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

CASE NO: 2023/127395

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED.

Date 30 April 2026

K. La M Manamela

In the matter between:

C[...] V[...] R[...]

Applicant

and

L[...] V[...] R[...]

Respondent

DATE OF JUDGMENT: This judgment is issued by the Judge whose name is reflected herein and is submitted electronically to the parties/their legal representatives by email. The judgment is further uploaded to the electronic file of this matter on CaseLines by the Judge's secretary. The date of the judgment is deemed to be **30 April 2026**.

JUDGMENT

Manamela, J

Introduction

[1] This is an application directed at the alteration of the shared residency contact regime in place regarding one or all of the applicant's and respondent's three minor children. The prevailing contact regime, allowing a shared week-on-week-off residency of the children between the two parents, was agreed upon by the parties in terms of a settlement agreement incorporated in the decree of divorce granted in 2023 by the Regional Court for the Regional Division of Gauteng held at Randburg ('the Regional Court'). The regime had been recommended by the office of the Family Advocate.

[2] A new contact regime has been recently recommended by Ms T Kriel, a social worker appointed at the instance of the Children's Court at the Randburg Magistrates Court ('the Children's Court'). The proceedings before the latter court currently stand adjourned to July 2026. The applicant now seeks that the recommendations by the social worker or part thereof be sanctioned by this Court as an interim arrangement whilst waiting for the sitting of the Children's Court in July 2026 or whenever that court is able to do so. He says that this is in the best interest of the minor children and permissible in terms of the provisions of the Children's Act 38 of 2005 ('CA 2005').

[3] The parties are former spouses and parents to three minor children, being (a) R, born on 9 September 2015; (b) S, born on 24 April 2018, and (c) L, born on 21 August 2019. The parties were married to each other until 4 January 2023 when their marriage was dissolved by a decree of divorce granted by the Regional Court. The settlement agreement (concluded between the parties and incorporated into the decree of divorce) awarded joint residence of the minor children to both parents on a weekly rotational basis. The applicant seeks that this be altered, on an interim basis, primarily to allow the minor child R, who is of the autistic spectrum, to stay only with him, as opposed to alternating between the residences of the applicant and the respondent. The respondent had moved houses in August 2024. According to the applicant the minor child R is distressed by the effect of her mother's move particularly the distance travelled from her mother's house to school and back. This Court, it is submitted, is empowered to make the relevant interim orders when the best interests of the child – as in this matter - so dictate.

[4] The application currently before the Family Court of the Division was initially brought

on an urgent basis in November 2025. It met an order of removal from the roll, with costs reserved, granted by my colleague Hassim J. The source of the then purported urgency of the matter was the adjournment of court proceedings of the Children's Court. That court on 14 October 2025 postponed the matter between the parties to 17 February 2026. The applicant had approached that court in August 2024 for substantially the same relief as the one he sought on the urgent roll and now seeks in the Family Court. The current enrolment was precipitated by a subsequent adjournment of the matter before the Children's Court on 17 February 2026 to July 2026. Evidently, the applicant is pursuing parallel proceedings before this Court and the Children's Court. This is one of the grounds of opposition of this application by the respondent.

[5] The matter came before me in the Family Court on 25 March 2026. Mr MD Köhn appeared for the applicant and the respondent appeared in person (i.e. without legal representation). I reserved this judgment after listening to oral submissions by the applicant's counsel and the respondent.

Brief background

[6] A brief background in the matter is necessary to explain how the parties ended up here. I would strive to avoid areas of disputes or will indicate what is disputed.

[7] On 21 December 2021, the office of the Family Advocate furnished a report to the Regional Court which was by then seized with the divorce matter between the parties. The report found both parents fit and bonded caregivers in respect of their children.

[8] On 23 September 2022, the parties concluded a settlement agreement which provided for joint residence of the minor children on a weekly rotational basis. The material terms of the agreement reads as follows, quoted verbatim:

3.2 CARE AND CONTACT:

3.3.1 The parties shall have contact with the minor children during term time and during school holidays, having regard to the minor children's social, extramural activities as described below.

3.3.2 The father shall have the minor children every alternative week, where the father will collect the minor children on a Saturday afternoon, until the next Sunday afternoon and take the minor children from and back to school daily, the mother to do the same during her week of contact.

...

