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REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

CASE NO: 2025-178969

DATE: 3 NOVEMBER 2025

- (1) **NOT** REPORTABLE
(2) **NOT** OF INTEREST TO OTHER JUDGES

In the matter between:

**THE CENTRAL AUTHORITY OF THE
REPUBLIC OF SOUTH AFRICA**

First Applicant

R D C

Second Applicant

and

L L

Respondent

Neutral Citation: *The Central Authority of the RSA and Another v L* (2025-178969) [2025] ZAGPJHC --- (3 November 2025)

Coram: Adams J

Heard on: 28 October 2025

Delivered: 3 November 2025 – This judgment was handed down electronically by circulation to the parties' representatives by email, by being uploaded to *CaseLines* and by release to SAFLII. The date and time for hand-down is deemed to be 10:00 on 3 November 2025.

Summary: *The Hague Convention on the Civil Aspects of International Child Abduction* (the Hague Convention) – Article 12 jurisdictional requirements established by the left-behind parent – there was wrongful removal of the child from his ‘habitual residence’ – whether a defence to the application for the return of the child to Denmark was established as envisaged in Article 12 and Article 13(b) – Article 13(a) and (b) defences not established by the abducting parent – no consent established on the part of the left-behind parent and the minor child would not be exposed to a grave risk of physical and psychological harm or be placed in an intolerable situation – Application succeeds.

ORDER

- (1) H H C ('the minor child') is to be returned forthwith to the jurisdiction of Denmark in accordance with the provisions of Article 12 of the Hague Convention on the Civil Aspects of International Child Abduction.
- (2) Within five days from date hereof, the first applicant is to collect the minor child's passport and other travel documents from Van Zyl Hertenberger Incorporated Attorneys (the erstwhile Attorneys of record for the respondent) at Block [...], V[...] O[...] P[...], 2[...] B[...] N[...] D[...], N[...], Johannesburg.
- (3) Within ten days from date of this order, the first applicant shall facilitate the handing over of the minor child from L L ('the respondent') at number 2[...] L[...], V[...] V[...], M[...], or from any other place where the minor child may be found and to be handed over to R H C ('the second applicant').
- (4) If the respondent fails to co-operate of her own volition in handing over the minor child, the Sheriff or his Deputy, duly assisted, insofar as it may be necessary, by members of the South African Police Services (SAPS), shall use whatever measures and/or means necessary to execute this order.
- (5) Member/s of the SAPS are to assist the Sheriff or his Deputy when called upon to do so.
- (6) Upon receipt of the minor child, the second applicant shall arrange and pay for the minor's flight ticket and visa to travel to Denmark.
- (7) The first applicant is directed to request the assistance of the Central Authority for Denmark to put in place such further measures as may be necessary to ensure the welfare of the minor child as soon as possible on arrival at the minor's habitual residence in Denmark.
- (8) In five months' time, if and when the respondent is ready to return to Denmark, the second applicant shall pay all fees associated with her travel

to Denmark, as well as the fees associated with the travel to Denmark of the parties' second minor child, born on 23 September 2025.

- (9) The second applicant shall also accommodate the respondent and the second minor child during their stay in Denmark or pay for such accommodation. The second applicant shall provide proof, to the satisfaction of the Central Authority of South Africa, prior to the departure of the respondent and the second minor child from South Africa, of the nature and location of such accommodation and that such accommodation is available for them immediately upon their arrival in Denmark. The Central Authority for Denmark shall decide whether the accommodation thus arranged by the second applicant is suitable for the needs of the respondent and the second minor child, should there be any dispute between the parties in this regard, and the decision of the Central Authority for Denmark shall be final and binding on the parties.
- (10) The second applicant will ensure that the respondent's and the second minor child's medical expenses are covered by him and/or his Medical Aid.
- (11) The second applicant will ensure that the respondent has access to a range of financial and other support services available to her in Denmark.
- (12) It is recorded that to the best of the second applicant's knowledge, no relevant criminal charges are pending in Denmark for which the respondent could be prosecuted in relation to her conduct in retaining the minor child in South Africa. The second applicant undertakes not to pursue any criminal proceedings or assist in procuring the prosecution proceedings against the respondent in relation to her conduct in retaining the minor child in South Africa.
- (13) The second applicant confirms that the minor child will, when the respondent arrives in Denmark, live with her upon her return to Denmark and that the minor child will spend reasonable time with him until parenting orders, insofar as it may be necessary, have been made by the Family Court in Denmark in relation to care arrangements for the minor child.

