

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

CASE NO: 21/36802

(1) REPORTABLE: YES/NO

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

(3) REVISED:

11 August 2025

In the matter between:

P[...] N[...]

Applicant

and

K[...] N[...]

Respondent

JUDGMENT

SEGAL AJ:

[1] This is an application in terms of Uniform Rule 43(6) in which the Applicant (the father) of two young children, T[...] and S[...] N[...] seeks an order for increased contact to the children, which relief is opposed by the Respondent (the mother). For convenience sake, in this judgment I shall refer to the parties as the father and the mother respectively.

[2] The contact arrangement which currently prevails arose from an order agreed between the parties and granted by consent by the Honourable Wilson J on the 17th

of August 2021. Notably, at that time, T[...] (the son) was 4 years old, and S[...] (the daughter) was 2 years old.

[3] The contact was crafted and agreed to at that time, on the basis of the children's respective ages and stages of development.

[4] The father contends that he has, for the longest time sought to secure increased contact to the children but contends that he has, to all intents and purposes, been stonewalled by the mother who simply refuses to permit increased contact.

[5] The application was initially brought as an urgent one in December 2024, but the application was strangely struck from the roll for apparent want of urgency. That same application was subsequently re-enrolled together with an amended Notice of Motion and a Supplementary Affidavit, to which the mother has responded.

[6] The amended relief which the father now seeks by way of Rule 43(6) is *inter alia* for the appointment of a forensic expert to conduct an investigation into the best interests of the children, for increased contact to both T[...] and S[...] as well as defined contact over school holidays and on certain religious days and special days.

[7] The mother agrees to the relief that a forensic psychologist be appointed but not to the implementation of increased contact as sought by the father.

[8] The father contends that the Rule 43(6) Application was necessitated by *inter alia* disturbing conduct on the mother's part that emerged at the end of 2024 when T[...] disclosed to him that the mother had requested T[...] to secretly video the ongoings in the father's home and return the recordings to her when he returned to her home. T[...] was obviously conflicted by this wholly inappropriate request and when he was caught, he disclosed that his mother had put him up to it.

[9] T[...] also disclosed that both his mother and his grandmother had hit/smacked him on several occasions. There was a further incident where the mother is alleged to have had a disagreement with the domestic worker who assists

the father and instructed the children that they need not listen to her as she is an “illegal immigrant”.

[10] The mother allegedly called the police with a view to having the father’s domestic worker arrested. This was a source of great distress to the father, the children and of course the domestic worker. The mother denies this allegation.

[11] The father also contends that the mother has repeatedly called the private security company and the South African Police Services to the Estate in which she and the father both live (but in separate homes), that she enters the father’s home unilaterally and uninvited and that her conduct is a source of distress for the children.

[12] There have been three enquiries by the office of the Family Advocate, and three reports rendered containing recommendations in respect of the children’s care and contact. The Family Advocate’s recommendations appear not to have been implemented from June 2022 to date on account of the mother’s steadfast refusal to do so, notwithstanding the father’s requests.

[13] No cogent reasons for the refusal to allow extended contact have been proffered by the mother. In argument, she asserted that she does not see any reason to change the contact.

[14] The material change in circumstances relied upon by the father in support of the order for increased contact sought by him are:-

14.1 the fact that the children are now four years older than they were at the time that the initial order was granted;

14.2 that their circumstances have changed from a developmental standpoint;

14.3 that the Family Advocate has recommended extended contact both over weekends and on weekdays.

[15] Despite attempts to resolve the question of increased contact, it appears that the parties are unable to do so.

[16] It also appears that when the matter was judicially case managed, it was noted by the judicial case manager that the mother had adopted a stance that was dilatory. Regrettably it seems that this *modus operandi* continues.

[17] The mother, who appeared in person albeit that she had been legally represented until recently and whose papers were drafted by her erstwhile attorneys and/or counsel, contended that she does not see any reason to change the current contact.

[18] When pressed to explain her position she asserted that the bases upon which she opposes extended contact are firstly that the father is a CEO of a large company, travels regularly and frequently requests that she swaps scheduled contact periods. This is denied by the father who asserts that he infrequently seeks accommodations but for the most part exercises contact as scheduled.