- 3.3.6 The minor children shall be entitled to have telephonic access to the mother when they are with the father and to the father when they are with the mother at reasonable times...
- 3.3.7 Such other contact as may be arranged by agreement between the parties considering the minor children's activities and wishes. The parties record their intention to facilitate the minor children's relationship with each other.
- ...
- 3.3.11 The Plaintiff and the Defendant hereby undertake to encourage the bond between the other parent and furthermore the contact that they are to enjoy during their respective contact weeks. They furthermore undertake to ensure that the children know that both parents love them.¹

[9] The parties were divorced on 4 January 2023 and, as per convention, the settlement agreement was made an order of the Regional Court through incorporation into the divorce order.

[10] On 15 September 2023, Dr Ribeiro diagnosed R as being of autistic spectrum (i.e. autism spectrum, speech and language, and sensory processing disorder) ('the diagnosis'). He advised that R be placed in a specialised autism school using spelling to communicate.

[11] During December 2023, the applicant launched proceedings in this Court seeking other unspecified relief ('the 2023 Application'). It is contended that the 2023 Application - although it appears to have been launched under the same case number as this application currently before this Court - was for a different unspecified purpose. During March 2024, the respondent filed her answering affidavit in the 2023 Application. The respondent complains that the 2023 Application has since stalled.

[12] In August 2024, the respondent relocated from Randburg to Alberton, south-east of Johannesburg. This decision or move is central to the current dispute between the parties, particularly given the fact that the children are now travelling a longer distance to school than before, when in the care of the respondent. The applicant says that the behavioural problems of R began only after this move. This is denied by the respondent.

[13] Still in August 2024, the applicant approached the Children's Court seeking an order that the primary residence of the minor children be granted to him. This was in a quest to

¹ Founding affidavit ('FA') annexure 'FA2' (i.e. settlement agreement), CaseLines ('CL') 74-76.

alter the divorce order or settlement agreement incorporated therein. This relief appears to be substantially the same as that sought by the applicant in this Court and, perhaps, the 2023 Application.

[14] Ms Kriel furnished her report dated 12 October 2025. It is not clear when she was appointed by the Children's Court to conduct her investigation. It is the applicant's objective in bringing this application to have Ms Kriel's recommendations or some of them made an interim order of this Court.

[15] On 14 October 2025, the Children's Court found that there was a discrepancy in the versions of Ms Kriel's report in the court file from that in possession of the parties or legal representatives. It is said that this concerned the number of pages constituting the competing versions before the Court. The proceedings were adjourned to 17 February 2026 due to the discrepancy. I hasten to point out that the applicant or his counsel criticises the Children's Court for this ruling. It is stated that the ruling or decision was made without affording the parties an opportunity to make submissions on the recommendations in the report. Ultimately, on 6 November 2025 this application was launched as an urgent application.

[16] On 17 to 18 November 2025, the maintenance reduction case was set down for trial in the Children's Court. On 18 November 2025, another application was enrolled for continued non-payment of maintenance, according to the answering affidavit.

[17] On 25 November 2025, this application came before Hassim J of this Division. The learned judge ordered the removal of the application from the roll whilst directing that the associated costs are reserved. My attempt to probe the reason for this order from counsel did not bear fruit, but nothing turns on this.

[18] On 17 February 2026, the parties were back at the Children's Court. That court adjourned the proceedings to 7 July 2026 for Ms Kriel, the social worker, to testify on her report. On the same date the applicant set down this application for the hearing which took place in March 2025.

History of litigation between the parties, lis pendens and forum shopping

[19] The respondent complains about the number of legal proceedings initiated by the applicant against her, essentially on the same facts or dispute as currently before this Court.

[20] The respondent took time to set out the applications brought by the applicant in this Division and the Children's Court, as follows:

[20.1] The applicant launched - in December 2023 in this Division - an application for the primary residence of the minor children (i.e. the 2023 Application). The 2023 Application was opposed by the respondent and she filed what she describes as a

comprehensive answering affidavit. The latter step was facilitated by an order made by my colleague Kubushi J on 15 February 2024.² To date the applicant has not pursued the 2023 Application further or withdrawn it. Therefore, it is still pending before this Division.

[20.2] During 2024, the applicant instituted two applications in the Children's Court concerning the respondent's relocation and care of the minor children. That court referred the matter for investigation by Ms Kriel, a social worker. The proceedings before that court appears to have been consolidated into one and remain pending and have been adjourned to July 2026 for Ms Kriel to give testimony.

