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**IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN**

Not reportable

Case no: 2200/2025

In the matter between

G[...] K[...] M[...]

APPLICANT

And

T[...] C[...] M[...]

RESPONDENT

Neutral citation: *M[...] v M[...]* (2200/2025) [2026] ZAFSHC 236 (10 April 2026)

Coram: MOLITSOANE J

Heard: 23 February 2026

Delivered: 10 April 2026

Summary: Urgency – principles restated – whether the applicant has made out a case for the variation of the interim order.

ORDER

- 1 The application is dismissed.
- 2 The Family Advocate is ordered to furnish the parties with a report concerning the investigation conducted herein within 60 days of the service of this order.
- 3 Should the investigation not be complete, then in that case, the Family Advocate is ordered to an furnish the parties with an interim report within 60 days of the service of this order.
- 4 There is no order as to costs.
- 5 The Registrar of this court is ordered to forward this order to the Family Advocate and file proof of service in the court file.

JUDGMENT

Molitsoane J

[1] This application is but one of a series of applications brought by the applicant against the respondent concerning a baby, now ten months old. I feel constrained to quote the words of my brother Daffue J on 30 May 2025 in one of the applications between these parties about this infant. I hope the parties will deeply ponder what was said on that day in the best interests of this child. Daffue J said:

‘We have seen too often that fights between parents have a negative influence on the children, and I often wonder how children can readily become good adults when their parents fight like cats and dogs.

The problem is, maybe in this case he is still small so he may not know what is going on, but we never know what the position is, bearing in mind emotional conflict, et cetera.’

[2] No less than six judges in this Division have been involved in this case. When the interim order was granted in this case on 30 May 2025, the child was just over a month old. When this application was heard, the child had just turned ten months old. This application, like all other previous applications brought by the applicant, were instituted on an urgent basis.

[3] The issues for determination in this application are the following:

- (a) whether the applicant has passed the threshold for urgency; and
- (b) whether the applicant is entitled to the order to vary the interim order granted on 30 May 2025.

[4] Uniform rule 6(12)(b) requires the applicant to set out explicitly in an affidavit the reasons why the circumstances of his or her case render the case urgent and why he or she believes that he or she cannot be afforded substantial redress at a hearing in due course. In *Luna Meubel Vervaardigers v Makin and Another*¹ the court held that ‘[p]ractitioners should carefully analyze the facts of each case to determine, for the purposes of

¹ *Luna Meubel Vervaardigers v Makin and Another* 1977 (4) SA 135 (WLD) at 137E-F.

setting the case down for hearing, whether a greater or lesser degree of relaxation of the rules and of the ordinary practice of the court is required. The degree of relaxation should not be greater than the exigency of the case demands. It must be commensurate therewith. Mere lip service to the requirements of rule 6(12)(b) will not do and an applicant must make out a case in the founding affidavit to justify the extent of the departure from the norm, which is involved in the time and day for which the matter be set down.'

[5] In order for this Court to deal with the case of a litigant on an urgent basis, the court will have regard to the prejudice the applicant will suffer if the hearing of the case was delayed. The court will also have regard to the prejudice the respondent might suffer if the timelines prescribed by the rules are not abridged. A litigant who brings an application on an urgent basis essentially skips the queue and allows his or her case to be heard first before the other matters which have already been set down on the roll.² This may cause prejudice to the other applicants as the case in an urgent application is given preference. This means that an application which is brought on an urgent basis begets preferential and differential treatment.

[6] The court in *IL & Marcow Caterers (Pty) Ltd v Greatermans SA Ltd and Another*³ held as follows:

'The reason for this differential treatment is that the courts are there to serve the public and this service is likely to be seriously disrupted if considerations such as those advanced by the applicants in these two matters were allowed to dictate the priority they should receive on the roll. It is, in the nature of things, impossible for all matters to be dealt with as soon as they arrive for hearing. Considerations of fairness require litigants to wait their turn for the hearing of their matters. To interpose at the top of the queue a matter which does not warrant such treatment automatically results in an additional delay in the hearing of others awaiting their turn, which is both prejudicial and unfair to them. The loss that applicants might suffer by not being afforded an immediate hearing is not the kind of loss that justifies the disruption of the roll and the resultant prejudice against other members of the litigating public. Finally, there is the question of prejudice to respondents. The respondents were required to prepare their answering affidavits and obtain the service of counsel for the hearing in great haste.'

² *IL & Marcow Caterers (Pty) Ltd v Greatermans SA Ltd and Another* 1981 (4) SA 108 (C) at 113H-114B.

