

SOUTH AFRICA / JUDGMENT

M.E.M v T.D and Others (2023-107813) [2023] ZAGPJHC 1491 (27 October 2023)

[2023] ZAGPJHC 1491

COURT

South Gauteng High Court, Johannesburg

BEFORE

Franck

CASE / FILE NUMBER

2023-107813

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IN THE HIGH COURT OF

SOUTH AFRICA

(GAUTENG DIVISION,

JOHANNESBURG)

CASE NO : 2023-107813

(1)

REPORTABLE YES/NO

(2)

OF INTEREST TO OTHER JUDGES YES/NO

(3)

REVISED

DATE: 27/10/23

SIGNATURE

In the matter between: M[...],
M[...] E[...] (ID No. 8[...])
Applicant
and
D[...],
T[...] (ID No. 8[...])
First
Respondent
DIRECTOR
GENERAL OF HOME AFFAIRS
Second
Respondent
DEPARTMENT
OF HOME AFFAIRS
Third
Respondent
MINISTER
OF HOME AFFAIRS
Fourth
Respondent
In
re: M[...],
O[...] M[...] O[...] (ID No. 0[...])
Minor
Child
M[...],
M[...] I[...] M[...] (ID No. 1[...])
Minor
Child

JUDGMENT

FRANCK AJ:

- [1] An application was launched by the Applicant, the biological mother of two minor children aged 16 years and 11 years respectively. The First Respondent is the biological father of the two children.
- [2] The urgent application was set down for hearing on 24 October 2023 but was allocated for hearing on 26 October 2023. The Respondent only filed a notice of intention to oppose on the morning of the 26th of October 2023. At the hearing he was represented by Sheralyn Lea Pieterse Attorneys and Advocate Morland appeared on his behalf. No answering affidavit was filed and no application to stand down or to postpone was made.
- [3] The Applicant avers that her relationship with the Respondent terminated some 11 years ago, when the eldest child was aged 4. The youngest child, aged 11, has no relationship with the Respondent.

- [4] The Applicant instituted proceedings in the Randburg Children's Court for relief relating to the minor children. An order was obtained on the 6th of August 2019 that reads as follows:

"In terms of Section 46 of the Children's Act 38/2005, it is ordered that the Applicant (biological mother) of the minor child

concerned will have sole parental rights in respect of all administrative functions required to be fulfilled by both parents.

This will include all documents for applications for school admissions, medical matters, travelling etc.

For these purposes, the consent of the Respondent (biological father of the minor child concerned), T[...] D[...], Identity No : 8[...], is not required and that the Applicant (biological mother) will suffice."

- [5] The Applicant ultimately seeks the termination of the First Respondent's parental rights and responsibilities in respect of the minor children in part B of her application.

- [6] The Randburg Magistrates' Court appointed a social worker, Mr Ngubane on the 22nd of February 2023 to investigate this matter and to produce a report by the 25th of April 2023 regarding the best interests of the minor children. It was postponed on that day to the 28th of June 2023, due to the report not being ready. On that date, another order was issued in order to assist the appointed social worker to obtain the details of the First Respondent. On the 4th of July 2023, the First Respondent appeared in the Randburg Magistrates' Court although no affidavit was filed by him during those

proceedings.

- [7] On the 4th of July 2023 the Respondent informed the court that he consented to the travel arrangements made in respect of the minor children.

On the 11th of September 2023, the First Respondent did not appear in the Randburg Magistrates' Court. The social worker's report

was still not available and the Applicant was informed that, the relief that she sought was not competent to be granted in the

Magistrates' Court. This is presumably since the termination of parental rights and responsibilities in toto would include termination of guardianship, which falls to the High Court to decide. The Applicant accordingly withdrew the

application in the Randburg Magistrates' Court.

- [8] The social worker undertook to provide the report verbally, on the 18th of October 2023, by no later than the 19th of October 2023. This, however, did not occur.