[20.3] The applicant, as stated above, launched the current application before this Court in November 2025. It was removed from the urgent roll per the order of Hassim J and, subsequently, enrolled in the ordinary course before the Family Court. In this Court the relief sought is styled as being primarily for the primary care of the minor child R, but in fact includes the other children.³

[21] As a result of the litigation before the two courts, the respondent raised in this Court the defence of *lis alibi pendens* (suit pending elsewhere),⁴ as substantially the same dispute is already pending before the Children's Court. She also accused the applicant of forum shopping.

[22] This issue is also said not to have escaped the attention of the magistrate presiding over proceedings before the Children's Court. When the parties were before that court on 17 February 2026, the presiding magistrate, reportedly, raised the issue of parallel proceedings before that court and this Court. When the applicant was asked how he wished to proceed in light of the competing proceedings, he confirmed his choice of the Children's Court. This choice was, reportedly, due to speediness of the processes of the Children's Court when compared to this Court. He, reportedly, also told the presiding magistrate that he wished to proceed in that court. But all these suddenly changed after the proceedings before the Children's Court were adjourned to July 2026. The applicant on the same day caused a notice of set down of the application currently before this Court.⁵ Therefore, the applicant is pursuing the same dispute in the two forums, the respondent points out. She, further, says that the parallel litigation risks undermining the orderly resolution of disputes, which disputes in these instances concern the minor children.

² CL 000-1.

³ Par [26] below on the nature and extent of the relief sought by the applicant.

⁴ VG Hiemstra and HL Gonin, *Trilingual Legal Dictionary* (3rd edn, Juta 1992).

⁵ CL 008-377 to 378.

[23] To succeed in raising a plea or defence of *lis pendens* one has to meet the requirements, that the two actions: (a) are between the same parties or their successors in title; (b) concern the same subject-matter, and (c) are founded upon the same cause of complaint.⁶ The determination of the plea of *lis pendens* cannot be achieved without consultation of the pleadings (and not the evidence led in the matters).⁷ *Lis pendens* bears the hallmarks of the defence of *res judicata* (a matter adjudged; matter settled by judgment),⁸ also another mode of a temporary stay of proceedings in our courts. Both are ground on the principle that litigation cannot be endless and ought to reach finality, as well as that once a suit is commenced before a chosen tribunal it should not be replicated elsewhere, lest there is multiplicity of lawsuits or conflicting judicial decisions on the same issues.⁹ In fact, it is vexatious to bring two or more actions in the same court with regard to the same matter and, generally, the court ought to place the applicant or plaintiff to an election between the two actions.¹⁰ It is equally vexatious to bring two actions in different courts where the remedy sought and the procedure to be followed are practically the same.¹¹

[24] There is credence in the complaint by the respondent. Not much has been put forward by way of evidence or information as to the facts or nature of dispute in the 2023 Application to accurately compare it with this application. The 2023 Application is the other matter instituted in this Court which is still pending. But I have enough before me regarding the matter before the Children's Court. It is common cause that the proceedings before the latter court and this Court are between the same parties; (b) concern the same subject-matter (i.e. making Ms Kriel's recommendations an order of the court), and (c) are founded upon the

⁶ AC Cilliers, C Loots and HC Nel, *Herbstein and Van Winsen: Civil Practice of the High Courts and the Supreme Court of Appeal of South Africa* (5th edn, Juta/Jutastat e-publications 2009) ('*Herbstein and Van Winsen: Civil Practice*') 5th Ed, 2009 ch10-p311, partly relying on *Pretorius v Barkly East Divisional Council* 1914 AD 407 at 409 (holding that the requirements of *lis pendens* are the same as those of *res judicata*); *Mitford's Executor v Ebden's Executors* 1917 AD 682 at 686. See also *Nestlé (South Africa) (Pty) Ltd v Mars Incorporated* 2001 (4) SA 542 (SCA) [17]; *African Rainbow Capital (Pty) Limited v Pula Group LCC and Others* (2025/092254) [2026] ZAGPJHC 361 (14 April 2026) [33] *per* Adams J.

⁷ *Herbstein and Van Winsen: Civil Practice* at 5th Ed, 2009 ch10-p311, partly relying on *Marks & Kantor v Van Diggelen* 1935 TPD 29 at 33.

