



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: 044991/25

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED: YES

DATE 4 MAY 2026

SIGNATURE

In the matter between:

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

Applicant

And

M[...] P[...] A[...]

First

Respondent

BRITISH HIGH COMMISSION, PRETORIA

Second Respondent

NEUKIRCHER J:

1] This is an urgent application that was set down in the Family Court on terms allowing the respondents to file the answering affidavits within three court days. Although I was, and remain, of the view that the relief itself is not so urgent that the applicant (PD) could not have obtained substantial redress in due course, the parties have remained at constant loggerheads since an order was granted by Mokose J on 16 March 2026 as the parties are not *ad idem* regarding the meaning of that order.

2] The facts of this matter are, in general, common cause. PD and the first respondent (MA) were married to each other on 25 April 2015 in the Philippines. From that marriage one minor child was born, namely E. He was born on 5 August 2015 and he is thus presently 10 years old.

3] PD is a Diplomat First Secretary for Immigration currently posted at the diplomatic compound occupied by the second respondent (the British High Commission) in Pretoria. He is thus temporarily resident within the Republic of South Africa with MA and E. It appears that MA at a stage worked for the British High Commission but decided to leave her employ during approximately 2023 and left for the Philippines. She also left E in the care of PD during her absence.

4] MA returned to South Africa during February 2025 and it appears that she moved back into the common home (the residence) which is situated in the British High Commission compound in Pretoria. The Family Advocate mentions that the parties shared residency of E at a stage by each moving out when it was the other's

week to look after E, but given that MA is now *persona non grata* at the compound, it seems she has cemented her occupancy of the residence since at least February 2026 by refusing to leave the residence.

5] The main disputes stated when PD instituted divorce proceedings against MA on 7 November 2024 in the United Kingdom. A final decree of divorce was granted on 27 August 2025 in that court, and the patrimonial and primary care and residence issues are still pending before the court in the United Kingdom. At present, a trial date is yet to be allocated for the patrimonial issues to be finalised. The point is that for purposes of this application PD and MA are no longer spouses. It is also clear from the papers that MA has applied for residency in South Africa since she is no longer entitled to be here on a spousal visa. Whilst she secured an interdict against Home Affairs before Haskins AJ, that application is still pending and the outcome of that application is unknown. It could also take years to finalise.

6] The British High Commission has placed a “Limited Explanatory Affidavit - without waiver of rights” before this court. It indicates that MA is not accredited with the Department of International Relations and Cooperation, she is not recognised as entitled to reside within the diplomatic residential accommodation¹ in Pretoria and “any prior tolerance of her presence was temporary and has been withdrawn since at least 26 February 2026”. It is thus clear, that MA has no right to remain in the diplomatic compound at all – a fact which she admits in her papers as she states that she fears leaving the residence as she will be unable to return as she will be locked out of the compound.

¹ This is in terms of the Diplomatic Immunities and Privileges Act 37 of 2001 and the Vienna Convention on Diplomatic Relations and the Vienna Convention on Consular Relations

7] In fact, this *status quo* appears to have played itself out in a previous urgent application brought by MA against PD and the British High Commission on 10 March 2026 when she sought *inter alia* the following relief:

- a) to interdict the British High Commission from taking any active steps to evict her from the compound before 1 April 2026;
- b) an order that PD provide her with alternative accommodation and monetary assistance on or before 1 April 2026;
- c) the use of the Suzuki Swift motor vehicle;
- d) whether the shared residency of the minor should continue once MA has left the residence.²

8] It is important to note that, at all stages during those prior proceedings, and indeed during argument before me, it was stated that MA would vacate the residence before 1 April 2026.

9] Bearing in mind that the parties were divorced on 27 August 2025, the application brought by MA before Mokose J on 10 March 2026 cannot, in any form, be construed as a Rule 43 or seek interim relief under that rule. Be that as it may, the matter was fully argued and on 10 March 2026, judgment was reserved. The order that was handed down on 16 March 2026 states the following:

“Pending the final outcome of the Applicant’s visa application as provided for in the order of Haskins AJ, an order is made as follows:

² The relief is stated in cryptic and succinct terms as it is this that formed much of the argument before me

1. In respect of the relief sought against the second respondent³, the application against the second respondent is dismissed with costs on Scale B.
2. In respect of the relief sought against the first respondent, the first respondent is ordered to make a cash contribution to the applicant in the sum of R25 000 (twenty five thousand rand) per month for a period of six (6) months only.
3. No order is made as to costs.”

