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**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

JUDGMENT

**Not Reportable
Case No: 2025-246332**

In the matter between:

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

Applicant

And

L[...] A[...] A[...]

Respondent

Coram: DA SILVA SALIE, J

Heard on: 19 December 2025

Delivered on: 19 December 2025

Summary:

Family law – Minor child – International travel – Passport – Citizenship Act s 26B – Best interests of child – Father authorised to travel with 16-year-old minor to the United

States and to apply for renewal of South African passport – s 26B applies only to major citizens and does not render a court order authorising travel by a minor unlawful – Non-compliance with passport requirements does not divest a minor of citizenship or bar re-entry – Return flight and schooling arrangements confirmed – Mother’s consent dispensed with – Court, as upper guardian, regulating travel subject to safeguards and directing cooperation at Department of Home Affairs – Each party to bear own costs.

ORDER

[1] For the reasons stated above, I grant the order attached hereto as “X”.

JUDGMENT

DA SILVA SALIE J:

Introduction:

[1] This is an application by the applicant father for authorisation to travel with his minor son, J[...] A[...] A[...] (“the minor”), presently aged 16, to the United States of America and for ancillary relief relating to the application for a South African passport for the minor. The relief is sought in the context of, and with reference to, the parties’ divorce order granted in 2018 which permits him to have contact with his minor sons.

This application is only in relation to the older sibling. The younger son is presently aged 13.

[2] The respondent mother opposes the application. Her opposition is primarily founded on the contention that the proposed travel would be unlawful by reason of alleged non-compliance with South African citizenship and passport legislation and that the granting of the relief sought would place this Court in conflict with section 26B of the South African Citizenship Act 88 of 1995. She is also concerned that without confirmation of a return flight for the minor, together with the applicant's encouragement for him to take up residence with the application in the USA, the applicant may not return the minor to his residence and primary care with the respondent.

Issues for determination

[3] The issues for determination are:

3.1 Whether the relief sought is consistent with the parties' 2018 divorce order.

3.2 Whether the proposed travel and ancillary relief are in the best interests of the minor child as contemplated in section 28(2) of the Constitution.

3.3 Whether the respondent's reliance on the South African Citizenship Act and passport requirements renders the relief sought unlawful or impermissible.

Legal framework

[4] It is common cause that South African law requires South African citizens to enter and depart the Republic on South African passports. This requirement regulates administrative and immigration compliance.

[5] Section 26B of the South African Citizenship Act provides that a major South African citizen who enters or departs the Republic using the passport of another country commits an offence and is liable, upon conviction, to a fine or imprisonment not exceeding 12 months.

Mischaracterisation of section 26B and passport requirements

[6] The respondent contends that the minor child could be arrested, treated as a visitor, or barred from returning to South Africa should travel occur without full compliance with passport formalities, and that this Court would act unlawfully were it to grant the relief sought.

[7] These contentions are legally incorrect.

[8] Section 26B applies expressly and exclusively to a major citizen. It does not apply to minor children, does not criminalise a child's travel, and does not divest a child of South African citizenship by reason of passport non-compliance.

[9] A South African citizen cannot be rendered a visitor in his or her own country, nor can such citizen lawfully be excluded from the Republic. At most, non-compliance with passport requirements may give rise to administrative consequences capable of rectification through established Department of Home Affairs processes.

[10] Section 26B does not render unlawful a Court order authorising international travel involving a minor child, nor does it place this Court in conflict with statute where such travel is regulated by appropriate conditions aimed at ensuring compliance with administrative requirements.

[11] The respondent's further suggestion that she could incur criminal liability as a guardian is speculative and unsupported. Criminal liability under section 26B presupposes conduct by a major citizen, prosecutorial discretion, and a factual matrix not established in these proceedings.

The role of the Court in regulating travel involving minor children

[12] Courts are routinely called upon to regulate international travel involving minor children in the context of divorce orders and parental disputes. In doing so, Courts as the upper guardian of minor children are empowered to grant travel authorisation subject to conditions safeguarding the child's return and compliance with immigration and passport requirements.

[13] Outstanding administrative processes, without more, do not justify the refusal of travel where such travel is authorised and demonstrably consistent with the child's best interests.

Best interests of the child

[14] The respondent's opposition is framed predominantly in legal and administrative terms. It does not establish that the proposed travel would be detrimental to the minor's welfare, safety, or emotional well-being. To the extent that the respondent has expressed concerns regarding the applicant not returning the minor, it had been

confirmed during argument that a return flight is scheduled for the minor departing the USA on 6 January 2026 and landing on 7 January 2026. The applicant had also already paid the minor's tuition fees for his private school in Cape Town, commencing in January 2026.

[15] In the circumstances I am satisfied that no evidence is placed before the Court to suggest that the applicant seeks to frustrate the minor's return to South Africa or to undermine the respondent's parental rights.

[16] The application must be assessed with reference to the minor's best interests, rather than conjecture regarding hypothetical future administrative difficulties.

