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

Case No: 2026-075226

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED.

DATE: 29/05/2026

SIGNATURE

In the matter between:

N[...] C[...]

Applicant

and

A[...] S[...]

Respondent

JUDGMENT

The judgment and order are published and distributed electronically.

PA VAN NIEKERK, J

Summary; Application to waive requirement for guardian's consent in terms of section 18(3)(c)(iii) and (iv) of the Childrens Act. Counter-application for investigation and contact. Natural father resides overseas and exercised right to physical contact twice since birth of child and failed to comply with duty to contribute to maintaining child while mother was sole caregiver of child since birth.

Held; mother's decision to take up employment opportunity in other country will have no effect on father who also resides in foreign jurisdiction and decision not unreasonable as it will improve the socio-economic position of the mother and child. Counter-application only intended to frustrate mother's intention. Application granted and counter-application dismissed.

INTRODUCTION:

- [1] Applicant and Respondent are the parents of a daughter who was born on 5 April 2017. The Applicant is a counsellor working and residing in Pretoria, and the Respondent is a marine engineer and a citizen of Greece who permanently resides in Edessa, Greece. Applicant instituted an application in the Family Court of this Court's Division which was enrolled for hearing on 26 May 2026.
- [2] The application was brought in terms of Rule 6(12) and Applicant sought an order to the effect that the Respondent's parental responsibilities and rights in respect of guardianship of the minor child be circumscribed in terms of Section 28(1)(b) of the Children's Act, 38 of 2005 ("the Act") by terminating *alternatively* suspending the Respondent's rights in terms of Section 18(3)(iii) and (iv) of the Act. These provisions relate to the requirement for consent to be given by both guardians of a minor child to be removed from the Republic of South Africa or to be issued a passport. Respondent opposed the relief sought by Applicant and instituted a counter-application wherein an order was sought to provide Respondent immediate electronic access to the minor child and to refer the issue of the Respondent's right of contact to the minor child for an investigation by the Office of the Family Advocate.
- [3] In support of that part of the notice of motion seeking a hearing of the application on an urgent basis, the Applicant avers that she must arrive in New Zealand by no later than

26 June 2026 so that she can assume employment in New Zealand on 6 July 2026. The Applicant further avers that she must complete the final practical arrangements for the enrolment of the minor child at school, purchase the required uniform and stationaries, and must secure suitable accommodation and basic household necessities required for the relocation of the Applicant and the minor child to New Zealand. The Applicant's founding affidavit further disclose that correspondence was exchanged between the Applicant and the Respondent previously, seeking the Respondent's consent for a passport to be issued to the minor child, and permission to relocate to New Zealand, to no avail. In opposition to the application, the Respondent persists in his refusal to consent to the relocation of the minor child accompanying the Applicant to New Zealand and refuse to consent to the issue of a passport for the minor child.

[4] After hearing argument on 26 May 2023, the matter stood down for purposes of preparation of a draft order which contained certain ancillary provisions inserted at the request of the Respondent in the event of the relief claimed by Applicant being granted, and on 27 May 2026 this Court made an order terms of the draft order which contains the following terms:

- “1. *The requirements set out in the Rules pertaining to service and time-periods are dispensed with and the applicant's non-compliance with the Rules is condoned, insofar as may be necessary and the matter is heard as one of urgency, as contemplated in Uniform Rule 6(12) and enrolled on the Urgent Roll;*
2. *The respondent's parental responsibilities and rights in respect of guardianship of the minor child, Isabella Chetty, born on 5 April 2017, are circumscribed in terms of section 28(1)(b) of the Children's Act 38 of 2005 ('the Act') by suspending his rights in terms of section 18(3)(c)(iii) and (i) of the Act to give or refuse consent in respect of the child's departure or removal from South Africa and her application for a passport;*
3. *The applicant is granted leave to remove the minor child permanently from the Republic of South Africa in order to relocate to New Zealand;*
4. *The respondent's consent for the minor child's permanent removal from the Republic of South Africa and her relocation to New Zealand, as required by section 18(3)(c)(iii) of the Act, is dispensed with.*

