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REPUBLIC OF SOUTH AFRICA



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

CASE NO.: A91/2025

COURT A QUO CASE NO.: 111694/24

(1) REPORTABLE: **YES** / NO

(2) OF INTEREST TO OTHER JUDGES: **YES** / NO

(3) REVISED: **YES** / NO

DATE 04 May 2026

SIGNATURE

In the matter between:

A[...] C[...] J[...] F[...]

Applicant

and

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

Respondent

Heard on: 12 November 2025

Delivered: _____ 2026 - This judgment was handed down electronically by circulation to the parties' representatives by email, by being uploaded to the *CaseLines* system of the GD and by release to SAFLII. The date and time for hand-down is deemed to be 14:00 on _____ 2026.

Summary:

Family Law – Relocation of minor child – Section 19(1)(b) of the Superior Court Act – Appeal – Mootness - Absence of practical effect – Admission of new evidence on appeal – New evidence not relevant - Foreign jurisdiction – International child relocation and Hague Convention proceedings.

ORDER

It is ordered:-

1. The appeal is dismissed with costs on scale C.
2. The applications for further evidence are dismissed with costs on scale C.

JUDGMENT

KOOVERJIE J (TOLMAY J AND PIENAAR AJ CONCURRING)

The Appeal

- [1] This appeal was instituted against the judgment and order of the court *a quo* where the court granted the relocation application instituted in terms of Section 18(3)(iii) of the Children’s Act 30 of 2005 (Children’s Act). The Supreme Court of Appeal granted leave to appeal to the full court of this Division on 9 April 2025, upon a petition filed by the appellant, Mr F[...].
- [2] By virtue of the order granted by the court *a quo*, Ms C[...] (the respondent) was permitted to permanently relocate the minor child, [O], to the United Kingdom (“the UK”). [O] was born in South Africa on 4 May 2022, and she will be four years of age soon.

- [3] At the appeal hearing, the appellant presented new evidence that illustrated that the parties had commenced proceedings in the UK Court. The parties were also requested to address the court on the point of mootness. Subsequent to the hearing, the parties were given an opportunity to file their written submissions on this point. In this time the appellant further instituted an application to adduce further evidence on appeal.¹
- [4] Argument was presented on behalf of Ms C[...] on appeal and written submissions on the mootness point were filed. There was, however, no opposition in respect of the appellant's application to introduce the new evidence. Ms C[...] merely filed a notice expressing that "the new evidence does not take the matter any further".

Issues for determination

- [5] The main issues for determination are:

- 5.1 whether the appeal is moot;
- 5.2 whether exceptional circumstances exist to allow the further evidence as envisaged in Section 19(1)(b) of the Superior Court Act (the Act);
- 5.3 if the mootness point is not sustained, then a determination on the merits is necessary.

The order of the court a quo

- [6] The court *a quo*'s order in the relocation application was that:

- 6.1 leave was granted to Ms C[...] to relocate with the minor child, [O], from South Africa to the United Kingdom;

¹ Section 19(b) provides that the court may receive further evidence on appeal. The discretion to be exercised by the court in allowing further evidence on appeal should be exercised sparingly.

- 6.2 permission was granted to Ms C[...] to apply for a UK settlement visa so as to enable [O] to relocate to the UK with her without obtaining the consent of Mr F[...] in terms of Section 18(3)(c)(iii) and (iv) of the Children's Act;
- 6.3 the consent of Mr F[...] regarding any steps that would be required to enable Ms C[...] to remove the minor child from South Africa to the UK was dispensed with;
- 6.4 Ms C[...] would be entitled to apply for any permits, licenses, ID documents, travel documents, passports, and any other documents in respect of [O] without the written consent of Mr F[...]. This would include documents pertaining to the education, health and welfare of [O];
- 6.5 Mr F[...]’s rights to maintain contact with [O] would be exercised in terms of Annexure ‘A’ attached to the order;
- 6.6 Mr F[...] was required to create a savings fund for [O] in South Africa of his own choice and his obligation to maintain [O] in terms of the parenting plan was suspended;
- 6.7 Mr F[...] and his family were entitled to have contact with [O] for the purpose of saying their farewells on Sunday, 3 November 2025;
- 6.8 Ms C[...] was ordered to keep Mr F[...] informed of all serious aspects of “O’s” well-being and educational prospects;
- 6.9 Mr F[...] was ordered to pay the costs of this urgent application.

