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

CASE NO: 007995/2025

DELETE WHICHEVER IS NOT APPLICABLE

- (1) REPORTABLE: **NO**
- (2) OF INTEREST TO OTHER JUDGES: **NO**
- (3) REVISED.
- (4) Date: 08 October 2025

In the matter between:

T[...] S[...] J[...] V[...] R[...]

First Applicant

E[...] I[...] S[...]

Second Applicant

And

C[...] S[...] J[...]

Respondent

JUDGMENT

NYATHI J

A. INTRODUCTION

[1] This is a two-parts application (opposed by the respondent) wherein the applicants seek, in PART A an order declaring and confirming the first applicant as a co-holder of full parental responsibilities and rights in respect of a minor child; directing that the primary residence of the minor child be investigated by an independent expert; and pending the finalisation of the investigation, the order should also entitle the second applicant reasonable parental responsibilities and rights in respect of the minor child. The application requests Part B to be postponed *sine die*.

[2] The respondent opposes the applicants' application on the following grounds:

- 2.1 that the application is wasting the Honourable Court's time to the extent that the first applicant prays to be granted rights and responsibilities that he already has and which he knows are not disputed by the respondent.
- 2.2 that it will not be in the best interest of the minor child to have the second applicant granted parental responsibilities and rights in respect of the minor child who has capable, caring and loving parents none of which the applicants are accusing of failing in their parental responsibilities. Especially If the second applicant is to be granted parental rights and responsibilities in respect of the minor child without the best interest of the minor child standard applied on her request.
- 2.3 that the applicants are not revealing their true motive when stating that they are acting in the best interest of the minor child as the facts will show that they are merely flexing their financial muscles for the purpose of abusing and embarrassing the respondent.
- 2.4 that the applicants are not alleging that the respondent is abusing or neglecting the minor child or alleging that the primary residence of the minor child is not appropriate. Further the applicants are not providing the reasons why they believe an interim order is necessary in this matter.
- 2.5 that the second applicant has no locus standi in the matter and that this application fails to assist her case by not alleging any right in the Bill of Rights or in the Children's Act that has been infringed or threatened that the second applicant is attempting to enforce.

- [3] The respondent asserts that she exercised her parental rights and responsibilities in the best interests of the child, and the minor child stays in a supportive and safe home in accordance with the *Children's Act 38 of 2005* and as required by public policy.

B. FACTUAL BACKGROUND

- [4] Between August 2018 and November 2020, the first applicant and respondent were involved in a romantic relationship that resulted in the birth of SLJVR, on 31 October 2019 (the minor child) who is now a boy of about five years and who is characterized with delayed development.
- [5] After the minor child was born, the first applicant and the respondent intended to get married hence they agreed to register the birth of the minor child in the surname of the first applicant instead of the respondent. This act granted the first applicant full parental responsibilities and rights in respect of the minor child.
- [6] However, the first applicant and the respondent hold different views about whether the act of registering the birth of the minor child in the surname of the first applicant assigned full parental responsibilities and rights to the first applicant in respect of the minor child.
- [7] It is also important to state that the minor child has both paternal and maternal grandparents in his life. The second applicant (the other grandmother) wants to be assigned parental responsibilities and rights in respect of the minor child. The first applicant and the respondent also hold divergent views as to whether the fact that the first applicant is the only child of the second applicant who

resides in South Africa, entitles the second applicant to be assigned parental responsibilities and rights in respect of the minor child. The respondent disagrees with this view as she believes that those factors are irrelevant when assignment of parental and rights in respect of a child are considered.

