

/EVDM

**IN THE HIGH COURT OF SUID AFRICA
(NORTH GAUTENG HIGH COURT)**

CASE NUMBER: 49023/2007

DATE: 05 NOVEMBER 2009

In the matter between:

N.S.

APPLICANT

vs

A. K. A.

RESPONDENT

JUDGMENT

Matter heard on: 03 November 2009

Delivered on 05 November 2009

BAM AJ.

§ 1. The parties had a [.....] from which a child was born on the [.....], initially the parties lived together but the respondent left the applicant on the 15th of June 2007 and moved in with her half sister. From the applicants version it appears that he was inter alia dissatisfied about the surrounding circumstances where the respondent and the child then

resided.

§ 2. The applicant then under certain pretexts removed the child from the custody of the respondent. This act resulted in an urgent application (Case Number: 48373/2007) launched by the respondent against the applicant for the return of the child. The application was successful.

§ 3. Subsequently the applicant lodged an application in this court against the respondent, primarily regarding the exercising of his rights of access pertaining to the child.

§ 4. This application was settled between the parties after the family advocates office investigated the situation and brought out a report. In terms of the settlement agreement between the parties it appears that, more specifically, the applicant's rights regarding the removal of the child from the custody of the respondent for the purposes of exercising applicants rights, were specified.

§ 5. It appears from the papers that the applicant was at all relevant times before the settlement of the matter entitled to and did in fact exercise his afore said rights regarding the child.

§ 6. Apart from the fact that the status quo has changed in the sense that the parties are not living together any more, it appears that the settlement agreement entails the usual rights of parties in similar circumstances.

§ 7. Ms. Delport appearing for the applicant submitted that each party should pay his/her own costs of the application that was settled as mentioned before. Mr Lennox appearing for the respondent submitted that the applicant should pay the costs because of the fact that he created the problem and that the respondent was accordingly compelled to oppose the

application in view of several allegations the applicant made regarding the respondents tack of properly caring for the child. It is true that this matter has a history regarding allegations made by the parties regarding the alleged lack of each party to properly care for the child.

§ 8. I have perused the evidence on record and I have carefully considered the submissions made by counsel In view of the way. In which the matter was settled, from which both parties benefited, and the history of the matter, I am of the opinion that each party should bear Its own costs.

§ 9. Accordingly I make the following order:

§ 9.1 The parties are ordered to pay their own costs.

A.J. BAM

Acting Judge of the High Court

Applicant:

Counsel:

Ms. Deport

Attorney on record:

Krause Attorneys

Tel : 011 615 4862

c/o HKR Attorneys

Waterkloof Ridge

Pretoria

Respondent:

Counsel:

Mr Lennox

Attorney on record:

Schoeman & Associates

Tel: 012 346 8606

Ref: D.J. Scoeman/yb

File No: SA 0292