Grounds for the Appeal

[7] Mr F[...] raised the following grounds of appeal:

- 7.1 the application for relocation instituted by Ms C[...] was not *bona fide*;

- 7.2 the urgency was self-created as Ms C[...] could have instituted the application timeously and the issues regarding [O] could have been properly ventilated;
- 7.3 the application was determined without the input of expert evidence. It was crucial for the Family Advocate's office to have investigated the impact that the relocation would have on the minor child's emotional, social and psychological wellbeing, particularly if it would be in her best interest;
- 7.4 the court failed to consider Mr F[...]’s case and placed more emphasis on Ms C[...]’s relocation plans, particularly her new employment prospects. The contact rights attached as Annexure ‘X’ to the order did not properly and fairly address the appellants parental responsibilities and contact rights; and
- 7.5 lastly the court erred in granting an order in terms of the costs on Scale C.

Events subsequent to the order granted

- [8] The court *a quo*’s order and judgment (the relocation order) was granted on 25 October 2024. The application for leave to appeal was instituted on 1 November 2024 and was subsequently heard and dismissed on 10 February 2025. On the same evening, armed with the relocation order of 25 October 2024, Ms C[...] and [O] left for the United Kingdom. Mr F[...]’s petition was filed in the Supreme Court of Appeal a week later, on 18 February 2025.
- [9] When the appeal was heard on 12 November 2025, Ms C[...] informed this court that the Family Court in Derby, United Kingdom, was seized with the dispute between the parties. An order was granted by the said court in relation to Mr F[...]’s parental and contact rights to [O]. Both parties participated in the hearing, albeit Mr F[...]’s attendance was virtual.

[10] I have taken cognisance of the contents of the UK Court order, wherein the following was recorded:

- 10.1 Mr F[...] was cited in the order as “the father of the child, a litigant in person”;
- 10.2 it was declared that the court in England and Wales had jurisdiction in relation to [O] on the basis that the child was habitually resident in the jurisdiction of England and Wales;
- 10.3 provision was made that the said order be disclosed to a South African court of competent jurisdiction, in any proceedings relating to the child and to the Secretary of State, Home Affairs Department;
- 10.4 provision was made for Mr F[...] to see [O] from 16 August until 20 August 2025, at specific times, which included both supervised and unsupervised visits;
- 10.5 it was declared that the parties shared joint and equal parental responsibilities towards the child; and
- 10.6 the next date for the hearing was scheduled for 24 September 2025. Once again, Mr F[...] was permitted virtual attendance.

Mootness

[11] It is apposite to firstly dispose of the point raised on mootness. This court raised concern that an order granted on appeal, may not have a practical effect. This point was raised in accordance with Section 16(2)(a)(i) of the Act which stipulated:

“When, at the hearing of an appeal, the issues are of such a nature that the decision sought will have no practical effect or result, the appeal may be dismissed on this ground alone.”

[12] In order to determine if the appeal is moot, the court would have to establish if the appeal would have a practical effect or result.² A matter becomes moot when a judgment that would have to be rendered for any reason cannot have practical effect upon an existing controversy.

[13] In *Premier, Provinsie Mpumalanga en 'n Ander v Groblersdalse Stadsraad*,³ the court emphasized that the test is whether the judgment or order would have a practical effect and not whether it might be of importance in a hypothetical future case. Appeals should be submitted for adjudication only if there would be real, practical effect or result of a judgment of the court of appeal. In other words, if the judgment is enforceable in another jurisdiction.

