



**IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE DIVISION, MAKHANDA)**

CASE NO. 2025-181191

Not Reportable

In the matter between:

C[...] L[...] S[...]

FIRST APPLICANT

V[...] R[...] S[...]

SECOND APPLICANT

R[...] J[...] S[...]

THIRD APPLICANT

and

A[...] K[...] S[...]

RESPONDENT

JUDGMENT

Rugunanan J

[1] The applicants approached this court on urgency. In their notice of motion to which is attached as ‘Annexure A’, an ‘Implementation Plan for Reunification and Contact’, they seek an order sanctioning contact in a structured and graduated reunification process principally between the first applicant (the applicant) and two minor children, A[...] and E[...] (the children), respectively 10 and 11 years of age. The second and third applicants who are the maternal grandparents of the children are resident in Zimbabwe and are to be included in that process. On the whole, the process is to be supported by a facilitator and a multidisciplinary team of experts.

[2] The respondent opposes the application. He disputes its urgency and the applicant’s entitlement to relief on the merits. In addition, his opposition rests on a preliminary objection that the matter is *lis alibi pendens*. In that regard he contends for its dismissal since the dispute between the parties is pending determination in Case number 17118/2022 in the Western Cape Division of the High Court (the Cape proceedings). Prior to delivery of the respondent’s answering papers the limitations in the present application were distinctly communicated by his attorney to the applicant’s attorney in a letter dated 15 October 2025.¹ It is no misnomer to state at the outset that the respondent’s stance on the preliminary issues is not without merit and forecloses inquiry into a determination of the merits.

¹ Answering affidavit, Annexure AS1.

[3] The respondent's answering affidavit was not delivered in accordance with the timeline set by the applicant in her notice of motion. This issue is addressed at the conclusion of this judgment.

[4] The court papers comprise of the founding affidavit, the answering affidavit, and a replying affidavit. Also included are confirmatory affidavits, various items of correspondence exchanged between the parties' legal representatives, lengthy expert reports and joint minutes. The total volume of material amounts to an estimated 500 pages. The parties' failure to have prepared an index compliant with the express provisions of rule 3(g) of the joint rules of practice in this division mired efforts to navigate through the material with ease of expedience. Any annexure which may have been incorrectly referenced in this judgment, or failure to identify a specific annexure, is attributed entirely to this circumstance. The claimed urgency did not justify non-compliance with the elementary prescripts of the rule.

History

[5] The applicant and the respondent were divorced in 2021. They are the biological parents of the children who are respectively 10 and 11 years of age. The divorce followed a mediated settlement. A consent paper and a parenting plan were incorporated in an order of court made on 15 December 2021 in the Western Cape Division of the High Court (Case number 17074/2021). Although the applicant and the respondent remained co-holders of full parental rights and responsibilities, the consent paper and parenting plan stipulated that the children were to remain in the care of and to reside with the applicant in Cape Town and provided for a flexible arrangement for contact with the respondent.

[6] The applicant presently resides in Cape Town and is self-employed. The respondent is a farmer residing in Tarkastad in the Province of the Eastern

Cape. The children have been in his *de facto* custody and care since June 2023 following their refusal to return to the applicant after spending a holiday with the respondent. On the day on which the children were to return to the applicant in Cape Town, and at the airport in Gqeberha (formerly Port Elizabeth), the children became hysterical and refused to board the flight for their return (the airport incident). The airline declined to allow the children to board the flight and had them returned to the respondent. The applicant attributes the *de facto* situation to the actions of the respondent which she contends are ‘a direct contradiction to the agreed consent order’.

[7] Prior to June 2023 the children resided with the applicant in Cape Town where they attended primary school. During 2024 the children attended a boarding school in KwaMaqoma (formerly Fort Beaufort). At present they are boarders attending a girls’ school in Makhanda where they were enrolled since January 2025.

[8] Other than infrequent telephonic contact and/or FaceTime video interaction there has, to date, been no in-person or physical contact between the applicant and the children. Nor has there been any indication from the children themselves, or from the numerous mental health practitioners/clinicians involved in the matter that the children are ready to commence with the reunification process.