- [8] The first applicant works and lives in Malaysia and the second applicant is alleged to work as a radiologist and lives in Johannesburg. The respondent works in Pretoria, and her parents are self-employed.
- [9] In February 2020, by the time when the minor child was four months old, the respondent and the minor child undertook a visit to Malaysia to join the first applicant in what was initially intended to be a short visit. However, due to the COVID-19 outbreak, the respondent and the minor child ended up staying in Malaysia for nine months, in a stay which, according to the respondent, was laden with domestic abuses meted on her by the first applicant.
- [10] In November 2020, the respondent and the minor child returned to South Africa and since then, they had been staying with the respondent's parents (i.e, the minor child's maternal grandparents) in Pretoria.
- [11] Soon after their return to South Africa, the romantic relationship between the first applicant and the respondent ended because of unresolved issues that started in Malaysia.
- [12] Thereafter, whenever the first applicant would visit South Africa, he would stay with the second applicant at her house in Johannesburg and at times his circumstances would allow him to have day contacts with the minor child including sleepovers to the extent found convenient by both parents.
- [13] In total, since the birth of the minor child, the first applicant had only undertaken 15 visits of 5 weeks each to South Africa. These visits were the opportunities

for him to have physical contact with the minor child in addition to telephonic contacts. But the first applicant cannot say that he attempted to use all his days in South Africa to spend time with the minor child. The respondent also submits that none of these visits to South Africa by the first applicant occurred during school holidays.

[14] Since October 2024, the minor child had been attending pre-school at Edukleuter Kampus, 786 Kamdebo Street, Florauma, Pretoria after he was expelled from the previous pre-school due to intermittent emotional outbursts. It is important to also indicate that this replacement school is another issue that the first applicant and the respondent squabbled about. The respondent submits that the first applicant fails to understand that, at the time, the respondent as the custodian parent needed to act swiftly to find a replacement pre-school for the minor child.

[15] Since the minor child had been at this new pre-school, the minor child had consistently attended therapy sessions, and what is convenient is that the clinical psychologist is based at the school. The respondent submits that the child had adapted well.

[16] It is not unusual that in a relationship where parents have fallen out of love and a minor child is involved, disputes about trifling issues in respect of the minor child sometimes arise. The facts of this case indicate that the relationship between the first applicant and the respondent is not immune from such disputes.

[17] The respondent summarises conflicts between her and the applicants in respect of the minor child as ranging from (i) the respondent as the custodian parent being accused of keeping information from the applicants; (ii) the respondent being accused of unreasonably limiting contacts of the applicants with the minor child; (iii) unilaterally making choices about the school of the

minor child; (iv) to sporadic disagreements leading to incidents of violence and shouting in the presence of the minor child often between the second applicant and the respondent; and (v) threats to withhold maintenance of the minor child by the first applicant in order to control the respondent.

[18] The respondent is convinced that it is these fallout between the parties that are behind the applicants making this application.

C. BRIEF CHRONOLOGY

[19] This chronology was provided by the first applicant:

- 19.1 August 2018 – first applicant and the respondent commence a romantic relationship.
- 19.2 31 October 2019 - the minor child is born.
- 19.3 February 2020 – first applicant and the respondent move to Malaysia.
- 19.4 2023 – the minor child starts to exhibit concerning conduct.
- 19.5 January/February – application is served and filed.

D. ISSUES FOR COURT’S CONSIDERATION

[20] The issues engaging the Court’s attention are:

- 20.1 What are the best interests of the minor child?
- 20.2 The first applicant already enjoys parental responsibilities and rights granted to unmarried fathers in terms of the Children's Act.
- 20.3 Does the second applicant have any locus standi in this application.
- 20.4 The role of the Family Advocate versus an Independent Expert.
- 20.5 Is a parenting plan required/necessary?

E. DISCUSSION OF LEGAL PRINCIPLES

Best interests of the minor child:

[21] The applicants allege in their papers that they brought this application in the best interests of the child.

[22] According to section 15 of the *Children's Act*, a court may entertain a matter brought before it when satisfied that the following two requirements are met, namely,

- 22.1 if any person has alleged an infringement or threats to a right in the Bill of Rights or in the Act, and
- 22.2 (ii) if such person is one of those listed in section 15(2) of the Children's Act. Nowhere in their papers did the applicants

indicate to this Court that they satisfied these requirements to be heard and for that they deserve any remedies that the Court may provide. Hence on this observation alone, the respondent contends that if this Court is with her, the application ought to fail.

[23] Section 28(2) of the *Constitution of the Republic of South Africa* and Section 9 of the *Children's Act* which echoes the words of section 28(2) of the Constitution states that "*In all matters concerning the care, protection and well-being of a child the standard that a child's best interest is of paramount importance, must be applied*".

