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

Case Number: 2026-008459

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

DATE

SIGNATURE

In the matter between:

B[...] **L[...]** **F[...]** **M[...]**

Applicant

And

G[...] **J[...]** **M[...]**

Respondent

JUDGMENT

STRYDOM, J

Introduction

[1] This is an urgent application concerning the relocation, residence, and schooling of the parties' minor children. Although the urgency was accepted, the respondent raised a preliminary and potentially decisive issue as to whether this Court has the requisite jurisdiction to entertain the application.

[2] The respondent contends that this Court lacks jurisdiction on the basis that, at the time these proceedings were instituted, the minor children were ordinarily

resident in Cape Town, having permanently relocated there with the applicant. The applicant, conversely, submits that the permanency of the relocation was contingent upon her finding employment in Cape Town. As she failed to obtain employment in Cape Town, her continued stay there with the minor children could no longer be regarded as permanent, as the applicant reserved her right to move back to Johannesburg. In such an event, the existing Parenting Plan, which was in force whilst the parties lived in Johannesburg, would apply.

- [3] The applicant moved back to Johannesburg after about four months in Cape Town, and the children were to follow her at a later stage under an agreement between her and the respondent. Accordingly, the applicant submitted that the minor children were not, at the time this application was filed, ordinarily resident in Cape Town but remained subject to this Court's jurisdiction.
- [4] The jurisdiction of this court to deal with this matter concerning minor children must be determined before the merits can be considered. If this Court lacks jurisdiction, it has no authority to pronounce upon the substantive relief sought.
- [5] Section 29(1) of the Children's Act 38 of 2005 ("the Act") provides that applications in terms of certain sections of the Act may be brought before the High Court within whose jurisdiction the child concerned is *ordinarily resident*.
- [6] Jurisdiction in matters concerning the care, contact, residence, and schooling of minor children is governed primarily by the Act. Section 29 of the Children's Act provides as follows:

"An application in terms of section 22(4)(b), 23,24,26(1)(b) or 28 may be brought before the High Court, a divorce court in a divorce matter or a children's court, as

the case may be, within whose area of jurisdiction the child concerned is ordinarily resident.”

- [7] In *N v N*, (*In re N* (2425/16)(2017) ZAECPEHC 61 (14 December 2017)), the court noted that the terms of Section 29 are clear and unambiguous and serve as an overriding determinant of jurisdiction in circumstances where a court is called upon to terminate, suspend, or circumscribe a parent's parental rights and responsibilities.
- [8] Goosen J, (as he then was), noted that the requirement is that the minor child must be ordinarily resident within the area of jurisdiction of the court. This is a territorial limitation of jurisdiction.
- [9] On behalf of the applicant, it was argued that to find that children are ordinarily resident at a particular place, it must be accompanied by some degree of permanency. It is a matter of degree. (see *Trik v Broude* 1973 (1) SA462 (T) at 469F-G). In this case, with reference to the matter of *Ex parte Minister of Home Affairs* 1941 AD 53, the court found that to establish residency, ‘*some good reason for regarding it as his place of ordinary habitation at the date of service*’ is required. The court in *Trik, supra*, found ‘*This conveys to me some sense of stability or something of a settled nature.*’
- [10] To consider whether the minor children were ordinarily resident in Cape Town when this application was filed, the court will have to consider some of the background circumstances regarding how the children were relocated to Cape Town and attended school there.

[11] The parties lived in Johannesburg, and the children were born there. From August 2020 to January 2021, the parties temporarily relocated to Cape Town. Upon returning with the children, they moved into a family home in Hyde Park, Johannesburg. The parties started to experience marital problems, and during October 2022, the respondent indicated that he no longer wished to be married to the applicant. The parties began living separately, and on 18 March 2023, they entered into a Parenting Plan.

[12] In terms of the Parenting Plan the parties would have joint residency, and contact would be shared on a 50/50% basis. The children would stay in a new residence in Sandhurst, and their parents would alternate in staying with them. The Parenting Plan was to be reviewed and renewed from time to time.