[9] During September 2022 the respondent instructed his attorney to direct a letter² to the applicant advising that he was concerned about the emotional wellbeing of the children ever since they commenced residing with the applicant. The respondent’s attorney recorded that the respondent’s concerns ‘stemmed from his own observations when the children are in his care as well as the feedback from their educators’. The letter also addressed the issue of the appointment of a

² Answering affidavit, Annexure AS10.

therapist for the children. The response from the applicant's erstwhile attorney indicated that the applicant was shocked and felt ambushed by the letter. Her sentiments were that there was 'absolutely no build up leading to this drastic proposed intervention' and that the respondent should adhere to the agreed parenting plan.

[10] In November 2022 the respondent (as applicant) launched the Cape proceedings on urgency. The notice of motion sought relief in two parts namely, Part A: Care and Contact Assessment, and Part B: Variation of Parenting Plan and Consent Paper. The respondent's reason for recourse is explained in the following terms:

'... I brought the application was because I had become increasingly concerned about the children's wellbeing and welfare in the first applicant's care. Whenever I saw them over the holiday periods, they refused to speak to first applicant telephonically and were very reluctant to return to her after the holiday period. E[...] in particular was not performing well at school and I noticed they were absent often. I wanted a childcare expert to conduct an assessment to ascertain what was troubling the children and to assess whether the care and contact arrangements that we had agreed to on divorce was optimal for them and was in their interests.'

[11] On 3 November 2022 an interim order was granted by agreement in respect of the Part A relief claimed in the notice of motion. The material terms of the order are recapitulated as follows only in so far as is considered necessary:

- '1. That psychologist Ms Leigh Pettigrew (Pettigrew) is hereby appointed by applicant and is authorised forthwith to carry out an enquiry and assessment and compile a report setting out her findings and recommendations regarding the following aspects:
 - 1.1 what care and contact arrangements are in the parties' minor childrens' ... best interests; and
 - 1.2 the functioning of both parents insofar as it may impact on their respective parenting skills, i.e. how the parties manage the day to day needs of the children, see to their emotional wellbeing and provide for their physical needs.

2...

3...

4...

5. Respondent is entitled at any time before or after the filing of Pettigrew's report to appoint her own expert, at her cost, if she deems this necessary.

[12] The order included a timeline for the filing of further affidavits by the parties. In addition, it incorporated the following provision:

- '7. Applicant shall thereafter be entitled to set the matter down for hearing on reasonable notice to the respondent on the appropriate roll for the hearing of the relief sought in Part B.'

[13] Reproduced in necessary measure, the main relief in Part B of the notice of motion reads:

- '8. That the court order, which incorporates the consent paper and parenting plan granted on 15 December 2021 under Case no. 17074/2021 be varied as recommended by Pettigrew in respect of the care of the children, including their primary residence and the parties' contact with them.

9...

10...'

[14] To date, Part B of the Cape proceedings has not been finally concluded. That much appears to be common cause between the parties considering that the applicant has attached to her founding affidavit Part A of the agreed order and the notice of motion in the Cape proceedings.

Lis alibi pendens

[15] The invocation of a defence by way of a plea of *lis alibi pendens* is based on the proposition that the dispute (*lis*) between the parties should be stayed because it is being litigated elsewhere and therefore it is inappropriate for it to

be litigated in the court in which the defence is raised. Underpinning the plea is the policy that there should be a check on the extent to which the same issue is litigated between the same parties and the desirability that there be finality in litigation to avert a situation where different courts pronounce on the same issue with the risk that they may reach differing conclusions.³

[16] The plea shares features in common with the defence of *res judicata* as they have a common underlying principle – there should be finality in litigation. Once a suit has been commenced before a tribunal competent to adjudicate upon it, the suit must generally be brought to its conclusion before that tribunal and should not be replicated (*lis alibi pendens*). For the same reason the suit will not be permitted to be revived once it has been properly concluded (*res judicata*).⁴

[17] In *Hassan and Another v Berrange NO*⁵ (*Hassan*) the requirements for a reliance on a plea of *lis pendens* were expressed in the following terms:

‘Fundamental to the plea of *lis alibi pendens* is the requirement that the same plaintiff has instituted action against the same defendant for the same thing arising out of the same cause.’

