



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

CASE NO: 2025/115787

DATE: 09 APRIL 2026

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

Date: **09 April 2026**

Signature:

In the matter between:

E[...] **G[...]**

Applicant

and

C[...] **E[...]** **G[...]**

Respondent

JUDGMENT

NYATHI J

INTRODUCTION

[1] This is an opposed urgent application concerning the care, residence and contact arrangements in respect of two minor children born of the marriage between the parties, now divorced.

[2] The application served before this Court as **Part A** of a wider application. Final relief is reserved for **Part B**, contingent upon further investigations and reports.

[3] The matter was stood down by Goosen AJ on **31 March 2026** and heard by this Court in the **Urgent Court on 1 April 2026**, at which stage judgment was reserved.

[4] The Court has had regard to the voluminous papers, including founding, answering and replying affidavits (both original and supplementary), the interim and final reports of the Office of the Family Advocate, expert evaluations, extensive heads of argument, and relevant authorities.

THE ISSUES FOR DETERMINATION

[5] The issues requiring determination at this stage are narrow but significant, namely:

5.1 Whether the matter is properly before this Court as an urgent application;

5.2 Whether the objection of *lis pendens* can be sustained;

5.3 Whether interim interference with existing care and contact arrangements is justified; and

5.4 What interim order best serves the **best interests of the minor children**, pending completion of professional investigations.

URGENCY

[6] Urgency in matters involving children is not assessed mechanically. The Court is enjoined to assess urgency through the prism of **section 28(2) of the Constitution** and sections 6, 7 and 9 of the **Children's Act 38 of 2005**.

[7] While aspects of the dispute have existed for some time, the present application is triggered by developments occurring after the July 2025 order, including:

- ongoing conflict around contact;
- allegations concerning emotional well-being and parental conduct; and
- the incomplete status of professional processes intended to stabilise the children's circumstances.

[8] In matters involving children, delay itself may be prejudicial. I am accordingly satisfied that the matter is sufficiently urgent to warrant determination.

LIS PENDENS

[9] The Respondent raised the defence of *lis pendens*, contending that substantially similar relief had been sought before the Children's Court.

[10] This defence cannot succeed.

[11] Section 45(4) of the Children's Act expressly preserves the **inherent jurisdiction of the High Court as the upper guardian of all minor children**. Even had parallel proceedings been pending (which, on the papers, they are not), that would not bar this Court from intervening where the interests of children demand it.

[12] The objection of *lis pendens* is accordingly dismissed.

APPLICABLE LEGAL PRINCIPLES

[13] It bears repeating that this Court is not adjudicating a dispute between competing parents, but is required to determine what arrangement best serves the **children's welfare**.

[14] As held in *Terblanche v Terblanche* and reinforced in *J v J*, this Court is:

- not bound by strict pleadings;
- not confined to evidence existing at launch of proceedings; and
- entitled to take into account developments up to the date of hearing.

[15] Interim relief, however, must be approached with caution, particularly where far-reaching consequences may follow from disrupting an existing status quo in the absence of a completed professional assessment.

EVALUTION OF THE EVIDENCE

[16] The papers reveal serious factual disputes, particularly regarding:

- the mental and emotional stability of the Respondent;
- the Applicant's conduct in facilitating contact;
- allegations of parental alienation; and
- the children's expressed wishes.

[17] Both parties rely on expert material that supports aspects of their respective versions. At the same time, it is apparent that:

17.1 The **Family Advocate investigation remains incomplete**;

17.2 The **Voice of the Child process has not been finalised**; and

17.3 The Court lacks a consolidated, neutral assessment capable of sustaining definitive findings at this stage.

[18] This is not a case where one version can be rejected as palpably implausible on the papers. To do so would require the Court to usurp the role of experts and potentially entrench an interim arrangement that might later prove harmful.

THE BEST INTEREST OF THE CHILDREN

[19] The children have endured prolonged conflict, repeated litigation, and uncertainty. The central concern of this Court is therefore **stability, predictability, and emotional protection**.

[20] In my view, the children's best interests are served by:

- avoiding drastic interim changes;
- ensuring that meaningful relationships with both parents are preserved; and
- expediting the completion of outstanding professional processes.

CONCLUSION

[21] Neither party has established a case for the drastic interim relief they respectively seek.

[22] What is plainly required is the **urgent completion of pending professional investigations**, after which this Court (or another seized with Part B) will be adequately equipped to make informed determinations.

ORDER

[23] In the result, the following order is made:

1. The application is confirmed as urgent.
2. The objection of *lis pendens* is dismissed.
3. Pending the finalisation of Part B of the application:
 - The existing care and contact arrangements as set out in the order of **29 July 2025** shall remain in force.
4. The Office of the Family Advocate is directed to:
 - finalise its investigation, including a **Voice of the Child assessment**, within **60 (sixty) days** of this order; and
 - file a comprehensive report dealing with care, residence, contact and any therapeutic interventions deemed necessary.
5. Both parties are directed to cooperate fully with all assessments, interviews and evaluations required for the completion of the report.
6. Costs are reserved for determination in Part B.

FINAL REMARKS

[24] The parties are cautioned that continued conflict-driven litigation risks causing further emotional harm to the children. The focus must shift from adversarial positioning to genuine cooperation in the children's interests.

JS NYATHI

Judge of the High Court
Gauteng Division, Pretoria

HEARD ON: 01 April 2026

JUDGMENT DATE: 09 April 2026

FOR THE AAPPLICANT: Adv L Van der Westhuizen

INSTRUCTED BY: George Rautenbach Attorneys Inc, Pretoria

FOR THE RESPONDENT: Adv R. Erasmus

INSTRUCTED BY: Wynand du Plessis Attorneys, Jhb
c/o M Botha Attorneys, Centurion, Pretoria

Delivery: This judgment was handed down electronically by circulation to the parties' legal representatives by email and uploaded on the CaseLines electronic platform.
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