10] I enquired from the parties whether reasons for the order had either been provided or sought – none had. There is also no transcript of the court proceedings before me and there was some difference of opinion as to precisely what had happened. Without the reasoning that forms the basis for the order granted, I am left with the order only which has led to the present application.

11] The relief in this urgent application is framed as follows:

“1...

2. That the First Respondent be ordered to vacate the diplomatic compound which is under the direct control of the Second Respondent st...Pretoria;
3. That pending final Determination of parental rights and responsibilities as well as patrimonial relief in the UK, the minor child shall reside primarily with the Applicant, with reasonable contact to the First Respondent as recommended by the Family Advocate;...”

12] It was conceded by counsel for PD that prayer 2 could not succeed as this court has no authority to evict someone from a diplomatic compound of another country – it is, after all, considered to be sovereign soil. Thus, MA’s argument that

³ The British High Commission

the procedure provided for eviction in the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 fell by the wayside.

13] Thus, it was only prayer 2 supra that remained. In this regard it was argued that, at the hearing of 10 March 2026, MA had evinced an intention to vacate the residence by 1 April 2026 and in exchange PD would pay her an amount of R25 000 per month for six months for her to be able to set up a residence for herself. But MA's version is slightly different: according to her, her vacation of the residence also was contingent on the acquisition of the Suzuki Swift motor vehicle which PD had tendered to her in his papers, and the shared residency of E.

14] There is much correspondence between the parties' respective attorneys on these issues after the order of Mokosi J. The point is that without a judgement and without a transcript, this court cannot possibly make findings other than the following:

- a) it is common cause that the motor vehicle has been sold. It is therefore no longer available to MA for her use;
- b) its use is not regulated in the order that was handed down on 16 March 2026;
- c) in any event, prayer 2 of the order of 16 March 2026 commences by stating "in respect of the relief sought against the first respondent". In respect of this relief, only an amount of R25 000 per month for six months was granted. This then ends any other financial and other claims that MA had.

15] Part of the relief sought by MA against PD was a shared residency arrangement. It is clear that the order of 16 March 2026 is silent on this issue. In this

regard, the Family Advocate had investigated this issue and made the following recommendations on 28 November 2025:

- “10.1 The mother and the father to be awarded full parental responsibilities and rights with regards to care and guardianship of the minor child[...].
- 10.2 The parental responsibility and right with regards to residency of the child to be with the father.
- 10.3 The mother to be granted specific parental responsibility and rights regarding contact as contemplated in Section 18(2)(b) of the Children’s Act 38 of 2005 with the minor child as follows:
 - 10.3.1 Alternate weekends from Friday 17h00 until Sunday 17h00.
 - 10.3.2 The parties to share and alternate the long and short school holidays with Christmas and New Year to rotate.
 - 10.3.3 The parties to share the child’s birthday.
 - 10.3.4 The child to spend the day with the mother on Mother’s Day and with the father on Father’s Day.
 - 10.3.5 Regular video-call/telephonic contact to be maintained on Tuesday, Thursday and the Sunday of no contact between 18h00 to 19h00.”

16] It is clear from the correspondence that preceded this urgent application that this was not an acceptable arrangement to MA. For example, she states in her answering affidavit:

- “2.8 Over the period of approximately the past 14 (fourteen) months, the *status quo* has been that the Applicant and I have, to a large extent, shared care and contact in relation to our son, on a 50/50 basis, with a slight leaning towards me spending more time with E, in general.”

17] This is an interesting statement to make: firstly, PD and MA still share a residence. It is thus hardly surprising that they both have shared care and contact. Secondly, PD works – MA does not. Thirdly, MA seems to gloss over the fact that she left E in PD’s care from 2023 until February 2025 whilst she was in the Philippines. Lastly, MA has made no mention of where she will move to and what arrangements she has made for E’s daily care and needs were she to leave the residence. It is also clear that her visa status in this country has yet to be determined, and she has no means of income once the six-month period of the order granted on 16 March 2026 comes to an end.

18] I wish to emphasize that the above has nothing to do with whether she is (as she terms it) “an incompetent mother” – no one is saying this. What this court must determine is what arrangements will be in E’s best interests.