[18] Put differently, the conventional requirements for a plea of *lis pendens* are: same identity, same cause, and same relief – but even if the requisites are established the court retains a discretion, premised on considerations of fairness and convenience to allow the matter to proceed despite the earlier pending proceedings.⁶ The default position nonetheless appears to be that once the requisites for a plea of *lis pendens* are established the court should be inclined to

³ *Caesarstone Sdot-Yam v World of Marble and Granite 2000 CC and Others* 2013 (6) SA 499 (SCA) (*Caesarstone*) para 2.

⁴ *Nestlé (South Africa) (Pty) Ltd v Mars Inc* 2001 (4) SA 542 (SCA) para 16.

⁵ *Hassan and Another v Berrange NO* 2012 (6) SA 329 (SCA) para 19.

⁶ *Williams v Shub* 1976 (4) SA 567 (C) at 571C; *Caesarstone* fn3 at 513F-G; *Keyter NO v Van der Meulen and Another NNO* 2014 (5) SA 215 (ECG) at 218A.

uphold it because it is undesirable for there to be litigation in two courts over the same issue.⁷

[19] In *Caesarstone Sdot-Yam v World of Marble and Granite 2000 CC and Others*⁸ (*Caesarstone*) the Supreme Court of Appeal (the SCA) expressed the view that the *dictum* in *Hassan* ‘must be read as being no more than a general but not a definitive description of the plea of *lis pendens*’. Elsewhere in the judgment, the court observed that the requisites must not be understood in a literal sense and as immutable prescripts.⁹

[20] Caesarstone was an Israeli entity that concluded an agency agreement with the family Sachs represented by Mr Oren Sachs, and with World of Marble and Granite (Womag). The agreement was for the distribution of quartz products in South Africa. A dispute arose about the manner in which the agreement was performed (or not performed) and the circumstances of its termination. Legal proceedings were instituted in Israel and in the Western Cape High Court in South Africa. In Israel, Caesarstone featured as plaintiff in the action it instituted against Womag and Mr Oren Sachs who were cited as defendants. In South Africa, Womag and the family Sachs, all as plaintiffs, instituted their action against Caesarstone as defendant.

[21] In the South African action Caesarstone raised as a defence the plea of *lis alibi pendens*. It sought a stay of the action pending the outcome of the litigation in Israel. Cognisant that the requirement of ‘the same persons’ may be too narrow and that it should not be narrowly confined to cases where there are identical persons¹⁰ Caesarstone, as defendant, was not precluded by the SCA from raising the plea even though it was the plaintiff in the proceedings abroad.

⁷ *Caesarstone* above fn3 at 513G.

⁸ *Caesarstone* above fn3.

⁹ *Caesarstone* above fn3 at 508C.

¹⁰ *Caesarstone* above fn3 paras 42 and 43.

Plainly, this was a less restrictive approach presenting a departure from a literal treatment of the ‘same identity’ requirement.

[22] In the action instituted abroad Caesarstone claimed a declaratory order that the agency agreement had lapsed or had been cancelled. In the action instituted in South Africa by Womag and the Sachs family, damages were claimed on the basis that Caesarstone repudiated the agreement.¹¹ The SCA recognised that the relief claimed in the two actions differed but relaxed the ‘same relief’ requirement. It appears to have done so on the basis that the factual and legal issues in the proceedings abroad involved the determination of questions necessary for the determination of the case in which the plea is raised where the claims in both actions revolved around the agency agreement as a central requirement of the same cause of action.

[23] The judgment in *Caesarstone* conveys that the requisites for a successful plea of *lis pendens* are not in all circumstances required if the central dispute, whether legal or factual, is similar.¹² Put another way, it indicates that a rigid approach to the requisites of identity, cause and relief is not in all circumstances required if the central dispute is in effect similar.

Analysis

[24] Evident from *Caesarstone* is that the SCA sanctioned an approach that a defendant can raise the plea even though it is the plaintiff in the other proceedings on which the plea is based. In the present case this means that the respondent can rely on the plea even though he is the applicant in the Cape proceedings. This, however, presents a possible difficulty in the way of the respondent in relation to the involvement of the second and third applicants who are not parties in the Cape proceedings. If those proceedings were litigated and

¹¹ *Caesarstone* above fn3 para 24.