[19] Secondly, the mother contends that the father should not have extended contact because he allegedly abuses alcohol. She avers that there have been numerous incidents in which the father had consumed alcohol to excess, whilst the children were in his care and that there were instances where she had been constrained to contact security at the complex to intervene.

[20] The third basis upon which the mother asserted that extended contact should not be ordered at this stage, is that she wished for this issue to be mediated. She contends that the parties had endeavoured unsuccessfully to mediate before but that there was still a prospect of the matter being mediated now.

[21] An analysis of the father's case and whether he has and demonstrated a material change in circumstances such as to warrant a variation of the Rule 43 order, together with the mother's objections has been considered.

[22] It is correct that in the period between August 2021 and the present day, the children have developed and matured considerably, and their daily routines have changed. Strangely, despite the fact that S[...] is now 6 years old, she is not permitted to have sleepover contact with the father. The two children have different contact regimes and whilst there may have been a good reason for this discrepancy when S[...] was 2 years old, there is simply no basis for this to continue now. Notably when the mother travelled overseas for a period of approximately 2 weeks, both children resided with the father who ably cared for them. There is simply no basis for the father's contact not to be increased.

[23] It is obviously not possible for a Rule 43 Court to make findings in respect of disputes of fact that cannot be independently corroborated but it seems to me that the allegations concerning the father's excessive alcohol consumption have been raised repeatedly by the mother, investigated by not only the Family Advocate but have been tested by an independent laboratory, SA Mobile Drug Testing and found to be devoid of merit.

[24] The independent expert that I intend to appoint (by agreement between the parties) to conduct a full forensic investigation should be requested to investigate *inter alia*, whether or not the father has an alcohol dependence / problem and whether this needs to be addressed by him.

[25] In the face of the three Family Advocate's reports as well as the report of SA Mobile Drug Testing, I am disinclined to make any orders in this regard.

[26] The simple fact of the matter is that the father took care of the children for two weeks when the mother was required to travel overseas and he exercises regular (albeit insufficient) contact with both minor children and there does not appear to be any objective evidence of the father's alcohol consumption being excessive or affecting the children.

[27] Insofar as the father's travel for business purposes is concerned, I do not believe that it should be a bar to his contact being extended, Ultimately, parties need to co-operate with another to foster a positive relationship between the children and

both parents and this may well involve both parties adopting a flexible and accommodating stance rather than one which is rigid and intractable.

[28] I have considered the submissions of both parties as well as their additional written submissions in respect of the draft order proposed by the father's counsel (which were sent to me after the conclusion of argument). I have noted the changes that the mother proposes but find that there is no basis for these limitations to be upheld. They appear to be arbitrarily restrictive and are not supported by any cogent evidence. Both children must be afforded proper contact to their father both during school term and during school holidays and special days and the implementation thereof should not be delayed.

[29] The Family Advocate, FJ Vogel had made the following recommendations on 28 June 2022:-

"RECOMMENDATION"

26. *In the premises, the following recommendation is respectfully made:*

26.1 *The parties to retain full parental responsibilities and rights as contemplated in section 18 of the Children's Act 38 of 2005, read with sections 19 and 20;*

26.2 *The children's primary residence to be with the respondent in Gauteng;*

26.3 *The applicant to exercise unsupervised contact with the children as follows (commencing September 2022):³⁶*

a. *Every second weekend from Thursday afternoon to Monday morning when the minor children are to be returned to school;³⁷*

b. *Every intervening Thursday from after school to Friday morning when the minor children are to be returned to school;*

- c. *Every Tuesday afternoon for two hours;*
 - d. *Half of each school holiday or period corresponding with same, subject to the following phased-in approach:*
 - i. *2022: no more than seven nights;*
 - ii. *2023: no more than 10 nights;*
 - iii. *2024: no more than 14 nights;*
 - iv. *2025: half of school holidays.*
 - e. *Public holidays falling on a Friday or Monday to form part of the succeeding or preceding weekend, with the necessary changes; other public holidays to alternate between the parties;*
 - f. *Father's Day and the applicant's birthday to be spent with the applicant; Mother's Day and the respondent's birthday to be spent with the respondent; the minor children's birthdays to be shared or alternated;*
- ³⁶ *The parties are, of course, welcome to agree to the nanny also accompanying the minor children.*
- ³⁷ *S[...]’s contact to be phased in over six months:*
- Two months: one night;*
 - Two months: two nights;*
 - Two months: three nights; and*
 - After six months: four nights.*
- g. *Telephonic contact every other day between 18:00 and 18:30; and*
 - h. *Any other reasonable contact as agreed upon.*