19] Part of that determination is to decide which parent is in the best position to care for his emotional, physical, psychological, educational and daily needs. I have nothing before me to demonstrate that both parents are not suitable to see to E’s emotional and psychological needs. However, taking into account the background of this matter, the fact that MA has left E in PD’s care for almost two years, the fact that PD has an income, that E’s residence and schooling do not need to be disrupted if he remains in PD’s care, my view is that the Family Advocate is correct.

20] At this stage, MA’s future is just too uncertain: her pending visa application the outcome of which is uncertain, her unemployed status, the fact that she does not have a firm abode to move to or know what the routine will be with E, simply means

that she is not best suited, at this stage, to be awarded primary care and residence or even shared residence.

21] It was pointed out during argument that MA had made a formal tender in her answering affidavit regarding primary care and residence and contact “for the time being”. That tender is the following:

“2.35.1 Contact with a minor child every second week (“mother's week”) as follows:

During weekdays

- 2.35.1.1 I will collect the minor child from his father's house and transport the minor child to school;
- 2.35.1.2 I shall collect the burner child from school, and ensure that the minor child attends all his extramural activities/ extra classes, etc;
- 2.35.1.3 I shall thereafter be entitled to spend time with the minor child, including, but not limited to, taking the minor child to my home, to assist the minor child with homework;
- 2.35.1.4 while in my care during this., I shall ensure that the minor child is properly taken care of, feed and bathed;
- 2.35.1.5 I shall return them on the child to his father's house every night, just before bedtime, for sleepovers at his father's house;
- 2.35.1.6 I shall return to my own house, for the night [weekdays].

2.25.2 Contact with a minor child every other week (for this week”) as follows:

During weekdays:

- 2.35.2.1 I am willing and available to collect the minor child from his father's house and transport the minor child to school, should the father need me to, but this is not a must, and subject to the father's request;

2.35.2.2 I am willing to collect the minor child from school, and ensure that the minor child attends all his extramural activities/ extra classes, etc, should the father need me to, but this is not a must, and subject to the father's request;

2.35.2.3 I am willing to return the minor child to his father's home, to assist the minor child with homework, after school, should the father need me to, this is not a must, and subject to the father's requests;

2.35.2.4 should the father need my assistance at any time during this, I undertake to return to my own home, every night, for sleepover at my own house;

2.35.2.5 in this manner, and if needed by the father, I can continue to assist the minor child with his daily activities, while the father is attending to work responsibilities.

2.35.3 WEEKEND and HOLIDAY contact can work as follows:

Weekend rotational contact:

2.35.3.1 Shared/ rotational sleepover holiday contact, with long weekends and short school holidays to rotate annually, and long school holidays to be shared equally.

2.35.4 Contact during SPECIAL DAYS, can work as follows:

2.35.4.1 During Mother's Day and my birthday, E will be with me;

2.35.4.2 During Father's Day, and the father's birthday, he will be with his father;

2.35.4.3 E's birthday can either be rotated between the parties, or shared 50/50;

2.35.4.4 Special days, such as Easter, Christmas, and New Year's Eve, to rotate annually.

2.35.5 TELEPHONIC contact can work as follows:

2.35.5.1 The parent in whose care the minor child is not, at any point in time, may have reasonable, unlimited telephonic contact with a minor child, which contact periods, can be agreed to between the parties, but which contact periods will also be flexible, depending on the need of the minor child, for extra telephonic contact.

2.35.6 I can then proceed to rent a safe and secure apartment, as close as possible to the aforementioned house (for the convenience of the minor child)."

2.35.7 The father is to then grant me unhindered use of the Suzuki Swift [or an alternative similar vehicle, since he unilaterally decided to sell the Suzuki Swift], with the father to attend to the maintenance of the said vehicle, in full.

2.35.8 The applicant is to continue to pay the amount of R25 000.00 To meet monthly [into attorney firms trust account], as per the court order, for six months")"

22] It is hardly surprising that the above tender was rejected. PD's response was the following:

"69. The First Respondent Is attempting to "hijack" my week of contact with E. Her proposal not only creates instability, but derails the current routine of E. E is transported to and from school on a school bus which is arranged through the Second Respondent and the school and E travels with all his friends from the diplomatic compound. This has been a stable arrangement for the past 5+ years, whilst on occasion the parties deviate from the service, the school bus has created a stable routine for E.

