



**IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, JOHANNESBURG)**

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

SIGNATURE

DATE: 19 January 2026

Case No. 4078-2026

In the matter between:

FM

Applicant

and

LB

Respondent

JUDGMENT

WILSON J:

- 1 On the afternoon of Monday 12 January 2026, the applicant, FM, approached me though her attorneys seeking leave to enrol an urgent application for permission to relocate her three children from South Africa to Zimbabwe. FM alleged that her children were being kept from her by her sister-in-law, LB, who is the respondent in these proceedings, and that it would be in the children's best interests to be relocated to Zimbabwe forthwith. FM said that she has no right to reside permanently in South Africa. FM also said that she

has to leave South Africa by no later than 19 January 2026, in order to settle the children in Zimbabwe before returning to her employment in the Republic of Ireland.

2 I granted FM leave to enrol the relocation application before me on 15 January 2026. I required that LB be given at least forty-eight hours' notice of the application, and that the application be served on the Family Advocate. In due course, LB opposed the application, and a full set of affidavits was filed. The Family Advocate's office studied the founding papers and informed me that it had no objection to the relief FM sought.

3 I heard argument on 15 January 2026, and interviewed FM's three minor children in my chambers for about an hour on the morning of 16 January 2026. I asked the parties to submit further draft orders dealing with a range of possible outcomes by no later than noon on 17 January 2026. I then reserved my decision and indicated to the parties that I would hand this judgment down at around 8am on Monday 19 January 2026.

4 On the information currently available to me, I have come to the conclusion that it is not presently in the children's best interests to be relocated to Zimbabwe. This is chiefly because FM has no intention of living with them there. FM instead wishes to return to Ireland, where she is presently employed, and to leave the children in the care of her Zimbabwean relatives. On the evidence as it stands, I am not satisfied that the children have any meaningful connection with Zimbabwe or with any of FM's relatives there. They were born, brought up, and are being educated in South Africa. Save for the fact that there is some evidence that LB has sought to alienate the children

from FM, the children have a healthy and loving relationship with LB, and are settled and comfortable in her care. I intend to make orders to ensure that LB refrains from any conduct that might further alienate FM from her children, and I intend to enforce a regime of contact between FM and her children which LB will be bound to respect. In addition, I do not wish to close the door to the children eventually rejoining FM, whether in Ireland, Zimbabwe or elsewhere. I will make orders that facilitate the exploration of those possibilities. I am, however, convinced that, for the time being, it is in the children's best interests that they remain under LB's care. In what follows, I give my reasons for reaching these conclusions.

FM, TC and the children

5 FM is a Zimbabwean national who was until recently married to a man I will call TC. FM and TC had three children: two boys, who I will call LN and LA (aged 9 and 5), and a girl (aged 12) who I will call LC. All three of the children were born in South Africa, but none of them has a South African birth certificate, or any other document evidencing a right to live here. TC was a Zimbabwean national with South African permanent resident status. As far as I can tell, FM's right to live in South Africa was dependent on TC's permanent residence status. FM is currently in South Africa on a visitor's visa.

6 FM and TC brought their three children up in Pretoria until around three years ago, when the family moved to Bronkhorstspuit. In 2023, TC was unemployed (according to LB, he was involved in some sort of business, but it does not seem to have produced a regular or dependable income for the family), but FM managed to find a job in Ireland. FM says that she hoped to settle there

permanently with TC and the children. FM travelled to Ireland to carry out her work, while TC applied for a visa to allow him and the children to join FM. On 22 January 2025, however, that application was declined, on the basis that the supporting information TC had provided was insufficient.

7 At some point thereafter TC began to suspect that FM was having an affair with one of her Irish colleagues. TC had apparently seen pictures on a social media account which he took to be evidence of FM's infidelity. In her founding papers, FM says that the pictures were entirely innocent, and that she was not having an affair. Still, TC and FM apparently argued about the pictures for much of 2025. I do not know – and I do not regard it as particularly relevant – whether FM was having an affair. But it is a fair inference from the papers that TC felt resentful, powerless and lonely, left with the parties' children in South Africa while FM supported the family from Ireland.

8 These feelings ran deeper than anyone could have known. On 25 November 2025, TC committed suicide. The circumstances in which TC took his own life are particularly distressing. Apparently deeply disturbed about what he believed was FM's infidelity, TC had driven himself, LN, LA and LC to Louis Trichardt. The suggestion seems to have been that he was on his way to Zimbabwe. Whatever his intentions, it appears the TC's mental state broke down completely on the journey. He pulled his car over. He gave each of the children their birth certificates and told them to walk towards a group of construction workers nearby. He also told them that FM was having an affair. He then dowsed himself with petrol in front of the children and set himself alight. He died from his injuries. LC ran toward TC and tried to extinguish the

flames. She suffered burns requiring hospitalisation, but her physical injuries appear now substantially to have healed.