⁸ *Nestlé (South Africa) (Pty) Ltd v Mars Incorporated* 2001 (4) SA 542 (SCA) [16]; *Pretorius v Barkly East Divisional Council* 1914 AD 407 at 409. See also Hiemstra and Gonin, *Trilingual Legal Dictionary* (3rd edn, Juta 1992) on the meaning of *res judicata*.

⁹ *Visagie v Health Professions Council of South Africa And Others* 2023 (2) SA 626 (GP) [14] *per* Potterill J; *Nestlé (South Africa) (Pty) Ltd v Mars Incorporated* 2001 (4) SA 542 (SCA) [16].

¹⁰ *Herbstein and Van Winsen: Civil Practice* at 5th Ed, 2009 ch10-p312.

¹¹ *Herbstein and Van Winsen: Civil Practice* at 5th Ed, 2009 ch10-p312, partly relying on *Painter v Strauss* 1951 (3) SA 307 (O) at 312.

same cause of complaint.¹² This, as indicated above, was also generally the view of the Children's Court. When asked by the presiding officer upon appearing before the Children's Court to make an election between the two courts, the applicant confirmed his preference to continue in the Children's Court. But, when the latter court postponed the proceedings he immediately changed tack and enrolled the current application before this Court. This was not his first rodeo. He had previously – after the postponement of the matter before the Children's Court in October 2025 turned to this Court – on the urgent roll - in November 2025. When he couldn't get his way in the urgent court he went back to the Children's Court in February 2026. This clearly suggests a litigant who is vexatious and abusive of the processes of both courts. It cannot be countenanced. I will return to this issue below.

Applicant's case (including submissions on her behalf)

[25] I have just dealt with an established complaint by the respondent that the parties have been involved in a number of legal skirmishes before this Court and the Children's Court, initiated by the applicant for the same relief.

[26] In this application the relief sought by the applicant is captured in the following terms, but only quoted in the material part:

The Applicant seeks relief as recommended by Kriel in her report, as outlined in *paragraph 14*, which is further expanded upon below. The applicant then seeks the following order as per the notice of motion, *alternatively*, as set out in a draft order by agreement:-

1. The applicant and respondent continue to have full parental rights and responsibilities concerning the guardianship, care, contact and maintenance of their minor children as contemplated in section 18(2) (a) (b) (c) (d) and 18(3) of the Children's Act 38 of 2005;
2. The minor child, [R], is to be placed in the primary care of the applicant;
3. The respondent shall have contact with the minor child, [R], every alternative weekend, from Friday after school until Monday morning, where the respondent will fetch and drop off the minor child from school;
4. The minor children, [S] and [L], remain in the shared residency contact regime, provided they are allowed to attend reasonable extramural activities, such as Voortrekkers, boxing, and dancing, which take place after hours....¹³

¹² *Herbstein and Van Winsen: Civil Practice* 5th Ed, 2009 ch10-p311, partly relying on *Mitford's Executor v Ebden's Executors* 1917 AD 682 at 686.

¹³ Applicant's Practice Note dated 15 March 2026, CL 011-407 to 409, which appears to accord with the notice of motion (CL 001-11 to 13) and FA (par 10, CL 001-19 to 21).

[27] The applicant's main complaint is that the respondent, despite the rotational joint weekly residency of the minor children - agreed between the parties and incorporated into the divorce order - had unilaterally relocated to Alberton. The distance between the respondent's home and the children's schools, according to the applicant, spans about 45 kilometres. The relocation was without his consent and proper consultation by the respondent and also contravenes section 31(1)¹⁴ of the CA 2005 requiring that both guardians consider the children's views and their best interests prior to making major decisions affecting the children. Disgruntled by this the applicant approached the Children's Court in August 2024 seeking an order granting him the primary residence of the minor children.

[28] The applicant is concerned about the distance the minor children are to cover to get to their schools. This is more concerning when it comes to R given the diagnosis of autism by Dr Ribeiro. The distance, it is submitted on behalf of the applicant, is unreasonable or not in the best interests of R, as an autistic child. He (and other children) travel about 100 kilometres daily from the respondent's home to school and back. The two other children, namely S and L, are also fatigued by this and have reduced concentration at school.

[29] Bearing the above in mind, the applicant is of the view that the shared residency arrangement is exposing the minor children, particularly R, to unbearable conditions. The children's emotional and educational development is impaired by the effect of the arrangement after the respondent's move to her new home. This is in breach of section 28(1)(d)¹⁵ of the Constitution of the Republic of South Africa, 1999 ('the Constitution') and section 93 of the CA 2005, this submission concludes. Discussion on this, which involved the parties' legal representatives, did not yield the desired outcome.