70. I submit that, the Family Advocate's Recommendation should be enforced pending the finalisation of the matter in the United Kingdom court and should be enforced immediately."

23] In my view MA's tender *prima facie* appears reasonable. But on closer inspection all she does is try to regulate a more extended contact arrangement between E and herself. This is especially noticeable in paragraph 2.35.2 *supra* and paragraph 2.35.5 regarding unlimited telephonic contact to E.

24] In my view, there is no reason, at this stage, to deviate from the recommendations of the Family Advocate. MA has informed the court that she has requested the Family Advocate to re-investigate the issue of shared residency and contact. A letter uploaded to CaseLines during the proceedings demonstrates that the Family Advocate is of the view that it is not in E's best interests to subject him to another interview in such a short period of time especially where there are no significant changes that warrant a re-investigation.

25] I have considered whether another investigation should be sought by request from this court. However, I agree with the Family Advocate that until such time as MA's circumstances have materially changed and her new living circumstances are stable and she has established a stable and consequent routine for E, another investigation would be fruitless. It is always open to MA to institute proceedings for a variation of this order and complete an Annexure B⁴ to commence an investigation when her circumstances are more stable.

⁴ Mediation in Certain Divorce Matters Act 24 of 1987

26] I must add that, at all stages, it was continually emphasized during MA's argument that the only reason that she has not vacated the residence is because she was concerned about E and about the arrangements with regard to his residence and contact with both parents. Given her tender, this is no longer an issue and has not been since her answering affidavit was filed on 15 April 2026. She also instructed her counsel to tender the contact set out in her answering affidavit – which was done during argument. It was submitted that were I to be of the view that the matter is not urgent, I should show my displeasure with an appropriate costs order to be taxed in accordance with Scale C.

27] PD argued that he had no choice but to launch these proceedings given the stance MA had adopted throughout the period leading up to the service of this application.

28] The British High Commission has not sought any costs order against any party and appeared simply to be of assistance to the court. Ms Britz is thanked for her submissions.

29] In my view both the PD and MA must bear equal responsibility for this application. They have both adopted an implacable stance: MA knew very well what the order stated. Where it states that it is in respect of all of her claims in her urgent application, it means every single one of them without exception. She had given an undertaking to vacate the residence; she knew her right to residence had been revoked by the British High Commission and she knew what the Family Advocate's recommendation was. On the other hand, PD's relief against the British High

Commission was untenable, he had tendered use of the Suzuki motor vehicle and then sold, he knew what MA's tender regarding care and contact was on 15 April 2026 and instead of negotiating, proceeded to court.

30] In my view, this entire application could have been avoided had the parties and their legal representatives kept their respective wits about them and acted reasonably.

ORDER

1. Prayer 1 of the notice of motion is dismissed.
2. The first respondent's tender to vacate the residence and the British High Commission compound is noted.
3. Pending the final determination of parental rights and responsibilities as well as patrimonial relief in the United Kingdom:
 - 3.1 the parties are awarded full parental responsibilities and rights with regards to the minor child;
 - 3.2 the applicant is awarded the primary care and residence of the minor child;
 - 3.3 the first respondent is granted contact to the minor child as follows:
 - 3.3.1 alternate weekends from Friday 17h00 until Sunday 17h00;
 - 3.3.2 the parties shall alternate short school holidays. Long school holidays are to be shared equally between the parties so that Christmas and New Year rotates annually between them;
 - 3.3.3 the parties shall equally share the minor child's birthday;

3.3.4 the minor child will spend Mother's Day with the first respondent and Father's Day with the applicant;

3.3.5 regular video-call/telephonic contact is to be maintained on Tuesday, Thursday and the Sunday of no contact between 18h00 to 19h00.

4. Each party shall pay his/her/their own costs.

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 4 May 2026.

For the applicant	:	Adv Martin
Instructed by	:	Alet Uys Attorneys
For the first respondent	:	Adv Ferreira
Instructed by	:	AKA Attorneys Inc
For the second respondent	:	Adv Britz
Instructed by	:	Judin Combrinck Inc
Matter heard on	:	21 April 2026
Judgment date	:	4 May 2026