- 9 Between her last telephone conversation with TC on 23 November 2025, and learning of TC's death at 1am on 27 November 2025, FM spent what must have been many anxious hours trying to contact TC and the children. Eventually, TC's sister, LB, told FM that TC had died. After a short stay in hospital, all three children went to stay with LB and her husband.

After TC's suicide

- 10 It is not clear from the papers what FM's movements were immediately after TC's death. It seems that she was unable immediately to leave Ireland, whether because of her employment commitments or because of problems with her Irish visa. I am unable to say whether FM returned to Zimbabwe or how long she spent there if she did. It is common cause, however, that FM kept open a consistent line of financial support to the children through LB, and that she attempted consistently to speak to them. FM arrived back in South Africa on 7 January 2026, and sought to visit the children at LB's home.
- 11 Nevertheless, between TC's death on 25 November 2025, and a two-hour contact session that I ordered take place on 15 January 2026, LB steadfastly refused to permit FM to talk to or visit her children. During argument, Mr. Matshidzha, who appeared before me for LB, submitted that LB had not in fact prevented FM from seeing her children, but had rather refused FM access to LB's house, where the children were staying. Since the children did not wish to speak to FM, LB was, Mr. Matshidzha implied, able neither to encourage

the children to come out of the house to talk to FM, nor to have a telephone or video call with her.

12 I reject that submission. In the circumstances of this case, it was a particularly cynical one to make. I am satisfied on the papers that LB believed that FM was having an affair, that LB blamed FM for TC's suicide, and that LB encouraged the children to do the same. In her answering affidavit, LB annexes what she says are intimate messages between FM and her Irish colleague that prove the affair. She says FM's lack of contact with the children is her own fault and is due in large part to what LB calls FM's "physical and emotional detachment" from her family. Given the irrelevance of FM's involvement in any extramarital affair, I need not consider the authenticity of the messages. However, the fact that LB chose to produce them, and the terms in which LB chose to criticise FM in her answering affidavit, plainly disclose LB's true attitude. I have no doubt that LB has sought deliberately to keep the children from FM.

13 Though LB's conduct in this respect was wrong, I do not mean to criticise her too harshly for it. Anger is the predictable product of grief, especially in a case as tragic as this one. Nonetheless, Mr. Matshidzha's attempt to paint LB as a disinterested observer who was only carrying out the wishes of the children was as unhelpful as it was unconvincing.

FM's contact with the children

14 Once this picture had emerged fully from the papers and argument presented to me, I made an order requiring that FM have immediate contact with the children. I also ordered that the children be made available to meet with me in

my chambers to discuss their relationship to FM and what they feel about the prospect of relocating to Zimbabwe.

15 As far as contact is concerned, and notwithstanding the obvious and extreme trauma they have endured, I am satisfied that all three of the children want to live with their mother, even though LB has clearly told them that living with FM will also mean living with a “stepfather” with whom they have been encouraged to believe FM has been unfaithful. Nonetheless, that the children have not been alienated from FM by the events of the past two months was clear both from how they talked about FM in their meeting with me, and from the fact that LA and LC sat in court huddled up to FM during the short hearing the followed my meeting with them. There was never any justification for preventing FM from seeing the children, and I am satisfied that it was never really their wish to be separated from her.

16 It follows that all three children should continue to have as much contact with FM as they possibly can. It also follows that relief aimed at restraining LB from discouraging or interfering with that contact is necessary, at least in the short term.

Relocation

17 However, the core dispute in this case is about whether the children should immediately be relocated to Zimbabwe. Were I asked to make a straightforward choice between directing that the children remain with LB or directing that they relocate to live with FM, whether in Ireland or in Zimbabwe, I would have had little hesitation in granting an order authorising FM to relocate the children so that they can reside with her.

- 18 But that is not the choice that faces me. The decision I am asked to make is whether the children should be immediately if perhaps only temporarily relocated to Zimbabwe while FM returns to Ireland with the hope of obtaining the permission of the Irish government to relocate the children to live with her there. Framed in that way, the decision is far more finely balanced. On the one hand there remains a risk that LB will persist in her attempts to alienate the children from FM if they continue to reside with LB. There is also the fact that, although they were born in South Africa, and have lived their whole lives here, the children are not presently documented, and their immigration status remains to be determined, given that TC was a South African permanent resident and FM is not.
- 19 Nevertheless, the children are as a fact settled in South Africa. LB has registered them at a school. LB has a close, long-standing and loving relationship with them. They are in familiar surroundings and are clearly comfortable where they are for now. They know that living with FM is not likely to be practical in the immediate future.
- 20 On balance, I am satisfied that it is in the children's best interests to remain where they are for now. In the absence of residence with FM being a realistic imminent prospect, the advantages to the children from continued residence with LB outweigh the disadvantages I have set out. I think that there is a small risk that LB will continue to alienate the children from FM. In my judgement, however, LB's attitude to FM is yet to mature. On the information I presently have, it seems more probable than not that once the immediate shock of TC's death passes, LB's animus towards FM will subside, at least to the extent

