

SOUTH AFRICA / JUDGMENT

VJS v SH (19578/2024) [2024]

ZAWCHC 333 (22 October 2024)

[2024] ZAWCHC 333

COURT

Western Cape High Court, Cape Town

BEFORE

Lekhuleleni

CASE / FILE NUMBER

19578/2024

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FLYNOTES:

CIVIL PROCEDURE –
Commissioner of oaths – Remote
commissioning –
Applicant in Pakistan –
Founding affidavit emailed to him – Commissioning conducted
over Zoom video call –
Firststrand Bank v Briedenhann
discussed – Signing and commissioning of affidavits through
video conferencing will save
time, reduce travel expenses and
expedite finalisation of cases – Substantial compliance with
the regulations in this
case – Regulations Governing the
Administering of an Oath or Affirmation, reg 3(1).
REPUBLIC
OF SOUTH AFRICA
IN
THE HIGH COURT OF SOUTH AFRICA
(WESTERN
CAPE DIVISION, CAPE TOWN)
CASE
NO: 19578/2024
In

the matter between:	VJS Applicant And SH Respondent
Heard:	10 October 2024
Delivered:	Electronically on 22 October 2024

JUDGMENT

LEKHULENI J

Introduction

- [1] This is an application in which the applicant seeks an order that his parental responsibilities and rights as contemplated in section 18(2)(a),(b),(c), and (d) of the Children's Act 38 of 2005 in respect of the minor child PJH, born on 24 November 2017 be terminated. The applicant seeks an order deleting certain paragraphs of the settlement agreement which was incorporated into the final order of divorce issued by this court on 14 December 2022, under case number 8870/22, which finalised the dissolution of the marriage between the applicant and the respondent. These paragraphs specifically address the applicant's obligations to maintain the minor child and outline the applicant's access rights to the child.
- [2] In addition, the applicant further seeks an order permitting him to approach the Department of Home Affairs for the alteration and deletion of his name as the father of the minor child from both the population register and her birth certificate without requiring the respondent's consent.

Background

Facts

- [3] The applicant is an adult male, a project manager for the local guard force for the US Embassy in Pakistan, which is situated in Islamabad. He is, however, domiciled in Kraaifontein in the Western Cape. The applicant and the respondent were married to each other in 2012. On 14 December 2022, this Court granted a decree of divorce dissolving the marriage between the applicant and the respondent and incorporated the terms of a settlement agreement entitled 'parenting

plan' dealing with care and contact and maintenance of the minor child into the final divorce order.

- [4] In terms of the said settlement agreement, it was ordered that the minor child born during the marriage between the applicant and the respondent would primarily remain in the care of the respondent subject to the applicant's rights of contact. The parties agreed that the respondent and the applicant would make joint decisions in respect of the minor child. The applicant was further ordered to pay maintenance towards the minor child in the sum of R7500 per month.
- [5] The parties also agreed in the settlement that the applicant will keep the minor child as a dependent on his medical aid scheme or hospital plan. If the medical aid or hospital plan does not cover certain medical expenses, the parties agreed that they should be equally liable for those expenses. The applicant and respondent further agreed that the respondent would remain the primary carer of the minor child subject to the applicant's rights of contact. Additionally, the parties agreed that the respondent and the applicant would make joint decisions in respect of the minor child. To date, the applicant is fully compliant with the divorce order, including maintenance payments for the minor child.
- [6] However, the applicant asserts that certain information recently came to his attention, which indicated that the applicant may not be the biological father of the minor child. This information relates to a WhatsApp conversation between the respondent and one Mr MW that came to the applicant's attention. The applicant avers that the said conversation clearly demonstrated that the respondent and Mr MW were involved in an extramarital affair during at least a period when the applicant was working abroad. On reflection, the applicant stated that he realised that this period corresponded more or less with the minor child's estimated date of conception. In the WhatsApp conversation, Mr MW asked the respondent in Afrikaans "kyk moi na my dogtertji," loosely translated to "please look after my little girl."
- [7] In response to the message, the respondent indicated that she knew the minor child's real father and where he was. The applicant attached an excerpt of the WhatsApp messages between the respondent and Mr MW to this application. Pursuant to this information coming to the applicant's attention, the applicant underwent two paternity tests. The applicant had a paternity test done by LAB DNA Scientific (Pty) Ltd. Pursuant to the test done in by this lab, the applicant was excluded as the biological father of the minor child. The applicant subsequently had another paternity test done by Genediagnostics (Pty) Ltd. The test conducted by this lab also excluded the applicant as the biological father of the minor child. The applicant asserted that the two test results constitute conclusive evidence that he is not the minor child's biological father.
- [8] According to the applicant, it appears the respondent and Mr MW intentionally withheld this pertinent information from him. The applicant only assumes that this was done for the purpose of benefiting from his maintenance payments. The applicant stated that from this information, particularly the test results, it follows that he should have no parental rights and responsibility in respect of the minor child and, furthermore, that the divorce order needs to be amended by deleting the relevant clauses to reflect the same. In addition, the applicant implored the court to order that the population register, and the minor child's

