

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: 25/03/2026

SIGNATURE

In the matter between:

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

Appellant

And

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

Respondent

JUDGMENT – LEAVE TO APPEAL

STRYDOM, J

[1] This is an application for leave to appeal against the whole judgment of this court delivered on 09 February 2026. The court dismissed the applicant's

urgent application, with costs, concerning the relocation of the parties' minor children from Cape Town back to Johannesburg to live and attend school there.

- [2] The applicable test for leave to appeal is set out in section 17(1) of the Superior Courts Act 10 of 2013. Leave may only be granted where there is a reasonable prospect that another court would come to a different conclusion, or where there exists some other compelling reason for granting leave to appeal.
- [3] In considering whether there is some other compelling reason why the proposed appeal should be heard, provided for in section 17(1)(a)(ii) 18 of the Act, an important question of law or a discrete issue of public importance that will have an effect on future disputes may constitute such compelling reason.
- [4] The threshold is stringent. It requires a realistic, not remote, prospect of success.
- [5] The central issue in the main judgment was this court's jurisdiction to make the orders sought in the notice of motion. This Court found that jurisdiction is determined by section 29 of the Children's Act, read with section 28, and that the decisive factor is the ordinary residence of the minor children. The court found that the ordinary residence of the minor children was Cape Town and not Johannesburg. Consequently, this court lacked the necessary jurisdiction to deal with this matter.
- [6] The main grounds stated for leave to be granted are:
 - a. The court erred in finding that the minor children ordinarily resided in Cape Town at the time the application was filed.
 - b. The court erred in finding that in this case the jurisdiction should be determined with reference to section 29 of the Act and that the pending divorce proceedings within the jurisdiction of this court did not alter the position.
 - c. A cost order should not have been made against the applicant in this case concerning the well-being of minor children.

- d. There exists another compelling reason why leave to appeal should be granted, as there are conflicting judgments on whether, in a case like this, jurisdiction is also established in terms of the Divorce Act 70 of 1979.
- [7] The applicant's grounds of appeal, in my view, do not demonstrate any misdirection in this court's conclusions on the facts or the law.
- [8] The finding that the children were ordinarily resident in Cape Town was based on objective facts: relocation, schooling, and their settled daily life. These findings are factual and firmly supported by the evidence.
- [9] Ordinary residence is an objective concept. It does not require permanence, nor is it determined by future intentions or contingent arrangements.
- [10] The applicant's case amounts to no more than a re-argument on the same facts. That does not meet the threshold for leave to appeal.
- [11] No compelling reason exists for leave to appeal to be granted. The court was referred to an array of cases. On behalf of the applicant, it was argued that there were conflicting authorities on the issue of whether jurisdiction could be found at the same time with reference to the Children's Act and the Divorce Act.¹ On behalf of the respondent, such conflicts were denied. It was argued that the authorities overwhelmingly supported one outcome, i.e., that the Children's Act prevails in cases where the best interests of children are to be considered in circumstances covered by the Children's Act. the legal position to be that the Chil
- [12] In my view, the alleged conflicting authorities do not create a true legal uncertainty but reflect fact-specific outcomes. The legal position that clearly emerges from the authorities is that the Children's Act provides the statutory framework for determining a child's best interests in cases involving relocation, residence, schooling, and parental rights. This would mean that, in terms of section 29, jurisdiction would be established with reference to the ordinary

¹ *N v N* (18042/2014 [2014] ZAGPJHC 151 (24 July 2014); *AC RC* [2015] ZAECPEHC 1 para 19; *SW v SW and Another* 2015 (6) SA 300 (ECP) (SW) para.12; *J.S v W.F.* (63698/13) ZAGPPHC 350 (10 July 2020), *YC v JRC* (20375/2024) [2024] ZAWCHC 273 (20 September 2024); *S.H. v M.L.H.* (775/2025) [2025] ZAECQBHC 34, 2026 (1) SA 615 (ECGq) (2 September 2025)

residence of a minor child. This remains the position regardless of the pending divorce proceedings in another jurisdiction.

[13] The reliance on the Divorce Act is misplaced. The existence of a pending divorce does not override the jurisdictional framework of the Children's Act in matters concerning children.

[14] As far as the argument pertaining to the cost order is concerned, I am of the view that a court of appeal would not interfere with the exercise of this court's discretion in this regard. There is no basis to interfere with the costs order.

[15] There is accordingly no reasonable prospect that another court would come to a different conclusion.

[16] Costs of this application should again follow the result.

[17] The order:

- a. The application for leave to appeal is dismissed with costs, on scale C.

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

Heard on: 24 March 2026

Delivered on: 25 March 2026

Appearances:

For the Appellant: Adv. F. Bezuidenhout

Instructed by: Shepstone Wylie Attorneys

For the Respondent: Adv. T. Carstens

Instructed by: Theron Incorporated