26.4 The parties to appoint a suitably qualified mental health professional to act as case manager with the following minimum duties and responsibilities:

- a. To mediate disputes;*
- b. To monitor the respondent's psychological health and to ensure that same is reviewed on a quarterly basis;*
- c. To monitor the applicant's contact with the minor children and to facilitate the introduction of the recommended contact arrangement;*
- d. To monitor the applicant's possible use of drugs and alcohol and to request him to undergo random drug tests if necessary;*
- e. To monitor the minor children's emotional wellbeing and to provide them with appropriate therapy or refer them to another professional;*
- f. Other duties and responsibilities as agreed upon between the parties..."*

[30] This extended contact ought to have been implemented years ago and the intransigent stance of the mother on this score should be carefully scrutinised by the expert.

[31] In all the circumstances, I am persuaded by the father that the order sought by him is indeed in the minor children's best interests.

[32] The following order is granted:-

28.1 Both the Applicant and Respondent are granted leave to file their respective supplementary affidavits in terms of Rule 43(5).

Pendente lite:

28.2 The existing interim order granted by this Honourable Court on 17 August 2021 is hereby varied by the deletion of paragraphs 2.4, 2.5, 2.6 and 2.7 in their entirety and the substitution of the following paragraphs in place thereof:

“ ...

2.4

2.4.1 *That Nellie Prinsloo, clinical psychologist in private practice of Nellie Prinsloo Inc, is hereby appointed to conduct the agreed full forensic investigation and assessment of the Applicant, the Respondent and the two minor children, T[...] and S[...] N[...], with regard to the allocation of parental responsibilities and rights of care and contact, as provided in terms of Section 18(1) of the Children's Act 2005 as amended. (“mandate”)*

2.4.2

2.4.2.1 *That Respondent, within 5 days from date of the order herein, shall complete and sign all relevant documentation required by Nellie Prinsloo for her to carry out her mandate including but not limited to:*

- (a) *the consent for evaluations for court purposes;*
- and*
- (b) *the questionnaires and forms for the said consent for evaluations; and*
- (c) *all and any other relevant documentation required by Nellie Prinsloo.*

2.4.2.2 *That the completed and signed consent and quotation letter and any other relevant documentation required by her, be submitted to Nellie Prinsloo within 5 days from date of the order of court granted herein.*

2.4.2.3 *In order for Nellie Prinsloo to fulfil her mandate:*

- (a) *Both parties shall co-operate fully with all of Nellie Prinsloo's requirements at all times in respect of the agreed forensic investigation and assessment; and*
- (b) *Both parties shall make themselves available to consult or to undergo testing required by Nellie Prinsloo as and when required to do so;*
- (c) *Nellie Prinsloo shall include in her investigation, inter alia,*

consideration of whether or not the applicant has an alcohol dependence / problem and whether this needs to be addressed by him; and the respondent's steadfast refusal to permit the applicant to have age-appropriate contact to the children.

2.4.3 That each party shall be equally liable for the costs of the agreed forensic investigation, assessment and report."

2. Pending the finalisation of the forensic investigation, assessment and the publication of the report containing the recommendations of Nellie Prinsloo, the Applicant shall exercise contact to the minor children follows:-

3. Alternate weekends

*3.1 **T[...]***

Alternate weekends from Thursday after school to Monday morning when the Applicant shall return T[...] to school.

*3.2 **S[...]***

3.2.1 For one month from the date of this order, [11 August 2025 to 11 September 2025] one night sleepover contact from 09:00 on a Saturday to 18:00 on a Sunday.

3.2.2 For the following two-month period, [12 September 2025 to 12 November 2025] two-night sleepover contact from Friday after school to Sunday, 18:00.

3.2.3 For the following three-month period, [13 November 2025 to 13 February 2025] during the school term; a three night sleepover contact from Friday after school until Monday when school starts and when he shall return her to school.

3.2.4 Thereafter, after the expiry of the said six-month period, sleepover contact from a Thursday after school until a Monday when school starts and when he shall return her to school.