¹² *Caesarstone* above fn3 paras 11, 20, 21, and 24.

decided, the present case provides an illustration of the type of problem in permitting them to litigate all over again in this suit in the hope of a different outcome merely because there is some difference in the complement and identity of the parties.

[25] In their written arguments the parties' counsel presented differing views. The contention for the second and third applicants is that they are parties to the present case having derived their *locus standi* under s 15 of the Children's Act 38 of 2005 (the Act) in their endeavour to protect the rights and best interests of the children. The contention for the respondent is that the second and third applicants have no standing in these proceedings because a prior conferral of rights in respect of the children in accordance with s 23 of the Act ought first to have been claimed and granted to the second and third applicants.

[26] Resolving the involvement of the second and third applicants is a matter that is not without considerable difficulty. On the one hand it may not be feasible at this stage to make a definitive finding on the competing contentions regarding *locus standi*. It is not readily apparent in the confirmatory affidavits of the second and third applicants whether for purposes of s 15 of the Act they fall within the legislated category of persons who may approach a court alleging that a right has been infringed/threatened; or whether for the purpose of s 23 of the Act the second and third applicants are persons having an interest in the care, well-being or development of the children. On the other hand there is the stark deficiency in the affidavits which contain no allegations about the second and third applicants' bond or relationship with the children and why it would be to the detriment of the children not to have contact with them, or to the benefit of the children to have contact.

[27] Possibly, the only sensible way for this court to address the problem is to stay the present matter until completion of the Cape proceedings. This lies in the court's discretionary exercise of its inherent powers to control and regulate its own procedures. That discretion is located in s 173 of the Constitution.

[28] As to 'cause' and 'relief', it is not intended to depart from the approach adopted in *Caesarstone*. Although in his answering affidavit the respondent believes that these requisites are dissimilar in the parallel litigation, he persists with his contention that the present matter is *lis pendens*. In applicant's heads of argument, counsel make the following submission:

'In order to advance these contentions Mr S[...] is constrained to conflate the issue of restoring contact and the minor children's relationship with Mrs S[...] (the subject of the present application) with care and primary residence as reflected in the parenting plan and consent order (the subject of Part B of the 2022 application). That conflation is, in our submission, both contrived and cynical.'

[29] To the contrary, it is noted in Part B of the notice of motion (quoted earlier in this judgment) that the Cape proceedings envisage, as a cause, a variation of the divorce order that incorporates the consent paper and parenting plan. The composition of the relief indicates that an aspect of the variation – though pertinent to the care and primary residence of the children – revolves around 'contact' with the children. In the instant proceedings the notice of motion read with the 'Implementation Plan for Reunification and Contact' envisages a structured process initially entailing 'contact', 'overnight contact', and 'equitable shared contact', with the process ultimately graduating to an adaptation of the children's boarding school schedule for ensuring meaningful and consistent time with both parents and grandparents'. Indubitably, contact being one of the real issues of substance is central to both sets of proceedings. A judicial investigation and assessment of the same factual issue/s in the one set of proceedings will involve the determination of a question that is necessary for

the determination of the case in which the plea/objection is raised. In the circumstances a rigid approach to the requisites of identity, cause and relief is not required where the central issue in dispute is in effect similar in both sets of proceedings.

[30] Next, is the question whether this court should in its discretion allow full ventilation of the matter. I can find no good reason to do so, whether on the basis of equity or convenience.

[31] I factor into that formulation the issue of urgency. A litigant that approaches the court for relief on an urgent basis is obliged to comply with uniform rule 6(12)(b) (the rule) which reads:

‘In every affidavit filed in support of any application under paragraph (a) of this subrule, the applicant must set forth explicitly the circumstances which ... render the matter urgent and the reasons why the applicant claims that applicant could not be afforded substantial redress at a hearing in due course.’

[32] The reasons underpinning the absence of substantial redress in due course are significantly absent in the applicant’s certificate of urgency and founding affidavit. The import of this peremptory requirement is that urgency is not there for the taking. Importantly, a litigant must state the reasons why it cannot be afforded substantial redress at a hearing in due course. The applicant’s averments on urgency are perfunctorily limited to the following assertions:

‘130. This matter is self-evidently urgent as the minor children deserve to be reunited with their family, friends, and myself, as their mother.

131. I have no doubt that E[...] and A[...] deserve healthy relationships, which they previously experienced two years ago, when they were in my care.

