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

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

CASE NO: 2025-202092

In matter between:

K[...] G[...]
(IDENTITY NUMBER: 8[...])

APPLICANT

and

S[...] V[...] G[...] (previously N[...])
(IDENTITY NUMBER: 8[...])

RESPONDENT

EX TEMPORE JUDGEMENT

INTRODUCTION

[1] This application is an opposed urgent application for the immediate return of two minor children to Johannesburg, pending a competent Court Order

regarding residence, care, contact, and/or any proposed relocation.

- [2] The parties are the biological parents of the minor children, namely I[...] G[...] (born 2018) and A[...] G[...] (born 2023).
- [3] There are divorce proceedings pending between the parties and a Rule 43 application which is still to be decided. There is also a pending investigation which is about to be commenced by the Office of the Family Advocate, with a meeting which has been scheduled for the parties on 14 May 2026.
- [4] It is common cause that the Respondent launched an urgent application on 28 March 2026 in terms of Rule 43 for *inter alia* leave for the Respondent to relocate the minor children to Cape Town. However, on the same day as launching the application, and without waiting for the matter to be argued, the Respondent removed the minor children from the former matrimonial home, where they had been residing with both parties, and moved to Cape Town, where she and the children are currently residing.
- [5] The Respondent argues that the current application ought to be struck from the urgent roll, alternatively dismissed with costs, on the basis that it is, in substance, an attempt to re-litigate, on an urgent basis, the same issue which was already decided by Her Ladyship Justice Mia in the prior urgent Rule 43 proceedings on 10 April 2026. On that occasion the matter was struck from the urgent roll and the Respondent was directed to proceed in the ordinary course.

- [6] The Respondent submits that the Applicant was in effect *forum shopping*, that the Applicant had failed to establish; genuine urgency, a clear right to the final effect relief now sought, and/ or that the best interests of the minor children require this Court to override the pending ordinary course processes, including the imminent Family Advocate investigation.
- [7] The Applicant however submits that the issue before this Honourable Court is not the final adjudication of a relocation dispute, which formed the subject of the opposed Rule 43 application heard by Her Ladyship Justice Mia but it is a determination of whether the Respondent, the mother of the minor children, having removed the minor children from Johannesburg to Cape Town on or about 28 March 2026, without the Applicant's consent and in the absence of any court order, ought to be permitted to retain and benefit from the consequences of that unilateral and "taking the law into her own hands" conduct.
- [8] The Applicant distinguishes the proceedings before Her Ladyship Justice Mia from the current application on the basis that the issue before Her Ladyship Justice Mia was the respondent's application for consent to relocate as prayed in her notice of motion. It is that application which was struck from the roll for lack of urgency. The current application however is limited to the issue of the return of the minor children to Johannesburg.
- [9] Counsel for the Applicant argued that the reasonable assumption is that on

hearing the order granted by the Ladyship Justice Mia, striking the matter from the roll due to lack of urgency and awarding costs in the applicant's favour, the Respondent would have returned to Johannesburg as she did not receive the order prayed for, namely consent to relocate with the minor children to Cape Town as prayed for in her Rule 43. Her failure to do so and her stated intention to remain in Cape Town, coupled with her decision to enrol the minor children in school in Cape Town gave rise to the current urgency which forms the basis of this application.

- [10] The Applicant submitted that in matters concerning minor children, the Court exercises its jurisdiction as upper guardian of all minor children and with due regard to determining what is in the minor children's best interests. The applicant submits that central to that inquiry is the well-established principle that self-help and the creation of a *fait accompli* are impermissible and ought not to be sanctioned, whether directly or indirectly.
- [11] Counsel for the Applicant further argued that the relief sought by the applicant is interim, restorative, and protective in nature. It is directed at restoring the status *quo ante* as it existed prior to the Respondent's unilateral conduct, pending the adjudication of all issues relating to residence, care, contact, and relocation in due course, which issues remain extant and in dispute.
- [12] Counsel for the respondent argued that were the applicant to be successful, it would destabilise the children even more as they would be returned to Johannesburg in the short term and were the respondent to be successful in her

application for relocation, they would have to move again. He further stated that this could not be in the minor children's best interests. In my view this is the direct result of the respondent's actions in removing the children from Gauteng with the knowledge that the applicant did not agree with the relocation and in the absence of a court order.

[13] The Applicant's position is that this situation has resulted in ongoing and immediate prejudice to the children, including disruption to their established routines, schooling, therapeutic support, and their relationship with him. He contends that the current circumstances are unstable and harmful, and that the Respondent has effectively created a new factual position through unilateral conduct, which she now seeks to maintain pending determination in the ordinary course.

[14] The Respondent argued that any urgency was self-created by the applicant. This argument cannot stand however as the urgency flows from the Respondent's deliberate creation of a new factual position.

[15] During argument, counsel for the applicant submitted that substantial redress cannot be achieved in the ordinary course. The usual procedures, including investigations by the Family Advocate and the timelines applicable to opposed motion proceedings, are likely to take several weeks. In the interim, the current unlawful position may become entrenched, with increasing prejudice to the minor children. It was therefore contended that this application is the only effective means of restoring the previous position

pending a proper judicial determination.

[16] The applicant further contends that the urgency of the matter is heightened by the respondent's conduct in relocating the minor children before her own relocation application had been decided, and thereafter continuing to retain them after that application was struck from the urgent roll. It is argued that this amounts to the creation of a *fait accompli*, through which the respondent seeks to benefit from unilateral action and establish a new status quo outside the proper legal process. On this basis, the applicant submits that the present application is not premature but is necessary to restore legality and avoid further prejudice.