³ *Ibid.*

[7] This application was brought on an extremely urgent basis. It appears that it was issued and served on a Friday, 20 February 2026, in the afternoon. The respondent was afforded time to file both a notice to oppose and an answering affidavit at the same time on Monday 23 February 2026 at 10h00. The application was enrolled for hearing a mere two hours thereafter. Minutes before the hearing, the respondent filed what purported to be an answering affidavit. This document which was handed to the court and the applicant in court at the commencement of the proceedings, in answer to the founding affidavit, was not commissioned. The applicant, after he was given time to peruse it, elected not to reply to it, as he was entitled to and he also made no reference to it in his submissions. I will also not have any regard to a document which purports to be an affidavit, but is not.

[8] It is my considered view that the applicant is not entitled to bring this matter on truncated timelines as indicated above. His conduct did not only prejudice the respondent but unnecessarily prejudiced other litigants whose matters were already on the roll. The applicant cannot be allowed, at every turn, to bring an urgent application in circumstances where he already has an order in place, as will be demonstrated later in this judgment. On the issue of urgency, the applicant has dismally failed to make out a case why he should be allowed to skip the queue. In his affidavit, he mentions the following as factors which he asserts must be taken into account in order to decide the question of urgency: 'ongoing unilateral schooling crèche decision making and threatened changes without joint consent; disrupting the minors' routine; immunization disruption; breakdown of joint decision making and co-parenting communication: erosion of the minor's bond with the applicant.' What the applicant has listed are conclusions as opposed to facts themselves which would enable the court to decide the question of urgency. He has failed to explicitly set out the reasons for seeking to skip the queue and why he will not obtain redress in a later hearing.

[9] It would seem on the version of the applicant that the parties had been staying together from November 2025 to 31 January 2026. He averred that the respondent took decisions concerning the child on her own without involving him, and he termed

this conduct the ‘unilateralism’ of the respondent. He has also not indicated to the court when the so-called ‘unilateralism’ by the respondent took place. He only says that he was informed by a crèche manager that the respondent had taken steps inconsistent with the arrangements he had with her. He does not tell the court when he met the crèche manager. Importantly what was conveyed to him by the crèche manager constitutes inadmissible hearsay and cannot be considered as the crèche manager did not file a confirmatory affidavit.

[10] Even if it could be said that the applicant had to bring this matter on an urgent basis, he still had to make out a case as to why the respondent should be allowed to serve her opposing papers by 10h00 and be at court at 12h00 on the same day, having regard to the relief he seeks. I accept that he has the right to set his timelines but same cannot be so unfair to the respondent to the extent of being prejudicial to her in opposition of the case brought against her. The court in *Harvey v Niland and Others*⁴ recognized that the applicant had a right to determine the time and date in urgent applications, but that notwithstanding, the court also sounded a warning that in doing so ‘the applicant must give proper consideration to those time periods.’ The applicant did not give any consideration to the time limits he set for the applicant.

[11] The application was not served by the sheriff contrary to Uniform rule 4. The applicant also did not file any service affidavit; there is no evidence as to when the application was received by the respondent. It does, however, appear that she received the application as she purported to file a notice to oppose, and what she called an answering affidavit. There is no reason why this application was not brought on a semi-urgent basis if one has regard to the relief sought. I am of the considered view that the applicant has failed to pass the threshold of urgency. On this point alone, the application stands to be struck of the roll.

[12] The applicant seeks what he labels a ‘substantive interim relief pending the family advocate report.’ Most of the paragraphs of the relief he seeks were granted by

⁴ *Harvey v Niland and Others* [2015] ZAECHGHC 149; 2016 (2) SA 436 (ECG) para 19

this Court on 30 May 2025. Where such was not granted, the evidence reveal that the applicant has not made out a case for the abridgment of the time periods as stated in the notice of motion or he is simply not entitled to the relief sought. It is necessary to set out the substantive relief sought by the applicant in full.

[13] He seeks the following relief:

'Pending finalization of the family advocate investigation and report in case number 2200/2025, an interim parenting regime is ordered as follows:

Schooling /creche stability

The minor child shall continue attending the current creche/ school attended prior to the respondent's unilateral removal and/or shall be reinstated there to within 24 hours of this order, pending further agreement or the family advocate recommendation and no change to the child's schooling/crèche shall occur without the prior written consent of both parents.

Joint the decision making.

The party shall exercise joint decision making in respect of all major decisions concerning the minor child, including but not limited to schooling/creche, medical treatment, immunizations, travel, and caregivers.

Medical or immunization

The party shall, within 48 hours, confirm the minor child's immunization status and coordinate attendance at the next immunization appointment. The applicants securing off an alternative appointment date shall be shared forthwith.

Contact and care (restorative overnights)

The applicant shall have contact and care with the minor child as follows:

Weekly overnight on Tuesdays and Thursdays (Collection from creche at close of day return to creche the following morning).

Alternate weekends from Friday after creche collection until Monday morning drop off at creche.

In weeks where creche is closed, a party shall agree reasonable equivalent Schedule, failing which the applicant shall collect at 16:00 on their relevant day (s) and return by 08:00 the following morning(s).

Daily video contact.