[30] There has been problems especially with the collection of the children from school and their handover between the parties. There were incidents involving R, particularly during his school drop off and handover. It is said that he is continuously distressed by these and that his conduct has led to the school warning that he may be expelled should the respondent continue to drop him off at school. And Ms Kriel, the social worker, is said to have supervised one or more handover sessions. As already indicated she has furnished a report

¹⁴ Section 31(1)(a) of the CA 2005 provides for major decisions involving a child, among others, as follows: '[b]efore a person holding parental responsibilities and rights in respect of a child takes any decision contemplated in paragraph (b) involving the child, that person must give due consideration to any views and wishes expressed by the child, bearing in mind the child's age, maturity and stage of development.'

¹⁵ Section 28(1)(d) of the Constitution provides: '[e]very child has the right ... to be protected from maltreatment, neglect, abuse or degradation'.

recommending change to the shared residency regimen. She is due to testify before the Children's Court in July 2026.

[31] But the applicant doubts that the hearing in July before Children's Court would take place or that R's situation can wait until then. He may be expelled from his current school before there is a resolution in this regard. A further delay is not in his best interests, it is submitted. Therefore, this Court, given the extensive delays in the Children's Court, ought to step in and grant interim relief, set out above, pending the hearing of part B of this application. It would be recalled that the latter is subject to the proceedings before the Children's Court.¹⁶

Respondent's case (including submissions on his behalf)

[32] As stated above the respondent participated in the hearing of this application without legal representation. She had also filed a written argument which in form and substance appears to be unaffected by the absence of a legal representative on her part. But it appears that in proceedings before the Children's Court she has or has had legal representation.

[33] It is pointed out by the respondent that the shared residency structure has been in place since January 2022. Evidently, this was before its formalisation through a decree of divorce about a year later in January 2023. This means that the parties and the children have lived under this structure for over three years.

[34] The respondent confirms that she relocated to Alberton during August 2024. The relocation, she points out, did not lead to a change in schools attended by the children and shared residency continued. She also points out what she considers material inconsistencies in the versions placed by the applicant in his papers before the various courts or forums. She says that when the social worker investigated the matter, the version attributed to the applicant was that he was given about one and a half months' notice of the respondent's pending relocation. But now the applicant is telling this Court that the relocation was without notice.

[35] It is asserted by the respondent that the endurance of the shared residency since January 2022, a period of over three years, has allowed the minor children to: (a) maintain meaningful relationships with both parents; (b) provided the children with stability and continuity, and (c) the minor child R, with developmental challenges, has nevertheless aptly adapted to shared residency and its transitional nature between the two parental residences. It

¹⁶ Par [26] above for the terms of the relief sought in this Court.

is the respondent's view that all these would only deserve disruption on the basis of compelling reasons.

[36] With regard to the distance travelled by the children during the week that they are with her, the following is stated by the respondent. The distance ought to be viewed in the context of traffic patterns or conditions in Johannesburg. The distance between her residence and the children's school(s) is about thirty kilometres. It is largely travelled using the highway routes and, thus, depending on traffic conditions takes about thirty to forty minutes one way. This is normal for daily school commuting in Gauteng. The children have adapted to the routine. Shared residency has continued without disruption or alteration to the established routine, until for a period of about six months when the applicant fetched the children from school during parenting slot meant for the respondent. The respondent considers this to be confirmation that the relocation – in and of itself - did not directly disrupt the established shared residency or the routine of the children. The applicant's conduct did, she asserts.

[37] In as far as the minor child R - whose primary care is the real subject of this dispute - the respondent's assertions include the following. She was a stay-at-home mother for a period of about seven years. During that time she had the responsibilities of the day-to-day care and upbringing of the children. She was thus the children's primary caregiver. This included R. The shared residency started when she separated from the applicant from around January 2022. This history of caregiving is a relevant factor for the determination of the best interests of the children, particularly R.

