



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: 041525/26

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED: YES

DATE 30 March 2026

SIGNATURE

In the matter between:

P[...] A[...] D[...]

Applicant

and

THANYAPHON SOPRADIT

First Respondent

CENTRAL AUTHORITY FOR THE REPUBLIC

OF SOUTH AFRICA

Second Respondent

Re: the minor child A[...] F[...] D[...]

(Born 24 December 2024)

NEUKIRCHER J:

1] This application is one in which the applicant¹ seeks *inter alia* – over and above an order for substituted service - the following relief against the first respondent²:

“...5. Pending the final determination of this application and/or the return proceedings under the Hague Convention:

5.1 Recording that the Applicant has instituted return proceedings under the Hague Convention through the 2nd Respondent³;

5.2 Directing that no steps be taken which may prejudice the determination of the child’s habitual residence and return under the Convention.

PART B – DECLARATORY RELIEF

(HAGUE CONVENTION)

6. Declaring that the minor child, AFD, born 24 December 2024 in Midrand, Johannesburg, Gauteng Province, Republic of South Africa, (“the minor child”), was habitually resident in the Republic of South Africa immediately prior to his removal, and/or return, in the Republic of the Seychelles, during June/July 2025.

7. Declaring that the Applicant held rights of custody in respect of the minor child under the laws of the Republic of South Africa including

¹ Who is the father of the minor child AFD

² Who is the mother of the minor child

³ Which is the Central Authority of South Africa

sections 18 and 21 of the Childrens Act 38 of 2005, immediately prior to such removal and/or retention.

8. Declaring that the removal and/or retention of the minor child in the Republic of Seychelles, from on/or about 1 July 2025 to date, constitutes a wrongful retention in terms of **Article 3 of the Hague Convention of the Civil Aspects of International Child Abduction, 1980**.
9. Directing that a certified copy of this order may be furnished to the relevant judicial and/or administrative authorities in the Republic of Seychelles for purposes of **Article 14 of the Hague Convention**.⁴

2] Although the matter was originally set down for hearing in the ordinary urgent court, it was ultimately directed to adjudication by me by virtue of the Directives of this Division. This was on 16 March 2026. As I was, in any event, allocated urgent court duty in the week of 23 March 2026, I allocated it for hearing on 24 March 2026. I also requested that the Central Authority send a representative to court, which they did. I am indebted to her for her appearance and assistance.

The Convention

3] Section 275 of the Children's Act 38 of 2005 (the Children's Act) provides as follows:

"The Hague Convention on International Child Abduction is in force in the Republic and its provisions are law in the Republic, subject to the provisions of this Act."

⁴ Emphasis already provided

4] Schedule 2 of the Children's Act contains the Articles under the Convention.

5] The preamble to the Hague Convention states:

“The States signatory to the present Convention, Firmly convinced that the interests of children are of paramount importance in matters relating to their custody, Desiring to protect children internationally from the harmful effects of their wrongful removal or retention and to establish procedures to ensure their prompt return to the State of their habitual residence, as well as to secure protection for rights of access, Have resolved to conclude a Convention to this effect, and have agreed upon the following provisions -...”

6] This being so, the objects of the Convention are to secure the prompt return of a child wrongfully removed or retained in any Contracting State⁵ and to ensure that rights of custody and of access, under the law of one Contracting State are effectively respected in the other Contracting State⁶. In this regard it is common cause that both South Africa and the Republic of the Seychelles are Contracting States. It is also trite that proceedings under the Convention are to be conducted expeditiously, and Regulation 23 provides

“(1) Proceedings for the return of a child under the Hague Convention must be completed within six weeks from the date on which judicial proceedings were instituted in a High Court, except where exceptional circumstances make this impossible.”

7] At roll call on Tuesday 24 March 2026, I expressed my concern that this court had no jurisdiction to adjudicate this matter as it is common cause that the minor

⁵ Article 1(a)

⁶ Article 1(b)

child was retained in the Republic of the Seychelles (the Seychelles). In terms of the Convention, and specifically Articles 8, 9 and 10, provision is made for what Article 11 terms “expeditious” proceedings to effect the return of the child to the left behind parent. In this respect, the procedure is that the left behind parent completes Form 10 of the Convention, lodges it with the Central Authority of his/her country. It, in turn must take the steps set out in Article 7 of the Convention⁷. Where it has reason to believe that the child is in another Contracting State, the Central Authority transmits the application to that Contracting State so that proceedings to effect the return of the child may be commenced there.

8] Nothing prevents a left behind parent from launching proceedings, to obtain the return of the child, in the Contracting State where the child has been retained.

9] *In casu*, the applicant completed the Form 10 and transmitted it to the Central Authority of South Africa on 26 September 2025. That application was transmitted to

⁷ “Central Authorities shall co-operate with each other and promote co-operation amongst the competent authorities in their respective States to secure the prompt return of children and to achieve the other objects of this Convention.