[17] I am satisfied that the minor, escorted by his father on his departure to the USA for a two week visit and return to South Africa on 7 January 2026 would be in his best interests and that an order permitting him to leave with the following documents would be acceptable for his departure: (a) receipt issued by DHA for the renewal of his passport; (b) expired passport; (c) birth certificate; (d) USA passport and (d) this Order of Court.

Rebuilding relationship with F[...] (J[...]) (aged 13):

[18] It is imperative that a relationship with one sibling, in this case the older son, must not be at the expense of the younger son. I have raised concerns with the applicant during the hearing of this matter that a fostered relationship and travel with his older son would also potentially cause tension between the two siblings and that I am concerned regarding the lack of relationship between F[...] (J[...]) and his father. I am of the view that an investigation by the Office of the Family Advocate as to the interests

and contact in respect of both minors, and in particular so, as to nurture a continued relationship between father and both sons would assist this Court in making further orders to review the needs of the children insofar as the applicant could access both his sons, including regular electronic and other means of communication and build a healthy relationship with them. I make provision for that in the order below.

Costs

[19] Having regard to the nature of the dispute, the parties' ongoing parental relationship and that the applicant appeared in person, it is just and equitable that each party bears their own costs.

Order

[20] For the reasons stated above, I grant the order attached hereto as "X".

G. DA SILVA SALIE
JUDGE OF THE HIGH COURT
WESTERN CAPE DIVISION

Appearances

For Applicant: Mr A A[...] (in person)

For Respondent: Adv. K Felix

Instructed by: Karen Botha Attorneys

“X”

19/12/25

**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

At Cape Town on Friday, 19 December 2025
Before the Honourable Ms Justice Da Silva Salie

Case No.: **2025-246332**

In the matter between:

A[...] T[...] A[...] Applicant

and

L[...] A[...] A[...] Respondent

ORDER

Having read the papers filed of record and having heard the applicant in person and counsel for the respondent, IT IS ORDERED THAT:

1. The applicant father is authorised and directed to attend at the Department of Home Affairs, Barrack Street, Cape Town ("the DHA"), at **08h00 on Monday, 22 December 2025**, together with the respondent mother and J[...] A[...] A[...] as well as F[...] (J[...]) A[...], (the minor children) for the purposes of applying for and obtaining South African passports (or renewal thereof) for the minor children.

2. The respondent is directed to provide the birth certificates and expired passports for both children and other documentation as may be necessary to process the application and to remain in attendance with the minors until a receipt is issued in respect of both applications. The receipt in respect of J[...]’s application shall be provided to the applicant immediately, as well as his birth certificate, his expired South African passport and his present USA passport for the purposes of the travel arrangements as contemplated herein.

3. The consent of the respondent mother, ordinarily required for the application or renewal for/of a South African passport in respect of the minor children, is hereby dispensed with, (should she not consent) and this order shall serve as sufficient authority for the DHA to accept, process and finalise the application.

4. The applicant father is authorised to travel with the minor child to the USA and to return the minor child to South Africa, such travel being consistent with and not derogating from the divorce order granted by this Court on 20 February 2018 ("the 2018 order").

5. The consent of the respondent mother J[...]’s travel to and from the USA is hereby dispensed with, and this order shall serve as sufficient authority for immigration officials and all relevant authorities to permit such travel.

6. The authorised travel shall take place within the period from 22 December 2025 to 6 January 2026, and the applicant father shall ensure that the minor child is returned to South Africa on or before 7 January 2026.

7. The applicant father shall, at least 24 (twenty-four) hours prior to departure, provide the respondent mother with:

7.1. the confirmed flight itinerary (outbound and return) for the minor child;

7.2. the address(es) at which the minor child will reside while in the USA

and

7.3. a contact telephone number at which the applicant father and the minor child can reasonably be reached during the period of travel.

8. During the period of travel, the applicant father shall ensure that the respondent mother is afforded reasonable telephonic or electronic contact with the minor child, having due regard to time-zone differences.

9. The applicant father shall take all reasonable steps to ensure compliance with applicable immigration and passport requirements relating to the minor child.

10. The Office to the Family Advocate ("the Family Advocate") is to conduct an investigation and provide a report on care and contact arrangements in relation to the minor child, and his brother, F[...] K[...] A[...] ("J[...]") (collectively referred to as "the minor children"), in particular the applicant father's relationship with Francis (Jake).

11. The Family Advocate is to deliver its report by no later than Friday, 15 May 2026.

12. The application is postponed to **Monday, 15 June 2026** for further hearing before the Honourable Mrs Justice Da Silva Salie.

13. The parties are given leave to supplement their papers by no later than Monday, 8 June 2026.

14. Save as expressly provided herein, all remaining terms of the 2018 order remains of full force and effect.

15. Each party is to pay their own costs.

BY ORDER OF THE COURT

COURT REGISTRAR

KAREN BOTHA ATTORNEY

Somerset West

c/o ENGLAND SLABBERT ATTORNEYS INC.

Cape Town

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