birth certificate be amended to reflect the true position regarding the aforesaid. The applicant sought leave to do so without the consent of the respondent.

- [9] This application with a date of hearing, the relevant annexures and the blood test results were served personally upon the respondent, and the latter did not file any notice to oppose or an answering affidavit. Furthermore, the respondent did not appear at the hearing of the matter.

Preliminary Point

- [10] As previously stated, the applicant is domiciled in the Western Cape but currently works in Islamabad, Pakistan, as a project manager for the local guard force of the US Embassy. As a result, his affidavit was not conventionally attested or commissioned. The applicant's legal representative filed an affidavit stating that the applicant is constantly being monitored and that any visit by him to the embassy or police station will raise questions that can put his employment at risk. The applicant's legal representative also indicated that the applicant will only be returning to South Africa at the end of the year and that the divorce order, particularly the maintenance clauses regarding the minor child, will remain operative until the relief sought herein is granted.
- [11] As a result, on 05 September 2024, the applicant's legal representative transmitted an unsigned version of the founding affidavit to the applicant through e-mail. Thereafter, and on 05 September 2024, the applicant, the commissioner of oaths, and the applicant's legal representative were on a video conferencing call via the Zoom platform. The applicant identified himself by presenting his identity document to the commissioner of oaths. The applicant's attorney stated that he previously met the applicant whilst the applicant was in South Africa and could confirm that it was indeed the same person known to him.
- [12] During the Zoom video call, the applicant proceeded to initial the affidavit and annexures and signed on the last page above his name while he, the commissioner of oaths, was on the call. Thereafter, the commissioner asked the applicant whether he knew and understood the contents of the declaration that was emailed to him, whether he had any objection to taking the prescribed oath and whether he considered the prescribed oath as binding on his conscience.
- [13] The applicant acknowledged that he knew and understood the contents of the declaration and informed the commissioner of oaths that he did not have any objection to taking the prescribed oath and that he considered the oath to be binding on his conscience. Pursuant thereto, the commissioner then administered the oath, causing the applicant to utter the words, "I swear that the contents of the declaration are true, so help me God."
- [14] The applicant thereafter scanned and emailed a copy of his signed affidavit to his attorney's email address. Once the scanned copy of the signed affidavit was received, the applicant's attorney transmitted the same to the commissioner of oaths. The commissioner in both the applicant and the applicant's legal representative's presence printed the affidavit out,

initialled every page, completed and signed the certificate on the last page of the affidavit and completed his particulars as required in terms of the relevant Act. The original was subsequently sent to his office via courier which he subsequently filed in the court file.

