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IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

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

Date: 2 April 2026

Signature: _____

CASE NO: 2025-120837

DATE: 2 April 2026

In the application between:

S[...] **V[...]** **D[...]** **S[...]**
[Identity No. 8[...]]

Applicant

and

M[...] **L[...]**
[Identity No. 8[...]]

Respondent

Delivered: This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the Parties/their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date for hand-down is deemed to be on 1 April 2026.

WRITTEN REASONS FOR JUDGMENT REGARDING COST ORDER

M VAN NIEUWENHUIZEN, AJ:

1. This application came before me as one of urgency on 2 December

2025.

2. The respondent did not file an answering affidavit. The respondent was however represented by counsel at the hearing.
3. On the 1st of December 2025, a day before the hearing, the respondent served on the applicant and uploaded to CaseLines a written notice to abide. The notice to abide reads as follows: *"The respondent does not intend to oppose the above application and will abide by the decision of the above Honourable Court"*. In court counsel for the respondent informed me that only the issue of costs would be argued. After having heard argument from both counsel, I granted an order in favour of the applicant in terms a draft Court Order prepared by the applicant, which includes an order for costs on an attorney client scale in favour of the applicant.
4. On the 5th of February 2026 the respondent uploaded a notice of application for leave to appeal the costs order onto CaseLines and on the 8th of February 2026 the respondent requested reasons for granting the judgment and order in email correspondence. No formal request for reasons was made.
5. The notice of application for leave to appeal against costs was served out of time and it was not filed with the Registrar. I received the transcript of the hearing on the 17th of March 2026. I accordingly limit this Judgement to the reasons for granting costs on an attorney and client scale.
6. Prior to the aforementioned hearing on the 29th of October 2025 Adams J made an order restoring contact between the applicant and the minor children. The Family Advocate was directed to conduct an investigation into the best interests of the minor children regarding primary residence,

care and contact,¹ and both parties were ordered to “...co-operate fully with the Office of the Family Advocate, who will be instructed to forthwith commence the investigations. In the event of either party failing to co-operate with the Family Advocate, the non-defaulting party shall be entitled to approach this Court for appropriate relief by way of motion proceedings, for an order compelling compliance with the Family Advocate's requests.”²

7. The facts demonstrate that the aforementioned order was granted consequent upon the respondent's refusal to co-operate and partake in an investigation ordered by the Children's Court.
8. On the 17th of November 2025, as part of their investigation, the Office of the Family Advocate scheduled an interview with the parties for 9 December 2025 at 13h00.
9. On the 18th of November 2025 the applicant's attorney sought confirmation from the respondent's attorney that the respondent and the minor daughter, M[...], eight years of age, would attend the appointment. The respondent's attorney replied that his offices would obtain instructions and revert.
10. On the 18th of November 2025, the respondent's attorney addressed email correspondence to the Family Advocate, without notice to the applicant's attorney, informing their office that the respondent would not be attending the interview as the respondent was “booked off” due to medical reasons and the M[...] would be attending school. The respondent requested that the interview be postponed for the following reasons:

¹ FA, Annexure “SV1”, CaseLines, 021-19

² FA, Annexure, “SV1”, para 4, CaseLines, 020-20

- “1. Our client was unfortunately involved in an accident and is currently booked off due to medical conditions and is again consulting with his medical practitioner this Friday and will gladly provide you with a dated medical certificate.
 2. We also noted that you request the minor child to be present. It is also common cause that the minor child is still attending school at this stage, and we do not want to take her out of school unnecessary for the day as there is still some activities that needs to be concluded.
 3. Under those circumstances we kindly request that you provide us with a new date and confirmation of the postponement.”
11. On the 18th of November 2025 the applicant's attorney requested a medical report and treatment plan relating to the respondent's alleged injuries from the respondent's attorney. The papers reflect that the accident occurred on the 2nd of November 2025 and the respondent was discharged from hospital on 7 November 2025. No medical certificate accompanied the email “requesting a postponement” of the interview. The applicant offered to take M[...] to the interview considering that the academic school year had come to an end. The applicant also threatened to launch an urgent application if the respondent persisted with his refusal to attend the scheduled interview.
12. On the 21st of November 2025 the respondent's attorney advised that the respondent refused to:
 1. Provide a medical report.
 2. Agree that the applicant takes M[...] to the interview.
 3. Attend the scheduled interview on 9 December 2025 with M[...].
12. The respondent also addressed a WhatsApp message to the respondent

in which he affirmed his refusal that the applicant takes the minor child to the scheduled interview.

