

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

CASE NUMBER: 2025-032965

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

29 August 2025

In the matter between:

M[...] F[...]

Applicant

and

A[...] W[...]

Respondent

JUDGMENT

Mahomed J

INTRODUCTION

[1]. The father of a minor child is the applicant in this matter, and has approached this court on an urgent basis, for a variation of an order granted by Segal AJ, on 5 August 2025. He asks this court to vary his contact rights, pending the finalisation of a report by a Dr Del Fabbro who is briefed to conduct a forensic investigation into the best interests of the one year old boy and to make recommendations if necessary.

[2]. Furthermore, he asks this court to order the respondent, their child's mother, to refrain from in any way interfering with his very limited contact rights with his daughter.

[3]. He furthermore prays for an order for contempt against the respondent, mother in violating the order of 5 August 2025, when she dismissed Ms Khumalo, the minor child's nanny, although this argument was not seriously pursued and I am of the view that on the facts before me he fails to discharge the onus in this regard.

[4]. The urgency was argued and counsel for the respondent alerted the court to the extremely truncated times afforded to her client to respond to very lengthy papers. I considered the parties' submissions and was of the view that it is in the best interest of the minor child that I consider the merits of the application, a hearing in due course might prejudice the minor child who is at a very vulnerable age.

[5]. Advocate Strathern for the applicant contended that the order for supervised contact is without any basis and must be varied to allow the father of the child his right to exercise contact freely and respectfully of his rights to dignity. The evidence is that the minor child's nanny Ms Petty Khumalo was to accompany the child and be present when he visited his with his father. According to the respondent mother, Petty and the minor child had bonded well over the year and she had a calming effect on the minor child. Two weeks ago, the respondent was dissatisfied with Ms Khumalo's performance, she dismissed her. Consequently, the applicant has not been able to exercise his contact time for fear of violating the court order. Advocate Strathern submitted that the order of 5 August 2025 cannot be implemented and is impractical. Counsel submitted that when the order was made, there was no basis for any supervised contact laid out, except that the submissions that the respondent is a young and careful mother, and she held strong views on parenting. She contended that the father lacked parenting skills and refused to take any counsel from her in that regard. The evidence is that the applicant is permitted contact of three and a half hours twice a week and three hours on a weekend. He is permitted to chat to his son for between 5 and 10 minutes on the days he does not see his child.

[6]. By reference to a series of WhatsApp messages, which was not challenged, Ms Strathern demonstrated that the mother consistently interfered with the limited time her client is allowed with his son. The respondent's messages to Ms Khumalo focused on what the applicant and his girlfriend were doing in the time allowed, and who else was present in those times and the like. The messages were persistent and sent within seconds of one another.

[7]. Ms Strathern argued that her client has over the year developed a bond with his son and contended that any interruption of that programme, severely prejudices both him and the minor child, it was submitted the child is at a very sensitive and vulnerable stage and could easily lose what has been built over the very short periods over the year.

[8]. Advocate Bezuidenhout for the applicant submitted that the order at prayer 6 provides for the applicant to make up what is lost in contact time if Ms Khumalo was unavailable and contended that there is no need to vary the order, her client is in the process of appointing another nanny. She contended that the applicant is simply opportunistic and seeks to capitalise on the situation in the absence of a nanny.

[9]. There are no facts before me that the father is incompetent to parent his child. Whatever "rumblings" are before this court, suggest that the respondent simply needs to be in control and has difficulty in allowing the minor child to bond with his father or anyone connected to the applicant.

[10]. I am inclined to vary the order to allow the "coparent" of this minor child to continue to bond and exercise his contact rights unhindered. I am of the view that a "substitute nanny" is unlikely to "build rapport over a short time to have the "calming effect" on the minor child which was the basis set out for supervision. As I understand the facts presented for the respondent, nanny Khumalo, had spent a long time with the minor child and had built up a relationship with him to have a calming effect on him. I cannot think that any "new and strange" person would be better suited than the minor child's own father to keep him calm and happy during

their visits, it is in the best interests of the minor child as set out in section 28(2) of the Constitution.

[11]. Regarding the cost of this application, even if he waited, as was contended the, a new nanny would still have to have spent some time with the child to develop the rapport as was the case and the reasoning before Segal AJ, to justify supervised contact. I am of the view the applicant had no other remedy in the circumstances and the contact time allowed must be maximised on, he is the minor child's biological father. The respondent is ordered to pay the costs of this application.

[12]. Accordingly, I make the following order:

1. Pending finalisation of the report by the expert Dr Del Fabro,
 - 1.1 The applicant is to exercise his contact rights without supervision for the days and times as per the order of 4 August 2025.
 - 1.2 The contact must recommence forthwith.
 - 1.3 The respondent is prohibited from in any way interfering with the time that the minor child spends with his father, nor is she to use any other persons to interfere with the contact periods permitted in the order of 4 August 2025.
- 2 The respondent is ordered to pay the applicant's costs of this application.

Mahomed J
JUDGE OF THE HIGH COURT
JOHANNESBURG

Date of hearing: 27 August 2025

Date of Judgment: 29 August 2025

Legal Representatives:

For the Applicant: Advocate Strathern

For the Respondent: Advocate Bezuidenhout