[17] On the respondent's own version, the question of where the children should reside remains a live and disputed issue, and no court order currently regulates their care or primary residence.

[18] The matter was struck on the previous occasion on the issue of the urgency which the Respondent argued then and not on the scenario which is before me now. On this occasion it is the Applicant who argues urgency based on the failure of the Respondent to return to Johannesburg notwithstanding her failure to obtain leave to reside in Cape Town on an interim basis by her ladyship Justic Mia and her attempts to have the children enrolled in schools in Cape Town. There are new facts which have arisen indicating the Respondent's continued resolve to retain the minor children in circumstances in Cape Town.

- [19] This Honourable Court finds that as Upper Guardian of the minor children this matter is indeed urgent and on the basis of the principle of the paramountcy of the minor children's best interests this Honourable Court will pronounce upon their interim residency arrangements.
- [20] The respondent's submission that the matter should proceed in the ordinary course fails to take account of the practical consequences of delay. A postponement of several weeks may serve only to consolidate the altered living arrangements, thereby making any return to the children's previous stable environment increasingly difficult. A party cannot rely on delay to legitimise self-help. Rather, urgent intervention may be warranted to prevent an unlawful status quo from becoming the effective arrangement by default.
- [21] Counsel for the respondent argued that the Respondent's actions were necessitated by the untenable living conditions in which the parties were residing and that she acted as a *lioness* to protect her children from the harm being done to them in living in such a strained environment.
- [22] This argument is not sustainable – if the Respondent needed to move out of the former matrimonial home, this should have been negotiated between the parties and if the parties could not reach agreement, she could have approached this Court, or an alternative court for the relevant relief.
- [23] As regards the argument that the Applicant is not motivated by his concern for the best interests of the minor children but by his own comforts, I do not find

any support for this in the papers. On the contrary, the Applicant has placed the children at the centre of the issue. He has not, as argued by counsel for the Respondent in argument, sought to have the children returned to somewhere in Johannesburg because he does not want to commute to Cape Town, he has sought the restoration of the *status quo ante* that existed prior to the Respondent's departure to Cape Town.

[24] As counsel for the Applicant correctly limited the current enquiry to the issue of the restoration of the status quo ante that was in place prior to the Respondent's relocation with the children to Cape Town, it is not necessary to canvass the issue of the relocation itself, which will be dealt with in the ordinary course, assisted by the necessary investigations as ordered by Her Ladyship Justice Mia.

[25] The assistance of the Office of the Family Advocate is always useful and significant. However, this Honourable Court is not bound by the investigation of the Office of the Family Advocate and it would not be incumbent on this Court to await the outcome of an investigation, which has not yet commenced, in restoring a status quo ante in the interests of providing stability for the minor children, at least on an interim basis.

[26] On the issue of costs, I see no reason to depart from the standard that costs follow the result and accordingly grant costs as prayed by the Applicant.

[27] The Applicant further seeks an order which interdicts the Respondent from inter alia

removing the children from Johannesburg, and enrolling them in a school other than their habitual school. I am of the view that the Applicant has satisfied the requirements for interim relief and that he has shown the necessity for granting such interdicts.

[28] For the reasons set out above, I make the following order:

1. Condonation is granted for the Applicant's non-compliance with the Rules of Court and this application is heard as one of urgency in terms of the provisions of Rule 6(12) of the Uniform Rules of Court.
2. The Respondent is directed to return the minor children, namely I[...] G[...] and A[...] G[...], to Johannesburg by no later than 1 May 2026.
3. Pending the finalization of the Rule 43 application to be heard in the normal course:
 - 3.1. the minor children are to be returned to Johannesburg;
 - 3.2. the Respondent is interdicted and restrained from removing the minor children from Johannesburg;
 - 3.3. the Respondent is interdicted and restrained from relocating the minor children to Cape Town or any other jurisdiction outside of Johannesburg;
 - 3.4. the Respondent is interdicted and restrained from enrolling the minor children

in any educational institution without either the Applicant's written consent or an order of this Honourable Court.

- 3.5. the Respondent shall comply with all necessary steps to ensure the re-enrolment, if necessary, and continued attendance of the minor children at their respective schools and therapeutic programmes in Johannesburg.
4. The Applicant is authorised, for purposes of giving effect to this Honourable Court's order, to:
 - 4.1. travel to Cape Town and collect the minor children, namely I[...] G[...] and A[...] G[...], and return them to Johannesburg; *alternatively*
 - 4.2. make all necessary arrangements, in consultation with the Respondent where possible, for the safe and immediate return of the minor children to Johannesburg.
5. The Respondent is directed to cooperate fully with such arrangements and to do all things necessary to facilitate the return of the minor children, including making them available for collection at a date, time, and location specified by the Applicant.
6. In the event that the Respondent fails and/or refuses to comply with the provisions of paragraph 5 above:
 - 6.1. the Applicant shall be authorised to attend at the Respondent's address in Cape Town, or wherever the minor children may be, for purposes of

collecting the minor children and returning them to Johannesburg.

7. The Respondent is directed to immediately hand over the minor children, together with all their personal belongings, identity documents, and any travel documentation, to the Applicant.
8. The Respondent is directed not to obstruct, hinder, or interfere with the Applicant in giving effect to this order.
9. The Respondent shall pay the costs of this application on the scale as between attorney and client, including the costs of counsel.

R LANGE

ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, JOHANNESBURG

Appearances

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Date of hearing: 21 APRIL 2026

Date of judgment: 22 APRIL 2026