[38] The respondent criticises Ms Kriel's recommendation that R be placed in the applicant's primary care. In the respondent's view this would separate R from his siblings and, therefore, is not in his best interests or those of his siblings. The law places a premium of the maintenance of family relationships by a child, including with siblings.¹⁷ The bond between R and her siblings should be prioritised and not be disrupted through either separation, save where justified by compelling circumstances. She also says that the report is outdated and does not reflect the current circumstances. But, beyond her criticism, the respondent does not object to Ms Kriel's report forming part of the evidence before this Court, as long as this Court declines to make the recommendations therein an order of court. For Ms Kriel still needs to be examined on her report at the Children's Court. The respondent emphatically points out that this Court is not bound by Ms Kriel's recommendations.

¹⁷ Section 7 of the CA 2005.

Shared residency of the minor child R or of all the minor children: to be continued or not to be continued?

[39] The only issue to be determined in this matter is whether or not this Court should, pending the outcome of the proceedings before the Children's Court of part B of this application, make the recommendations in the social worker's report, prepared by Ms Kriel, an order of this Court. This would in effect be a suspension of the terms of the settlement agreement reached by the parties in the divorce court.¹⁸

[40] The following forms part of the recommendations in Ms Kriel's report, quoted verbatim:

- 14.1 Based on the above the following recommendations are made should the Honourable Court be in agreement.
- 14.2 [Mr VR] and Ms VR should both continue to have full parental rights and responsibilities with regards to the guardianship, care, contact and maintenance of their minor children as contemplated in section 182(a) (b) (c) (d) and 18(3) of the Children's Act 38 of 2005.
- 14.3 The minor child, [R] to be placed in the primary care of [Mr VR]. [Ms VR] should have contact with the minor child [R] every alternative weekend from a Friday after school until a Monday morning.
- 14.4 [The minor children S and L] can remain in the shared residency contact regime on condition that they are allowed to attend the reasonable extra mural activities such as voortrekkers; boxing and dancing which takes place after hours...
- 14.5 Should [Ms VR] not be able to prioritise same, the minor children should be placed in the primary care of [Mr VR]. In this instance, [Ms VR] should have contact with the minor children every alternative weekend from a Friday after school and until a Monday morning.¹⁹

[41] Although, for reasons which would become clear below, I do not wish to delve deeper into the contents of the report, I find the following extract on the impact of shared residency on children with autism to be of particular significance given the condition of the minor child R:

While shared residency may benefit some children by maintaining meaningful contact with both parents, it carries specific risks for children with autism. These

¹⁸ Par [8] above.

¹⁹ FA annexure 'FA2' (i.e. social worker's report dated), CL 68.

risks primarily stem from disruptions to routine, inconsistent caregiving environments, and difficulties managing transitions and parental conflict. Practitioners involved in custody evaluations or therapeutic planning should therefore assess the child's tolerance for change, the parents' capacity to coordinate routines, and the degree of environmental stability in each home. When shared residency is considered, it should be implemented cautiously, ensuring that both households maintain consistent structure, communication, and therapeutic continuity to mitigate potential harm.²⁰

[42] Also, Ms Kriel's evaluation of the relevant facts presents illuminative value to the issues under consideration and the relief sought. I quote the following material part:

- 13.1 It is clear that the co-parenting processes is failing and that it is creating strain for the minor children. Research has indicated the detrimental long and short term impact of such failure which is concerning specifically pertaining to the [VR] family.
- 13.2 The shared residency contact schedule is becoming impractical and the travel distance should be noted with concern.
- 13.3 [R] has a Constitutional right to an education, which is not being addressed at present.
- 13.4 [R] cannot cope with changes and is taking strain with the constant change in routine. Research has indicated that his movements should be limited and routine should be prioritised. Additionally, his current school is of the view that only [Mr V] should bring [R] to school to ensure emotional regulation.
- 13.5 [R's] school has noted that he is not adjusting and has requested that only [Mr V] brings him to school in future.
- 13.6 [S and L] cannot attend all the extra curricular activities based on the fact that [Ms VR] resides in Alberton and need to travel home at a reasonable time. This limits their social, sport and cultural exposure which should not be the case. Children relate to other children through various platforms thus this exposure will be in their best interest.
- 13.7 The children should be the priority when decisions are made and with a failing co-parenting relationship, shared residency is difficult to navigate.²¹

²⁰ FA annexure 'FA2' (i.e. social worker's report dated) par 11.8, CL 66.

²¹ FA annexure 'FA2' (i.e. social worker's report dated), CL 67-68.

[43] Ms Kriel was appointed by the Children's Court to conduct an investigation into the best interests of the minor children including on the children's residency and, contact and care.²² This, she reported, has become necessary following the respondent's relocation to Alberton and the resultant distance the minor children have to travel to reach schools whilst under her care.