5. *The minor child is entitled to depart from the Republic of South Africa and re-enter the Republic of South Africa without the requirement of a parental consent letter from the respondent, as provided for in regulation 6(12B) of the Immigration Regulation, 2014 to the Immigration Act 13 of 2002, subject to compliance with the remaining provisions of regulation 6 to the said Act.*
6. *The consent of the respondent, as required by section 18(3)(c)(iv) of the Act, for the submission of an application for a South African passport, and the issuing thereof in respect of the minor child is dispensed with.*
7. *The requirement of the respondent's signature in the application for a South African passport for the minor child, being the certificate of consent by both parents or guardians of a minor is dispensed with.*
8. *The Director General: Home Affairs is authorised and directed to accept the application for a South African passport for the minor child at the instance of the applicant, without the respondent being present, when the application for a passport is submitted, subject to compliance with the remaining provisions of the South African Passports and Travel Documents Act 4 of 1994, and the regulations thereto, without the signature in the certificate of consent of the respondent.*
9. *The respondent's consent for the issuing of a visa for the minor child to enter into and reside in New Zealand is dispensed with and the applicant is entitled to apply to the New Zealand authorities without the consent of the respondent.*
10. *The applicant shall, before departing for New Zealand, reintroduce telephonic/video contact to take place twice a week between 18h00 and 19h00, for a period of 15 minutes on a Monday and Thursday and shall ensure that same continues after relocation to New Zealand. The country in which the applicant and the minor child reside will determine the relevant time zone that will apply in respect of contact. The contact shall commence on 28 May 2026.*
11. *The applicant is directed to furnish the respondent with her and the minor child's residential address in New Zealand before departing for New Zealand and shall notify the respondent of any change of address within seven days of such change.*
12. *The respondent is directed to pay the costs of the application on Scale B; and*
13. *The counter-application is dismissed, with costs on Scale B."*

[5] The reasons for making that order follows hereunder.

BACKGROUND

[6] Applicant and Respondent met each other during 2016 while they were both working for a cruise line. Applicant was employed as an officer on a cruise ship and the Respondent is a Marine Engineer. A relationship developed between the parties and the Applicant fell pregnant during August 2016, resulting in the Applicant being unable to continue with her career as an officer on cruise ships. Applicant returned to South Africa and resided with one of her parents.

[7] Applicant gave birth to the minor child on 5 April 2017. The Respondent visited Applicant in South Africa during the birth of the child and left South Africa when the child was 3 months old. Applicant and Respondent did not enter into a marriage. After the visit to South Africa during the birth of the child the Respondent has had limited and sporadic contact with the minor child, concisely summarised as follows:

[7.1] Respondent visited South Africa during March 2019 and then again in September 2019 when he had daily contact with the child;

[7.2] On occasion, the Respondent made contact with the minor child on the “*WhatsApp*” communication platform.

[7.3] The last occasion that the Respondent had any contact with the minor child was during June 2023.

[8] Since date of birth of the child until the present there has been no formal arrangement in place between the parties insofar as the Respondent’s obligation to contribute to the maintenance of the minor child is concerned. Respondent initially made sporadic contributions, but since June 2023 the Respondent has made no contribution at all. The Applicant’s founding affidavit contains numerous averments which narrates a history of conflict, supported by copies of email correspondence and exchanged electronic communication between the Applicant and the Respondent, which serves to illustrate the *inter alia* the following:

[8.1] The relationship between Applicant and Respondent deteriorated substantially since the birth of the child, characterised by accusations from the Respondent

that the Applicant attempts to frustrate his contact to the minor child, and which allegations are met by the Applicant with the accusation that the Respondent only shows sporadic interest in the child and does not comply with his parental obligations in respect of the minor child by not paying maintenance and refusing to provide consent when his parental consent is required. Applicant *inter alia* illustrated through communication records that on occasion the Respondent stated that he would provide consent for a passport to be issued for the minor child on the condition that the name of the child be changed to his mother's name.