In particular, either directly or through any intermediary, they shall take all appropriate measures

- (a) to discover the whereabouts of a child who has been wrongfully removed or retained;
- (b) to prevent further harm to the child or prejudice to interested parties by taking or causing to be taken provisional measures;
- (c) to secure the voluntary return of the child or to bring about an amicable resolution of the issues;
- (d) to exchange, where desirable, information relating to the social background of the child;
- (e) to provide information of a general character as to the law of their State in connection with the application of the Convention;
- (f) to initiate or facilitate the institution of judicial or administrative proceedings with a view to obtaining the return of the child and, in a proper case, to make arrangements for organizing or securing the effective exercise of rights of access;
- (g) where the circumstances so require, to provide or facilitate the provision of legal aid and advice, including the participation of legal counsel and advisers;
- (h) to provide such administrative arrangements as may be necessary and appropriate to secure the safe return of the child;
- (i) to keep each other informed with respect to the operation of this Convention and, as far as possible, to eliminate any obstacles to its application. “

the Central Authority in the Seychelles on 8 October 2025. Unfortunately, that is where everything stalled – no response has, to date, been received from the Central Authority of the Seychelles and so, the applicant launched the present proceedings in this court on 19 February 2026.

10] The application is opposed by the first respondent who has taken the point of jurisdiction in her answering affidavit. She has also pointed out important facts which the applicant abjectly failed to disclose in his application. These facts go to the crux of the issues upon which the applicant founds his case, the *bona fides* of the application and thus, ultimately to the issue of costs.

11] As stated, at roll call I expressed my view regarding jurisdiction to the parties and stood the matter down so that the parties could discuss the way forward and, if necessary, the Central Authority could explain the proper process and procedure with the applicant's representative. However, when the matter was called again later, the applicant was determined to proceed with the application. Argument was presented by the applicant that, by virtue of the fact that the court is Upper Guardian of all minor children, it has jurisdiction to entertain the application and that the provisions of *McCall v McCall*⁸ are central to the issue of determining the best interests of the minor child in this matter. This, of course, is a very different issue to the one to hand.

12] The argument was further that this court had jurisdiction as the child was born in Midrand, Johannesburg on 24 December 2024 and the parties lived as a family in

⁸ 1994 (3) SA 201 (C)

South Africa from the child's birth until they went to the Seychelles in June 2025. Although he had consented to the travel of the child to the Seychelles, it was on condition that the child returned to South Africa on 1 July 2025. These facts, so the argument went, were indicative of the fact that the child's habitual residence was South Africa and that the applicant required such a declarator from this court so that he could place the order before the court in the Seychelles.

13] The first respondent's version was elucidating. According to her, the applicant had not only consented to child remaining in the Seychelles, but he himself had resided in the Seychelles from July 2025 until January 2026. She alleges that he consented to the minor child staying in the Seychelles. She also states that the applicant's residence there came to an end when he was deported to South Africa by the authorities in the Seychelles. The applicant had also filed no less than six different applications in the Seychelles Family Tribunal seeking not just contact with the minor child, but also various interdicts including one preventing the removal of the minor child from the Seychelles pending resolution of the parties' dispute in that country. It appears that these orders had been granted and the applicant had had contact with the minor child until he was deported back to South Africa. None of this is disputed by the applicant.

14] According to the papers, the disputes are set down for hearing in the Seychelles Family Tribunal on 13 April 2026. I was, however, informed during the course of argument by both counsel that the hearing was, in fact, on 7 April 2026. Thus, a resolution of the parties' disputes is imminent.

15] But what is of concern is that the applicant deliberately failed to take this court into his confidence regarding the facts set out *supra*. This conduct by a litigant is to be frowned upon.

16] The answering affidavit was filed on 13 March 2026 – 10 days prior to the hearing before me. All the defects in his application were pointed out in the answering affidavit and he forged ahead nonetheless.

17] In my view, his conduct leaves much to be desired, is deserving of censure and for this reason should attract a punitive costs order.

18] As stated above, this court is not clothed with jurisdiction to entertain this application by the provisions of the Convention. It is the Contracting State in which the child has been retained that must adjudicate all the issues arising from the application, including whether South Africa is the child's habitual residence. This court is not empowered to make that determination and cannot pre-empt that decision by the court in the Seychelles. It is only if the court in the Seychelles decides that South Africa is the child's habitual residence and orders the return of the child, that this court will be clothed with the discretion to determine the best interests of the child vis-à-vis primary care and residence as well as contact to the minor child. Until then, any such decision is not in this court's powers.

19] Accordingly, the application must fail.

ORDER

1. The application is dismissed.

2. The applicant is ordered to pay the respondent's costs on an attorney and client scale.

B NEUKIRCHER
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

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 30 March 2026.

For the applicant	:	Adv Dlwathi
Instructed by	:	Gcanga Attorneys
For the first respondent	:	Adv Richards
Instructed by	:	Michael Krawits & Co
Matter heard on	:	24 March 2026
Judgment date	:	30 March 2026