- (14) Either party may approach the family courts in Denmark, *inter alia*, to vary the terms of this order, and/or to make this order a mirror order of court in Denmark.
- (15) In the event of the appropriate court in Denmark failing or refusing to make the order as set out in this order, the Republic of South Africa Central Authority and/or the respondent is granted leave to approach this Court for a variation of this order.
- (16) A copy of this order shall forthwith be transmitted by the Republic of South Africa Central Authority to the Central Authority for Denmark.
- (17) Each party is to pay their own costs.

JUDGMENT

Adams J:

[1]. The second applicant is the father of a minor boy child ('the minor child') born on 7 July 2019, who is six years and four months old at present. With the assistance of the first applicant, the Central Authority of the Republic of South Africa (the Central Authority), the second applicant applies in these opposed proceedings in terms of the Hague Convention on the Civil Aspects of International Child Abduction (the Hague Convention), for an order directing the respondent, the mother of the child, to return him to Denmark.

[2]. It is the case of the second applicant that the minor child should be returned to his country of 'habitual residence' in Fredericia, Denmark, from where he was on 5 August 2025 unlawfully removed to South Africa and wrongfully retained by his mother, the respondent. The respondent opposes the application on the basis that the removal of the minor child from Denmark was not wrongful as the second applicant had consented in writing to such removal. Moreover, so the respondent contends, the minor child would be exposed to a grave risk of physical and psychological harm or be placed in an intolerable

situation, as envisaged by article 13(b) of the Hague Convention, if this court were to order his return to Denmark. In that regard, the respondent relies heavily on the fact that the father, who has been diagnosed with bipolar disease and who is in full time employment as a civil engineer and who travels extensively for work, does not have the capacity to look after a six-year-old boy. She has always been, so the case on behalf of the respondent goes, the primary caregiver of the minor child and, in her view, her son would be completely lost without her.

[3]. At issue in this opposed application is whether factually the second applicant had consented to the relocation to South Africa of the respondent with the minor child. Furthermore, the question to be considered by this court is whether the respondent has discharged the onus that rests upon her in terms of Article 13(b) to prove that the minor child would be exposed to a grave risk or be placed in an intolerable situation if the court ordered his return to Denmark.

[4]. The foregoing issues are to be decided against the factual backdrop of the matter. In that regard, there is a material factual dispute between the parties in relation to whether or not the second applicant has, in an email of 3 August 2025 purportedly from his email address to the email address of the respondent, consented to the respondent removing the minor child to South Africa. Closely related to this dispute is another disagreement in relation to whether or not the parties have agreed to the respondent, who was at the time before her untimely departure to South Africa expecting their second child, giving birth to the second child in South Africa or in Denmark. The father alleges the latter, whilst the mother avers that the agreement was that she would give birth in South Africa, hence the consent by the father that she could travel to South Africa at the time when she did.

[5]. However, before dealing with the facts in the matter it may be apposite at this point to have a brief overview of the applicable legal framework to place in context the issues which require adjudication.

[6]. Article 12(1) of the Hague Convention provides as follows:

‘Where a child has been wrongfully removed or retained in terms of Article 3 and, at the date of the commencement of the proceedings before the judicial or administrative authority of the Contracting State where the child is, a period of less than one year has elapsed from the date of the wrongful removal or retention, the authority concerned shall order the return of the child forthwith.’

[7]. Article 13 provides an exception to the obligation of the court to order the child’s return. It states, in the relevant part, as follows:

‘Notwithstanding the provisions of the preceding Article, the judicial or administrative authority of the requested State is not bound to order the return of the child if the person, institution or other body which opposes its return establishes that –

- (a) The person, institution or other body having the care of the person of the child was not actually exercising the custody rights at the time of removal or retention, or had consented to or subsequently acquiesced in the removal or retention; or
- (b) There is a grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation.’

[8]. In a recent judgment in *N M v Central Authority for the Republic of South Africa and Another*¹, the Supreme Court of Appeal, relying on *Ad Hoc Central Authority, South Africa and Another v Koch NO and Another*², reaffirmed the well-established law in applications under the Hague Convention as stated some two decades ago in *Sonderup v Tondelli and Another*³. In the latter judgment the Constitutional Court held as follows:

‘A South African court seized with an application under the Convention is obliged to place in the balance the desirability, in the interests of the child, of the appropriate court retaining its jurisdiction, on the one hand, and the likelihood of undermining the best interests of the child by ordering her or his return to the jurisdiction of that court. As appears below, the court ordering the return of a child under the Convention would be able to impose substantial conditions designed to mitigate the interim prejudice to such child caused by a court-ordered return. The ameliorative effect of Article 13, an

¹ *N M v Central Authority for the Republic of South Africa and Another* 2024 JDR 5313 (SCA).

