

REPUBLIC OF SOUTH AFRICA



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

Case Number: 2024-056100

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: NO
<u>27/6/2025</u> <u>[REDACTED]</u>	
DATE	SIGNATURE

In the matter between:

VA, HM

First Applicant

VA, E

Second Applicant

and

B, TH

Respondent

JUDGMENT

DELIVERED: This judgment was handed down electronically by circulation to the parties' legal representatives by e-mail and publication on CaseLines. The date and time for hand down is deemed to be 27 June 2025.

MEIKLE AJ

Introduction

1. The Respondent applies for leave to appeal against paragraphs 1,2 and 3 of my order made on 5 February 2025.
2. For ease of reference, I will continue to refer to the parties as I did in my original reasons for judgment and to the minor child as T.

Grounds for leave to appeal

3. The Respondent advanced various grounds for leave to appeal in his Notice of Application for Leave to Appeal, in this regard raising four main arguments against my order in the main, namely that:
 - 3.1 the Applicants prematurely launched this application and should have first sought to mediate with the Respondent the issue of their contact with T;
 - 3.2 the Applicants have been untruthful in their approach. It is only the grandparents who contend that it is in the best interests of T that they have the extensive contact with the child as ordered. There is no expert evidence to support this;

3.3 that the existing case law pertaining to contact between grandparents and children, since the passing of the Children's Act, does not support the excessive contact which I have awarded; and

3.4 there is cause for concern that the First Applicant tried to manipulate T, and that T was afraid that the Applicants want to take her away.

Firstly:

4. I am not persuaded that mediation would have resolved the issues between the Applicants and the Respondent in a manner which would have satisfactorily ensured the actual best interests of T as far as contact with her grandparents, who had played an integral role in her life since birth, is concerned. There was no reason for the Applicants not to proceed with this application as and when they did.

5. In fact, as time progressed, as the relationship between the Applicants and the Respondent become more acerbic, the contact which T enjoyed with the Applicants was reduced and thereafter disallowed altogether by the Respondent because they launched this application. As the primary caregiver, the Respondent, himself, sought no expert guidance to ensure that his actions were in the best interests of T.

Secondly:

6. It was argued, *inter alia*, that Applicants have painted a skew picture when they say that the contact they are seeking is in the best interests of T. This is their opinion only. It was argued that they proffered no expert evidence to show this was the case.
7. The Respondent is T's primary caregiver. He had more than sufficient opportunity to enlist the services of an expert to show how his actions in reducing and thereafter terminating T's contact with the Applicants were in fact in the child's best interests. He could have even approached the Office of the Family Advocate to conduct an investigation in order to serve the best interests of T. He did none of this.

Thirdly:

8. I do not agree that the facts in the decisions mentioned on behalf of the Respondent, as justification to curtail the extent of the contact I have awarded the Applicant and the contact between children and grandparents in those cited decisions, can be compared to the facts of this matter. T grew up in the home of her grandparents who had contact with her virtually every day of her life.
9. The contact awarded in my order, I believe is reasonable in the circumstances and as with any matter concerning children, if circumstances change, there are

a number of avenues for the parties to follow, including approaching a court to vary the order if circumstances permit.

10. I do not agree that the contact provisions afforded to the Applicants in the order made by me are excessive, regard being had to T's welfare and her right to have this contact with her grandparents. It is the child's right not her father's. There is no evidence before me that this contact is excessive save for the Respondent's say-so.

Fourthly:

11. Again, there is no foundation for this complaint of alleged manipulation by the First Applicant of T, other than the Respondent's say-so.
12. Surely, if it was the case that T had been so manipulated or that she feared that the Applicants would take her away, why did the Respondent, who has a legal duty to protect T, not have these allegations investigated and provided the court with concrete facts and expert evidence that T had been manipulated, how this manipulation is affecting T and that the Applicant's contact should be restricted.
13. During argument of this application, the parties were asked whether, since the granting of my order, T has had any contact with the Applicants. I was advised that contact has taken place i.e. one weekend a month on a Saturday from 9h00 to 16h00 and a Sunday from 9h00 to 16h00, with no sleepovers and on other special occasions.

14. By virtue of the aforesaid, I was not made aware of any detrimental events / factors with regards to the exercise by the Applicants of this contact with T. As such, T having had such contact, there is no cogent reason why the contact as ordered should not be exercised.
15. In my view, and against the background of the facts in the matter, the application for leave to appeal is made on no *bona fide* grounds.
16. The prospects of success on appeal must not be remote, but there must exist a reasonable chance of succeeding, as was held by the Supreme Court of Appeal. An applicant who applies for leave to appeal must show that there is a sound and rational basis for the conclusion that there are prospects of success on appeal. In other words, the Court must be convinced by an applicant on proper grounds that he has prospects of success on appeal and that those prospects are not remote, but have a realistic chance of succeeding.¹
17. In *Dexgroup (Pty) Ltd v Trustco Group International (Pty) Ltd and Others*,² Wallis JA stated that “*a Court should not grant leave to appeal and indeed is under a duty not to do so where the threshold which warrants such leave has not been cleared by an applicant in an application for leave to appeal*”.³ “*More is required than a mere possibility of success, or that the case is arguable on appeal, or that the case cannot be categorised as hopeless*”.⁴

¹ *Alf's Tippers CC v Baloyi and Others* (19556/2020)[2023] at [5] with reference to *Ramakatsa and Others v African National Congress and Another* (724/29) [2021] ZASCA 31 (31 March 2021).

² 2013 (6) SA 520 (SCA)

³ *Alf's Tippers* (note 1 above) at [6] with reference to *Dexgroup* (note 2 above) at [24]

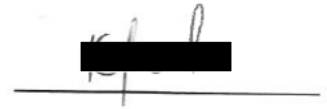
⁴ *Alf's Tippers* (note 1 above) with reference to *S v Smith* 2012(1) SACR (SCA)

18. I believe that, in view of what I have stated in my reasons for judgment as well as hereinabove, that the Respondent's appeal is "*bound to fail on the facts*".⁵
19. In the circumstances, I find that there are no reasonable prospects of success on appeal and there is no other compelling reason why an appeal should be heard.
20. Insofar as the costs are concerned, they should follow the result. The Respondent is to pay the costs of the application for leave to appeal, such costs to include the cost of one counsel on Scale B as contemplated in Rule 67(3) read with Rule 69.

ORDER:

In the result, I make the following order:

1. The application for leave to appeal is dismissed.
2. The Respondent in the application for leave to appeal shall pay the costs thereof, such costs to include the cost of one counsel on Scale B.



KL MEIKLE
ACTING JUDGE OF THE HIGH COURT
JOHANNESBURG

⁵ Dexgroup (note 2 above) at [24]

FOR THE APPLICANT:

ADV HB MARAIS SC

ADV T EICHNER

Instructed by SCHICKERLING BOWEN & HESSELINK INC

FOR THE RESPONDENT:

ADV H VAN ZYL Instructed by

DOWLING GROBLER ATTORNEYS

DATE OF HEARING:

5 February 2025

DATE OF JUDGMENT:

27 June 2025