[14] The Appellate Court in *Hugo v Wessels* expressed that:

“a court can only be said to have jurisdiction in the matter if it has the power not only of taking cognisance of the suit, but also of giving effect to its judgment.”⁴

[15] In a recent decision of *S.H. v M.L.H* the court expressed that the doctrine of effectiveness in civil procedure is a principle that dictates whether a court can exercise jurisdiction over a matter. It held that:

“a court should not issue a judgment unless same can be enforced or unless compliance with the judgment can be expected. This means that a court must have the ability to ensure its orders are carried out in the legal system.”⁵

[16] It is common cause that the court *a quo* was seized with a relocation application. The relocation order permitted [O] to permanently reside in the UK with Ms C[...]. Central to the dispute was whether the relocation was in the best interest of [O]. In his papers, Mr F[...] extensively alleged that it was not in “O’s” best interest to be estranged from her father.

² *Radio Pretoria v Chairman, Independent Communication Authority of South Africa* 2005 (1) SA 47 (SCA).

³ *Premier, Provinsie Mpumalanga en 'n Ander v Groblersdalse Stadsraad* 1998 (2) SA 1136 (SCA) at para 1141 D-F.

⁴ *Hugo v Wessels* [1987] 2 ALL SA 290 A at para 8.

⁵ *S.H v M.L.H* 2026 (1) SA 615 (ECGq) at para 32.

- [17] It is further common cause that post the relocation order, litigation between the parties ensued in the UK Courts. Presently there is a live controversy between the parties in proceedings before the Derby Family Court in the UK where Mr F[...]’s access and visitation rights in relation to [O] are being dealt with. The UK court has declared that it has jurisdiction over [O] on the basis that she is habitually resident in that court’s jurisdiction. In addition, there is a pending Hague Convention application filed in the UK Court where allegations have been made that [O] was unlawfully removed from South Africa.
- [18] On 12 December 2025, Mr F[...] issued the Hague Convention application in the UK High Court for the summary return of [O] to South Africa. This event occurred after the hearings of both the court *a quo* as well as the appeal proceedings in South Africa.
- [19] On 17 December 2025, the UK High Court issued an order which established its jurisdiction to hear the return application, and suspended the local UK welfare proceedings, until the Hague Convention Proceedings is finalised. Submissions were made by both parties, and their respective papers were filed. The scheduled court dates were for 28 January 2026 and 3 February 2026 which essentially would constitute “directions hearings”.
- [20] It cannot be disputed that the Hague Convention application is clearly premised on the purported unlawful removal of [O] from South Africa. It was not an issue that the court *a quo* in South Africa was seized with.⁶The primary purpose of

⁶ The Hague Convention was incorporated in South African law by the Hague Convention on the civil aspects of the International Child Abduction Act 72 of 1996 which came into operation on 1 October 1997. With effect from 1 April 2010 the Child Abduction Act was repealed by the Children’s Act. Chapter 17 of the Children’s Act deals with child abduction. Section 275 provides that the Convention is in force in the Republic and its provisions are law in the Republic subject to the provisions of this Act.

Article 8 of the Convention provides that any person, institution or other body who claims that a child has been removed in breach of custody rights may apply either to the Central Authority of the child’s habitual residence or to the Central Authority of any other contracting state for assistance in securing the return of the child.

Article 13 provides that the judicial or administrative authority in the state that is hearing the application for the return of the child has a discretion to refuse to order such if it finds that there is a grave risk that their return would

the Convention is to secure the prompt return of children (usually to the country of habitual residence) where wrongfully removed to or retained in any contracting state, and to restore the *status quo ante* and wrongful removal or retention as expeditiously as possible, so that custody and similar issues in respect of the child can be adjudicated by the courts of the state of the child's habitual residence.

[21] Mr F[...] contended that the appeal is not moot, and made the following submissions:

- 21.1 the removal of [O] from South Africa on a permanent basis was unlawful as the order that permitted the relocation was suspended by operation of law. Consequently, [O] is residing in the UK unlawfully. Mr F[...] has given no permission for her to remain there;
- 21.2 the outcome of the appeal would have a definitive practical effect on the pending international proceedings under the Hague Convention on the Civil Aspects of International Child Abduction (Hague Convention proceedings). For a return order anticipated under the Hague Convention, it must be declared that the removal was wrongful in that it breached his right of custody under the law of the state of habitual residence (which he argued is South Africa);
- 21.3 if the appeal is dismissed for mootness, then the order of the court *a quo* is effective and Mr F[...]’s co-holder rights regarding [O] remain infringed in terms of Section 18 of the Children’s Act;
- 21.4 the South African Central Authority as well as the UK Central Authority had questions regarding the South African proceedings (namely the appeal);

expose the child to physical and psychological harm. The Convention recognizes that it may not always be in the best interests of a particular child to be returned to their country of habitual residence.