- [15] The commissioner of oaths filed a confirmatory affidavit stating that apart from the medium of Zoom video call conferencing being used, compliance has taken place with the regulations governing the administering of oaths and affirmations promulgated under section 10 of the Justices of the Peace and Commissioners of Oaths Act 16 of

1963. In the confirmatory affidavit, the commissioner of oaths further stated that the signature on the affidavit is that of the applicant.

Legal principles on commissioning of affidavits

- [16] The Regulations Governing the Administration of Oaths have been promulgated in terms of section 10 of the Justices of the Peace and Commissioners of Oaths Act 16 of 1963.[1] Section 5 of the Act confers upon the Minister of Justice or officer of the Department of Justice delegated thereto in writing by the Minister the power to appoint any person as a commissioner of oaths for any area fixed by the Minister or delegated officer. While on the other hand, section 7 deals with the power of a commissioner of oaths. It states that:

“Any commissioner of oaths may, within the area for which he is a commissioner of oaths, administer an oath or affirmation to or take a solemn or attested declaration from any person: Provided that he shall not administer an oath or affirmation or take a solemn or attested declaration in respect of any matter in relation to which he is in terms of any regulation made under section ten prohibited from administering an oath or affirmation or taking a solemn or attested declaration, or if he has reason to believe that the person in question is unwilling to make an oath or affirmation or such a declaration.”

- [17] Section 8 of the Act deals with the administration of oaths or affirmations outside of the borders of the Republic. Section 8(1)(a) and (b) provide for the appointment of holders of any office in a country outside the Republic as commissioners of oaths at the place where they hold office. Section 8(2) requires a commissioner of oaths attesting an affidavit outside the republic to authenticate the affidavit by affixing thereto the seal or impressing thereon the stamp used by him in connection with his office or, if he possesses no such seal or stamp, certify thereon under his signature to that effect.

- [18] Section 10(1)(b) of this Act confers upon the Minister of Justice the power to make regulations prescribing the form and manner in which an oath or affirmation shall be administered, and a solemn or attested declaration shall be taken, when not prescribed by any other law. To this end, Regulations 1 and 2 of the Regulations Governing the Administration of an oath or affirmation set out the manner and form in which an oath or affirmation must be administered. While Regulations 3 and 4 provide as follows:

3(1) The deponent shall sign the declaration in the presence of the commissioner of oaths.

(2) If the deponent cannot write he shall in the presence of the commissioner of oaths affix his mark at the foot of the declaration: provided that if the commissioner of oaths has any doubt as to the deponent's inability to write, he shall require such inability to be certified at the foot of the declaration by some other trustworthy person.

4(1) Below the deponent's signature or mark the commissioner of oaths shall certify that the deponent has acknowledged that he knows and understands the contents of the declaration and he shall state the manner, place and date of taking the declaration.

4(2) the commissioner of oaths shall –

- (a) sign the declaration and print his full name and business address below his signature; and
- (b) state his designation and the area for which he holds his appointment or the office held by him if he holds his appointment *ex officio*.

[19] In terms of Regulation 6, a commissioner of oaths shall not charge any fee for administering any oath or affirmation or attesting any declaration. Regulation 7 prohibits a commissioner of oaths to administer an oath or affirmation relating to a matter in which he has an interest.

Is the applicant's affidavit commissioned via an audiovisual link a valid affidavit?

[20] It is trite that a court has a discretion to refuse to receive an affidavit attested otherwise than in accordance with the regulations depending upon whether substantial compliance with them has been proved or not. It is for the court, after considering the totality of the evidence, to determine whether as a fact substantial compliance with the regulations is proved. Whether there has been such a substantial compliance with the regulations is a matter of fact, not of law.[2] Compliance with the regulations provides a guarantee of acceptance in evidence of affidavits attested in accordance therewith.