132. The present recalcitrance on the part of Mr S[...] to cooperate with a reunification and access regime, in breach of the High Court order is self-evidently urgent and not in the best interests of the minor children.

...

134. I am also advised that the violation of a court order, (and especially one by agreement) creates urgency.’

[33] In her heads of argument the attempt is made to augment the applicant’s assertions of urgency where reference is made to the Constitution, the Children’s Act, as well as the United Nations Convention on the Rights of the Child, and case law in which the best-interests-of-the-child-principle is accentuated for the treatment and protection of children.

[34] The premise of the application therefore appears to be the best interests of the children and the respondent’s breach of the divorce order.

[35] While certain disputes or categories of disputes such as contempt of court matters and cases related to minor children have been regarded as inherently urgent, my sense is that urgency must still be founded on a properly pleaded case for that exigency. The fact that a matter is alleged to be urgent does not by itself found urgency for purposes of the rule.¹³ Urgency is not determined exclusively by the nature of the matter/claim but by the circumstances in which the applicant seeks its adjudication.

[36] In the present matter those circumstances are consummately detailed in two letters directed by the respondent’s attorney to the applicant’s attorney. This judgment should be read as if specifically incorporating their contents. Illustrating the recommendations and input from various experts, the letters

¹³ See *Siyakhulisa Trading Enterprise (Pty) Ltd v Glencore Operations South Africa (Pty) Ltd and Another* (2023 –038568) [2023] ZAGPJHC 1099 (2 October 2023) para 5 quoting with approval *Volvo Financial Services Southern Africa (Pty) Ltd v Adamas Tkolose Trading CC* (2023/067290) [2023] ZAGPJHC 846 (1 August 2023) paras 4, 5, 6, 7 and 8.

assume weight in clarifying the context, historical chronology, and the status of the Cape proceedings.

[37] The first is a letter dated 12 May 2025 and the second is the letter of 15 October 2025.¹⁴ The first letter proffers a comprehensive briefing of the factual history and the litigation between the parties and mentions the participation of various experts, their reports and joint minutes filed of record (all of whom, as I understand, became involved in the flow of events after the order under Part A of the Cape Proceedings was granted). The second letter presents a detailed and straightforward engagement with the shortcomings in the applicant's papers in the present application. Of note is that there is a reiteration of a proposal made in the first letter (subsequently repeated in a further letter dated 21 July 2025, which elicited no response from the applicant's attorney) that the psychologist¹⁵ appointed by agreement between the parties, meets with the children to ascertain whether they are prepared to exercise contact with the applicant. In that regard the applicant (as well as the experts she engaged during 2025) has overlooked eliciting the views of the children for consideration before launching these proceedings. This mechanism is legislated in s 10 of the Act.

[38] I have given consideration to the material raised in these letters and the material to which reference is made in the affidavits filed of record. The conclusion may justifiably be drawn that the applicant has not established urgency. Not only does this stem from her failure to address the requirements of the rule but it is also borne from the factual chronology in the timeline of events meticulously set out in the letters aforementioned (of which more is detailed below).

¹⁴ Respectively annexures CS21 and AS1.

¹⁵ Ms Kerry Yates.

[39] It is indubitable that a reunification process flowing from the Cape proceedings is underway. Relevant, are the events set out below as they unfolded.

[40] Pursuant to the order in Part A, Ms Leigh Pettigrew, a psychologist, released her initial report on 23 August 2023 which report dealt, *inter alia* with the airport incident and in which care and contact recommendations as to the best interests of the children were made. Significantly, she states:

‘The writer is strongly of the opinion that the girls should not have contact with C[...] until such time as they are ready to do so. This recommendation is made in the light of the manner in which this matter has evolved. The girls need to feel that C[...] has heard them and respects their voice. They also need to feel that C[...] is not going to minimise and control their space and their feelings. Finally, the girls need to know what it is like to miss C[...]. Her current intrusiveness allows very little space for this to take place.’

[41] Shortly after the release of the report by Ms Pettigrew, the applicant appointed a clinical psychologist, Ms Pam Tudin as her expert to commence with an assessment that entailed travel to Tarkastad during September 2023. More about Ms Tudin’s report appears below.