13. On the 24th of November 2025 the respondent's attorney re-affirmed to the Family Advocate that his "...instructions remain unchanged and do await confirmation that the appointment will be postponed for both parties. ..."
14. The respondent claimed that he was unable to attend the scheduled interview consequent upon the injuries sustained by him. The aforementioned averment is belied by his attendance of a 40th birthday party at a game farm over the weekend of 14 November 2025. Social media posts on Facebook depicts the respondent drinking and riding on a game vehicle. No visible injuries can be gleaned from the photographs and the respondent showed no discomfort that could have precluded him from attending the scheduled interview.³
15. The history of the matter shows that the respondent formed a habit of causing delays to the investigation processes. The applicant lodged a Children's Court application on 12 November 2024 - a month after the parenting plan was made an order of Court. The respondent and his attorney often failed to attend Court resulting in postponements to procure their attendance. The respondent also refused to co-operate with the social worker appointed by the Children's Court to perform an investigation. The respondent caused undue delays to the investigation by deliberately manipulating the Children's Court process and system as a result of which the proceedings had to be postponed on numerous occasions.
16. The respondent failed to "co-operate fully with the Office of the Family Advocate" by refusing to attend the scheduled meeting for no good

³ FA, Annexure "SV10", CaseLines 020-33

reason. The Court's intervention was necessary to prevent further delays in the investigation caused by the respondent's obstructive stratagem. The respondent's delaying strategy was evidently aimed at perpetuating the *status qua* for as long as possible. In order to achieve this, he orchestrated unnecessary delays.

17. This application was served on the 25th of November 2025. The applicant stated in an affidavit that M[...] expressed the wish to return to the applicant's primary care - the voice of the child is contained in two social workers' report ordered by the Children's Court. The applicant correctly argued that the respondent's delaying tactics is not in the interests of the two minor children.

18. On the 27th of November 2025 the respondent's attorney addressed a "*with prejudice*" letter to the applicant's attorney in which he stated, as follows:

"9. Additionally, the initial request to postpone the date was necessitated by the fact that, at the time, M[...] was still attending school and engaged in extramural commitments. This position has since changed. On 24 November 2025, M[...]’s school informed our client's wife, Ms C[...] L[...], that M[...] would not be required to attend school on 9 December 2025.

Our client has consulted with a treating specialist earlier today. The only available consultation time was at 08h30 today, which has been secured and was attended to by our client.

Acting strictly on medical advice, our client will postpone his scheduled surgery to ensure the family's attendance at the Office of the Family Advocate on 9 December 2025 and a new date will be provided."

19. The respondent's request that the application be withdrawn at that juncture was without merit.

20. A clear basis has been established for the lack of trust that the

respondent would honour his belated undertaking to attend the scheduled interview with the Office of the Family Advocate. I quote the applicant's attorney's warranted response, as follows:

- “5. *Your client did indeed give a medical certificate that stated he was unfit for work and will only return to work on 12 December 2025. As a result of this he is unable to attend to the appointment of the Family Advocate. Despite this he was capable of gallivanting with his friends on a game farm on 14 November 2025 and was clearly able to attend a meeting with the Family Advocate.*
6. *Your client's contention that our client influence M[...] does not even justify a response. Nor the contention that she had to attend school on 9 December 2025 which was never an issue.*
7. *Your client's refusal to adhere to the appointment and the reasons for the refusal is mala fide, obstructive and unreasonable. Hence the urgent application. Your client now contends that he postponed surgery which is a new fact. We specifically requested his treatment plan and was simply ignored. We decline to now accept his word about surgery which was never shared before. The latest medical certificate also does not assist your client.*
8. *We agree that it is deeply regretted that our client had to bring an urgent application where your client could simply have co-operated from the start. It is exhausting to our client to always have to fight your client's obstructive behaviour and mala fides.*
9. *Given the history of your client reneging on agreements and inter alia suspended contact mero motu our client cannot simply accept his compliance with the appointment.*
10. *As such we seek that your client agrees to a draft order in terms of the Notice of Motion except for costs that can be argued.”*
21. The respondent's counsel argued that the applicant should pay the costs as the respondent provided two undertakings and two medical