[21] From the reading of Regulation 3(1), it is evident that a deponent must sign the declaration in the presence of the commissioner of oaths. The purpose of obtaining the deponent's signature to an affidavit is primarily to obtain irrefutable evidence that the relevant disposition was indeed sworn to.[3] It has been held that the provisions of this regulation are not peremptory.[4] In other words, non-compliance with the regulation does not intrinsically invalidate an affidavit.

[22] In this case, it is common cause that the applicant's affidavit was commissioned unconventionally through a virtual platform whilst the deponent was outside the republic by a commissioner of oaths in the republic. The commissioner of oaths, a practising advocate of this division, confirmed in a confirmatory affidavit that he had no interest in this matter. He stated that he was satisfied that the applicant was the person who identified himself to be. Additionally, the commissioner of oaths stated that apart from the medium of Zoom video conferencing being used, compliance has occurred with the regulations governing administering oaths and affirmations promulgated under section 10 of the enabling Act.

- [23] From the affidavit of the applicant's legal representative and the commissioner of oaths' deposition, it is evident that the deponent produced a form of identification to the commissioner's satisfaction before the oath was administered. In addition, the commissioner of oaths asserted that he was satisfied that the signature on the affidavit belonged to the applicant. In other words, the applicant signed the affidavit virtually in his sight and of the commissioner of oaths. The only difficulty in this matter is that the affidavit was not signed in the physical presence of the deponent as required by the regulation.
- [24] The remote commissioning of affidavits has been the subject of debate in recent times.[5] In various cases, applicants sought a broad interpretation of "in the presence of" in regulation 3(1). The phrase in the presence of has been interpreted by the courts in various sections of our law. For instance, in *Gulyas v Minister of Law and Order*,[6] the court considered section 40(1)(a) of the Criminal Procedure Act 51 of 1977 ('the CPA') which speaks of an offender who "commits or attempts to commit" an offence in the presence of a peace officer. The court equated in the presence of to be analogous to within eyeshot or immediate vicinity or proximity of for the purposes of section 40 (1)(a).[7] The reasons for a commissioner of oaths and the deponent to be within eyeshot of one another is for the commissioner of oaths to ascertain the identity of the deponent by examining the identity document provided and comparing it to the deponent, and to ensure that the correct papers are properly deposited to.
- [25] Section 158 of the CPA provides that except as otherwise expressly provided by the Act or any other law, all criminal proceedings in any court shall take place in the presence of the accused. Furthermore, a court may, on its own initiative or on application by the public prosecutor, order that a witness, irrespective of whether the witness is in or outside the Republic or an accused, if the witness or accused consents thereto, may give evidence by means of closed-circuit television or similar electronic media. In other words, a witness may take oaths and testify in the presence of the accused through a close-circuit link. This arguably expands the in the presence of the accused phrase.[8]
- [26] Recently, section 37C of the Superior Courts Act 10 of 2013 and section 51C of the Magistrates Court Act 32 of 1944 were enacted to permit courts to receive evidence via remote audiovisual links in non-criminal proceedings. This development enhances the flexibility and accessibility of the judicial process. Section 37C(5) of the Superior Courts Act establishes that a witness who gives evidence by means of an audiovisual link is regarded as a witness who was subpoenaed to give evidence in the court in question.[9] In other words, a witness who takes oath and testifies via audiovisual link is considered as a witness who testified physically

in court. Section 37(6) provides that for purposes of this section, 'audiovisual link' means facilities that enable both audio and visual communications between a witness and persons in a courtroom in real-time as they take place. Section 158(6) of the CPA reinforces these important sentiments, underscoring that:

“For purposes of this section, a witness who is outside the Republic and who gives evidence by means of closed-circuit television or similar electronic media, is regarded as a witness who was subpoenaed to give evidence in the court in question.” (emphasis added)