21.5 during the first Hague Convention hearing, the UK court's attention was drawn to the appeal proceedings which had not been finalized.

[22] I reiterate that the core enquiry on the subject of mootness is whether an appeal order of this court will be effective and capable of being enforced in the UK. It is a prerequisite that any order the court may ultimately make will have some practical effect on the parties. The court in *Estate Late Stransham-Ford*,⁷ expressed that:

“Dealing with the situation where events subsequent to the commencement of litigation resulted in there no longer being an issue for determination, Ackermann J said in *National Coalition for Gay and Lesbian Equality & Others v Minister of Home Affairs & Others*:⁸

A case is moot and therefore not justiciable if it no longer presents an existing or live controversy which should exist if the Court is to avoid giving advisory opinions on abstract propositions of law’.”

[23] The Constitutional Court in *Minister of Tourism v Afriforum NPC* cited with approval the principle enunciated in the aforesaid matter. It expressed:

“A case is moot when there is no longer a live dispute or controversy between the parties which would be practically affected in one way or another by a court's decision or which would be resolved by a court's decision ...”.⁹

[24] A court's purpose is to adjudicate existing legal disputes and its scarce judicial resources should not be spent on abstract questions of law.¹⁰

⁷ *Minister of Justice and Constitutional Services v Estate Late Stransham-Ford* [2017] 3 SA 152 (SCA), paras 25 and 26.

⁸ *National Coalition for Gay and Lesbian Equality & Others v Minister of Home Affairs & Others* 2000 (2) SA 1 (CC) para 21, footnote 18.

⁹ *Minister of Tourism and Others v Afriforum NPC and Another* 2023 (6) BCLR 752 (CC) at para 23.

¹⁰ *National Coalition for Gay and Lesbian Equality & Others* above n 8.

- [25] On the present facts before us there is no longer a live controversy between the parties. The cause of action in the South African proceedings was premised on a relocation dispute. Subsequent to the relocation order being granted, proceedings commenced in the Family Court in Derby which dealt with Mr F[...]’s parental responsibilities and contact rights. After the hearing of the appeal, Mr F[...] proceeded with the Hague Convention application. The issues before the UK Court are premised on causes of action different to the cause of action in this matter.
- [26] But for Mr F[...]’s submissions that the outcome of the appeal would play a material role in the Hague Convention proceedings, there is no evidence from the court records that this is the case. There were mere references - to the effect that the South African court proceedings (the relocation application) was made available to the UK Court seized with the Hague Convention proceedings.
- [27] There was further no indication that any of the proceedings in the UK were stayed pending the appeal determination of the South African court in this matter. The court in *Jones v Krok*¹¹ expressed that where a foreign judgment is subject to an appeal then the English Court would normally order the stay of its proceedings pending the appeal. This was not the case in this instance.
- [28] The fact that there has been disclosure of the South African proceedings does not in any way mean that the order of this appeal court would be enforced if a determination is made on the merits. The UK Court in the Hague Convention proceedings is seized to consider the matter on all the evidence placed before it, which includes the record of the South African proceedings (relocation application). In particular, the UK court would have to weigh the interests of [O] in the context of the specific facts and in doing so it would consider the interrelated nature of the provisions of the Convention, which has its primary aim on the best interests of the child.

¹¹ *Jones v Krok* 1995(1) SA 677 AD, at para 30.

[29] It appears that Mr F[...] seeks a pronouncement from this court in order to bolster his case in the Hague Convention application (in the event he is found to be successful in this appeal). In fact, Mr F[...] explained that due to the delay in the finalization of the appeal proceedings, he was advised to institute the Hague application in the UK.