[13] The parenting Plan was amended during November 2024 by way of an addendum. In this addendum, it was provided that the minor children would relocate to Cape Town. This is what happened during December 2024. The 50/50% contact by the parents was maintained. To facilitate this, the respondent rented a place where the minor children could stay while the applicant exercised her rights of contact. Some permanency of this arrangement was envisaged as it was mentioned that after 5 years of *“the mother’s residency in Cape Town”* a bond should be obtained (presumably to buy a home) and the respondent would contribute R50 000 per month until the youngest child reaches the age of 18 years. Whilst the applicant was still employed by her employer in Johannesburg, the respondent undertook to pay for 12 flights between Cape Town and Johannesburg each year.

[14] Clause 4.3 of the Addendum was relied upon by the applicant to show that there was not even some degree of permanency as far as the residency of the children is concerned. This clause reads as follows:

“In the case where the aforementioned agreement reaches dispute and both parties (mother and father) are unable to maintain an amicable and conducive environment in the best interest of all the children in Cape Town, the mother reserves the right to revert back to the Johannesburg living arrangement. In which case, the mother will be wholly responsible for the relocation costs thereof from Cape Town to Johannesburg.”

[15] In my view, the Parenting Plan, read with the Addendum, indicates that the parties intended to permanently relocate to Cape Town with the minor children. They were enrolled in school in this city. Their mother came from Johannesburg to stay with them. The fact that the applicant failed to secure employment or, for another reason, decided to move back to Johannesburg does not affect the children's situation, as they remained ordinarily resident in Cape Town. Their situation was stable and remained as such at the time this application was launched. In fact, Cape Town is still the place of residence of the minor children. The applicant's claim that they should return as agreed does not alter the current position. The children relocated to Cape Town, where the respondent maintained his primary residency with the intention that, depending on future events, they may stay there for a long time. Johannesburg was no longer their place of ordinary residence.

[16] In my view, ordinary *residence* denotes more than a temporary sojourn. It requires that the residence be adopted voluntarily and for a settled purpose, even if the residence is of limited duration, provided that it is not transient or

casual. The test is not whether the relocation was immune from future challenge, but whether, at the relevant time, the children's residence in Cape Town bore the hallmarks of ordinary residence.

[17] Ordinary residence does not require permanence in the sense of forever. It requires that the residence not be fleeting or transitory.

[18] The applicant's relocation back to Johannesburg does not alter the children's actual ordinary residence, which must be determined objectively. Put differently, the applicant's expression of intention to relocate in March 2025 does not alter the factual residence of the minor children at the time this application was filed. During January 2026, the children were staying in Cape Town. At that stage, they had been living in Cape Town for more than a year. They attended school there.

[19] The fact that the respondent maintained a residence in Johannesburg is irrelevant to determining the children's residency. People may have multiple residences in various cities. Moreover, the property that the respondent maintained in Johannesburg was never the home where the parties and their children lived. The applicant, once back in Johannesburg, stayed with family and not on her own. She still went to Cape Town for approximately 8 to 9 days per month, staying at the place the respondent rented for her. To establish the children's ordinary residency, the question is which of these residences is regarded as their primary residence. The fact that the respondent only rented a property in Cape Town, where the children could stay, is also not decisive to the question of whether the children were ordinarily resident in Cape Town

[20] I find that the minor children were ordinarily resident in Cape Town at the time the application was filed.

[21] The High Court's role as the upper guardian of minor children does not permit it to assume jurisdiction where the connecting factors do not exist. Jurisdiction cannot be created by consent, convenience, or urgency.

[22] The applicant relied on the fact that the divorce action was instituted in this court about a week before the application was filed. Thus, the divorce action was pending in the Gauteng Division, Johannesburg, at the time. It was argued that this application was ancillary to the divorce action, and this would mean that this court has the required jurisdiction.

[23] I find that the Gauteng High Court, Johannesburg, lacks jurisdiction to deal with this matter because the minor children ordinarily reside in Cape Town. For this reason alone, this application stands to be dismissed.

[24] The following order is made:

- a. The application is dismissed.
- b. The applicant to pay the costs of the application on Scale C.

R. STRYDOM
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, JOHANNESBURG

Heard on: 03 & 05 February 2026

Delivered on: 09 February 2026

Appearances:

For the Applicant: Adv. F. Bezuidenhout

With: Adv. S. Meyer

Instructed by: Shepstone Wylie Attorneys

For the Respondent: Adv. T. Carstens

Instructed by: Theron Inc