[8.2] Applicant has attempted on two occasions to obtain an order in the Maintenance Court to compel the Respondent's maintenance obligations, to no avail. The fact that the Respondent presently resides in Greece frustrated the Applicant's efforts to procure the Respondent's attendance at the Maintenance Court, as he simply did not show up and refused to allow his attorneys in South Africa (who were involved in advancing his case for contact to the minor child) to represent him in the maintenance court. The communication records further disclose that the Respondent alleged that he may not send funds to South Africa for the minor child's maintenance as it was "illegal" in terms of Greek law while simultaneously refusing to co-operate in a maintenance enquiry in the maintenance court.

[9] In the Respondent's opposing affidavit he attempts to portray the Applicant as a mother who makes herself guilty of parental alienation. In support of that allegation, the Respondent relies on a different interpretation of the correspondence annexed to the Applicant's founding affidavit, and attempts to blame the Applicant for the fact that he has had limited contact to the minor child. Respondent attempts to blame his limited contact to the minor child on the Applicant, but provides no reasons why he did not visit the minor child regularly in South Africa. From the evidence it is common cause that he was allowed access to the minor child on the two occasions that he visited South Africa.

[10] In my view, the allegations and counter-allegations in relation to the reasons why the Respondent has had limited access to the minor child are irrelevant for purposes of the relief claimed by the Applicant and it will serve no purpose to apportion blame for the

fact that the Respondent is for all purpose and intent proverbially absent from the life of his daughter. In my view, the following objective facts are relevant:

- [10.1] The minor child is a young girl who still requires the intense daily physical and emotional comfort and care of her mother who has been the sole provider thereof since her birth, without any meaningful assistance from the Respondent;
- [10.2] There is no indication on the evidence before the Court, and nor was it alleged by the Respondent, that the Applicant has ever made any irresponsible decision or acted in a manner which adversely affected the well-being of the minor child. On the contrary, it appears from the common cause evidence that the Applicant has acted at all relevant times in a responsible manner and fulfilled her role as mother to the child in an exemplary fashion, often in circumstances of great difficulty caused *inter alia* by the Respondents failure to comply with his parental obligations.
- [10.3] The Applicant has been able to procure an employment opportunity in New Zealand which will render substantial benefits to the Applicant and the minor child. The socio-economic circumstances of the Applicant and the minor child will be improved substantially compared to their present circumstances in South Africa and the future prospects in terms of career development opportunities for the Applicant, education for the minor child, and their general well-being shows more promise.

APPLICABLE LEGAL PRINCIPLES

- [11] In terms of Section 18(5) of the Children's Act the Court may dispense with the provisions of Section 18(3)(c)(iii) and (iv) of the Children's Act which requires the consent of both guardians of a child for the removal of the child from the Republic of South Africa or for a passport to be issued for such a child. Where the Respondent withholds consent required in terms of those provisions of the Act, this court may grant an order dispensing with that requirement if the best interest of the minor child requires such intervention.

[12] In *F v F*¹ it was held that the impact of a refusal to grant consent for the removal of a child on the mother of the child is a factor to be considered. It was held that the Court should not likely interfere with the right of a parent who has properly been awarded custody to choose in a reasonable manner how to order his or her life.² It was further held that the child's interests are more often than not intertwined with those of their caregivers and that Courts must thus properly consider the impact on the custodian parent of her refusal to remove a child insofar as such refusal may have an adverse effect on the custodian parent and in turn the child.³ It was further held that it is in the interests of a child to be raised in a happy and secure atmosphere, which right may be compromised by the frustration experienced by a parent who is refused permission to relocate with a child.⁴

[13] On a perusal of *F v F*, it follows that it is important to consider the reasonableness of the custodian's decision to relocate and in this regard it was held:

"While attaching appropriate weight to the custodian parent's interests, Courts must, however, guard against 'too readily in assumption that the custodian's proposals are necessarily compatible with the child's welfare. The reasonableness of the custodian's decision to relocate, the practical and other considerations on which such decision is based, the extent to which the custodian has engaged with and properly thought through the real advantages and disadvantages to the child of the proposed move are all aspects that must be carefully scrutinised by the Court in determining whether or not the proposed move is indeed in the best interests of the child".

IS THE APPLICANT'S INTENDED RELOCATION REASONABLE AND/OR IN THE BEST INTERESTS OF THE MINOR CHILD?

