

REPUBLIC OF SOUTH AFRICA



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

Case No: 2026/071915

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED
14/4/2026	
DATE:	SIGNATURE

In the matter between:

C [A...] [P...]

Applicant

and

P [M...] [F...]

Respondent

JUDGMENT

Mia, J

Introduction

- [1] The background facts are necessary before the law can be applied to the facts.

Facts

- [2] The applicant is the father of the minor child. The respondent is the mother of the minor child. The parties are married to each other and resided in Kenya initially where the applicant was working. When the parties became estranged in 2021, the minor child remained with the applicant and the respondent returned to South Africa. The parties had planned to move to South Africa together, however in view of the deterioration in their relationship, the applicant moved to Zimbabwe, his country of origin, with the minor child. In Zimbabwe the applicant was supported by his mother with the care of the minor child.
- [3] During this time, the respondent exercised contact telephonically. She pursued work opportunities in Asia which included Vietnam and Malaysia. She remained in Asia from 2023 until 2026 when she returned to South Africa. The applicant during this period travelled to South Africa to ensure the child received necessary medical treatment. The minor child is enrolled in the French international School in Zimbabwe. Whilst receiving in South Africa and during the period of recuperation she continued to complete homework assignments which were returned to the school virtually.
- [4] In January 2026, the respondent contacted the applicant and requested to see the child whilst she was in South Africa. The applicant was in Zimbabwe attending to his ailing mother. The minor child was in the care of the helper, who is alleged to be the applicant's girlfriend. The respondent was given access to the home. The respondent informed the applicant that the minor child complained that she was abused by the applicant's girlfriend and his mother. The applicant disputes this. It is noted that this was not communicated to the respondent during the virtual contact over the years. This was also not communicated to the applicant.
- [5] The respondent returned to Limpopo to her parental home and took the minor child with her as she did not have accommodation in

Johannesburg. The removal was with the applicant's consent to enable the minor child to have access to the respondent. The applicant called for the return of the child shortly thereafter to allow her to complete her schooling at the French International School, in Zimbabwe. The respondent refused to return the minor child citing the alleged abuse of the minor child by the paternal grandmother and the applicant's girlfriend. The respondent wishes to retain the child in Limpopo and contends that since she is living with the child at her mother home in Limpopo this court does not have jurisdiction. This despite the divorce having been issued out of this court. The applicant wishes to enrol the minor child at the French International School in Sandton, despite not having accommodation or verifiable employment.

- [6] The child is entitled to have her best interests inform the decision regarding education and relocation informed by section 28(2) of the Constitution, which provides that:

"A child's best interests are of paramount importance in every matter concerning the child."

This principle is decisive, not merely one factor among many. It overrides procedural, jurisdictional, and parental disputes where necessary.

- [7] The enquiry is further defined by section 7 of the Children's Act 38 of 2005. This standard first espoused in *McCall v McCall*¹ and expanded in *S v M (Centre for Child Law as Amicus Curiae)*.² These authorities require the enquiry encompass a holistic, child centred evaluation.³ This must further ensure that the parenting prioritises the child's stability, emotional security, educational continuity and their developmental needs.

¹ 1994 (3) SA 201 (C).

² (CCT 53/06) [2007] ZACC 18; 2008 (3) SA 232 (CC); 2007 (12) BCLR 1312 (CC); 2007 (2) SACR 539 (CC).

³ *Id* para [122].

- [8] The minor child, approximately 10 years old, has been in the primary care of the applicant for several years. He has been the long-term primary caregiver and applicant attended to the child's daily needs and enrolled the child at the French International School in Harare. The applicant supported the child's instruction and ensured the child received treatment in 2025. He ensured that she was medically cleared to resume schooling in March 2026. This demonstrates structured support and active involvement.
- [9] The change in the child's circumstances occurred after the respondent returned to South Africa and removed the child to Limpopo in March 2026. The child has not returned to school. The respondent does not show that the child has kept up with her curriculum whilst in Limpopo and sought to remove the child again to enrol her at the French International School in Sandton, introducing a further sudden change in the child's life.
- [10] The matter was referred to the Office of the Family Advocate to investigate limited aspects and to revert with its findings. Having regard to the findings, there appears to be no substantial evidence to support the respondent's suggestion of abuse by the paternal grandmother or the applicant's girlfriend. The Family Advocate also expressed concern with the sudden change in schooling.
- [11] The child's established living arrangement would be disrupted if she remained in Limpopo. It will not afford continuity of care by the applicant who has been the primary caregiver for a considerable period. In contrast, the minor child's removal to Limpopo was unilateral, recent and disruptive as the child stopped completing her work for virtual submission.
- [12] In addition to continuity and stability of care which the applicant has furnished, in an established relationship, the educational continuity is important. This is a critical factor in ensuring the best interests of the