² *Ad Hoc Central Authority, South Africa and Another v Koch No and Another* 2024 (3) SA 249 (CC).

³ *Sonderup v Tondelli and Another* 2001 (1) SA 1171 (CC).

appropriate application of the Convention by the court, and the ability to shape a protective order, ensure a limitation that is narrowly tailored to achieve the important purposes of the Convention. It goes no further than is necessary to achieve this objective, and the means employed by the Convention are proportional to the ends it seeks to attain.'

[9]. According to *N M v The Central Authority of the Republic of South Africa and Another* (supra), the following key aspects may be extracted from the Constitutional Court's interpretation in *Koch* of Article 13(b):

- '(a) The prompt return of the child: The judgment confirms that the Convention proceeds on the basis that the best interests of a child who has been unlawfully abducted from one jurisdiction are ordinarily served by requiring the return of the child to that jurisdiction so that the law can take its course. As the Constitutional Court put it: "The prompt return of the child lies at the heart of the Convention's entire scheme".
- (b) Grave risk threshold: The Court emphasised that the threshold for invoking Article 13(b) is high. It is not sufficient to demonstrate that the child would face some level of harm or discomfort upon return; rather, the risk must be 'grave,' meaning serious or severe.
- (c) Nature of harm: The Court considered the nature of the harm that the child might face if returned to their country of habitual residence. This included an assessment of the psychological impact on the child of being separated from her primary attachment figure and the environment in which she had become settled in South Africa. In making reference to *Sonderup*, the Court reiterated that "[t]he harm must be grave".
- (d) In considering an Article 13(b) defence, evidence of the child's attachment to one parent should not be overemphasised. To do so misapplies the test in Hague Convention proceedings. The attachment factor does not belong in the Article 13(b) inquiry, it is a test utilised for custody and care proceedings.
- (e) There must be clear and compelling evidence of the grave risk of harm or other intolerability which should be measured as substantial.
- (f) Source of harm: The Court noted that, under Article 13(b), the source of the risk of harm is irrelevant. What matters is the existence of a grave risk to the child, regardless of whether this risk arises from the circumstances in the country to which the child is to be returned or from the process of removal itself.

- (g) **Balancing act:** The Court balanced the grave risk of harm against the objectives of the Hague Convention. It recognised that while protecting children from harm is paramount, this must be balanced against the Convention's goals of deterring child abduction and ensuring the prompt return of abducted children to their habitual residence for custody disputes to be resolved.
- (h) **Context-specific analysis:** The Court's interpretation underscored that the application of Article 13(b) must be tailored to the specific circumstances of each case. It involves a careful, fact-specific inquiry into the potential harm to the child in the context of the particular case.
- (i) **Determination of factual disputes and the analysis of evidence:** The application of the *Plascon-Evans* rule is not conducive to a determination of factual disputes in Convention proceedings for several reasons. Since, it is not open to an applicant in Convention proceedings to choose the procedural form of the proceedings, he or she will be imperilled by factual disputes irresolvable on the papers. Convention proceedings are summary in nature. The body of evidence placed before the court in proceedings under the Convention may consist of a hotchpotch of different types of material. A determination made in terms thereof must be based on an overall assessment of all the evidential material placed before the court.
- (j) **Expert evidence, even if uncontradicted, remains an opinion that must be scrutinised by a court to determine its value.**
- (k) **Nature of the inquiry:** A Hague Convention inquiry involves a two-stage process in which the long- and short-term interests of the child must be balanced. The latter interests, with which the inquiry is primarily concerned, centre around jurisdictional issues. The long-term interests involve custody and care issues. These are best determined by the court having jurisdiction over the child. The aim of the Convention is to facilitate the child's prompt return to that jurisdiction to enable it to make the necessary determination regarding long-term custody and care. The two inquiries should not be conflated.
- (l) **Caution should be exercised when the abducting parent relies on the time that has elapsed since the child has been in South Africa as a factor in establishing an Article 13(b) defence. It may undermine the primary objective of the Convention and could become a strategic tool to evade its objectives.'**

[10]. That then brings me back to the facts in the matter and the application to those facts of the foregoing legal principles.

[11]. The second applicant is a South African, who presently lives and works in Denmark. The respondent is a Zimbabwean national and the two of them got married in South Africa on 22 May 2018. Of the marriage between these two parties, the minor child was born. The parties, with the minor child, have been living in Denmark since the birth of the child during July 2019. It is common cause between the parties that, at all times material hereto, the second applicant and the respondent were 'habitually resident' in Denmark, together with the minor child.

