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**THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, JOHANNESBURG**

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|-----|-----------------------------------------------------------------------------------------|
| (1) | REPORTABLE: Yes <input type="checkbox"/> / No <input type="checkbox"/>                  |
| (2) | OF INTEREST TO OTHER JUDGES: Yes <input type="checkbox"/> / No <input type="checkbox"/> |
| (3) | REVISED: Yes <input type="checkbox"/> / No <input type="checkbox"/>                     |

Date: 29 August 2024

WJ du Plessis

In the matter between:

**J[...]** **S[...]**  
(ID Nr 9[...])

First Applicant

and

**Z[...]** **M[...]**  
(ID Nr 9[...])

First Respondent

**Coram:** Du Plessis AJ

This judgment has been delivered by uploading it to the CaseLines digital data base of the Gauteng Division of the High Court of South Africa, Johannesburg, and by email to the attorneys of record of the parties. The deemed date and time of the delivery is 10H00 on 29 August 2024.

**Heard on: 27 August 2024**

**Decided on: 29 August 2024**

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## ORDER

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The following order is made:

1. The matter is struck from the roll for lack of jurisdiction.
  2. The parties are to pay their own costs up to the serving of the urgent application.
  3. The applicant is to pay the costs of the respondent after the serving of the urgent application.
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## JUDGMENT

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DU PLESSIS AJ

### *Introduction*

[1] This urgent application relates to a minor child born from a relationship between the parties. At the time of hearing the matter, the child just turned one.

[2] The application was launched as an application to appoint an expert to evaluate the parties and to investigate and provide a report and recommendations in the best interest of the minor child regarding parental alienation and care and contact between the applicant and the minor child.

[3] The respondent raised the issue of jurisdiction, which needs to be addressed first. She terminated her employment in Randburg in June 2024, after which she moved back to her parents in Rustenburg. They all permanently relocated to KwaZulu Natal on 12 August 2024. The application was issued on 19 August 2024. The respondent's attorneys informed the applicant's attorneys of this fact as soon as

the application was served. The applicant, nevertheless, decided to continue with the application.

[4] Respondent relies only on s 21(1) of the Superior Courts Act,<sup>1</sup> and s 29 of the Children's Act<sup>2</sup> with regards to jurisdiction. The requirement for jurisdiction in terms of the Superior Courts Act is that all persons must *reside* or be in the area of jurisdiction. It does not refer to domicile, but rather where one sleeps after a day's work.<sup>3</sup> Similarly, s 29(1) of the Children's Act requires that the High Court where the child concerned "is ordinarily resident" is the court with jurisdiction.

[5] The respondent's answering affidavit shows that she has moved to KwaZulu Natal to live with her parents. The child is thus no longer a resident of the North West Province (Rustenburg) or the Gauteng Province (Johannesburg). Since jurisdiction is determined by the time the proceedings are instituted, and because the respondent had already been residing in KwaZulu Natal for a week when the proceedings were instituted, this court no longer has jurisdiction to hear the matter. The matter must thus be struck from the roll for lack of jurisdiction.

[6] I am aware that the court has inherent jurisdiction<sup>4</sup> that it can draw on if it is just and equitable to do so, also to ensure the observance of due process of law, or to secure a fair trial between the parties. However, this is not such a case.

[7] Up to the moment when the urgent application was served to the respondent, the applicant was still under the impression that the respondent went on holiday to KwaZulu Natal, as this was communicated to his mother. When he instituted the proceedings, he was thus under the impression that she still resides in the court's jurisdiction, although that impression was erroneous. However, the respondent's attorneys informed him that this was no longer the case when they received the application, and they expressly asked if the applicant wished to proceed knowing

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<sup>1</sup> 10 of 2013.

<sup>2</sup> 38 of 2005.

<sup>3</sup> *Mayne v Main* 2001 (2) SA 1239 SCA paras 3 – 6.

<sup>4</sup> Taitz, J (1985) *The Inherent Jurisdiction of the Supreme Court*, 1.

this. The applicant proceeded. This will have an implication on the cost order that I make.

*Order*

[28] The following order is made:

1. The matter is struck from the roll for lack of jurisdiction.
2. The parties are to pay their own costs up to the serving of the urgent application.
3. The applicant is to pay the costs of the respondent after the serving of the urgent application.

**WJ du Plessis**

Acting Judge of the High Court

For the Applicants:

G Olwagen-Meyer instructed by Cumming Attorneys

For the Respondents:

XT van Niekerk instructed by Martin Vermaak Attorneys