certificates. The respondent's counsel further argued that the undertakings rendered the application moot. There is no merit in this argument because the applicant was not obliged to accept the medical certificates. Furthermore, the applicant was not obliged to accept the respondent's belated undertaking in the instant matter where the applicant was faced with the respondent's stratagem to delay the investigation. The applicant had good reason not to trust that the respondent would make good on his belated undertaking. The applicant was, accordingly, entitled to persist that the application be heard and an order be granted by the Court.

22. The respondent made a 180 degree turn in his letter dated 28 November 2025, contrary to his previous blunt refusal to attend the scheduled meeting with the Office of the Family Advocate in breach of the Order granted by Adams J. The about turn only came about when the respondent was faced with the reality that he may not get away with his previous stratagem. This occurred only after the applicant incurred costs which could and should have been prevented if the respondent did not refuse to attend the scheduled meeting with the Office of the Family Advocate.
23. The respondent's aforementioned undertaking is contrary to the stance that he took on the 21st and 24th of November 2025 which prompted the launch of the urgent application.
24. The first medical certificate was obtained after the Family Advocate's letter of the 17th of November 2025 and the second medical certificate was obtained after service of the application. The two medical certificates were not supported by an affidavit deposed to by the doctor. The medical certificates became irrelevant from the moment that the respondent agreed to attend the interview. There is, accordingly, no merit in the respondent's reliance on the medical certificates in the context of cost. The irrelevance of the medical certificates renders it

- unnecessary to deal with further warranted critique against the *pro forma* medical certificates and its confusing content.
25. Suffice to say that neither of the medical certificates state that surgery was scheduled for the 9th of December 2025 as alleged in the respondent's letter dated 28 November 2025. The first medical certificate refers to the nature of illness/operation/enquiry "*post-surgery*" and the second to "*follow-up procedures or surgeries to be rescheduled*".
 26. The Applicant's counsel argued that the respondent has not filed any papers and argued that this was because of the weekend away⁴ where the respondent appears not to be as injured as he now claims to be and there was no surgery scheduled for the date of the Family Advocate's Investigation. The first letter also did not mention scheduled surgery.
 27. The respondent could and should have avoided the application by agreeing to attend the scheduled interview in the first place.
 28. The Notice of Motion contains a prayer for the payment of costs on attorney and client scale.
 29. I exercised my discretion to grant punitive costs on the basis that the respondent's conduct was *mala fide*. Prior to the issuing of the application, the respondent bluntly refused to attend the scheduled interview/meeting with the Family Advocate on *mala fide* grounds. The production of medical certificates, which is contradicted by the respondent's attendance of a 40th birthday party at a game farm over the weekend of 14 November 2025, as depicted in social media post, demonstrates the respondent's *mala fides*. A *bona fide* litigant would have agreed to

⁴ The weekend of the 14th of November 2025

attend the scheduled meeting.⁵

30. The respondent should not in my view be “left out of pocket.”
31. Based on the aforementioned facts I granted the relief sought in the draft order which accords with the relief sought in the Notice of Motion, and I granted costs on an attorney and client scale to the applicant.

M VAN NIEUWENHUIZEN

*Acting Judge of the High Court of South Africa
Gauteng Division, Johannesburg*

HEARD ON: 2 December 2025

DATE OF JUDGMENT: 2 April 2026

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⁵ Fripp v Gibbon and CO 1913 AD 354; Intercontinental Exports (Pty) Ltd v Fowles 1999 (2) SA 1045 (SCA) at 1055F-G.