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REPUBLIC OF SOUTH AFRICA



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

Case Number: 2025/012875

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

20 March 2026

DATE

SIGNATURE

In the matter between

A[...] J[...] V[...] V[...]

APPLICANT

and

MAGISTRATE M HARICHAND

FIRST RESPONDENT

E[...] L[...] W[...]

SECOND RESPONDENT

ADV CAROLINE FOORD N.O.

THIRD RESPONDENT

JUDGMENT

HINRICHSSEN AJ

Introduction

- [1] This is a review application in which the applicant, the father of a minor child, seeks to review and set aside proceedings conducted on the 7th of November 2024 in the Children's Court for the District of Tshwane Central, presided over by the first respondent, Magistrate M Harichand, together with the orders made on that date. The applicant also seeks to impugn the further proceedings conducted before a substitute presiding officer in the same Court on 5 February 2025.
- [2] The third respondent, Advocate Caroline Foord N.O., has been cited in her official capacity as the Court appointed legal representative of the minor children. No relief is sought against her, and she abides by the decision of this Court.
- [3] The second respondent, the mother of the minor child, E[...] L[...] J[...] V[...] V[...] (“E[...] ”), opposes the application to the extent only of resisting a cost order against her. She has filed an answering affidavit deposed to by her and does not oppose the substantive relief.
- [4] The first respondent has not filed an answering affidavit and has elected to abide by this Court's decision.

The factual matrix

- [5] The factual background to this application is somewhat convoluted. It involves multiple proceedings in different Courts, a tangle of parallel litigation, and the conduct of a judicial officer who, fundamentally misapprehended the limits of her statutory jurisdiction. I shall set out the essential chronology.
- [6] The parties, the applicant the second respondent were married. They were later divorced by order of the Gauteng Local Division, Johannesburg on 5 May 2023, under case number 2023/00068. The decree of divorce incorporated a deed or settlement dealing *inter alia*

with care, contact and maintenance in respect of the minor child E[...] , born on the 8th of May 2018. In terms of that settlement the parties shared parental responsibilities and rights, with primary residency being awarded to the second respondent.

- [7] During or about mid-2023, serious allegations emerged involving the applicant and both minor children, E[...] , and C[...] A[...] R[...] , the second respondent's daughter from a prior relationship. These allegations were referred to the Kidz Clinic, Boksburg and thereafter to the South African Police Services, Kempton Park, under case number 54/08/2023.
- [8] On 14 August 2023 the second respondent launched an application in the Children's Court for the District of Kempton Park, (Ekurhuleni North) under case number 14/1/4/88/2023 (*"the Kempton Park matter"*). She sought, in terms of section 28 of the Children's Act, Act 38 of 2005, (*"the Act"*) to suspend *alternatively* terminate the applicant's parental responsibilities and rights in respect of E[...] , pending the outcome of the investigation and criminal proceedings.
- [9] At the time of launching the Kempton Park matter, both the second respondent and E[...] resided in the Kempton Park magisterial district. The applicant resided in Boksburg. The Kempton Park Children's Court therefore had jurisdiction over the matter.
- [10] At the first appearance in the Kempton Park Children's Court on 11 September 2023, the Court ordered the appointment of a social worker and a legal representative for E[...] . The third respondent, Advocate Foord, was duly appointed as E[...] 's legal representative.
- [11] On 20 December 2023, the applicant brought an urgent application in this Court under case number 2023/133232 before Acting Justice Strydom, seeking the suspension of the second respondent's parental rights and responsibilities in respect of E[...] pending the Kempton Park

hearing scheduled for 29 January 2024. That relief was granted and E[...] was placed in the care of the applicant. The Kempton Park matter has remained active and part-heard since August 2023 - now approaching almost three years of proceedings.

[12] A significant milestone was reached on 20 January 2025 when the Kempton Park Court ordered that the applicant, the second respondent and E[...] to undergo urgent forensic assessments. The matter was postponed to 12 May 2025 for that purpose.

[13] On 19 July 2024, the applicant launched an arrear maintenance application in the Pretoria Central Maintenance Court, with reference number 1022024/MAI/000762, and obtained a garnishee order against the second respondent's salary in respect of alleged arrear school fees.