[24] Section 7(1) of the *Children's Act* guides how this standard is applied by stating that when applying "the best interests of the child standard" the following factors must be considered where relevant, namely:

(a) *The nature of the personal relationship between –*

(i) *The child and the parents, or any specific parent, and*

(ii) *The child and any other care-giver or person relevant in those circumstances; (b) The attitude of the parents, or any specific parent, towards –*

(i) *The child; and*

(ii) *The exercise of parental responsibilities and rights in respect of the child;*

(c) *The capacity of the parents, or any specific parent, or any care-giver or person, to provide for the needs of the child, including emotional and intellectual needs;*

(d) *The likely effect on the child of any change in the child's circumstances;*

(e) *The practical difficulty and expense of a child having contact with the parents, or any specific parent, and whether that difficulty or expense will*

substantially affect the child's right to maintain personal relations and direct contact w the parents, or any specific parent, on a regular basis;

(f) The child's –

(i) Age, maturity and stage of development;

(ii) Gender;

(iii) Background; and

(iv) Any other relevant characteristics of the child;

(g) The need for a child to be brought up within a stable family environment and, where this is not possible, in an environment resembling as closely as possible a caring family environment;

(h) The need to protect the child from any physical or psychological harm that may be caused by –

(i) Subjecting the child to maltreatment, abuse, neglect, exploitation or degradation or exposing the child to violence or exploitation or other harmful behaviour; or

(ii) Exposing the child to maltreatment, abuse, degradation, ill-treatment, violence or harmful behaviour towards another person;

(i) Any family violence involving the child or a family member of the child; and

(j) Which action or decision would avoid or minimise further legal or administrative proceedings in relation to the child.

[25] The respondent contends that this application is not in the interest of the minor child but those of the applicants. For instance, the applicants cannot claim they are acting on behalf of the child yet they are requesting this Court to grant them an order that have terms that directs the respondent to ensure that the second applicant access to the minor child only on her off-duty weekends (see sub-terms 4.3 & 4.4 of the Notice of Motion), as though performing parental responsibilities and exercising parental rights is a hobby, that is reserved only to off-duty days. This clearly does not show a scintilla of intention to act in the best interest of the minor child.

[26] A further indication of lack of interest of the minor child is shown in a term of the requested order that the applicants be granted parental responsibilities and rights, yet they know full well that they will not have time to perform and exercise those duties on a daily basis, except when one of the applicants comes to South Africa once a year, which the Court had that it had never been on school holidays; and the other applicant on her off-duty weekends. Clearly, the applicants failed to take this Honourable Court in their confidence by not showing that they are prepared to sacrifice for the minor child and that they also considered the *"practical difficulty and expense of a child having contact with the parents, or any specific parent"*.

[27] The respondent contends that the applicant is only paying lip-service to the minor child's interest in this application, as the application is more about their broken relationship with the respondent. This motive is appropriately captured in paragraph 16 of the applicants' Founding Affidavit when the first applicant states the following:

" ... I believe it is prudent that the Court take cognizance of the history between myself, the Second Applicant and the Respondent, to assist the Court with the proper adjudication of this application and in order to prove my intentions towards the minor child with this application."

[28] If the application was truly in the best interest of the minor child, the applicants would have considered it important to inform the Court also about their relationships with the minor child. Especially considering that the applicants want this Honourable Court to assign them parental responsibilities and rights as well as guardianship of the minor child (see 3.2 of the Notice of Motion). It is trite that when deciding, the Court ought to have been informed of the nature of the personal relationship between the child and the parent, or grandparent or a relevant person in the circumstances. Silence on this point shows that the best

interest of the child standard is not paramount in their case and was not applied as required.

[29] Furthermore, as indicated above, another of the requirements of "the best interests of the child standard" is to consider "action or decision which would avoid or minimise further legal or administrative proceedings in relation to the child". Notwithstanding this, the applicants chose to litigate this matter and are opposed to mediation and use of the Family Advocate, and it is clear that when they do not have their way in this Court and the Court is for the Family Advocate, they still want independent experts to be used. This does not paint a picture of applicants who are acting *bona fide* the interests of the minor child. This does not show the applicants as parents who are acting in compliance with the requirement of the standard to avoid or minimise further legal or administrative proceedings in relation to the child.