[42] On 27 September 2023 Ms Pettigrew released an addendum to her report following allegations of sexual abuse raised by the children against the applicant. It was recommended that the applicant undergoes a full psychiatric assessment with a clinician identified as Dr Wayne Saunders and that contact with the children be implemented through the medium of a supervisor. The recommendation was made from the viewpoint of healing the relationship between the applicant and the children. The applicant acceded to the recommendation for assessment, albeit by engaging two clinicians of her own choice, a psychiatrist Dr N Cassimjee (whose scope and depth of his report

generated concerns with Ms Pettigrew) and Dr Sarah Boshoff, a specialist psychiatrist.

[43] Whereas Dr Cassimjee concluded that the applicant ‘does not currently display any significant symptoms of mental illness that may compromise her functioning’ – Dr Boshoff expresses the view that the applicant ‘does not currently display any symptoms of severe mental illness’, and although having support structures in place that have enabled her to continue with healthy habits beneficial to her mental health, she is distressed regarding the lack of contact and communication with her daughters.

[44] On 16 October 2023 Ms Pettigrew released a further report after the respondent sought input on the possibility of the children having contact with the applicant. In that report she records the following:

‘[The] writer is of the opinion that contact between C[...] and the girls is premature and carries a high risk of the girls regressing from the progress they have recently made and of E[...] being re-traumatised. The girls require more time in therapy and C[...] needs to embrace the treatment recommendations with greater honesty and transparency. As such the writer is concerned that should any contact that is arranged now re-traumatise the girls, it may make contact with C[...] in the future more difficult to engage in. The writer is, therefore not of the opinion that contact between C[...] and her girls should take place now. It is premature ... ’

[45] In addition, Ms Pettigrew proposed an outline initiating the reintroduction of contact between the applicant and the children to be supervised by Ms Tracey Whitehead, a psychiatrist. Such contact was exercised on 20 October 2023. In her care and contact report, Ms Whitehead stated:

‘Once the girls are stabilised the writer would recommend mother and daughter therapy sessions to repair the relationship in a safe space. As the girls were vehemently opposed to seeing C[...] it was, nevertheless forced upon them, removing their autonomy and reinforcing the feeling of not being heard by C[...]. This seems to have resulted in the re-traumatising and

reinforcement of the fear that their mother is a danger to their safety. The writer fears that future visits with C[...] will be far more difficult for E[...] and A[...] to engage in.'

[46] In October 2023 Ms Kerry Yates, a school psychologist, was mandated to assist the children to develop skills conducive to their emotional well-being in preparation for their reunification with the applicant. The appointment of Ms Yates was recommended by the parties' experts Ms Pettigrew and Ms Tudin. In the previously mentioned letter of 15 October 2025 the respondent's attorney points out:

'Yates is not obliged to give the parties feedback on her sessions with the children, as her mandate is to report back to Tudin and Pettigrew regarding the children's readiness to commence with the reunification process. To date Yates has not advised either expert that the children are in fact ready.'

[47] On 13 December 2023 Ms Tudin prepared her assessment report following her appointment in September 2023 at the instance of the applicant. There is a dispute between the parties as to whether this report was timeously made available to the respondent. His complaint is that it was only made available on 6 October 2025 after the applicant initiated the present matter on urgency. In response to censure that he had been dilatory by more than two years for his failure to have brought the Cape proceedings to finality, his rebuttal is that the proceedings would have been set down for determination had the report been made available at any time sooner. The criticism levelled against the respondent is entirely misplaced and vacuous given the timing and manner in which events evolved after the order in Part A of the proceedings was obtained.

[48] Ms Tudin's report confirms that she undertook a home visit to Tarkastad on 5 December 2023 where she met with the children and 'Mr and Mrs S[...] (senior)'. She indicated that she interviewed Ms Yates and Ms Whitehead in the

preparation of her report. The report highlighted the views of psychologist Doctor Glyde Thompson who worked with the children over a period of several months who indicated that during his therapy: '[N]o mention of a conflictual or hurtful or destructive relationship with their mother was raised'; and 'the girls appeared to be spontaneously happy when interacting and engaged with their mother, they were loving and tactile in the engagement.'

