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IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, JOHANNESBURG

CASE NO: 181093/2025

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

10 In the matter between

R[...] W[...] K[...] APPLICANT

and

K[...] A[...] M[...] FIRST RESPONDENT

(PREVIOUSLY M[...])

THE DIRECTOR GENERAL

DEPT OF HOME AFFAIRS SECOND RESPONDENT

J U D G M E N T

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MAKUME, J: This matter commenced before me as an urgent application on the 14th of October 2025. On the 15th of October 2025 I made an order which is annexed hereto as annexure X which has been uploaded on CaseLines. What follows hereunder are my reasons for that order.

In the application, the applicant sought an order that the requirements contained in Section 18(3)(iii) of the Children's Act 38 of 2005, in terms of which the first respondent's consent is required to remove the minor child T[...] W[...] K[...], born on the 8th of January 2012, (the minor child) is dispensed with.

The other ancillary prayers are that the requirements set out in Regulation GNR784/1986 which requires a minor child to produce written consent from both parents so that
10 the minor child be granted a passport, also be dispensed with, and lastly, that applicant be permitted to apply for any Visa for the minor child to enable the minor child to travel with applicant outside the Republic of South Africa.

Background facts

I deal first with the exposition of the background facts and circumstances leading up to this application, including a chronology of events and correspondence exchanged.

The minor child was born on the 8th of January 2012 from a romantic relationship that existed then between the
20 applicant and the first respondent. When the relationship soured, the parties concluded a parenting plan in respect of the minor child.

The parenting plan, which was made an interim court order by the Children's Court on the 7th of June 2023, was confirmed by the family advocate in her report dated the

30th of November 2023. The final details of that plan are not necessary, save to indicate that both parties retained full parental rights and responsibilities in respect of the minor child, as contemplated in Section 18 of the Children's Act. Also that the applicant was granted primary residence of the minor child.

The parenting plan was concluded as a result of the fact that the first respondent had already relocated permanently to Ballito in Kwa Zulu Natal. The minor child
10 had been in the care of the applicant since about January 2022, when the respondent relocated.

In the court order supported by the parenting plan, the respondent has contact rights to the minor child at varying times and periods, which includes school holidays as well as telephonic and WhatsApp correspondence.

The issue about applying for a passport for the minor child commenced with WhatsApp correspondence on 9 June 2025 between the parties. The applicant requested the first respondent to send to him a copy of her identity document.
20 The first respondent had no difficulty and said "I will send a copy of it as soon as I am home." This was at 18H24 on the 9th of June 2025.

On the 13th of June 2025, at 11H15, the first respondent sent a copy of her identity document to the applicant with the following message: "Please use it only

for the passport application. Anything else I do not give you consent to use it.”

The first respondent confirmed that on the 24th of September 2025, the applicant contacted her telephonically and told her that he intends traveling to Germany with the minor child during January 2026. The first respondent says that she needed time to consider the request and information and would revert.

On the 25th of September 2025, discussions took place
10 involving the applicant, the respondent, as well as the minor child. The applicant informed the respondent that he had made arrangements that the two of them meet at the Standard Bank in Johannesburg on the 3rd of October 2025 and inquired when the respondent would come up to Johannesburg. It is at that meeting also as per the respondent's answering affidavit where the minor child asked her if he can go on holiday in Germany with his father. The respondent did not respond positively. She instead told the minor child that she is still in discussions
20 with the applicant and will get back to him.

The respondent reneged on her earlier agreement to come up to Johannesburg so as to complete the necessary documents to enable the minor child to be issued with a passport. Instead the respondent sent a WhatsApp message to the applicant which reads as follows:

“The only way I will sign or do anything is if he comes to live with me permanently from 1st of January 2026.”

It is that response that prompted the applicant's attorneys to address a letter to the respondent on the 30th September 2025. In that letter the attorneys had attached a consent form which the respondent was required to sign and send back to, to them by the 1st of October 2025. The applicants attorneys warned the respondent that if no
10 response is received then the applicant will launch an urgent application and seek necessary relief in terms of the Children's Act.

That letter was followed by numerous calls and WhatsApp messages which the respondent ignored and ultimately sent the following message on WhatsApp:

“Good morning.

I will lay a charge of harassment if I continue getting calls and messages whilst I am trying to work. My lawyer and I will get back to you as soon
20 as we have gone through everything.”

The response from the first respondent clearly indicated that she had now changed her mind and was no longer prepared to join the applicant in applying for a passport for the minor child.

On the 3rd of October 2025 the applicant launched this urgent application in terms of Rule 6(12) of the Uniform Rules of Court and set same down for hearing on the 14th of October 2025 at 10 in the morning.

On the 7th of October 2025, the respondent's attorneys Mrs NLA Inc, addressed a letter to the applicant's attorney raising a number of issues that had nothing to do with the request for consent but ended up in paragraph 5 of that letter by informing the applicant's attorney that their client
10 is now prepared to consent to the minor child travelling to Germany and said nothing about consent to travel to Australia.

The applicant's attorneys then informed the respondent's attorneys that they will not ask for costs if the respondent consent to the order as set out in the notice of motion. Instead of responding to that the respondent then filed a notice to oppose the application and then followed it up with a lengthy answering affidavit on the 10th of October 2025.

20 In the answering affidavit the respondent took issue with the aspect of urgency at length and then dealt with the merits, ending up in paragraph 78.14 of her affidavit, by saying the following:

“The applicant's attorneys was informed formally by my attorney telephonically, and in writing, on the

6th and 7th of October 2025, respectively, that I would consent to the travel of the minor child. Despite this, an urgent application was launched, on abusive time periods and for completely different relief.”

The respondent only indicated her consent after the urgent application had been launched and served, besides having been warned of that on the 30th of September 2025.