[30] It is common cause that the minor child is of a young age and that his development is delayed. Notwithstanding this too, the applicants do not find it necessary to also inform this Court how they considered in their application the age, maturity and stage of development of the minor child. Clearly, the applicants dismally failed the best interest of the minor child test and there is no reasonable person who cannot see through them based on their submissions in this application.

Parental responsibilities and rights of unmarried fathers:

[31] In their Notice of Motion, the applicants request this Court to grant an order that contains a term that assigns full parental responsibilities and rights in respect of the minor child to the first applicant who is an unmarried father.

[32] The respondent concedes that unmarried fathers do not acquire parental responsibilities and rights in respect of minor children just for the fact of being fathers.

[33] Assignment of parental responsibilities and rights to unmarried fathers is regulated by section 21 of the Children's Act which provides the following in respect of parental responsibilities and rights of unmarried fathers:

“(1) The biological father of a child who does not have parental responsibilities and rights in respect of the child in terms of section 20, acquires full parental responsibilities and rights in respect of the child-

(a) if at the time of the child's birth he is living with the mother in a permanent life partnership; or

(b) If he, regardless of whether he has lived or is living with the mother –

(i) Consents to be identified or successfully applies in terms of section 26 to be identified as the child's father or pays damages in terms of customary law;

(ii) Contributes or has attempted in good faith to contribute to the child's upbringing for a reasonable period; and

(iii) Contributes or has attempted in good faith to contribute towards expenses in connection with the maintenance of the child for a reasonable period.

(2) This section does not affect the duty of a father to contribute towards the maintenance of the child.”

[34] The respondent submits that at birth of the minor child, the first applicant consented to be identified as the father. Section 26(1)(a) of the Children's Act referred to *supra*, provides that:

"A person who is not married to the mother of a child and who is or claims to be the biological father of the child may apply for an amendment to be effected to the registration of birth of the child in terms of section 11(4) of the Births and Deaths

Registration Act, 1992 (Act 51 of 1992), identifying him as the father of the child, if the mother consents to such amendment".

Because the parents already gave the minor child the first applicant's surname at birth, this act made it unnecessary to for the first applicant to later follow the route of amendment as envisaged in section 26(1)(a) of the Children's Act.

[35] It is against this background that the respondent contends that in this case, the first applicant acquired parental responsibilities and rights in terms of section 21(1)(b)(i) of the Children's Act 38 of 2005 and section 10(1)(b) of the Births and Deaths Registration Act 51 of 1992. After all, the respondent submits that this exercise was undertaken with the first applicant consent, hence it is surprising that the first applicant is making this request for assignment of full parental responsibilities and rights in respect of the minor child.

[36] Therefore, the respondent argues that the first applicant had never lost his rights and responsibilities and as a result if this Court is with her on this point, this application should be considered redundant and be dismissed with costs.

Second Applicant's lack of *locus standi*:

[37] The respondent submits that it is trite that a preliminary procedural question that has to be answered in the judicial process is whether the parties to the litigation have the necessary standing or legal capacity to litigate. However, *locus standi* is not only a procedural question but is also a question of substance; it concerns the sufficiency and directness of the litigant's interest in proceedings which warrants his or her title to prosecute the claim asserted.

[38] Apparently, in this application the applicants appear to be misled to believe that the fact that the second applicant is the grandmother of the minor child establishes sufficient and direct interest that entitles her to litigate or be joined

in a dispute between the parents involving the rights of a minor child. The respondent argues that by merely being joined does not automatically grant locus standi before a court, but the sufficiency and directness of the litigant's interest in the matter must still be shown to the satisfaction of the Court.

- [39] The respondent contends that section 15 of the Children's Act regulates legal standing of litigants to enforce rights in respect of children, and thus those litigants must allege compliance with these requirements of this section. Section 15 of the Children's Act provides as follows:

“15 Enforcement of rights

(1) Anyone listed in this section has the right to approach a competent court, alleging that a right in the Bill of Rights or this Act has been infringed or threatened, and the court may grant appropriate relief, including a declaration of rights.