- [27] These developments, in my view, are a testament that the benefits of technology should be utilised and incorporated into our justice system to improve the efficiency of civil litigation in our courts. This will go a long way in optimising access to justice for civil court litigants. I understand that different divisions of the High Court in our country have adopted CaseLines, where pleadings, affidavits, and relevant documents are uploaded to the CaseLines portal. In my opinion, this clearly demonstrates that the courts are acknowledging the significance of technology and the advantages it brings. This recognition reflects an evolving understanding of how technology can enhance legal processes and improve access to justice.
- [28] In *FirstRand Bank limited v Briedeman*,^[10] the court observed that the language of Regulation 3(1) when read in the context of the Regulations as a whole, suggests that the deponent is required to append their signature to the declaration in the physical presence or proximity of the commissioner. The court noted that this accords with the concern for place insofar as the exercise of the authority to administer an oath is concerned, as appears from the Act. The court stated that it is not ordinarily open for a person to elect to follow a different mode of oath administration than that which is statutorily regulated.
- [29] I appreciate the views expressed by the court however, I am of the view that each case must be dealt with on its own merits. Furthermore, if a witness can take an oath and testify through a close circuit television or audiovisual link as envisaged in section 37C of the Superior Courts Act and section 158 of the CPA, the same principle, in my view, applies with equal force to a deponent who takes an oath when an affidavit is commissioned through the audiovisual link. Expressed differently, in my view, there is no difference between taking an oath through a virtual platform for testifying and taking an oath when an affidavit is commissioned using an audiovisual link.
- [30] We need to remind ourselves that the purpose of administering an oath normally before a witness testifies is to ensure that he does not speak lightly and frivolously but weighs his words; to impress on him the solemnity of the occasion, and above all to provide a sanction against untruthfulness.^[11] This principle is applicable in the same manner, irrespective of whether the witness is physically present with the commissioner of oaths or is participating through an audiovisual link.
- [31] In *Uramin (incorporated in British Columbia t/a Areva Resources Southeren Africa v Perie*,^[12] the court stated that courts must adapt to the requirements of the modernities within which they operate and upon which they adjudicate.

The court also stated that the Constitution and the Rules enjoin the courts to make the necessary developments on a case-by-case

and era-by-era basis.

[32] As modernisation unfolds, it is important for the courts to open themselves to the modern trend of technology.[13] Interestingly, notwithstanding the provisions of Regulation 3(1) discussed above that the deponent is required to append his signature

to a declaration in the physical presence of the commissioner, the regulations applicable in domestic violence application depart

completely from this requirement and underscores the need to embrace the evolution of technology. Section 1(3) of the Domestic Violence Regulations 2023,[14] provides that:

“If any document that requires to be made under oath or on affirmation is submitted electronically or through the online portal, the clerk of the court may administer the oath or affirmation through an audio-visual communication with the person required to sign the document: Provided that the document is signed before the oath or affirmation is administered.”

(emphasis added)

[33] I am mindful that courts must be careful not to substitute their preferred policy choices for those of the legislature, a democratically elected body entrusted with legislative powers. I am also regardful that courts must respect the legislation the legislature enacts as long as the legislation does not offend the Constitution.[15] However, I am of the firm view that there are cases where it poses great difficulty and hardship or even impossible for litigants to comply with the Regulations.[16] In such circumstances, it is my respectful view that courts ought to adopt a more pragmatic approach and accept affidavits executed via audiovisual links. However, the court must still be satisfied that there was substantial compliance with the Regulation before condonation for non-compliance is granted. This will, in my opinion, make access to courts a reality for everyone, as envisaged in section 34 of the Constitution.

[34] Moreso, given the unfolding modernisation of the courts, sections 13(4), 14 and 15 of the Electronic Communications and Transactions Act 25 of 2002 have done well to facilitate the use of electronic communications, particularly of data messages (e-signatures included).