[14] On 9 September 2024 the second respondent attended the Pretoria Central Maintenance Court to dispute the garnishee order. She was unrepresented at that stage. According to her, a maintenance officer advised her that she should approach the Children's Court in Pretoria to have the divorce decree varied, given the change in circumstances since its grant. On that same day, and acting on that advice, the second respondent filed a Form 2 in terms of section 53 of the Children's Act before the Children's Court for the District of Tshwane Central, under case number 14/1/566/2024 (*"the Pretoria matter"*).

[15] The Form 2 describes the nature of the matter as an application to set aside the divorce settlement and the garnishee order granted against the second respondent, as obtained by the applicant after her parental rights and responsibilities had been suspended.

[16] By e-mail dated 6 November 2024, the day before the first appearance in the Pretoria matter, the second respondent communicated to all relevant parties, including the Pretoria social worker, Advocate Foord,

and the applicant's attorney, her expressed intention to withdraw the Pretoria matter. She acknowledged in that communication that the application had been made incorrectly, that she had acted on the advice of the maintenance officer, and that the ongoing Kempton Park matter already addressed the relevant issues concerning E[...] 's care and contact.

[17] On 7 November 2024, the matter served before the first respondent in the Tshwane Central Children's Court. The applicant's attorney, Mr Bruwer, appeared. The second respondent appeared in person, with the stated intention of withdrawing the Pretoria matter.

[18] Out the outset Mr Bruwer addressed the Court on the following points:

- a. That the Tshwane Central Children's Court lacked jurisdiction in light of the pending proceedings in the Kempton Park Children's Court.
- b. That the doctrine of *lis pendens* applied.
- c. That the Kempton Park Court had already made a series of orders including the appointment of the third respondent as legal representative and the ordering of clinical assessments; and
- d. that it would not be in the interest of justice to fragment or duplicate those proceedings.

[19] The first respondent's response to those submissions is recorded in the papers. She stated, firstly, that since E[...] was now residing in the Pretoria area for approximately 1 year, the Tshwane Central Children's Court had jurisdiction and she would not permit the withdrawal of the matter. Secondly, she stated that the doctrine of *lis pendens* could never apply. She then proceeded, of her own accord and without hearing an application to this effect, to make the following orders:

- a. The Department of Social Development, Pretoria, is directed to investigate as contemplated in section 50 of the Children's Act, Act 38 of 2005 in respect of E[...] ; and
- b. The proceedings will continue on 5 February 2025.

[19] It is also clear from the papers, and specifically from the founding affidavit, that the first respondent stated or at the very least clearly indicated during those proceedings that the Kempton Park Children's Court must close its file and transfer the matter to her Court. That statement - whether made as a formal order or as a clear and definitive judicial discretion - forms the epicentre of this review.

[20] On 20 January 2025, the Kempton Park Children's Court, having been advised of what had transpired before the first respondent, stated through its presiding officer that it would continue with the hearing unless a High Court directs otherwise.

[21] On 27 January 2025, a social worker from the Department of Social Development, Pretoria, contacted the applicant to visit his residential premises pursuant to the section 50 order made by the first respondent. The applicant declined, since the Kempton Park Children's Court had already concluded that part of the investigation.

[22] On 5 February 2025, when the matter came before a different presiding officer in the Tshwane Central Children's Court, the first respondent being ill and on sick leave, the substitute presiding officer, though aware of this review application and though apparently declining to explore the merits, nonetheless appointed a new legal representative for E[...] and directed the social worker to conclude her report in E[...] 's circumstances. The matter was postponed to 17 March 2025.

[23] This application was launched on 2 February 2025, shortly after the 7 November 2024 proceedings and the consequences became apparent.

The applicable legal framework

[24] This Court's jurisdiction to review the proceedings of the Children's Court is multi-sourced and well established.

[25] There is no spectrum of reasonableness on a jurisdictional question. The Tshwane Central Children's Court, either had jurisdiction or it did not.

[26] The following sections of the Children's Act are central.