(2) The persons who may approach a court, are:

(a) A child who is affected by or involved in the matter to be adjudicated;

(b) Anyone acting in the interest of the child or on behalf of another person who cannot act in their own name;

(c) Anyone acting as a member of, or in the interest of, a group or class of persons; and

(d) Anyone acting in the public interest.”

- [40] The respondent argues that compliance with this section of the Act affords any person claiming *locus standi* the right to be heard by the Court, especially when claiming to litigate in the best interest of the minor child. Therefore, in simple terms, to have locus standi in such a claim, as per section 15, a person would need compliance with the following two-step requirements:

- (i) allegation that a right in the Bill of Rights or this Act has been infringed or threatened; and
- (ii) (ii) the applicant is made by one of the persons listed in the subsection.

[41] At face value, the second applicant seems to satisfy the threshold set by section 15. However, when one looks deeper into the requirements, the respondent argues that the applicants fail the test as they do not allege any right that the respondent infringed or threatened that the applicants, particularly the second applicant is enforcing.

[42] Hence on this basis alone, the respondent contends that this application by the applicants is unfounded and is a waste of Court's time that should be dismissed with costs. By failing to meet the threshold set out by section 15, the respondent argues that the second applicant is therefore not properly before this Court.

[43] Furthermore, the respondent contends that even if this Honourable Court were to find that the second applicant is properly established as a party to these proceedings, that conclusion of the Court would not affect her status as a grandmother of the minor child. Particularly considering that the respondent still allows the minor child to visit her now and then as she believes that it is important that the minor child maintains relations with both paternal and maternal grandparents. In *LH and Another v LA 2012 (6) SA 41 (ECG)*, the Court confirmed that it is usually in a child's best interest to maintain a close relationship with his or her grandparents. The Court further held that though contact between the grandparents and their grandson is desirable, that contact must be carefully circumscribed so as not to interfere with the respondent and her husband's parental responsibilities.¹

¹ The respondent's son was born soon after her husband was killed in a car accident. After she remarried, relations between her and the parents of her deceased husband (the applicants) deteriorated and all contact between them and their grandson ended. The applicants wanted to re-establish contact with their grandson and approached the High Court for an order granting them access. The respondent opposed the application on the basis that the initial contact with them had resulted in numerous problems that convinced her that further contact with the applicants would not be in her son's best interests.

[44] The respondent submits that the applicants conceded in paragraph 27 of their Founding Affidavit that the reason for the limitation of contact of the second applicant with the minor child is because of the harmful disagreements between the second applicant and the respondent.

[45] Therefore, the respondent submits that the applicants did not demonstrate sufficient and direct interest concerning the second applicant's involvement in this matter hence this Honourable Court should find the second applicant not properly before the Court.

Referral to Family Advocate versus Independent Expert:

[46] The respondent submits that the first applicant and her are co-holders of parental responsibilities and rights in respect of the minor child and find themselves in dispute over the exercise of their parental responsibilities and rights.

[47] The respondent contends that her dispute with the applicants over parental responsibilities and rights in respect of the minor child is the kind that falls within the mandate of the Family Advocate.

Smith J held that it is

usually in a child's best interests to maintain a close relationship with his grandparents. In the present case the respondent's attitude was motivated by her personal difficulties with the applicants rather than a consideration of her son's best interests. Contact between the applicants and their grandson, although desirable, had to be carefully circumscribed so as not to interfere with the respondent and her second husband's parental responsibilities. A reasonable transition period was required for the repair of the soured relationship between the respondent and the applicants.

The court ordered that the applicants be allowed to visit their grandchild at least once a week, for three hours at a time, at his home or anywhere else the respondent deemed appropriate. – Excerpt from *De Rebus*, Jan/Feb 2013:46.

[48] It is trite that the Office of the Family Advocates investigates disputes over parental responsibilities and rights and ensures compliance with the principle of the best interests of the minor child. The respondent submits that this case is exactly about determining a fair and practical parenting plan considering the circumstances of the parties in the dispute. The applicants' side in the dispute is well resourced whereas the respondent's is not, and consideration of this is in line with the best interest of the child standard.