[49] Elsewhere in her report, Ms Tudin records her personal observation regarding her visit:

'The children remain very resistant to the idea of having contact with their mother.'

and,

'This was corroborated by the children's current therapist, Ms Yates as well as the observing therapist, Ms Whitehead both in written communication and in the respective interviews.'

[50] Importantly, Ms Tudin made *inter alia* findings and recommendations to the effect that she believed that contact be restored between the applicant and the children and that it be done in a particular and careful manner; and that reunification would best be achieved under the guidance of a skilled therapist in a therapeutic setting.

[51] After a visit by Ms Tudin and Ms Pettigrew to the respondent's farm to investigate the allegations of sexual abuse, a joint minute was released on 28 February 2024. This was followed by two further joint minutes of 19 June 2024 and 30 July 2024. What was outlined was a process that the parties' experts had agreed on for the reunification process. Quoting again from the letter of 15 October 2025, it reads:

'[D]espite this proposal and the weekly intervention of Yates, both children indicated that they did not want to exercise contact with your client and Yates confirmed to Pettigrew and Tudin that they both were not ready to commence with the process. It was agreed by the

experts that the matter would be reconsidered and reviewed after 6 months. The joint minute of 30 July 2024 records the following:

“After discussion, Pettigrew and Tudin are of the opinion that forcing the girls to see C[...] will not only have a negative impact on their relationship with C[...] but could in fact have a further damaging impact on them emotionally and hinder the progress that has been made to date. As such, the writers are strongly advocating that the girls require more time with Kerry and that while the process...will now be delayed, it remains in place for now. The writers will contact Ms Yates again at the end of October 2024, or sooner should Ms Yates contact the writers in the interim, in order to ascertain if there have been any shifts in this regard. The writers wish to record that Ms Yates has been able to work with both girls respectively without any parental intrusion. The space she has created for them has, therefore, remained a protected and safe space for both girls. We thank both A[...] and C[...] for respecting this.” ’

[52] On 24 April 2025 the applicant’s attorney directed a letter to the respondent’s attorney advising that the applicant had appointed two further experts, Dr Heather Rauch and Mr Iain Reid. The response from the respondent’s attorney (the letter of 12 May 2025) appears to convey the understanding that the applicant had terminated Ms Tudin’s mandate. Ms Tudin’s extensive involvement in the matter is evident from the chronology of events. While it is not intended to explore the implications of the impasse in the parties’ correspondence, the termination of Ms Tudin’s mandate – if indeed that did occur – raises the uncertainty whether or not her report and joint minutes have been repudiated, notwithstanding their inclusion in the applicant’s founding affidavit. As is evident from the views held out in the letter of 12 May 2025 from the respondent’s attorneys, the implications of the applicant’s stance in the appointment of two further experts are not without consequence. Quoted where relevant, the extracts read:

‘Further, it is requested, why your client wishes for two further individuals to be appointed to conduct an assessment especially in circumstances where several joint minutes have been released on the way forward in this matter, which recommendations are in the best interests

of the children. It is also asked, what purpose this assessment will achieve? It can never be deemed to be in the children's best interest to be exposed to multiple professional experts and our client is concerned that we will find the children being over-exposed to further professional involvement.

Our client has a grave concern, that should your client insist on a further assessment, the negative impact that this assessment will have, considering the progress the children have shown over the past few months, far outweighs any positive reunification between your client and the children. A further concern, as highlighted in every report and minute, is that your client's conduct, in forcing the children to participate in the assessment, will further alienate your client from them.'

[53] What follows thereafter in the letter is the proposal:

'It is our instructions to propose, whether your client would be amenable, for Yates to meet with the children to ascertain whether they are prepared to exercise contact with your client and if so, how that process can be achieved. Alternatively, whether the parties are to agree to the appointment of a psychologist for the children, together with the assistance of Yates, as well as the school, to identify this person, who can continue with the children's therapy and a system where needed.'