- a. Section 29(1) provides that an application in terms of section 28 may be brought before the Children's Court within whose area of jurisdiction the child concerned is ordinarily resident.
- b. Section 42(1) provides that, for purposes of the Children's Act, every magistrate's court shall be a children's court and shall have jurisdiction on any matter arising from the application of the Act for the area of its jurisdiction.
- c. In terms of section 44(1) the children's court that has jurisdiction in a particular matter is the court of the area in which the child involved in their matter is ordinarily resident. Where it is unclear which court has jurisdiction in a particular matter, the children's court before which the child is brought has jurisdiction in that matter.
- d. Section 46 sets out the orders which a children's court may make.
- e. Section 6(4)(b) requires that proceedings under the Act be resolved as speedily as possible.

- f. Section 9 entrenches the '*child's best interest*' as the standard in all matters concerning the child under the Act.

Analysis

The jurisdictional competence of the Tshwane Central Children's Court

- [27] The first question is whether the Tshwane Central Children's Court had jurisdiction to entertain the Pretoria matter at all. The answer, in my view, is clearly in the negative, but I must deal with the first respondent's stated rationale, namely that since E[...] had been residing in the Pretoria area for approximately 1 year, the Tshwane Central Court had jurisdiction.
- [28] There's a fundamental confusion in that reasoning, one which the first respondent did not interrogate. The Kempton Park Children's Court was seized of the matter since 14 August 2023. At that time, E[...] and the second respondent resided in the Kempton Park district. The applicant thereafter relocated to Pretoria and E[...] , by virtue of the High Court order of 20 December 2023 temporarily suspending the second respondent's parental rights and placing E[...] in the temporary care of the applicant, came to reside with the applicant in Pretoria. E[...] 's presence in the Pretoria area was therefore a direct consequence of a High Court order made in the course of the very litigation being concluded in the Kempton Park Children's Court.
- [29] This is not a case where a child's residence has changed in a manner that might trigger a fresh jurisdictional consideration. The child has been placed in the temporary care and residence of the applicant, pending finalisation of the Kempton Park Children's Court proceedings.
- [30] More fundamentally, however, the question of whether a change in the child's residence justifies the opening of a new matter in a different

Children's Court when proceedings are already pending and part-heard before another Children's Court is not answered by simply asserting concurrent geographical jurisdiction.

[31] The Children's Act does not permit a children's court to direct - out of own accord - to transfer the matter to another Children's Court on the grounds of changed residence.

[32] The Tshwane Central Children's Court had no authority, statutory or otherwise, to override or circumvent that provision by entertaining a parallel application and then directing Kempton Park to close its file.

[33] The Tshwane Central Children's Court also does not have jurisdiction to request an investigation in terms of section 50 of the Act in relation to a maintenance order and an ancillary garnishee order.

[34] The second respondent, to her credit, acknowledges in her answering affidavit that the relief sought in her Form 2 went beyond what a Children's Court can grant. The Form 2 sought to set aside the maintenance order as contained in the divorce settlement and the garnishee order. The Tshwane Central Children's Court has jurisdiction over none of these matters.

[35] I accordingly find that the Tshwane Central Children's Court lacked jurisdiction to entertain the Pretoria matter in the first instance. The first respondent should have dismissed or struck the matter for want of jurisdiction. She did not.

The ultra vires transferred direction

[36] The most egregious aspect of the first respondent's conduct on 7 November 2024 was her direction - whether framed as a formal order or a definitive judicial command - that the Kempton Park Children's Court

must close its file and transfer the matter to the Tshwane Central Children's Court.

[37] This direction was wholly without legal foundation. No statute or common law rule authorises the first respondent to direct a coordinate Court to close its proceedings.

[38] This is an axiomatic principle of judicial organisation. Courts of coordinate and equal jurisdiction have no supervisory authority over one another. They are coequal creatures of statute. One Magistrate's Court cannot instruct another to close a pending case.

[39] The direction was therefore not merely irregular - it was void *ab initio*. An order or direction made without jurisdiction produces no legal effect whatsoever¹.

The section 50 investigation order

[40] The section 50 investigation order directed the Department of Social Development, Pretoria, to investigate as contemplated in section 50 of the Act in respect of E[...] .