[35] The reality is that when the Justices of the Peace and Commissioners of Oaths Act was passed over 60 years ago, internet and video conferencing were not envisaged. Notably, South Africa's legal system depends significantly on evidence provided on affidavits. In practice, almost every civil court application in the High Court and the Magistrate's Court requires a signed and commissioned affidavit. Rule 55(1)(a) of the Magistrate's Court Rules and Rule 6(1) of the Uniform Rules of Court provides that every application must be brought on notice of motion supported by an affidavit as to the facts upon which the applicant relies for relief. Furthermore, most agreements in financial institutions are done electronically. To this end, I agree with the views expressed by Singh that the traditional wet ink signing of affidavits is extremely cumbersome, as the signing and commissioning process is costly and time-consuming, particularly for witnesses who are outside the shores of the Republic.[17]

- [36] Undoubtedly, the virtual e-signing of affidavits could serve as an easier, faster and more cost-effective measure in civil litigation. The Rules Board for Courts of Law has considered that the benefits of technology should be utilised and incorporated into the civil justice system to improve the efficiency of our courts and the processes of litigation, which would optimally utilise resources and enhance access to justice for users of the civil justice system.[18] The modernisation of the civil litigation process will provide several advantages, including reduced costs, prevention of unreasonable delays, and a quicker resolution of cases. Evidently, the ability to sign and commission affidavits through video conferencing will significantly save time, reduce travel expenses, and expedite the finalisation of cases.
- [37] In the circumstances, it is inherently critical in my view that the Justices of the Peace and Commissioners of Oaths Act and the relevant Regulations should be amended to bring them in line with modernisation by allowing for electronic signing and commissioning of affidavits.
- [38] In this case, I am satisfied that there was substantial compliance with the Act and the Regulations. The evidence placed before this court clearly establishes that the purposes of Regulation 3(1) have been complied with. In my view, it will not be in the interest of justice for the applicant to travel to South Africa to have his affidavit commissioned in the physical presence of the commissioner of oaths. It will only delay the finalisation of the application and incur costs. I therefor accept the applicant's affidavit deposed in the manner described in this judgment as complying in substance with the provisions of the Regulations.

The applicant's application on the merits

- [39] The applicant applies that his parental rights and responsibilities be terminated as it is established that he is not the father of the child. Under the common law, when a child is born into an existing marriage, the husband of the mother of the child is presumed to be the biological father, and this is known as the *pater est quem nuptiae demonstrant maxim*. However, this presumption is rebuttable.[19] This means that it can be rebutted if the husband produces proof to the contrary.
- [40] The applicant and the respondent were legally married. The child was born during their marriage. Pursuant to the *pater est quem nuptiae demonstrant maxim*, the applicant was presumed to be the father of the child. In terms of section 20 of the Children Act 38 of 2005, the applicant, as a putative father, had full parental responsibilities and rights in respect of the said child as he was married to the respondent at the time of the child's conception and birth. In terms of sections 19 and 20 of the Children's Act, the applicant and the respondent both hold full parental rights and responsibilities in respect of the child.

- [41] It has now been established in this matter that the applicant is not the father of the child. Two scientific tests have excluded the applicant as the father of the child. The applicant asserted that the conversation between the respondent and Mr MW demonstrated that they were involved in an extramarital affair when the applicant was working abroad. On reflection, the applicant realised that this period corresponded with the minor child's estimated date of conception.
- [42] As stated above, the respondent was served with this application personally and she chose not to oppose this matter. The sheriff explained to her the nature and the exigency of the application. Notwithstanding, the respondent chose not to attend court. In my view, on the facts placed before this court, it is abundantly clear that the respondent knew all along that the applicant was not the father of the child but decided to conceal this information from the applicant. Her communication with Mr MW clearly demonstrates that she knew that the applicant was not the child's father. In addition, her WhatsApp communication with Mr MW accords with the scientific test results, excluding the applicant as the father of the child. Ostensibly, the respondent hid this information from the applicant to receive maintenance from him. In my view, the respondent's conduct appears to be a paternity fraud. Her conduct in my view, constitutes misrepresentation.
- [43] The respondent intentionally identified the applicant as the father of her child knowing very well that the child's father was Mr WM. As previously stated, the DNA test have excluded the applicant as the father of the child. I am mindful of the centrality of the child's best interests as enshrined in section 28(2) of the Constitution. However, the applicant has no legal duty to maintain the child. He should not be saddled with the responsibility of paying child maintenance, as the child is not his. In my view, the applicant's application for the termination of his parental responsibilities and rights, as outlined in the settlement agreement, should be granted.