necessary to enable LB to refrain from conscious efforts to set the children against FM. Though the children remain undocumented in South Africa, that status does not place them at any immediate risk, especially since I intend to continue to oversee the residence and contact regime applicable to them. In other words, any attempt to remove the children from South Africa will have to be approved by me.

- 21 For all these reasons, leave to relocate the children to Zimbabwe will be refused. However, I will make orders which will ensure FM's continued contact with the children, and will facilitate an investigation of the circumstances under which FM will ultimately be able to reside with her children, wherever she may choose permanently to settle.

Order

- 22 At the hearing of this matter on 16 January 2026, I asked the parties to try to reach agreement on a draft order to be made in the event that I was not inclined to order the relocation FM sought. On 17 January 2026, two draft orders were uploaded to Caselines. One was clearly FM's preferred draft. The second draft, which appears to have been prepared by Mr. Matshidzha or his attorney, was presented as an "order by agreement". It turned out that the "order by agreement" was not, in fact, agreed, as became clear from correspondence forwarded to me during the early evening of 18 January 2026. The order I shall make is not in any material sense agreed between the parties, but it does contain elements of both parties' proposals.

- 23 Accordingly –

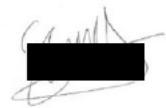
- 23.1 The application for leave to relocate LN, LA and LC to Zimbabwe is refused.
- 23.2 It is declared that parental rights and responsibilities over and for LN, LA, and LC (“the children”) under the Children’s Act 38 of 2005 vest in FM.
- 23.3 It is directed that the children are to remain primarily resident with LB and under LB’s primary care at her current residential address pending the delivery of a report from the Family Advocate, setting out whether, in the view of the Family Advocate, it is in the children’s best interests to relocate to the Republic of Ireland, Zimbabwe or elsewhere, whether to reside with FM or otherwise.
- 23.4 The Family Advocate is directed to deliver that report to the chambers of Wilson J and to the parties, within three months of the date of this order.
- 23.5 FM is to have the right to full unsupervised contact with the children.
- 23.5.1 When FM is not present in South Africa, that contact may be by video or telephone call at any reasonable time that is arranged with LB. LB is to take the necessary steps to facilitate unsupervised contact between the children and FM at least three times per week, including by ensuring that the children have access the equipment necessary to make unsupervised contact with FM.

- 23.5.2 When FM is present in South Africa, her contact with the children will be unsupervised for such reasonable periods and at such reasonable dates and times as are arranged with LB. FM will be entitled to remove the children from LB's care for such reasonable periods and on such reasonable terms as FM and LB may agree.
- 23.5.3 In the event that any dispute arises as to the implementation of the contact regime set out above, either party may approach Wilson J in chambers for an appropriate directive, having given reasonable notice to the other.
- 23.6 LB is interdicted and restrained from taking any step whether herself or through the agency of any other person which may foreseeably result in the alienation of FM from the children. LB is directed to take such steps as are reasonably necessary to support and encourage a positive, loving relationship between FM and the children.
- 23.7 No person is to seek permanently to remove the children from their current school or place of residence without the leave of Wilson J.
- 23.8 The matter is to remain with Wilson J until the Family Advocate has issued their report, and a further order regulating the residence, care and contact regime to be applicable to the children has been made.
- 23.9 No person is to seek out or disclose to any other person the identities of the children or of the parties to this application. From the date of

this order no person is to be given access to the Caselines or Court Online file applicable to this matter without the leave of Wilson J.

23.10 Any interested party may, on reasonable notice to all other interested parties, apply to Wilson J in chambers for a variation of this order.

23.11 Each party will pay their own costs to date.



S D J WILSON
Judge of the High Court

This judgment was prepared by Judge Wilson. It is handed down electronically by circulation to the parties or their legal representatives by email, by uploading it to the electronic file of this matter on Caselines, and by publication of the judgment to the South African Legal Information Institute. The date for hand-down is deemed to be 19 January 2026.

HEARD ON: 15 and 16 January 2026

DECIDED ON: 19 January 2026

For the Applicant: L Maake
Instructed by Julian Brouwer Attorneys

For the Respondent: L Matshidzha
Instructed by SM Shirindzi Attorneys