[30] In *Nkwe v Genorah*¹², the Supreme court of Appeal expressed:

“A party cannot approach a court for a purely academic recognition of a foreign order, where such recognition will have no practical effect at all. No explanation could be proffered as to why the recognition and enforcement was sought and the inference that I must draw is that it is a purely academic exercise, which ought not be entertained by our courts. There would be no point in enforcing the order where it will have no practical effect.” (Emphasis added)

[31] I pause to mention that an appeal court does have a discretion to decide matters even if a matter has become academic or moot if it is in the interests of justice.¹³ In these circumstances, however it would not be in the interest of justice to make a pronouncement on issues that are currently pending in the UK Court by virtue of the Hague Convention application where the court is required to make a determination on inter alia whether “O’s” removal from South Africa was lawful or not.

[32] Mr F[...] further contended that the appeal involves a discreet legal issue of public importance that will affect future matters as well.¹⁴ It was submitted that a court can exercise its discretion to hear a matter to provide clarity for future litigants despite the issue being moot between the specific parties.¹⁵ Hence the

¹² *Nkwe Platinum Limited and Another v Genorah Resources (Pty) Ltd and Others* [2026] ZASCA 27 at paras 51-52.

¹³ *Sebola and Another v Standard Bank of South Africa Ltd and Another* 2012 BCLR 758 (CC) at para 32.

¹⁴ *Centre for Child Law v Hoërskool Fochville and Another* 2016 (2) SA 121 (SCA) at paras 11-14.

¹⁵ See para 42 of the Heads of Argument.

dispute remains alive and constitutional concerns regarding the rights of children have to be addressed.

[33] In my view, once again this is not such a matter where public interest demands that a determination on the merits be made. Our courts have emphasized that in relocation matters, each matter must be considered in light of the unique facts. The facts in each matter tell a different story and the outcome depends on the particular facts and circumstances.¹⁶

[34] The Constitutional Court in *Minister of Tourism and Others v Afriforum*, when dealing with the COVID 19 Regulations at paragraph 20, expressed:

“There is no discrete issue before us. In the circumstances, it was not necessary to go into the merits of the matter. To adjudicate on the circumstances that gave rise to the limitation on the right to freedom of religion that no longer exist would be to do so in a vacuum. Therefore, if the court were to decide on the validity of the limitation, there would be no effect other than a mere declaration that the limitation was either valid or not. Such a declaratory order would in all likelihood have no effect on future regulations introduced either to combat another strain of COVID-19 or the emergence of a new pandemic, because those regulations would be fact-specific to circumstances present during that relevant time. As a result, this Court’s decision in respect of the impugned regulations based on the current facts would have no effect, as there are no regulations in place at the present moment.”

[35] For the reasons aforesaid, it is my view that the appeal is moot. Any order this appeal court would make, would have no practical effect in the UK Courts.

New evidence on appeal

[36] As aforestated, at the hearing the appellant submitted new evidence illustrating that the parties had commenced with proceedings in the UK. Later the appellant

¹⁶ *LW v DB* 2015 JR 2617 (GJ) at para 17.

instituted a formal application to introduce new evidence on appeal. Section 19(b)¹⁷ of the Superior Court's Act makes provision for a court to receive further evidence on appeal. Although courts are reluctant to re-open a trial, further evidence in exceptional circumstances can be permitted. It is settled law that further evidence on appeal is permitted under exceptional circumstances, namely:

36.1 where there is a reasonably sufficient application based on allegations which may be true why the evidence which it is sought to lead was not led at the trial;

36.2 a *prima facie* likelihood of the truth of the evidence; and

36.3 the evidence should be materially relevant to the outcome of the trial.

[37] In *Rail Commuters Action Group*,¹⁸ the Constitutional Court expressed:

"Relevant criteria include the need for finality, the undesirability of permitting a litigant who has been remiss in bringing forth evidence to produce it late in the day, and the need to avoid prejudice. One of the most important criteria was the following:

'The evidence tendered must be weighty and material and presumably to be believed and must be such that if adduced it would be practically conclusive, for if not, it would still leave the issue in doubt and the matter would still lack finality'."