Order

- [44] Given all these considerations, the following order is granted:

44.1 The applicant's parental responsibilities and rights, as contemplated in section 18 of the Children's Act 38 of 2005 in respect of the minor child PJH, born on 24 November 2017, are hereby terminated.

44.2 Paragraphs 1 (including sub-paras), 2.4, 2.5, 3 (including sub-paras), paragraph 4 (including sub-paras), paragraph 5 (including sub-paras), and 6.4 of the settlement agreement entitled 'parenting plan' incorporated in the divorce order granted on the 14 of December 2022 in this court under case number 8870/2022 (dealing with maintenance and contact) are hereby deleted.

44.3 The applicant is granted leave to approach the Department of Home Affairs for the alteration and deletion of his name as the father of the minor child on both the population register and her birth certificate without the consent of the respondent.

44.4 No order is made as to costs.

LEKHULENI JD

JUDGE OF THE HIGH COURT

APPEARANCES

For the applicant: Adv. S Van der Merwe

Instructed by: Jos Veldhuizen Attorneys

[1] See GN R774 of 23 April 1982.

[2] S v Munn 1973

(3) SA 734 (NC) at 737H – 738A.

[3] S v Munn (supra) at 737F.

[4] Ladybrand Hotels (Pty) Ltd v Stellenbosch Farmers' Winery Ltd 1974 (1) SA 490 (O).

[5] LexisNexis South Africa (Pty) Ltd v Minister of Justice and Correctional Services (2023-010096)

[2024] ZAGPPHC 446 (29 April 2024); Nedbank Limited v Alvetex 15 (Pty) Ltd and Others (unreported case number: 042994/2023)(18 June 2024); ED food S.R.L v Africa's Best (Pty) Ltd (unreported case number: 1245/2022) (GJ)(14 March 2024).

[6] 1986 (3) SA 934 (C).

[7] At 740D.

[8] See Otzen P and Brouwer A 'Remote Commissioning of Affidavits: Who can commission them and how it is done? De Rebus, June 2020.

[9] This section was inserted by section 18 of the Criminal and Related Matters Amendment Act 12 of 2021 (wef 5 August 2022).

[10] 2022 (5) SA 215 (ECG).

[11] S v Munn (supra) at 736H.

[12] 2017 (1) SA 236 (GJ) paras 27 and 33.

[13] ED Food S.R.L v Africa's Best (Pty) Ltd (2022/1245) ZAGPJHC 1619 (14 March 2024) at para 32.

[14] Government Notice R3289 of 2023. Published in Government Gazette 48428 on 14 April 2023.

[15] Chirwa v Transnet Ltd and Others [2007] ZACC 23; 2008

(4) SA 367 (CC) para 174.

- [16] See Robyn Snyman and Bukhobethu Matyeni 'Sign on the virtual line – commissioning affidavits in the digital era' De Rebus in 2022 (April) DR 14 who share the same sentiments.
- [17] Ciresh Sing 'A Sign' of the Times: A brief Consideration of the validity of e-signatures in agreements and affidavits in South Africa' (2024) 45 Obiter at 60.
- [18] Rules Boad for Courts of Law – Republic of South Africa: Proposed New E-Rules and Amendments to the Uniform and Magistrates Rules for the Electronic Civil Justice System. (09 March 2021).
- [19] See Heaton J and Kruger H South African Family Law (2015) 4 ed at 35.
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