[41] This order is infected by the same absence of jurisdiction that vitiates the entire Pretoria proceedings. A Court that lacks jurisdiction to hear a matter cannot make ancillary orders in that matter. The section 50 investigation was ordered by the Tshwane Central Children's Court in a matter over which it had no jurisdiction. The order is therefore invalid.

[42] But beyond the jurisdictional defect, there is a practical consideration of some importance to the child's best interests. The Kempton Park Children's Court had already, over the course of the proceedings since

¹ Municipal Manager, or Tambo Municipality and Another v Ndabeni 2023 (4) SA 421 (CC)

August 2023, made a series of section 50 orders and had commissioned social work investigations. The most recent Kempton Park order of 20 January 2025 directed urgent clinical assessments of all parties.

[43] A duplicate, parallel investigation by the Department of Social Development, Pretoria - who had not previously been involved in this matter - will create inconsistencies, duplication, and potential conflict in the evidentiary landscape before the Kempton Park Court. It would burden the parties and the minor child with yet another round of assessments and home visits, entirely contrary to the section 6(4)(a) injunction of expeditious resolution.

[44] The section 50 order is set aside.

The 5 February 2025 proceedings

[45] On 5 February 2025, a substitute presiding officer in the Tshwane Central Children's Court - the first respondent being on sick leave - made further orders. These include the appointment of a new legal representative for E[...] and a direction to a social worker to conclude a report in E[...] 's circumstances.

[46] These orders are equally infected. A Court that lacked jurisdiction on the 7th of November 2024 did not acquire it by 5 February 2025. The substitute presiding officer, who was aware of this review application, should not have taken any steps that assumed or purported to exercise jurisdiction over the subject matter of the proceedings before the Kempton Park Children's Court. The appointment of a new legal representative for E[...] is particularly concerning, given that Advocate Foord, was appointed by the Kempton Park Court and holds that appointment by virtue of an order of a competent Court.

[47] Any purported appointment of a different representative for E[...] by the Tshwane Central Court, in proceedings that the Court has no jurisdiction to hear, cannot stand.

[48] The 5 February 2025 proceedings and all orders flowing therefrom are reviewed and set aside.

The second respondent's position and costs

[49] The cost question requires careful and nuanced considerations. This is a children's matter at its core, and the overarching lens through which all ancillary questions - including cost - must be assessed is E[...] 's best interests.

[50] The applicant seeks costs against the second respondent on the attorney and client scale, premised on allegations of foreign shopping and wilful or malicious conduct calculated to undermine the administration of justice. The second respondent resists that order, citing her financial circumstances, her stated intention to withdraw the Pretoria matter before any orders were made, and the fact that the impugned orders were made *mero motu* by the first respondent.

[51] Having considered the totality of the papers, the history of this litigation, and the circumstances in which this application became necessary, I am of the view that no cost order should be made as between the parties in these proceedings, and that each party should bear their own costs. My reasoning follows.

[52] The primary and proximate cause of the irregularity which necessitated this review application was not the second respondent's conduct but the first respondent's fundamental and unreserved misapprehension of her own jurisdiction. The impugned orders of 7 November 2024 were not made at the second respondent's request. They were made *mero motu* after the second respondent had presented herself before the Tshwane Central Children's Court that morning for the stated and documented purpose of withdrawing the Pretoria matter.

- [53] The second respondent had communicated this intention unequivocally to all parties in writing, by e-mail dated 6 November 2024, the day before the Court appearance. In that correspondence, she expressly acknowledged that the application had been made erroneously and confirmed there was no intention to continue with or duplicate the Kempton Park proceedings.
- [54] In these circumstances, the ordinary costs principle that costs follow the result does not apply with its usual force. The second respondent did not oppose the substantive relief sought in this application. She opposes costs only. A cost order is not granted as a penalty against a party who did not contest the review on its merits and who was not the true author of the conduct the review was required to correct.
- [55] The second respondent was unrepresented when she filed the Form 2 in September 2024. She deposed that she acted on the advice of a maintenance officer. Whether that advice was correct or not - and it manifestly was not - acting on the erroneous advice of an official of the Court is a materially different species of conduct from deliberate, calculated forum shopping.
- [56] On the evidence before me, I am not satisfied that the second respondent approached the Tshwane Central Children's Court with the intention of circumventing or collaterally attacking the Kempton Park proceedings. Her explanation is not inherently improbable and has not been convincingly refuted in the replying affidavit.
- [57] It is further relevant that on 7 November 2024, before any orders were made, the applicant's attorney addressed the first respondent extensively on the jurisdictional objections and the doctrine of *lis alibi pendens*. The second respondent did not oppose those submissions and was indeed present for the same purpose, namely to withdraw the proceedings. The costs of the application are therefore attributable to the first respondent's conduct in making *ultra vires* orders in the face of