I am satisfied that the application is urgent, hence I
10 allowed the parties to address the court on the merits, which both parties did fully, after having exchanged, answering and replying affidavits. The applicant complied fully with the practice directive and afforded the respondent ample time to respond.

In the heads of arguments supported by the draft order, the first respondent asked in the alternative that the application be dismissed and yet follows up with a tender that mirrors to a large extent the applicant's notice of motion. I think this is nothing but an abuse of the process.

20 In dealing with the merits of the application, the first respondent blows hot and cold. She says that it is not in the best interest of T[...] to travel overseas, she says that it is not in the best interest of T[...] to travel overseas with the applicant, because she views this as a disguised permanent relocation, and yet confirms that her attorney, when

speaking to the applicant's attorneys, conceded that it is not correct to suspect that the intended holiday is a disguised relocation.

Is it in the best interest that the minor child travels to Germany and Australia with the applicant for the period of 4th to 11th January 2026

Having dismissed the point that the application is not urgent, I now deal with the number one requirement which is anchored both in Section 28 of the Constitution of the
10 Republic of South Africa, as well as in various sections of the Children's Act, which is the best interest of the minor child.

Once again, the first Respondent, in dealing with this aspect in her short heads, says the following in paragraph 9 thereof:

“Besides the factors of Section 7 in the Children's Act, for a final order of this kind, Sections 9 and 10 need to be followed. To date, this has not been done and there is no voice of the child's
20 assessment for such relief.”

It is common cause that both Sections 7 and 9 emphasize the principle of the best interest of the child. On the other hand, Section 10, which deals with the child's participation, reads as follows:

“Every child that is of such an age, maturity and stage of development as to be able to participate in any matter concerning that child has the right to participate in an appropriate way and views expressed by the child must be given due consideration.”

The first respondent, in her own words, at paragraph 24 of her answering affidavit confirms that the minor child did ask her if he can go on holiday to Germany in January and
10 she responded that she is still thinking about it. It is therefore clear that the minor child expressed a view and a desire to travel on holiday to Germany with his father.” This, in my view, was in compliance with Section 10 to which he got no response until after this application was launched.

I agree with the applicant's submission that the relief sought by the applicant does not impact the respondent's relationship with the minor child. It pertains solely to the waiver of the respondent's consent and cooperation in
20 respect to the passport, in respect to the passport. The passport, Visa and travel abroad. The relief is designed to promote the interest of the minor child.

The respondent, in her own affidavit, once more at paragraph 40 exposes her dilatory conduct in addressing the issue of consent. In paragraph 40, she says that it was

only after consulting with her attorneys that she became convinced that it would be good for T[...] to travel to Germany with his father to experience another culture. It is clear that up until that time, she was withholding consent on the basis that this was a disguised relocation for which she had no proof.

Paragraphs 7.1.1 up to 7.1.1.6 of the notice of motion, provided, provided sufficient proof and reassurance that there was no intention to relocate overseas permanently
10 with the minor child.

In the matter of In re: X.S (7265/2024) a decision by GAISA AJ, delivered on the 18th of July 2024, by the Limpopo Division of the High Court, the following was said at paragraph 55:

“In Bailey (supra) the Court reaffirmed that the child's best interests are paramount in relocation cases. While this is not a relocation case, the principle directly applies to it, as the Court must consider whether allowing X.S. to travel to USA for
20 the academic achievers' tour within the mentioned period is in her best interest.”

The first respondent has been acting *malefide* by initially agreeing to the passport application, and to that extent even sending a copy of her identity document to the applicant, only to later withhold, same and requiring that

the applicant should agree to the minor child staying with her permanently from January 2026.

The minor child asked her directly. She did not say no or yes. She said: “I will come back to you”, as she is still thinking about that. She knows that time was not on the side of the applicant, as applications for passports and Visas take some time, and yet she still had the luxury to put things on hold. In my view, her intention was to frustrate and delay as much as possible, so that the trip does not
10 take place, as she wants T[...] to come and stay with her permanently.

The Supreme Court of Appeal, Scott J A. in *Jackson v. Jackson* [2001] ZA SCA 139, held that:

“The fact that a decision has been made by the custodian parent does not give rise to some sort of rebuttable presumption that such decision is correct. The reason why a Court is reluctant to interfere with a decision is correct. The reason why a court is reluctant to interfere with a decision for a
20 custodian parent is not only because the custodian parent may, as a matter of fact, be in a better position than the non-custodian parent. In some cases, to evaluate what is in the best interest of a child, but more importantly, because the parent bears the primary responsibility of bringing up the

child should, as far as possible, be left to do just that. It is, however, a constitutional imperative that the interest of children remain paramount. That is a central and constant consideration.”

In the result I am satisfied that a proper case has been made by the applicant in the best interest of the minor child, not the best interest of the parties. The draft order, marked X, which has already been made an order of court, is annexed hereto.

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MAKUME, J

JUDGE OF THE HIGH COURT,

GAUTENG DIVISION, JOHANNESBURG

	Date of hearing	14 th October 2025
20	Date of Judgment	3 rd November 2025
	For the Applicant	Adv Lizzelle Venter
	For the respondent	Adv S J Martin

TRANSCRIBER'S CERTIFICATE

R[...] W[...] K[...]//LESLEY ANN MATTHIESEN

I, the undersigned, hereby certify that **so far as it is audible to me**, the foregoing is a true and correct transcript of the proceedings recorded by means of a digital recorder in the matter between the parties stated above:

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TRANSCRIBER'S NOTES / PROBLEMS EXPERIENCED

TRANSCRIBER: MRS F VAN SCHALKWYK

DATE COMPLETED: 2025-10-30



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