

REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

Case Number: 2024/117895

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: YES
DATE	SIGNATURE

In the matter between:

SLM

Applicant

and

FRRM

Respondent

JUDGMENT

[1] The applicant (SLM and hereinafter referred to as to as the mother) and the respondent (FRRM and hereinafter referred to as the father) were previously married. Two children were born of their marriage, namely ARM and LGM who are now respectively eleven and seven years of age (the children).

[2] The bonds of marriage between the mother and the father were dissolved in and during March 2020. A consent paper was made an order of court on that occasion.

[3] In terms of the consent paper the primary residence of the children was awarded to the mother. The mother and father remained co-holders of full parental rights and responsibilities in respect of the children and the father enjoyed extensive rights of contact.

[4] The parties thereafter maintained their places of residence in Johannesburg and by all indications the provisions of the consent paper relating to the primary residence of the children. Once their parental rights and responsibilities were maintained. So, too, were the contact regimes which had been put in place. The parties from time to time discussed the desirability of relocating from Johannesburg to Cape Town and agreed in principle that there was a strong possibility of that happening, provided that the father was able to sell his home at a favourable price and that he was able to secure his employer's consent to working in Cape Town, as opposed to Johannesburg.

[5] In and during June 2024 the mother pronounced her intention of moving to Cape Town. She had two objectives in mind. She firstly wished to secure gainful employment in that city which, when compared to Johannesburg, offered her much greater opportunity. She moreover wished to establish a home for both herself and the children. It was, according to the mother, envisaged by both her and the father that the children would relocate to Cape Town at the end of 2024. By then, so the mother thought, the father would have sold his home in Johannesburg and secured his employer's consent to work in Cape Town.

[6] True to that intention the mother moved to Cape Town. She secured a number of work opportunities which greatly improved her financial position. She moreover was able to secure accommodation for both her and the children. She made arrangements for their schooling in that city.

[7] She had in the interim placed the children in the care of the father, which situation was to endure until as they joined her in Cape Town at the end of 2024.

[8] The mother's expectations were short-lived. The father withdrew his home from the market, apparently because it had become depressed. It is moreover

apparent that the father made little effort (if any) to secure his employer's consent to relocate to Cape Town.

[9] The father's stance on the matter is that a firm decision had not been taken in relation to the relocation of either him or the mother to Cape Town. According to him the matter had still to be further discussed. He in this regard stated that the decision of the mother to relocate was unilateral and premature and that he had no intention of permitting the children to move to Cape Town and to stay with the mother, at least not until the matter had been fully discussed and agreed upon. A clear impasse developed and on 11 October 2024 the mother instituted an urgent application in which she sought an order for the variation of the consent paper to, *inter alia*, provide that the children were to reside with her in Cape Town. This application was opposed by the father.

[10] I cannot resolve the conflicting versions of the mother and father in relation to her move to Cape Town and the circumstances under which that occurred. I consequently need to independently determine whether the best interests of the children will be served should they relocate to Cape Town and assume permanent residence with their mother in that city. I at present do not have sufficient evidential material to responsibly make that determination.

[11] This has been recognised by the parties. They accordingly submitted a joint draft order regulating the future conduct of the matter, with the request that it be made an order of court. They were, however, not able to agree upon one aspect. This relates to the question whether the mother is to financially contribute to the contact regime which the parties envisage will take effect until the matter is finally determined. This financial contribution relates to whether the father or mother is to bear costs of air tickets to fly the children from Johannesburg to Cape Town and back so as to enable them to be with the mother over one weekend a month.

[12] The costs involved in finalising the matter will be paid by the father. These costs will in every likelihood be substantial. The mother's financial position has greatly improved since her move to Cape Town and it seems to me only proper that the single item of expenditure in issue ought to be paid by the mother. It is likely

within her means to do so. I thus intend completing the draft order to give effect to my finding in this regard.

[13] In the result the draft order initialled and dated by me and attached hereto marked "X" is made an order of court.

G FARBER
ACTING JUDGE OF THE HIGH COURT
JOHANNESBURG

APPEARANCES

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INSTRUCTED BY:

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