[38] In *Van Eeden*,¹⁹ the court highlighted that the court's power derives from Section 22(a) of the Supreme Court Act,²⁰ and should be exercised sparingly. It held that

¹⁷ S 19(b) reads:

"The Supreme Court of Appeal or a Division exercising appeal jurisdiction may, in addition to any power as may specifically be provided for in any other law—

(a) ...;

(b) receive further evidence".

¹⁸ *Rail Commuters Action Group v Transnet Ltd t/a Metrorail and Others* 2005 (2) SA 359 (CC) at para 41.

¹⁹ *Van Eeden v Van Eeden* [1998] JOL 4159 (C) at para 4.

²⁰ Section 22 was repealed and replaced with Section 19 of the Superior Courts Act.

the section did not include any express limitation which would exclude the reception of the evidence that sought to be tendered and that the court exercising appellate jurisdiction has a discretion whether or not to allow such new evidence. However, such discretion should be exercised sparingly and only in special circumstances.

[39] Normally a court of appeal is required to decide whether the judgment appealed from is right or wrong according to the facts in existence at the time it was given and not according to new circumstances which may have subsequently come into existence. In principle therefore, evidence of events that occurred after the judgment under appeal is generally not admitted to decide the appeal.

[40] However, if such evidence is material to the facts which existed at the time of the judgment, it will be open to court of appeal to receive such facts provided that the circumstances are very special. In *Krugel Heinsen Incorporated*,²¹ the Supreme Court of Appeal granted an application to receive further evidence on appeal as it found the evidence to be material, there were special and exceptional circumstances, and the interest of justice demanded that the evidence be received.

[41] In this instance, the new evidence is clearly not relevant to the South African proceedings, and particularly in these appeal proceedings. The specific grounds of appeal pertained to the relocation application and were, *inter alia*:

41.1 that the relocation application was not *bona fide*;

41.2 the application was determined without the input of expert evidence;

41.3 the court had placed more emphasis on the respondent's relocation plans instead of having regard to Mr F[...]’s circumstances;

²¹ *Krūgel Heinsen Incorporated v Thompson and Another* [2023] ZASCA 38 at para at 29.

41.4 the contact rights did not properly address the appellant's parental responsibilities and contact rights.

[42] The new matter purportedly constitutes evidence that [O] was unlawfully removed from South Africa. Such evidence presently also forms part of the papers in the Hague Convention application.

[43] Furthermore, the new evidence, if considered by this appeal court, would certainly not bring finality to the matter due to the pending Hague proceedings. In *Colman v Dunbar*,²² the court expressed:

“The evidence tendered must be weighty and material and presumably to be believed, and must be such that if adduced it would be practically conclusive for if not, it would still leave the issue in doubt and the matter would still lack finality.”

[44] In my view, it would clearly be highly inappropriate for this appeal court to make a determination on an issue which is pending before the UK court for a determination.

[45] Consequently, I find that an appeal order on the merits would have no practical effect. The litigation between the parties has been ongoing in the foreign jurisdiction, which addresses different causes of action. Moreover, there is no evidence that suggests that this court's order would be recognized or enforced in the United Kingdom. There are no exceptional grounds exist to justify the admission of the new evidence.

[46] In the premises the appeal as well as the application for further evidence is dismissed.

Costs

²² *Colman v Dunbar* 1933 AD 141 at para 162.

- [47] In exercising my judicial discretion, there is no reason why the general principle: costs should follow the result should not find application. Consequently, Mr F[...] is ordered to pay the costs of the appeal and the costs pertaining to the application to adduce the new evidence.

I agree, and it is so ordered,

H. KOOVERJIE
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

I agree, and it is so ordered,

R TOLMAY
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

M PIENAAR
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

Appearances:*Counsel for the appellant:**Adv. N Strathem**Instructed by:**Ulrich Roux and Associates**Counsel for the respondent:**Adv. FW Botes SC**Instructed by:**Schoemans Attorneys Inc**Date heard:**12 November 2025**Application for further evidence:**26 January 2026**Respondent's response to the application for further evidence:**2 February 2026**Respondent's submissions on mootness:**2 February 2026**Appellant's heads of argument:**27 February 2026**Date of Judgment:**_____ 2026*