proper and sustained legal argument to the contrary, rather than to any opposition or resistance mounted by the second respondent.

[58] There is a further and weighty consideration. The parties are the parents of a minor child whose welfare is the subject of ongoing litigation. Any costs order against the second respondent in the present proceedings would, in all likelihood, further deplete the financial resources available to her for the continued prosecution of and participation in the Kempton Park proceedings.

[59] The second respondent has deposed that she has experienced significant financial hardship as a consequence of the garnishee order and the lengthy litigation between the parties. A costs order in these circumstances would potentially compromise her ability to effectively participate in the Kempton Park proceedings, which would be antithetical to E[...] 's best interests, as he is entitled to have both parents properly before the Court that is charged with deciding matters of fundamental importance to his welfare.

[60] In children's matters, Courts have consistently recognised that the best interests of the child constitute a powerful consideration in the exercise of the discretion to award costs, and that the depletion of parental resources through costs orders may indirectly harm the very child in whose interests the proceedings are brought.

[61] In the circumstances of this case, justice is best served by directing each party to bear their own costs.

Order

In the premises, the following order is made:

[62] The proceedings conducted before the first respondent in the Children's Court for the District of Tshwane Central under case number 14/1/566/2024 on 7 November 2024 are reviewed and set aside.

[63] The following orders made by the first respondent on 7 November 2024 are reviewed and set aside.

- a. The order directing the Department of Social Development Pretoria to investigate as contemplated in section 50 of the Children's Act, Act 38 of 2005, in respect to the minor child E[...] L[...] J[...] V[...] V[...].
- b. Any direction, whether formal or informal, that the Children's Court for the district of Kempton Park (Ekurhuleni North) must close its file and transfer the matter under case number 14/1/4/88/2023 to the Children's Court for the District of Tshwane Central.
- c. The order that the proceedings in case number 14/1/566/2024 continue on 5 February 2025.
- d. The proceedings conducted before the substitute presiding officer in the Children's Court for the District of Tshwane Central on 5 February 2025, and all orders made therein, including the appointment of a legal representative for the minor child E[...] L[...] J[...] V[...] V[...], are reviewed and set aside.

[64] The Children's Court for the District of Tshwane Central lacked, and continues to lack, jurisdiction to entertain the application brought by the second respondent under case number 14/1/566/2024.

[65] The proceedings in case number 14/1/4/88/2023 remain valid and exclusively pending before the Children's Court for the District of Kempton Park (Ekurhuleni North).

[66] All orders previously made by the Children's Court for the District of Kempton Park in case number 14/1/4/88/2023 - including without limitation the appointment of the third respondent, Advocate Caroline Foord, as legal representative for the minor children, the appointment of experts for clinical assessments, and all investigative orders - remain valid and full force in effect, unaffected by the impugned Tshwane Central proceedings.

[67] The Children's Court for the District of Kempton Park is directed to proceed with case number 14/1/4/88/23 expeditiously, with due regard to section 6(4)(a) of the Children's Act, Act 38 of 2005, and is directed not to await any further directive or directions from the Children's Court for the district of Tshwane Central in relation to that case.

[68] Each party is to bear their own costs in respect of this application.

DH HINRICHSEN
ACTING JUDGE OF THE HIGH COURT
PRETORIA

DATE OF HEARING: 18 MARCH 2026

DATE OF HANDING DOWN JUDGMENT: 20 MARCH 2026

For the Applicant:
Bruwer

Inc

For the Respondent:

On behalf of the Minor Child:

Mr. James
James Bruwer Attorneys

No Appearance

Adv Caroline Foord