- [9] Counsel for the Applicant indicated to the court that, the eldest child, currently aged 16, wishes to study overseas and for this purpose, application has been made to schools in Paris, The Hague and Rotterdam. All of these institutions require confirmation that the Applicant is solely entitled to sign all enrolment documentation on behalf of the minor child. The Applicant contends that the order granted by the Randburg Magistrates' Court is either ambiguous, or insufficient to make provision for the enrolment of the minor child and for such action to be undertaken solely by the Applicant.
- [10] The urgency of the application relates to the eldest child's schooling, it does not concern the youngest child.
- [11] Applicant's counsel indicated that the Applicant accepts sole responsibility for the fees payable in respect of the overseas educational institutions.
- [12] The Respondent's counsel indicated that he would oppose the application on the basis of lack of urgency, failing which, he would argue on the Applicant's papers.
- [13] Initially, the court indicated that it was inclined to order the social worker to urgently produce a report regarding the best interests of both minor children and the court requested the parties to discuss the way forward and to attempt to find a via media, that would be in the best interests of both minor children, but especially the 16 year old son, who wishes to commence his schooling abroad.
- [14] When court recommenced, counsel for the Respondent indicated that the Respondent will consent to the minor child studying abroad and will co-operate in that regard with the Applicant. The Respondent's counsel, however, stated that provision should be made for contact between the Respondent and both minor children together with a phased-in reintegration plan in respect of both children.
- [15] The Respondent also made a tender towards maintenance of R2 000,00 per month and contributions towards stationery and clothing (unquantified). This court cannot deal with the issue of maintenance.
- [16] Applicant's counsel indicated that he received an undertaking from the social worker, that the social workers report would be ready by the 1st of November 2023.
- [17] The parties could make no further headway and Applicant's counsel submitted that the Applicant was not in agreement to place the minor children in a traumatic situation and to force them to have contact with the Respondent. I am in agreement, that contact cannot be ordered without the recommendations of the social worker.
- [18] Currently, the 16 year old son has not yet been enrolled in a school, as a result of the above difficulties that the Applicant has experienced with the enrolment process. The Applicant is the minor children primary caregiver and the custodial parent. The court is of the view that arrangements should be made in order to facilitate the enrolment process, in the best interests of the 16 year old son in the interim and that the parties be allowed to either file

affidavits or supplement affidavits once the social worker's report becomes available, in order to re-enrol the matter regarding issues of contact in respect of both children, if necessary. Such enrolment, would in all probability not be of an urgent nature and I would urge the parties,

to attempt mediation of disputes relating to contact, after receipt of the social worker's report.

[19] As this application involves the well-being and schooling of a minor child, the court heard this matter as one of urgency and urgent relief will be granted relating to the eldest child.

An order is made in the following terms, pending finalisation of Part B:

[1] In respect of the minor child, M[...], O[...] M[...] O[...] (ID No. 0[...]) ("the minor child"), the Applicant, M[...], M[...] E[...] (ID No. 8[...]) is authorised and shall be entitled to :

[1.1] solely apply for the minor child's passport.

[1.2] solely consent to the minor child's departure or removal from the Republic, for the purposes of the minor child attending schooling abroad.

[1.3] sign all enrolment documentation or other documentation relating to the minor child's schooling on behalf of the minor child.

[1.4] sign all travel documentation and/or affidavits required on behalf of the minor child.

[2] The Respondent's consent is not required regarding any of the above actions.

[3] The Applicant shall be solely responsible for the payment of all fees associated with such educational institutions which the minor child may apply to, or attend.

[4] The social worker, Mr Ngubane, appointed by the Randburg Magistrates' Court shall, in producing his report with recommendations for the court, consider and report on the following regarding both minor children:

[4.1] Whether or not, it is in the minor children's best interests, to have contact with the Respondent, their biological father.

[4.2] In the event that contact is recommended, the extent and phasing in of such contact including whether or not reunification or reintegration therapy is necessary.

[4.3] Recommended contact pre- and/or post-reunification and/or reintegration therapy with both minor children, taking into account that, the eldest child intends to study abroad.

[4.4] Whether or not the appointment of a parenting co-ordinator is necessary or feasible.

[5] The Applicant shall cause this order to be served on Mr Ngubane, the appointed social worker as well as the Second, Third and Fourth Respondent.

- [6] Upon production of the social worker's report, the Applicant is granted leave to supplement her affidavit, within 15 days from production of the report and the First Respondent is granted leave to file an answering affidavit, dealing with the founding affidavit as well as the supplementary affidavit within 15 days from date of filing of the Applicant's supplementary affidavit. In the event that the Applicant fails to file a further affidavit, as stipulated above the First Respondent shall file his affidavit within 15 days of the expiration of the first 15 day period.
- [7] The remainder of the relief sought by the Applicant, including the relief relating to M[...] M[...] I[...] M[...] (ID no. 1[...]) is postponed for determination as part of Part B of the Applicant's application, for final relief.
- [8] Costs are reserved, for determination upon finalisation of Part B.

FRANCK, A J

27 October 2023

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Prepared on 11 October 2026 · Esheria