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

CASE NO: 075101/2024

(1) REPORTABLE: **NO**

(2) OF INTEREST TO OTHER JUDGES: **NO**

(3) REVISED: **NO**

(4) Date: 29 July 2025

Signature:

In the matter between:

D[...] J[...]

Applicant

And

Y[...] O[...]

Respondent

JUDGMENT

NYATHI J

A. INTRODUCTION

[1] This is an application (opposed by the respondent) wherein the applicant seeks an order pertaining to the best interests of a child in relation to parental responsibilities and rights over the minor child, herein referred to as LJ. More specifically that:

- 1.1 The minor child will reside with the Respondent during the week;
- 1.2 The minor child will reside with the Applicant every weekend;
- 1.3 Both parties will have the right to reasonable telephonic contact whilst the minor child is in the care of the other party;
- 1.4 All school holidays will be shared equally between the parties; and
- 1.5 The parties will have the right to reasonable contact on their birthdays respectively and on Mother's and Father's Day, as the case may be.

- [2] The applicant seeks a further order that the Offices of the Family Advocate and an Independent Expert investigate the best interests of the minor child, with specific focus on primary care and contact as well as the existence of parental alienation.

B. BACKGROUND

- [3] The minor child LJ was born out the relationship between the applicant and the respondent.
- [4] When the relationship ended and the parties separated, they entered into a mutual separation agreement regulating the care and contact of the minor child. The agreement is dated 4 November 2014.
- [5] The agreement provided that the right of primary residency would vest with both parents, and that the minor child's residency would rotate on a weekly basis whilst the minor child was not of school going age.
- [6] Further provisions of the agreement were that:
"The parties undertake to timeously agree to an alternative arrangement insofar as same may be necessary when the minor child starts attending

school which will be in the best interests of the minor child having regard to routine, homework, extra-mural activities etc, but which will give both parties as close to equal and shared primary residence as possible."

- [7] The agreement was not registered with the Offices of the Family Advocate nor made an order of Court despite the applicant being informed by the respondent's erstwhile attorney that same would be done.¹
- [8] In 2019, the minor child started attending a primary school, and a verbal agreement was reached which provided that the minor child would reside with the respondent during the week and with the applicant every weekend. This verbal arrangement was to remain in place for a temporary period and until the respondent started working from home whereafter the minor child would be enrolled in a school midway between the parties' residences (Centurion) so that the weekly residence rotation could continue as previously agreed upon on 4 November 2014.
- [9] The respondent then commenced working from home, and despite numerous requests, the agreement regarding enrolment of the minor child in a school midway between the parties' residences and the re-implementation of shared residency did not come into existence.
- [10] The failure to re-implement the terms of the agreement dated 4 November 2014 led to disputes between the parties. These disputes were ventilated through correspondence during September 2022 to December 2022 to try and resolve the dispute amicably.²

C. THE CHILDREN'S COURT

¹ Para 6.6 applicant's founding affidavit.

² Para 6.14 founding affidavit.

[11] The respondent approached the Children's Court, Krugersdorp, during or about 26 April 2023 and without the applicant's knowledge. Proper service of this application did not take place.

[12] On 14 August 2023 an interim order was granted, in the absence of the applicant, which provided that:

*"In terms of SECTION 46 (1) (K), Act 38/2005, it is ordered that the minor L J (redacted), 2012/06/13 spends every alternative weekend with her biological mother, starting from 26 August 2023."*³

[13] The interim order granted on 14 August 2023 was only brought to the applicant's attention on 15 August 2023.

[14] A final order was granted on 27 October 2023 by the Childrens' Court. The applicant dedicates a number of pages⁴ in his founding affidavit detailing his dissatisfaction with the process and procedure that unfolded in the Children's Court, Krugersdorp. He lists a litany of complaints including instances of bias and being sidelined and excluded from making any inputs, as well as unbecoming attitudes towards from the Magistrate and the Social Worker.

D. THIS APPLICATION

[15] The applicant seeks to overturn the Children's Court order dated 27 October 2023 through these proceedings. This is procedurally irregular. The applicant in paragraphs 8 and 9 of his founding affidavit foreshadowed a review or an appeal against Magistrate Bosman's order but never saw that through. He even sought reasons for the final order from the Children's Court by delivering a Notice in terms of Rule 51 on or about 8 November 2023.⁵

³ Children's court order filed as Annexure DJ7.

⁴ Paragraphs 7 and 8 of founding affidavit.

⁵ Founding affidavit para 9.2

[16] The applicant, more pertinently, highlighted the irregularities in the children's court in chapter **C** of his founding affidavit. These are obvious grounds for a review application.

E. APPLICABLE LEGAL PROVISIONS

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

"...(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)(c)."

[18] Whilst the High Court has inherent jurisdiction in matters concerning the best interests of minor children, 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. As Van Niekerk AJ observed in **S.P.E. v B.N.** [2025]⁶, *"...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."*⁷

[19] A perusal of this application makes it abundantly clear that it is an appeal in disguise as contended by the respondent in her heads of appeal.⁸

⁶ Unreported ZAGPPHC (015692/25) dated 20/02/2025.

⁷ *Ibid* para [10].

⁸ Respondent's heads of argument para 14 – per Adv. PJ Badenhorst.

[20] The matter before the court is neither an appeal nor a review application but is made in circumstances where the applicant and his legal representatives should know better that forum shopping is frowned upon by the courts.

[21] In the circumstances, this appeal is dismissed with costs, taxable at scale B.

J.S. NYATHI
Judge of the High Court
Gauteng Division, Pretoria

Date of hearing: 22/01/2025

Date of Judgment: 29 July 2025

On behalf of the Applicant: Adv AR Coetzee
Instructed by: Lombard and Partners Inc., Pretoria

On behalf of the Respondents: Adv. PJ Badenhorst
Instructed by: Aldi Writes Attorneys

Delivery: This judgment was handed down electronically by circulation to the parties' legal representatives by email and uploaded on the CaseLines electronic platform. The date for hand-down is deemed to be 29 July 2025.