[12]. The case on behalf of the respondent is that her departure to South Africa had been planned for months and was for the purpose of her giving birth to the parties' second child, who was conceived using *in vitro fertilization* (IVF) under the supervision of a South African doctor. The respondent in fact gave birth to their second child in a clinic in Sandton, South Africa, on 23 September 2025. The agreement, according to the respondent, was that she would give birth to their second child and return to Denmark in four to five months with both children after she is in a position physically to travel and after she has been able to acquire the necessary travel documentation for the second child.

[13]. This is denied by the second applicant, who alleges that there was no agreement that the respondent would give birth in South Africa. In fact, so the second applicant alleges, the agreement was that the respondent would give birth in Denmark. It was only after they had a disagreement that the respondent seemingly decided to abscond to South Africa with the minor child on the pretext that she was going to give birth, as agreed to between her and her husband.

[14]. The difficulty with the respondent's version is that it appears at odds with the fact that, by all accounts, including the respondent's own narrative, during the period when the second applicant is alleged to have consented, in the email

of 3 August 2025 to the trip, they were at loggerheads. So, for example, on 27 July 2025 the second applicant called out the Danish police, complaining that the respondent was intoxicating him with illegal substances and trying to kill him. After they had arrived and discussed the matter with the parties, the police left, promising to check on the parties the following day.

[15]. Furthermore, on 31 July 2025, the respondent was having a discussion with an official from the local Municipal Authority, known as the *Kommune*, during which discussion the official was advised of the problems experienced between the parties, notably the fact that the second applicant was experiencing bouts of ‘psychiatric episodes’. The Kommune in Denmark is also tasked with domestic issues such as domestic violence. Importantly, on the aforementioned date, the Kommune official was advised by the respondent that the second applicant told her (the respondent) that she couldn’t leave Denmark. In response to which, the official commented that she (the official) told the second applicant that the respondents could not move address without him knowing about it.

[16]. On 1 August 2025, the *Familieretsuset* (the Family Court) in Denmark, on request of the second applicant, issued a so-called notice of guidance against foreign travel and child abduction to both parents pending the custody case. On 11 August 2025, the Kommune advised the second applicant that he has apparently given his consent for the respondent to travel to South Africa with the minor child, which came as a complete surprise to him

[17]. The point about the foregoing is that in the midst of all of the strife between the father and the mother and whilst the father, by all accounts, was against the mother traveling to South Africa, he (the father) consents – out of the blue – to her traveling to South Africa. The inherent improbability in the respondent’s version is self-evident. What is more is that the said version is far-fetched and unsustainable and falls to be rejected.

[18]. I therefore accept, as more probable, the version of the second applicant. There are further reasons why the version of the second applicant on this aspect of the matter should prevail, such as the fact that, on the respondent's own version, she left Denmark rather clandestinely and stealthily in the proverbial 'middle of the night'. She did not get the second applicant to drive her to the airport when she flew out of Denmark. If objectively he had given his consent to her travelling to South Africa with the child, why, can it be asked rhetorically, was it necessary for all of the secrecy and the underhandedness.

[19]. For all of these reasons the first ground on which the application is opposed by the respondent should fail. The second applicant did not consent to the respondent travelling to South Africa with the minor child. The simple point is that the respondent has not demonstrated that Article 13 (a) finds application *in casu*. The respondent has not established that the second applicant 'had consented to or subsequently acquiesced in the removal or retention' to and in South Africa of the minor child.

[20]. It is also the case on behalf of the respondent that, if returned to Denmark, the minor child would be exposed to a grave risk or be placed in an intolerable situation. In that regard, the report by the *curator as litem* (Ms Nieuwoudt) is, in my view, instructive. She reported that the respondent is of the opinion that it will be best for the minor child if they return to Denmark. He is very unhappy here and longs for his home in Denmark.

[21]. Moreover, the evidence before me belies the claim by the respondent that the second applicant is incapable of looking after the minor child, who himself has expressed a preference for returning to Denmark to be with his father. I also do not accept the contention by the respondent that because of his medical condition, the second applicant poses a threat to the minor child. It is so, as contended by the second applicant, that the evidence relating to his social, occupational, health and academic status paints a picture of the second applicant as a responsible and a trustworthy individual quite capable to

nurturing his six-year-old son. The second applicant has already put measures in place for the schooling of the minor child.

[22]. On the basis of the foregoing, I am of the view that I should exercise my discretion in favour of ordering the return of the minor child to Denmark. In my view, the defences envisaged in article 13(b) is not available to the respondent. I conclude that there is not a grave risk that the minor child's return to Denmark would expose him to physical or psychological harm or otherwise place him in an intolerable situation.