[14] In my view it cannot be found that the decision of the Applicant to relocate to New Zealand is unreasonable. The Applicant will improve her social economic circumstances substantially, and this fact will obviously benefit the minor child. On the

¹ 2006 (3) SA 42 (SCA).

² *F v F supra*, para [10].

³ *F v F supra*, para [17].

⁴ *F v F, supra*, para [11].

other hand, should the Applicant be forced to remain in the Republic of South Africa by virtue of the Respondent's refusal to grant permission for the minor child to vacate the Republic of South Africa, the Applicant will be subject to her present position where she is forced to work long and unreasonable hours, to the detriment of the minor child, at substantially reduced remuneration and lower quality of life. Significantly, notwithstanding Respondent's opposition to the application, and notwithstanding the common cause fact that Respondent failed and continues to fail in his maintenance obligation to the minor child, Respondent made no offer during the proceedings to rectify the maintenance issue or subject himself to a maintenance enquiry, but still insisted that Applicant be effectively prevented from improving her and the minor child's standard of living.

- [15] The effect of the relocation of the minor child to New Zealand will have no practical effect on the Respondent's rights of contact at all. Whether the Respondent exercise his right to contact with the minor child by way of electronic means in South Africa or in New Zealand will have no adverse impact on that right. Whether the Respondent travels from Greece to South Africa in order to exercise personal contact with the child, or whether he travels from Greece to New Zealand for purposes of such contact, will make no difference. I find it surprising that this logical conclusion evaded the Respondent.
- [16] Insofar as the Respondent complains that he was frustrated in his right to exercise contact with the minor child (without making a finding on the merits of that complaint) those issues may be dealt with in the jurisdiction of the relevant New Zealand Courts and it is not necessary that the Applicant remain in the Republic of South Africa, and be subjected to an investigation as proposed in the Respondent's counter-application for that purpose. New Zealand has a dedicated Family Court governed by inter-alia the Child Support Act 1991, Care of Children Act 2004, and Family proceedings Act 1980, and applies a process of Family Dispute Resolution. Any issues which Respondent may have can equally and effectively be addressed in that jurisdiction.
- [17] As a general remark it must be observed that, whereas the Respondent's opposing affidavit contains a plethora of allegations against the Applicant designed to support his

narrative of parental alienation, there is not one objective fact disclosed which can lead to the conclusion that it is in the interest of the Respondent that the minor child and the Applicant remain in the Republic of South Africa instead of proceeding to New Zealand. The Applicant's motives for proceeding to New Zealand are also not challenged with objective rational evidence, and no objective factual evidence was provided by Respondent to disclose any prejudice to the minor child to accompany her mother to that country. In my view, considering the history of the matter and the evidence as a whole, it will be a travesty of justice to deny the Applicant the right to proceed overseas in pursuit of improved means for her and the minor child. Respondent's inability to arrive at the same conclusion is deplorable.

[18] In conclusion, I am of the view that it cannot be found that the Applicant's decision to relocate to New Zealand is unreasonable, and it is patently in the best interest of the minor child to accompany her mother to New Zealand. The Respondent's withholding of consent as required in terms of Section 18(3)(c)(iii) and (iv) of the Children's Act is unreasonable because it will have no adverse practical or legal effect on any rights of the Respondent.

[19] Insofar as the Respondent's counter-application is concerned, I am of the view that the purpose of that application only serves to frustrate the Applicant's intention to proceed to New Zealand within the time frame that she is required to do so. The investigation envisaged by the Respondent in the counter-application serves no purpose, because any remedies that the Respondent intends to pursue for the enforcement of whatever rights the Respondent believes he may have in relation to the minor child, can be instituted in New Zealand. The counter-application therefore stands to be dismissed.

In the result, the draft order that was handed up was made an order of Court.

P A VAN NIEKERK
JUDGE OF THE GAUTENG DIVISION,
PRETORIA

APPEARANCES

FOR APPLICANT:
INSTRUCTED BY

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CVDH ATTORNEYS

RESPONDENT:
INTSTRUCTED BY

Adv S. STADLER
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