[49] According to section 33(2) of the Children's Act, if the co-holders of parental responsibilities and rights in respect of a child are experiencing difficulties in exercising their responsibilities and rights, those persons before seeking the intervention of a court, must first seek to agree on a parenting plan determining the exercise of their respective responsibilities and rights in respect of the child.

[50] The respondent contends that there has never been a genuine commitment to agree on a parenting plan before the applicants ran to this Court.

[51] In the premise, the respondent submits that assistance by the Family Advocate will be essential notwithstanding the resourced applicants preference of independent experts.

[52] Section 33(5) of the Children's Act confirms the relevance of a Family Advocate when it provides as follows:

"In preparing a parenting plan as contemplated in subsection (2) the parties must seek-

(a) The assistance of a family advocate, social worker or psychologist; or (b) Mediation through a social worker or other suitably qualified person."

[53] It is common cause that the Office of the Family Advocate was established by the *Mediation in Certain Divorce Matters Act 24 of 1987* and its functions were

extended by the *Children's Act 38 of 2005* and are not at use an expense to the parties. Clearly there are benefits in the use of a Family Advocate.

[54] Because the Family Advocate acts as an advisor to the court and mediator between family members, the respondent contends that by involving the Office that would be in the best interests of the minor child and would minimise the time that would be wasted on searching for a suitably qualified expert and the costs involved. This will also limit the frequency of court appearances if the parties would later want to amend or terminate the parenting plan.

[55] Section 34(4) of the Children's Act provides that *"A parenting plan registered with a Family Advocate may be amended or terminated by the Family Advocate on application by the co-holders of parental responsibilities and rights who are parties to the plan."* The respondent contends that this section directly aligns with section 7(1)(j) of the Children's Act which guides persons when complying with the best interests of the child standard to consider *"action or decision which would avoid or minimise further legal or administrative proceedings in relation to the child"*.

[56] It is well known that the use of independent experts come at both financial and time costs to the parties and the child. Hence the respondent submits that valuable resources and time would be wasted when determining the suitability of independent experts' expertise as well as when their reports are made Court orders. Even thereafter, time and resources would be wasted in court when the parties would want to amend or terminate the parenting plan developed through the assistance of the independent experts. The respondent contends that this is clearly not in compliance with the best interests of the child standard as contemplated by section 7(1)(j) of the Children's Act.

[57] Taking this into account, the respondent argues that the use of the Family Advocate remains a reasonable decision that is in the best interest of the minor child.

Is a parenting plan required/necessary?

[58] According to the respondent, all the disputed issues that the applicants brought to this Court indicate that the absence of a parenting plan is the problem, not the respondent. However, the respondent does not submit that she is a "perfect parent".

[59] In any event, the Courts have already determined that, in determining what custody arrangement would best serve the children's interests, a Court was not looking for the "*perfect parent*", as there was no such being. The Court's quest was to find what has been called "*The least detrimental available alternative for safeguarding a child's growth and development*" [See **P v P 2007 (5) SA 94 (SCA)**].

[60] In the matter of CM v NG [2012] (4) SA 452 (WCC) the Honourable GANGEN AJ, in consideration a dispute over rights and responsibilities, said the following:

[61] "*I have no doubt that Applicant is entitled to parental responsibilities and rights as set out in Section 18 as it would be in the best interests of the child to have a relationship with two parents. It is also important in a situation such as this where there is much conflict between the parties that processes be put in place for the due exercise of both parties' parental rights and responsibilities.*"²

[62] Section 33(3) provides that a parenting plan may determine any matter in connection with parental responsibilities and rights, including –

² At para [72] of the judgment.

- (a) Where and with whom the child is to live;*
- (b) The maintenance of the child;*
- (c) Contact between the child and*
 - (i) Any of the parties; and*
 - (ii) Any other person; and*
- (d) The schooling and religious upbringing of the child.*

[63] The respondent's submission in this regard was that the issues that are listed in section 33(3) are the exact same issues at the core of the applicants' application. The respondent, accordingly, pray that the Court should direct the parties towards the preparation of a parenting plan through the Office of the Family Advocate.