[54] During 2025 and prior to the institution of these proceedings the applicant obtained additional reports from clinical psychologist Mr Iain Reid (28 July 2025); social worker Dr Heather Rauch (25 July 2025); and clinical psychologist Professor Louise Stroud (11 September 2025). Drawing upon the noteworthy aspects of the reports, these experts agree that the historical matrix evinces indications of parental alienation rather than estrangement; that reunification be instituted urgently and be guided by a facilitator in a multidisciplinary team context; and that the applicant's psychiatric history is not consistent with any major psychological difficulties. Professor Stroud on the other hand attaches limited weight to the report by Ms Pettigrew and expresses reservations about the approach adopted by her in particular, that her classification of the withdrawal by the children as 'estrangement', premised on

the findings of maternal shortcomings is inconsistent with the relevant evidence in various reports. Professor Stroud ultimately expresses the view that:

‘Taken together, the findings of independent professionals point to a consistent pattern: [the applicant] does not suffer from a psychiatric disorder, the children’s rejection aligns with alienation rather than estrangement, and continued barriers to contact place [the children] at serious risk of long-term psychological harm’;

...

‘The evaluation conducted in the S[...]/S[...] matter attributed unsupported psychiatric diagnosis to C[...], aligned disproportionately with A[...] S[...]’s narrative while disregarding collateral evidence, and in doing so contributed to parental alienation by pathologising the mother and reinforcing the polarising family dynamic... Further, the evaluation overreached into judicial function by issuing prescriptive access recommendations beyond the available evidence’;

and

‘It is respectfully submitted that limited weight should be given to the prescriptive aspects of the evaluation report provided by Ms Pettigrew.’

[55] I draw no conclusions nor do I make any specific findings of fact from the material rehearsed in the above paragraphs. What does emerge is that a reunification process is underway and that it cannot be dispensed with. The submission in the respondent’s heads of argument that a psychological process, in the context of this matter, has no fixed timeline requires keen reflection notwithstanding the urgency mooted by the applicant’s experts. Tellingly, they have had no personal engagement with the children.

[56] Given the history of the matter I am of the view that entertaining it would result in a duplication of the unification process with the possibility that the potential for appointment of further experts and/or supplementation of existing reports and minutes may not bring the parties closer to a resolution of the issues between them.

Condonation

[57] There is the final aspect regarding condonation of the respondent's answering affidavit. The established prescripts for condonation are clear, entailing the exercise of a judicial discretion premised on the overriding consideration of the interests of justice – an expression that includes but is not limited to: the extent and cause of the delay and the reasonableness of the explanation therefor; the nature of the proceedings and content of the material before court; and prejudice to any of the parties.

[58] The late delivery (five court days equating to seven calendar days) of the answering affidavit invited objection on the basis that the applicants were left with less than two days to file replying papers and heads of argument.

[59] I accept that the explanation put up by the respondent is slender. It does not inspire confidence that he is candid – but overall the delay did not preclude the matter from proceeding on the date appointed in notice of motion. Nor did it impede any of the parties' legal representatives in their preparation and delivery of argument.

[60] It is my view that an appreciation of the history of the parallel litigation – in particular, the uncovering of facts and events and the attendant expert involvement disclosing the extant reunification process – would not have been possible without the answering affidavit. In point, the applicant's certificate of urgency does not explicitly mention the extant process, nor can one draw a reasonable deduction to that effect having regard to its factual structure and composition which advocates for a reunification process minted in the relief claimed in the notice of motion. On balance, condonation is granted.

[61] To conclude, no good grounds have been shown why the respondent's *lis alibi pendens* objection should not be given effect to, nor have there grounds

to persuade this court to make a determination on the merits of the case put forward by the applicant.

[62] I make the following order:

1. The late delivery of the respondent's answering affidavit is condoned.
2. The proceedings instituted in this Court in Case Number 2025-181191 are stayed pending determination of the proceedings in the Western Cape Division of the High Court in Case Number 17118/2022.
3. The applicants, jointly and severally, the one paying, the others to be absolved, are ordered to pay the respondent's costs as between party and party, such costs to include the costs of travel and accommodation for his counsel and his attorney.

M. S. RUGUNANAN
JUDGE OF THE HIGH COURT

Appearances:

For the Applicants: *J S Andersen SC* and *G W W Brown*, Instructed by
Wheeldon Rushmere & Cole Inc., Makhanda, (Ref: B Brody)

For the Respondent: *M Baartman*, Instructed by Cluver Markotter Inc.,
Stellenbosch, c/o Whitesides Attorneys, Makhanda, (Ref: G Barrow)

Date heard: 11 November 2025.

Date delivered: 20 January 2026.