

- 1. The application is dismissed.**
- 2. Pending determination by a South African court on the long term care and contact arrangements for the two minor children of the second applicant and respondent:**
 - 2.1 the interim contact arrangements contained in paragraphs 35 and 37 of the report of the children's legal representative dated 26 April 2024 shall apply to the second applicant's contact with the children;**
 - 2.2 the children's passports shall continue to be retained by the first applicant and shall only be released for the purpose of the father**

exercising holiday contact with the children in Germany (or such other destination that the second applicant and respondent agree in writing) whereafter the passports shall immediately be returned to the first applicant; and

3. Each party shall pay their own costs.

J I CLOETE

For the applicants: Adv J Williams

Instructed by: The Office of the State Attorney (Ms A Marsh-Scott)

For the respondent: In person

For the children: Adv J Anderssen (acting pro bono)