[44] Ms Kriel delivered her report around 12 October 2025. Her investigation is stated as having involved interaction with the children and the parents from around October 2024. This suggests an intensive deployment of her resources judging from the length of time it took her to furnish her report. This is also borne by the nature of her recommendations and other aspects of her report.²³ All these do not appear to me to have been intended for an interim or temporary arrangement. The recommendations, including those relating to the minor child R, appear to have been made with a sense of permanency or stability in mind. This is logical as they are geared towards addressing the perceived instability brought about by the geographical change of the location of the respondent's home.

[45] Further, the contents of the report or part thereof appears to be something which would be debated before the Children's Court. It is common cause that the latter court called for the report and that it is aware of its contents. This is a specialist court which, no doubt, is operated by functionaries or officials who are aware of and appreciate their duties and responsibilities and how to discharge them in the best interest of minor children. That court, whilst aware of the contents of the report and the recommendations therein deemed it justified to adjourn the proceedings. It would only be speculative and, thus, unfair to cast doubt on the work of that court purely from the time it is taking to finalise the proceedings affecting the parties.

[46] Bearing what is stated above in mind and the submissions by the parties, I do not find it in the best interests of the minor children, including R, that there should be an immediate interference with the shared residency applicable to the minor children. Also, I do not deem it warranted to make prescriptions as to the children's extramural activities based on Ms Kriel's report or an individual parent's preferences. I can only implore the parties to focus on the proceedings before the Children's Court and ensure that they progress reasonably towards finality.

[47] But, to merely assist and without derogating in any way from what is stated above, I will include in the order to be made a request to that court for consideration of placing the

²² FA annexure 'FA2' (i.e. social worker's report dated) par 2, CL 43.

²³ Pars [40]-[42] above.

matter on an expedited roll, if possible. This is done purely in an attempt to assist the parties at reaching quick resolution of the matter. I am not aware of the processes of the Children's Court and the facts considered when adjourning its proceedings. Therefore, the mention of expedited hearing of the matter is not a suggestion that the proceedings before that court lacked traction or anything of that sort. It's merely a respectful urging of that court to accommodate this Court's informal and non-binding appeal to be made.

Conclusion and costs

[48] From what appears above, it is clear that this Court is disinclined to grant the relief sought by the applicant. The application will indeed be dismissed. Costs ordinarily follow the outcome, but two factors - of equal weight in my view - justify deviation from this convention in this matter. First, the respondent appears to have always acted in person and, therefore, did not incur any legal costs. Secondly, I do not deem it warranted to hold the applicant liable for costs of these proceedings. This is so, despite my lamentation above regarding the applicant's very palpable forum shopping and vexation in the pursuit of the litigation in the two courts. Therefore, I will make an order declaring that there is no order as to costs.

[49] On the issue of forum shopping and vexatious litigation in this Court and the Children's Court, I will include in the order that the applicant is to disclose the contents of this judgment upon his return to this Court in any litigation relating to the children. This is necessary to avoid this Court unnecessarily being engaged on the same issues continuously.

[50] As indicated above, I will include in the order a request or plea to the Children's Court to possibly accommodate the future hearing of the proceedings before it in an expedited manner. I emphasise that this is not the same as saying or implying that there is lack of traction in the proceedings of that court. Therefore, should the Children's Court - for whatever reason - be unable to accommodate the respectful request of this Court, the making of the request should not morph into or trigger other processes or litigation before that court, this Court or elsewhere.

Order

[51] In the premises, I make the order (inclusive of a request in paragraph 2 below), that:

1. the application is dismissed with no order as to costs;
2. either of the parties may, if so minded or advised, on the basis of what is stated in this judgment, particularly in paragraphs [47] and [50] above, request the Children's Court in Randburg to consider re-allocating the matter an expedited date of hearing earlier than 7 July 2026, and

3. the applicant is to bring this judgment to the attention of the presiding judge in the event that the applicant approaches this Court or the Division in respect of these proceedings or any other existing or new proceedings regarding the minor children.

Khashane La M. Manamela
Judge of the High Court

Date of Hearing : **25 March 2026**

Date of Judgment : **30 April 2026**

Appearances:

For the Applicant : Mr MD Köhn
Instructed by : Mothle Jooma Sabdia Inc,
Brooklyn, Pretoria

For the Respondent : In person