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IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, JOHANNESBURG

CASE NO: 020029/2025

DATE: 12.11.2025

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

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SIGNATURE

DATE: 12 November 2025

In the matter between

T[...] T[...]

and

M[...] N[...]

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J U D G M E N T *EX TEMPORE*

WILSON, J: In the main application, the applicant seeks the suspension of an order of the Children's Court made on 24 April 2023. Flowing from the suspension of the Children's Court order, the applicant seeks a range of ancillary relief changing the primary residence and contact regime the Children's Court applied to regulate the care of the parties'

minor child.

When the matter was called before me today, Ms. Khubeka announced her appearance for the applicant and sought a postponement. Ms Khubeka, through no fault of her own, was unable to set out the basis on which the postponement was sought. She had clearly been given very few instructions.

There was a suggestion that there had been non-compliance with this court's practice directives. On further
10 probing the non-compliance appears to have been the failure of either party to file a joint practice note. Ms Khubeka was unable to say what prejudice would flow from that failure, since the joint practice note is primarily for the benefit of the court and not for either of the parties.

I indicated that I had read the papers and I was not at any disadvantage for not having had the benefit of a joint practice note. Ms Khubeka could not gainsay that, and she was unable to identify any other basis on which the applicant would suffer prejudice if the application was not
20 postponed. Of course, had the main application stood excellent prospects of success, the applicant would have been severely prejudiced by the absence of an advocate to motivate it on his behalf. That is why, as is trite, the prospects of success in the main application are always relevant in an application to postpone.

The problem in this case is that the prospects of success in the main application are extremely weak. There is a Children's Court order. It deals comprehensively with the applicant's rights of contact with the minor child. It was made after due consideration given to the matter by the Magistrate who gave a reasoned judgment in support of their order.

Under the Children's Act, all Magistrates' Courts are Children's Courts and all Children's Court orders are to be
10 treated as orders of the Magistrates Court. I am unable to find any basis on which on which I am entitled to reach into the Children's Court proceedings and interfere with an order made by that court in the absence of an appeal properly before me.

It was suggested in written submissions filed on the applicants' behalf that my general role as the upper guardian of children within my jurisdiction permits me to interfere with the Children's Court order if that is necessary to promote a child's best interests. But that merely begs the
20 question. Nothing has been said in the main application that supports the conclusion that an approach to the Children's Court to vary or appeal its order would not serve the child's best interests while according the appropriate respect to the jurisdiction of that court.

Had the applicant sought relief the Children's Court

cannot grant, that would have been a different matter. But as Mr Rood, who appeared for the respondent, argued, there is no relief sought in part A of this application that it would not be competent to seek from the Children's Court itself. The applicant's remedies accordingly lie in the Children's Court. The applicant is entitled to seek a variation of the Children's Court order. The applicant can seek leave to appeal the Children's Court order, explaining his tardiness in doing so. There is a range of other relief
10 that the applicant may be able to seek in Children's Court, dealing with the order as it presently stands.

There is no explanation on the papers as to why the Children's Court itself has not been approached and, indeed, there appears to be a concession on the applicant's behalf that the proper course would have been to appeal the Children's Court's order as soon as it was granted. On that conspectus of the applicant's case, his claim in the main application plainly stands very low prospects of success and accordingly the prejudice to him in refusing a
20 postponement is slight indeed.

The respondent would plainly be prejudiced by a postponement. Every day this application drags on, the perfectly lawful regime the Children's Court has put in place is thrown into doubt. It cannot be in anyone's best interests – let alone those of the parties' child – that this situation be

allowed to endure for a moment longer than is necessary.

There is accordingly no basis on which the application should be postponed, and I am bound to refuse the postponement order sought. For all those reasons, the application for a postponement is dismissed with costs.

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WILSON, J
JUDGE OF THE HIGH COURT
12 November 2025