BOTH CHILDREN

4. Midweek sleepover contact

Each Wednesday from after school until Thursday morning when school starts and he shall return them to school.

5. School holidays

5.1 Applicant shall be entitled to contact to the minor children in the first half of December 2025 school holiday from 09:00 on 11 December 2025 to 27

December 2025 at 14:00;

5.2 Long school holidays in respect of both children

5.2.1 *The July long school holiday shall be shared equally between the parties [the first half and the second half shall alternate annually].*

5.2.2 *In respect of the December long school holiday:*

5.2.2.1 *the first half shall start at 09:00 the day after the school term ends until 14:00 on 27 December of that year;*

5.2.2.2 *the second half shall commence at 18:00 on 27 December until 18:00 on the day before the school term starts for the following academic year.*

[The first half and the second half shall alternate annually].

5.3 *The parties shall be entitled to alternate short school holidays. Applicant shall be entitled to contact over the second short school holiday in 2025.*

5.4 *In respect of the Easter period, in the event that it falls outside of the short school holiday period, it shall alternate between the parties annually.*

6. Public holidays

6.1 *Those falling on a Friday or a Monday form part of alternate weekend contact;*

6.2 *Otherwise, public holidays alternate between the parties.*

7. Applicant's birthday and Fathers Day

7.1 *On Applicant's birthday, from 14:00 on the day before his birthday until 18:00 on the day of the birthday.*

7.2 *In respect of Father's Day, in the event it falls outside of Applicant's weekend contact, from 14:00 on the Saturday before Father's Day until 18:00 on Father's Day.*

8. Respondent's birthday and Mother's Day

8.1 *On Respondent's birthday, from 14:00 on the day before her birthday until 18:00 on the day of her birthday.*

8.2 *In respect of Mother's Day in the event it falls on Applicant's weekend contact, from 14:00 on the day before Mother's Day until 18:00 on Mother's Day.*

9. Children's birthdays

The birthdays of the minor children shall be shared equally on the birthday of

each child.

10. Telephonic contact

Reasonable telephonic contact.

11. Religious holidays and celebrations

11.1 Diwali:

11.1.1 With regard to the Festival of Lights (Diwali), the most important days are days 3 and 4 (the two-day Diwali period).

11.1.2 The said two-day Diwali period shall alternate between the parties annually.

11.1.3 Applicant shall be entitled to the two-day Diwali period in 2025 from 14:00 on the day preceding day 3 until the morning of day 5 when school starts.

11.2 Maha Shivaratri

The one-day festival (celebrated at night) shall alternate between the parties annually from 14:00 on the day prior to the festival until 19:00 on the day of the festival.

11.3 Sarawasthi

The one-day festival shall alternate between the parties annually from 14:00 on the day prior to the festival until 19:00 on the day of the festival.

11.4 Draupadi

11.4.1 The religious festival coincides with Good Friday of the Easter weekend.

11.4.2 It shall alternate between the parties annually, as is provided in respect of the Easter weekend contact provisions.

11.5 Christmas/New Year period

It shall alternate between the parties in accordance with the equal shared December holiday contact provisions.

12. Funeral/mourning periods in respect of close family of Applicant

Applicant shall be entitled to exercise contact:

12.1 from the date of death until the day after the funeral;

12.2 in respect of the 16-day memorial service : 2 days before and 1 day after the service; and

12.3 in respect of the one-year memorial service : the day before the service until the day after the service.

13. Right of first refusal

In the event that either party is unable for any reason whatsoever, to care for the minor children for any period in excess of 12 hours including any extended overnight contact period, the other party shall have the right to exercise care and contact to the two minor children for that period.

14. Contact to operate from date of grant of order

The said rights of contact shall be implemented immediately with effect from date of grant of the order of court herein.”

28.3 The costs of the application are costs in the cause of the divorce action.

**SEGAL AJ
ACTING JUDGE OF THE HIGH COURT
GAUTENG LOCAL DIVISION, JOHANNESBURG**

Delivered: This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the Parties/their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date for hand-down is deemed to be on 11 August 2025.

Heard on: 30 July 2025

Delivered on: 11 August 2025

Appearances:

RM Courtenay:

Shereen Meersingh & Associates: for the Applicant

In person for the Respondent