minor child apart from her physical and emotional well-being. The child is enrolled in a specialised school which requires physical attendance to ensure proper academic progression. The child's right to schooling is immediately realisable and cannot be subject to limitation in the current circumstances. The deprivation of education is ongoing and cumulative and will be irreparable unless there is a return to stability.

- [13] The recent relocation to Limpopo cannot determine the best interests of the child. The tactical relocation does not defeat the best interests of the child or oust this court's jurisdiction. Where the relocation appears to be calculated to achieve a self-created *fait accompli*, i.e. an accomplished fact, the conduct does not support a conclusion that the decision to relocate informed the child's best interests and that it was given paramount consideration.
- [14] Even if there were any residual doubt regarding territorial jurisdiction or the degree of urgency, neither contention can prevail in circumstances where the welfare of a minor child is directly implicated. This Court is seized with jurisdiction as upper guardian of all minor children, reinforced by the pending divorce proceedings before it and the substantial connection between the child, the parties, and this forum; such jurisdiction, once established, is not defeated by a recent, unilateral relocation. In matters concerning children, jurisdiction is determined with due regard to their best interests rather than rigid territorial considerations,⁴ and persists notwithstanding subsequent events. Likewise, urgency is not to be assessed through the ordinary commercial lens: where a child's right to basic education and developmental stability is being impaired on a continuing basis, the harm is inherently ongoing, cumulative, and not capable of adequate redress in due course.⁵ As emphasised in *S v M*⁶ and subsequent authority, courts are enjoined to act without delay where the child's interests so require. In these

⁴ In *S v M* op cit n 2 at para [122], the court emphasises that "the duties of the courts are to be imbued with a child centred approach, and the courts must as a rule, judiciously consider a child's interests."

⁵ *F v F* (9985/2022) [2022] ZAGPJHC 202.

⁶ *S v M* op cit n 2.

circumstances, both jurisdiction and urgency are properly established, and any technical objection must yield to the paramountcy of the child's best interests.

- [15] In circumstances where the child is recovering from a significant medical intervention, it is necessary to afford her routine, structure and peer interaction, in addition to parental support. A disruption in her routine places her emotional and academic development at risk. The recommendation that the child return to Zimbabwe to complete her schooling give weight to ensuring stability and removing uncertainty in her environment. The Family Advocate and family counsellor's recommendation has not been displaced by any contrary expert view.

- [16] The paramountcy of the child's best interests compels an outcome that restores stability, continuity, and access to education. The evidence demonstrates that the child's established caregiving arrangement and schooling have been disrupted by a recent unilateral relocation, resulting in ongoing deprivation of structured education. The Family Advocate confirms that the interruption of schooling is contrary to the child's welfare. In these circumstances, the only order consistent with the child's best interests is the immediate restoration of the status quo ante.

- [17] The above requires an immediate return to the applicant's primary care and resumption of schooling. The applicant has indicated a willingness to consider a change in schooling to enroll the minor child at the French International School in Sandton. The child shall remain with the applicant pending a change in circumstances which supports a different determination.

- [18] For the above reasons the following order was granted on 10 April 2026:
 - 17.1 The minor child shall be returned to the applicant's care and residence immediately pending any further investigation by the Office of the Family Advocate. The parties may approach the court on supplemented papers.

- 17.2 The applicant shall ensure that the child has access to the respondent specifically during the April - May 2026 school holiday.
- 17.3 In addition, the above access in paragraph 2 above the respondent shall exercise reasonable access to the minor child as agreed between the parties which shall include regular virtual contact as agreed and considering the child's educational commitments.
- 17.4 The costs herein to stand over for later determination during the divorce proceedings.

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S C MIA
JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

Appearances:

On behalf of the applicant	:	MB Mhango
Instructed by	:	Bazuka and Company Inc Bazukam@bazukalaw.co.za
On behalf of the respondent	:	A Prinsloo
Instructed by	:	Martin Vermaak Attorneys Inc. attorney2@martinvermaak.co.za
Date of hearing	:	10 April 2026
Date of judgment	:	14 April 2026