[23]. I reiterate that, in my view, the minor child will not suffer physical or psychological harm or be exposed to an intolerable situation should he be returned to Denmark. Moreover, there are protective measures or a package of protective measures that would protect the interest of the respondent. I intend granting ancillary orders to provide for the foregoing.

[24]. The applicants' application should therefore succeed.

[25]. Finally, as regards costs, I am of the considered view that it is fair that each party should pay their own costs.

Order

[26]. In the result, the order which I grant is as follows: -

- (1) H[...] H[...] C[...] ('the minor child') is to be returned forthwith to the jurisdiction of Denmark in accordance with the provisions of Article 12 of the Hague Convention on the Civil Aspects of International Child Abduction.
- (2) Within five days from date hereof, the first applicant is to collect the minor child's passport and other travel documents from Van Zyl Hertenberger Incorporated Attorneys (the erstwhile Attorneys of record for the respondent) at Block 6, V[...] O[...] P[...], 2[...] B[...] N[...] D[...], N[...], Johannesburg.

- (3) Within ten days from date of this order, the first applicant shall facilitate the handing over of the minor child from L[...] L[...] ('the respondent') at number 2[...] L[...], V[...] V[...], M[...], or from any other place where the minor child may be found and to be handed over to R[...] H[...] C[...] ('the second applicant').
- (4) If the respondent fails to co-operate of her own volition in handing over the minor child, the Sheriff or his Deputy, duly assisted, insofar as it may be necessary, by members of the South African Police Services (SAPS), shall use whatever measures and/or means necessary to execute this order.
- (5) Member/s of the SAPS are to assist the Sheriff or his Deputy when called upon to do so.
- (6) Upon receipt of the minor child, the second applicant shall arrange and pay for the minor's flight ticket and visa to travel to Denmark.
- (7) The first applicant is directed to request the assistance of the Central Authority for Denmark to put in place such further measures as may be necessary to ensure the welfare of the minor child as soon as possible on arrival at the minor's habitual residence in Denmark.
- (8) In five months' time, if and when the respondent is ready to return to Denmark, the second applicant shall pay all fees associated with her travel to Denmark, as well as the fees associated with the travel to Denmark of the parties' second minor child, born on 23 September 2025.
- (9) The second applicant shall also accommodate the respondent and the second minor child during their stay in Denmark or pay for such accommodation. The second applicant shall provide proof, to the satisfaction of the Central Authority of South Africa, prior to the departure of the respondent and the second minor child from South Africa, of the nature and location of such accommodation and that such accommodation is available for them immediately upon their arrival in Denmark. The Central Authority for Denmark shall decide whether the accommodation thus arranged by the second applicant is suitable for the needs of the respondent and the second minor child, should there be any dispute

between the parties in this regard, and the decision of the Central Authority for Denmark shall be final and binding on the parties.

- (10) The second applicant will ensure that the respondent's and the second minor child's medical expenses are covered by him and/or his Medical Aid.
- (11) The second applicant will ensure that the respondent has access to a range of financial and other support services available to her in Denmark.
- (12) It is recorded that to the best of the second applicant's knowledge, no relevant criminal charges are pending in Denmark for which the respondent could be prosecuted in relation to her conduct in retaining the minor child in South Africa. The second applicant undertakes not to pursue any criminal proceedings or assist in procuring the prosecution proceedings against the respondent in relation to her conduct in retaining the minor child in South Africa.
- (13) The second applicant confirms that the minor child will, when the respondent arrives in Denmark, live with her upon her return to Denmark and that the minor child will spend reasonable time with him until parenting orders, insofar as it may be necessary, have been made by the Family Court in Denmark in relation to care arrangements for the minor child.
- (14) Either party may approach the family courts in Denmark, *inter alia*, to vary the terms of this order, and/or to make this order a mirror order of court in Denmark.
- (15) In the event of the appropriate court in Denmark failing or refusing to make the order as set out in this order, the Republic of South Africa Central Authority and/or the respondent is granted leave to approach this Court for a variation of this order.
- (16) A copy of this order shall forthwith be transmitted by the Republic of South Africa Central Authority to the Central Authority for Denmark.
- (17) Each party is to pay their own costs.

L R ADAMS
Judge of the High Court
Gauteng Division, Johannesburg

HEARD ON:	28 October 2025
JUDGMENT DATE:	3 November 2025
FOR THE FIRST AND SECOND APPLICANTS:	M I Motimele
INSTRUCTED BY:	The State Attorney, Johannesburg
FOR THE RESPONDENT:	In person
INSTRUCTED BY:	In person
<i>CURATOR AD LITEM:</i>	E Nieuwoudt