

**IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, PRETORIA**

**Case No: 32844/2021**

**REPORTABLE: NO  
OF INTEREST TO OTHERS JUDGES: NO  
REVISED  
25 AUGUST 2022**

In the matter between:

**V[....]: N[....] J[....]**

Applicant

and

**S[....]: L[....] C[....]**

Respondent

**JUDGMENT**

**NDLOKOVANE AJ**

**INTRODUCTION**

[1.] The applicant, the father of the minor child (Mr TS), pending the investigation of the office of the family advocate, seeks an interim order for the primary care and residence of the minor child born of a romantic relationship between the applicant and respondent subject to the respondent's contact rights. This application is opposed by the respondent.

[2.] The matter has a protracted history of litigation between the parties and serious allegations of drug use. In that on July 2021, the matter was on the urgent court roll before Madam Justice Van der Schyff. On this date, numerous orders were granted including that the matter be placed on a normal opposed motion roll. Chief amongst those orders and relevant to the present application was an order for the office of the Family Advocate to conduct an investigation and to report and make recommendations into the best interest of the minor child, with specific reference to the parental responsibilities of the applicant and respondent which include but not limited to a recommendation regarding primary residence, contact and guardianship of the minor child.

[3.] Pursuant to allegations of drug use by the respondent and her partner, Jan Heijnen, the family advocate office requested that the respondent and her partner undergo the hair follicle tests

[4.] On 3 September 2021, the office of the Family Advocate in an interim report wherein it recommended contact of the minor child with the applicant pending the hair follicle results.

[5.] On 8 December 2021, the respondent then confirms that they had not undergone the tests owing to financial constraints.

[6.] On January 2022, the office of the Family Advocate reported that, it could not finalise the investigation as ordered by this court as a result of the outstanding hair follicle test results.

[7.] At the time this application was heard before me, the following were common cause:

7.1 The minor child is residing with the biological mother, the respondent, her partner, and their newly born child at an apartment in F[...]. The minor child attends school and is currently in grade 1. A mid-year report annexed to this application also confirms this.

7.2 The respondent is working as a junior draughtsman in the company of her partner.

7.3 The allegations of drug use against the two are maintained in the papers before me, I pause to mention that same are denied by the respondent.

[8.] I am of the view that, drug use allegations are of a very serious nature and until a final investigation report from the office of the Family Advocate's office with the recommendations as ordered by the honourable court, through Van der Schyff J has been concluded, I am in no position to assess whether the current care and guardianship is indeed in the best interest of the minor child or not. In the matter of **Kotze v Kotze**<sup>1</sup> it was stated that:

*"The High Court sits as upper guardian in matters involving the best interests of the child (be it in contact matters or otherwise), and it has extremely wide powers in establishing what such best interest are. It is not bound by procedural strictures or by the limitation of evidence presented, or contentions advanced or not advanced, by respective parties".*

[9.] As the upper guardian of all minor children, the next enquiry becomes whether or not the reason for the outstanding drug test has merit or not. I hasten to mention that same has no merit and ought to be rejected outrightly. There is sufficient evidence before me demonstrating that the respondent's full and accurate financial situation is being downplayed. I say so for the following reasons: I refer to annexure JVS 48.2 attached to this application which is a Facebook post (uncontroverted) which suggests an elegant and lavish lifestyle by the respondent and her partner, a Director of the same company the respondent works for. Of relevance is the post wherein the respondent confirms a lavish lifestyle and her gifts for valentine full of

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<sup>1</sup> 2003(3) SA 628 (T)

chocolate, lavish dinners and other gifts where she was gifted with a wrist RADO watch. This in my view is just one of the indication suggesting a lifestyle of a person who lives above the poverty line and not the one described in her papers, who 'merely' earns a monthly salary of R10 000.00 (ten thousand rand). Consequently, just like my sister Van der Schyff, I am in no position to finalise the issue of the child primary care and guardianship nor am I in the position to confirm the allegations of drug use as alleged, so I can be in a position to order the removal of the minor child.

[10.] In the light of the a foregoing, I make the following order:

1. The respondent to undergo the drug test as directed by the court in its order dated 16July 2021, within 30 days upon receipt of this order.
2. Upon receipt of the hair follicle results, and a final investigation report, both parties to supplement their papers and enrol the matter accordingly.
3. Pending the final report of the office of the family advocates the primary residence and contact of the minor child shall be in accordance with the recommendations contained in the interim report of the Family Advocate dated September 2021.
4. The issue of costs be reserved.

**N NDLOKOVANE AJ**  
**ACTING JUDGE OF THE HIGH COURT**  
**GAUTENG DIVISION, PRETORIA**

*Delivered: this judgment was prepared and authored by the judge whose name is reflected and is handed down electronically and by circulation to the parties/their*

*legal representatives by email and by uploading it to the electronic file of his matter on Caselines. The date for handing down is deemed to be 25 August 2022*

**APPEARANCES**

FOR THE APPLICANT: ADV. N ERASMUS

FOR THE RESPONDENT: ADV HC VAN ZYL

DATE OF HEARING: 28 JULY 2022

DATE OF JUDGMENT: 25 AUGUST 2022