The applicant shall have a daily video call with the minor child between 19h00 and 19h30 (or such reasonable time as the child's routine requires) and the respondent shall facilitate same.

Neutral exchanges and third – party collection.

All collections and drop -offs shall occur at a neutral location the (creche/ School, or another neutral public place agreed in writing).

No third party shall collect or drop off the minor child without the prior written consent of both parents, consistent with the creche undertaking and the parties' prior agreement.

Travel restriction

The respondent shall not remove or permit removal of the minor child from the Mangaung area without the prior written consent of the applicant or an order of court.

Parenting coordinator and co- parenting support.

A parenting coordinator shall be appointed within 7 days to be recommended by the office of the family advocate (or failing which to be appointed by this court on supplemented papers).

Their parties are directed to attend co-parenting counselling / classes as recommended by the familiar advocate or parenting coordinator, within a reasonable timeframe.

Financial disclosure and contributions.

The parties shall exchange financial disclosures relevant to the minor child's monthly needs within 7 days. The respondent shall within 7 days, provide written confirmation of her monthly contribution towards the minor child's expenses, including schooling / creche and essential items, and the parties shall agree a written schedule of responsibilities.

Weekly week schedule.

The respondent shall, by no later than each Sunday 18h00, provide her weekly work schedule for the coming week to enable planning of logistics and caregiving.

Noninterference

Grandparents and extended family members are interdicted from disrupting or interfering in the discharge of the parties' parental responsibilities and rights, and from obstructing exchanges, communication, and the child's stability.

Judicial reprimand / compliance

The court records its disapproval of unilateral major decisions affecting the minor child pending the family advocate process and directs strict compliance with this order and the existing interim order (Annexure "J")'

[14] I turn to the issues of:

- (a) contact and care (restorative overnights).
- (b) daily video contact.
- (c) neutral exchanges and third-party collection.
- (d) non-interference.

The interim order granted on 30 May 2025 already caters for these. The interim order was again confirmed by this Court on 24 July 2025. To come again before court seeking the same relief which was granted by this court amounts to abuse of the process.

[15] The applicant further seeks what he terms 'travel restriction'. It appears that what is meant here is that the respondent shall not remove or permit removal of the minor from the Mangaung area without the prior written consent of the applicant or an order of the court. This order was also granted by this Court on 30 May 2025. This is another factor which points to the abuse of the court processes.

[16] The applicant further seeks what he calls 'parenting coordinator and co-parenting support as well as financial disclosure'. It is trite law that an applicant must make out his case in the founding affidavit. The applicant cannot simply list several instances in which he seeks relief. He must set out in detail in his affidavit why relief must be granted. This court is not seized with the case of maintenance. It appears to me, although this is not set out in detail as such that the case before me is about an interdict and not maintenance. While parenting may implicate maintenance, this is not the forum to seek such relief. On the issue of parenting, this Court has already ordered that the Family Advocate must investigate and compile a report. It is unnecessary to grant this order.

[17] On the issue of medical or immunization of the child, no case has been made in the papers for the relief sought. On his version, it appears that the clinic card was with the applicant. There is no reason why he cannot simply go to the clinic and ascertain what he seeks. Because the clinic card was with him, he was able to notice that the minor child missed a scheduled immunization. It was up to him then to arrange to go to the clinic as he has already done, as per her papers. He does not need the respondent

to confirm the immunization status and to coordinate attendance he so desires. In terms of the order of 25 May 2025, the 'applicant is allowed all relevant medical information, reports and access to information including regular updates of the minor child's physical well-being subject to the best interests of the minor child.' Having parental rights and responsibilities does not entitle the applicant to be consulted at every turn about all decisions concerning the child. What he seeks was covered in the order of 30 May.

[18] This is one case where a cost order would have been warranted on punitive scale against the applicant, based on abuse of the court processes. It must be born in mind that the award of costs lies in the court's discretion. While the respondent purported to oppose the application, there was no proper answering affidavit before me. I dealt with this case like it was not opposed. I would therefore not make any cost order in this matter.

[19] The fact that the investigation by the Family Advocate has been outstanding for almost a year, is a cause for concern. That delay in finalization of the investigation has led the applicant to bring an application of this nature. It would be in the interests of the children that the parties be apprised by the Family Advocate as to the status of the investigations and I will accordingly make an appropriate order to that effect.

[20] I order as follows:

- 1 The application is dismissed.
- 2 The Family Advocate is ordered to furnish the parties with a report concerning the investigation conducted herein within 60 days of the service of this order.
- 3 Should the investigation not be complete, then in that case, the Family Advocate is ordered to furnish the parties with an interim report within 60 days of the service of this order.
- 4 There is no order as to costs.
- 5 The Registrar of this court is ordered to forward this order to the Family Advocate and file proof of service in the court file.

P E MOLITSOANE
JUDGE OF THE HIGH COURT

Appearances

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