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

CASE NO: 015692/2025

(1) REPORTABLE: YES / NO

(2) OF INTEREST TO OTHER JUDGES: YES/NO

(3) REVISED.

SIGNATURE

DATE: 20/02/2025

In the matter between:

S[...] P[...] E[...]

APPLICANT

and

B[...] N[...]

RESPONDENT

This Judgment was handed down electronically and by circulation to the parties' legal representatives by way of email and shall be uploaded on caselines. The date for the hand down is deemed to be on 20 February 2025.

JUDGMENT

VAN NIEKERK PA, AJ

INTRODUCTION:

[1] The Applicant approaches this Court and seeks relief framed in the Notice of Motion as follows:

- “1. Condoning the Applicant’s non-compliance with Rule 6 pertaining to forms and service and directing that the application be heard of one of urgency in terms of Rule 6(12) of the Uniform Rules of Court;*
- 2. Suspending the execution of the order of the Children’s Court granted on 14 November 2024 until the finalisation of the Children’s Court proceedings;*
- 3. Alternatively, to two above, that the court grant the Applicant contact rights with the minor child, M[...] L[...] N[...], until the finalisation of the matter in the Children’s court as follows:*
 - 3.1 Every alternative weekend from Friday after school until Monday morning where the Applicant will drop the minor child off at school;*
 - 3.2 Every Wednesday after school until the next morning where the Applicant will drop the minor child off at school;*
 - 3.3 Telephonic contact at all reasonable times;*
- 4. Costs in the event of opposition;*
- 5. Further and/or alternative relief.”*

[2] The application was initially served on the Respondent by the Applicant’s attorney of record on 14 February 2025 and served on the Respondent by the Sheriff. The Respondent did not oppose the application.

[3] The background to the application can be summarised as follows:

[3.1] The Applicant and the Respondent are the natural parents of a child, a boy born on 18 December 2014. The Applicant and the Respondent were never married to each other;

[3.2] During 2021 the Applicant married her present husband who has children from a previous marriage. The Applicant, her child referred to *supra* and the children of her husband from a previous marriage resided together since 2021;

[3.3] During April 2024 the Respondent launched proceedings in the Children's Court, Pretoria, to have primary care and residence of the child born of the relationship between the Applicant and the Respondent be awarded to him. The proceedings in the Children's Court were initiated after the Respondent made allegations of child neglect and abuse based on an incident where, as the Applicant states, her present husband disciplined the child;

[3.4] The Children's Court proceedings were postponed on various occasions, and during these proceedings expert reports consisting of a report from a Social Worker as well as a Psychologist were obtained;

[3.5] Based on a socio-emotional assessment report compiled by a Social Worker on 11 November 2024 the Children's Court made an interim order on 14 November 2024 that the primary residence and care of the child be awarded to the Respondent with inception from 28 December 2024. There were no provisions made in that order that the Applicant be entitled to exercise any contact with the child. The Children's Court proceedings are not finalised and were postponed again to the 27th of February 2025. According to the Applicant, she did not see the child since December 2024.

[4] The purpose of the application is clearly to either suspend the order of the Children's Court which would result in the minor child having to return to the Applicant or *in the alternative* awarding the Applicant certain rights of contact as a result of the fact that the Children's Court did not award such rights of contact. In support of such relief, the Applicant states in the Founding Affidavit the following:

[4.1] There is a “*injustice*”, and that “*substantial justice*” require that the relief be granted;

[4.2] Various averments are made which relates to the merits of the Applicant’s claim that the temporary order made by the Children’s Court should be suspended or *in the alternative* that the Applicant should be awarded rights of contact in the interim. These averments relate to the alleged inaccuracy of expert reports, the factual background to the manner in which the Applicant took care of the minor child before the interim Children’s Court order was made on 14 November 2024, and criticism levelled against the Respondent in relation to his previous responsibilities towards the minor child.

[5] The Children’s Court is established in terms of Chapter 4 of the Children’s Act no. 38 of 2005 (“the Act”) and in terms of Section 43 of the Act, a Children’s Court is a court of record and has a similar status to that of a Magistrates Court at district level. The matters which a Children’s Court may adjudicate are regulated in terms of Section 45 of the Act, which includes an order for the temporary safe care of a child, care of, or contact with a child; and in terms of Section 46 of the Children’s Act, a Children’s Court may make orders including an order that a child be placed in temporary safe care. The nature and extent of orders which the Children’s Court may make in terms of Section 46 of the Act clearly includes the orders which were made by the Children’s Court *in casu*.

[6] In terms of Section 46(2), a Children’s Court may withdraw, suspend or amend an order made in terms of sub-section 1 of Section 46 of the Act. It is therefore clear that the Children’s Court may revisit any order made under the provisions of Section 46(1) and withdraw, suspend or amend such order.

[7] Additional powers are awarded to the Children’s Court under Section 48 of the Act, which includes the power to extend, withdraw, suspend, vary or monitor any of its orders.

- [8] The order made by a Children's Court is subject to appeal in terms of Section 51 of the Act which reads:

"51. Appeals

(1) Any party involved in a matter before a children's court may appeal against any order made or any refusal to make an order, or against the variation, suspension or rescission of such order of the court to the High Court having jurisdiction;

(2) An appeal in terms of sub-section (1) must be noted and prosecuted as if it were an appeal against a civil judgment of a Magistrates Court, subject to section 45(2)©."

- [9] The application before this Court is neither an appeal nor a review. The application before this Court seeks to achieve what Section 46(2) and/or Section 48 of the Act empowers the Children's Court to do. Apart from the overriding consideration of *"the interest of justice"*, the Applicant provides no grounds why this Court should seize itself with the jurisdiction to suspend or vary an order made by the Children's Court. The Children's Court issued the impugned order after considering evidence in the form of reports from a Psychologist and Social Workers. This Court is not empowered, absent a duly prosecuted appeal or review proceedings, to suspend or amend the Children's Court order.

- [10] Whereas this Court may have inherent jurisdiction in matters involving the best interest of minor children, in my view that does not imply that this Court may suspend or vary orders of a Children's Court without due process in a form of an appeal or a review having been followed. That would erode the authority of the Children's Court, a statutory court with specific powers designed to protect the best interest of children, when a party dissatisfied with an order of the Children's Court may simply aver that it is *"in the interest of justice"* that such order then be amended by the High Court.

[11] The remedy of appeal or review provides a litigant with a remedy where a dispute may be ventilated in a structured manner, with the application of clear legal principles, which is a procedure far more advantageous to the protection of the interest of minor children than the application of a vague reference to “*the interest of justice*”.

[12] In the premises, the application was dismissed.

P A VAN NIEKERK
ACTING JUDGE OF THE GAUTENG DIVISION, PRETORIA

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