

SOUTH AFRICA / JUDGMENT

S.P v C.W and Another (Leave to Appeal) (88660/2019) [2024] ZAGPPHC 1244 (5 December 2024) [2024] ZAGPPHC 1244

COURT

North Gauteng High Court, Pretoria

BEFORE

Millar

CASE / FILE NUMBER

88660/2019

Source: saflii.org · Research copy typeset by Esheria. Not court-issued or certified.

Source record

SAFLII

Note: Certain

personal/private details of parties or witnesses have been redacted from this document in compliance with the law and SAFLII

Policy

IN THE HIGH COURT

OF SOUTH AFRICA

(GAUTENG DIVISION,
PRETORIA)

CASE

NUMBER: 88660/2019

(1) REPORTABLE:

YES/NO

(2) OF INTEREST TO

OTHER JUDGES: YES/NO

(3) REVISED

DATE: 5 DECEMBER 2024

SIGNATURE:

In the matter

between: P[...], S[...]
J[...]
APPLICANT
and
W[...], C[...]
J[...]
FIRST
RESPONDENT
W[...],
B[...]
SECOND
RESPONDENT

In re: W[...], C[...]
J[...]
FIRST
APPLICANT
W[...], B[...]
SECOND
APPLICANT
and
P[...], S[...]
J[...]
FIRST
RESPONDENT
P[...], H[...]
I[...]
SECOND
RESPONDENT
AMINAAB KHAN N.O.
(in her capacity as
nominee for ABSA TRUST LTD, the duly appointed trustee of the C[...]
J[...], W[...], Testamentary
Trust)
THIRD
RESPONDENT
ABSA TRUST LIMITED
N.O.
(in their capacity as
the appointed executor)
FOURTH
RESPONDENT
ABSA PENSION FUND
FIFTH
RESPONDENT
MASTER OF THE HIGH
COURT
SIXTH
RESPONDENT

In re: ADV
LC HAUPT SC in her capacity as
curator ad litem for
the minor children -
M[...] W[...]
(born on 12 June 2009)
R[...]
W[...] (born on 07 May 2015)

Coram: Millar J
Heard

on: 5 December
2024

Delivered: 5 December
2024 - This judgment was handed down electronically by circulation
to the parties' representatives by email, by
being uploaded to
the CaseLines system of the GD and by release to
SAFLII. The date and time for hand-down is deemed to be 14H00 on 5
December
2024.

JUDGMENT

MILLAR J

- [1] This is an application for leave to appeal against a judgment and order handed down on 2 December 2024. The judgment and order provide inter alia for the removal of Mr. P[...] as guardian of two minor children and for the appointment of Mr. W[...] in his stead. The order also provides that the primary residence and care are also awarded to Mr. W[...] and his wife. There are in addition ancillary orders relating to the engagement between the guardian and primary care giver/s and the Trust established for the minor children by their late father.
- [2] Pursuant to the order, arrangements were made for the youngest of the two minor children to take up residence with Mr. and Mrs. W[...]. Presently, no such arrangement has occurred in respect of the older child as she has been away on a school sporting camp and will only return today.
- [3] Counsel for Mr. P[...] was at pains to explain that although this application for leave to appeal was only served after the youngest child had already been placed in the care of Mr. and Mrs. W[...], this had occurred in order to comply with the court order and was not to be interpreted as an acquiescence to the order which would have had the effect of perempting Mr. P[...]’s right to apply for leave to appeal.

- [4] I accept that this is so. When this application for leave to appeal was called, there was also at the same time, brought by Mr. and Mrs W[...], an application in terms of section 18(1) and (3) of the Superior Courts Act. I heard both applications and reserved judgement. This judgement deals only with the application for leave to appeal. The second application will be dealt with by me in a separate judgement.
- [5] The test for granting leave to appeal pertinent to the present matter is set out in section 17(1) of the Superior Courts Act[1] as follows:
- “(1) Leave to appeal may only be given where the judge or judges concerned are of the opinion that*
- (a)
- (i) the appeal would have a reasonable prospect of success or
- (ii) there is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration”
- [6] I have considered the grounds upon which the application has been brought. None of the grounds are novel and are in their terms a repetition of the arguments made on behalf of Mr. P[...] in the main case. It suffices to states that the grounds upon which the application is predicated apply to every finding made that did not support the case made out on behalf of Mr. P[...].
- [7] In the reasons given by me in the judgment for the orders granted, I addressed the case advanced for Mr. P[...]. I indicated in the judgment that the papers in the matter extended to 4726 pages and furthermore that I did not intend to deal with every incident that had happened over the 5 years of this litigation. Mr. P[...] sought to present the main case on this basis and similarly so, his application for leave to appeal.
- [8] I have considered the grounds upon which the application for leave to appeal has been advanced and the reasons given by me in the judgment for the orders that were granted. I have also considered the submissions made by counsel for the respective parties as well as the curatrix in the present application.
- [9] I am not persuaded that another court would come to a different conclusion or that there is some other compelling reason why leave to appeal should be granted.
- [10] The costs will follow the result. It is necessary to mention that the same course of conduct with regards to unmeritorious attacks on previous courts and on the curatrix that was adopted in the main case, has been adopted in this application and hence the order for costs will be on the same basis as that granted in the main application.
- [11] In the circumstances, I make the following order:

[11.1] The application for leave to appeal is refused with costs on the scale as between attorney and client. The costs of counsel for the respondents in this application as well as for the curatrix are awarded on scale C.

A MILLAR

JUDGE OF THE HIGH COURT

GAUTENG DIVISION, PRETORIA

HEARD ON:

5 DECEMBER 2024

JUDGMENT DELIVERED ON:

5 DECEMBER 2024

IN THE APPLICATION FOR LEAVE TO APPEAL

CURATRIX AD LITEM:

ADV. L HAUPT SC

ATTORNEY FOR CURATRIX AD LITEM: SANET DE LANGE ATTORNEYS

REFERENCE:

MS. N FOURIE

COUNSEL FOR APPLICANT:

ADV. H GEYER

INSTRUCTED BY:

GROHOVAZ ATTORNEYS INC.

REFERENCE:

MS. A GEYER

COUNSEL FOR THE RESPONDENTS: ADV. R FERREIRA

INSTRUCTED BY:

VDT ATTORNEYS

REFERENCE:

MR. D FISCHER

[1] 10 of 2013.

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.saflii.org/za/cases/ZAGPPHC/2024/1244.html>

CASE PAGE <https://chat.esheria.ai/case-law/south-africa/sp-v-cw-and-others-unknown-topic-agpphc-2024>

Prepared on 10 October 2026 · Esheria