F. CONCLUDING REMARKS

[64] The applicant is already imbued with parental rights and responsibilities that flow from the provisions of section 21 of the Children's Act and has been exercising them already. Any order to this effect would be more for his assurance than a shift in the legal terrain.

[65] In South African law, grandparents do not have an automatic right to see their grandchildren but can apply to the court for an order for care or contact under Sections 23 or 24 of the Children's Act. Any person with a genuine interest in a child's well-being can apply, and the primary consideration for the court will always be **the best interests of the child**. [emphasis supplied].

[66] When deciding a grandparent's application, a court will consider:

- (a) The child's needs and welfare.
- (b) The need to maintain connections with family, culture, and traditions.
- (c) Parental rights and responsibilities.
- (d) Any other factors that are deemed relevant to the child's interests.

[67] The applicants' frustration are compounded by the fact that the applicant's working conditions abroad renders it difficult for him to access and bond appropriately with the minor child as he spends months abroad at a time.

[68] The applicants have made out a case in support of their application. The court will defer to a reference to the Office of the Family Advocate as a point of first reference. Other experts' interventions may become due as and when the situation evolves.

(e) COSTS

[69] Our courts have on occasion held that in disputes relating to children, where parents contesting the case have acted in the best interests of the child, there is no winner or loser and accordingly each party should pay their own costs.³

G. ORDER

[70] The following order is made in respect of PART A of the application:

³ *McCall v McCall* 1994(3) SA 201 (CPD) at 209 B-C) quoted from *CM v NG* supra at para [73].

- 70.1 The first applicant is declared to be a joint holder of full parental responsibilities and rights as contemplated in Section 21 of the Children's Act, 38 of 2005, of the minor child, SLJVR, a boy born on 31 October 2019, (the "Minor Child");
- 70.2 The disputes emanating from this matter regarding the best interest of the Minor Child are referred to the Office of the Family Advocate to investigate, assess and report on such disputes and report to this Court for finalization of those issues.
- 70.3 Pending the finalization of the investigation and subsequent report. The 1st and 2nd applicant shall be entitled to the following reasonable parental rights and responsibilities, namely:-

- 70.3.1 When the first applicant is within the Republic of South Africa, the first applicant is entitled to exercise at least seven days, in total, contact with a minor child, commencing on a Friday afternoon and terminating on a Sunday afternoon, alternatively, during school holidays, commencing on a Saturday and terminating on the next Sunday.
- 70.3.2 Regardless of whether the first applicant is within the Republic of South Africa, the first applicant shall be entitled to:
- 70.3.2.1 exercise regular daily or second daily telephonic and/or video contact with the minor child at a time agreed on by both parties;
- 70.3.2.2 be regularly informed of any or all school and extra-mural activities of the Minor Child, including the right to receive all reports, status updates, information sheets and/or any other form of communication directly from the school/therapist regarding the Minor Child's progress, immediately when available, including free access to contact the relevant parties to enquire about the Minor Child's progress;
- 70.3.3 When the first applicant is not within the Republic of South Africa, the second applicant shall be entitled to exercise contact rights with the minor child once every month on her off-duty weekend for the first 3 (three) months from date of the order sought, on Saturday from 09h00 until Sunday at 17h00, when the minor child is to be returned to the respondent;
- 70.3.4 Hereafter, the second applicant shall be entitled to exercise contact with the Minor Child once every month on her off-duty

weekend, from Friday after school, when possible, until Sunday at 17h00, when the Minor Child is to be returned to the respondent;

70.3.5 In addition, the second applicant, is awarded regular telephonic contact with the minor child once a week, at a time agreed by both parties or in case of an emergency, and that the respondent will answer the call, or return the call when more suitable; That the respondent shall furnish the first and second applicants with copies of all school and medical reports, notes and other documents relating to the minor child's education, academic and sporting achievements and doctor's consultations.

70.4 PART B of the application is postponed *sine die*.

70.5 Each party to pay its own costs for this application.

J.S. NYATHI

Judge of the High Court

Gauteng Division, Pretoria

Date of hearing: 09/06/2025

Date of Judgment: 08 October 2025

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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 08/10/2025.