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

**Case No: 2026 - 116573**

**(1) REPORTABLE: NO**

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

**(3) REVISED.**

**DATE:**

**SIGNATURE**

**In the matter between:**

**N[...] K[...] S[...]**

**Applicant**

**and**

**MR RAJCOOMAR – ADDITIONAL MAGISTRATE  
PRESIDING OFFICER CHILDREN’S COURT  
PRETORIA NORTH**

**First Respondent**

**M[...] A[...] S[...]**

**Second Respondent**

**NOXOLO NGOBESE (LEGAL AID) OBO  
K[...] S[...]**

**Third Respondent**

K[...] S[...]

K[...] S[...]

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## REASONS FOR ODER DISMISSING APPLICATION ON 2 JUNE 2026

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*The judgment and order are published and distributed electronically.*

**PA VAN NIEKERK, J**

### INTRODUCTION:

[1] On 2 June 2026, Applicant sought an order by way of urgency, framed in the notice of motion as follows:

*“2. Concerning the order granted in terms of Section 155(6)(b)(ii) of the Children’s Act 38 of 2005 on the 14<sup>th</sup> of May 2026 by the First Respondent sitting as Additional Magistrate for the Children’s Court – Pretoria North:*

*2.1 That it be declared unlawful, null and void.*

*2.2 That the whole of paragraph 1 of the order of the 14<sup>th</sup> of May 2026 be set aside.*

*2.3 That the terms of the order granted on the 13<sup>th</sup> of May 2026 by her Worship Mrs T Thelede sitting as Additional Magistrate – Presiding Officer Children’s Court – Pretoria North be and is hereby reinstated.*

2.4 *Costs of suit on attorney and client scale C including costs of Counsel.*

2.5 *Further and alternative relief*".

- [2] On 2 June 2026, the application was dismissed and no order in relation to cost was made, as the application was unopposed. The reasons for that order follows *infra*.
- [3] The First Respondent is a Magistrate who presided in the Children's Court, Pretoria North and who granted the impugned order referred to in paragraph 2 of the notice of motion. Second Respondent is the Applicant's estranged wife and natural mother of the children referred to hereunder. Third Respondent is a legal representative appointed by Legal Aid to represent the minor children born of a marriage between Applicant and Second Respondent in the Children's Court proceedings referred to hereunder.
- [4] Applicant and Second Respondent are the natural parents of three minor children, a boy presently 8 years old, and two girls respectively 6 and 4 years old. Applicant and Second Respondent separated during August 2025 and during August 2025 the Second Respondent instituted proceedings in the Children's Court, Pretoria North, which resulted *inter alia* in an investigation by social workers, that the matter be referred to the office of the family advocate,

and that the Third Respondent was appointed to represent the interests of the minor children in the Children's Court proceedings.

#### **BACKGROUND TO THE APPLICATION:**

[5] The Applicant's founding affidavit sets out a history of conflict between the Applicant and Second Respondent which commenced during 2024. Essentially the Applicant alleges that a child of the Second Respondent born of a previous relationship who is much older than the three minor children born of the marriage between the Applicant and Second Respondent has exposed the minor children to sexual conduct. This, according to the Applicant, manifested while the children were in his care.

[6] The allegations made by the Applicant resulted therein that the children were removed and placed in safe custody, pending finalisation of the Children's Court proceedings. The matter was enrolled and then again postponed for purposes of investigation on various occasions, and on 13 March 2026 Mrs Theledi, an additional Magistrate presiding in the Children's Court, Pretoria North, made an order which can be summarised as follows:

[6.1] The Magistrate found that she was unable to make "*an informed finding as to whether or not the three children involved ... are in need of care and support as contemplated in terms of section 150(1)(f) and (i) of Act 38 of 2005*";

- [6.2] The Magistrate held that the Court could not at that stage find that there were evidence of neglect or abuse against the Applicant as a result of which the children had to be removed from the safe custody where they were placed, and then placed the three minor children in the temporary custody of the Applicant, pending finalisation of the Children's Court proceedings;
- [6.3] Defined rights of contact to the children were granted to the Second Respondent;
- [6.4] The matter was postponed for purposes of appointment of a legal aid attorney for the Applicant in those proceedings (Second Respondent in this matter) and a legal aid attorney for the minor children.
- [7] The matter was eventually again set down for hearing on the 14<sup>th</sup> of May 2026. On 13 May 2026, one day before the hearing, the Applicant sent an email letter to the Magistrate of the relevant Children's Court informing the Magistrate that he is called upon to conduct an inquiry as a committee member of the Health Professional Council of South Africa, for which he is paid a fee and the fee is part of his basic source of income from which he is able to "*keep afloat with the caregiving child-centred interests of the minor children*". The letter terminates with a request that the matter be postponed to the 28<sup>th</sup> or 29<sup>th</sup> of May, *alternatively* on the 5<sup>th</sup> of June, or the 11<sup>th</sup> and 12<sup>th</sup> of June 2026. After sending this letter, the Applicant did not present himself during the Children's Court

proceedings which was set down for the 14<sup>th</sup> of May 2026. Nobody appeared on behalf of Applicant to seek a postponement, and it appears from the affidavits filed by Applicant that he expected as of right that the matter would be postponed at his behest.

[8] On 14 May 2026, First Respondent made an order in terms of the Children's Act which reads:

*"An order is granted in terms of section 155(6)(b)(ii) that all three children be placed in the temporary safe care of the biological mother M[...] A[...] S[...] (ID no. 8[...]) with immediate effect, pending finalisation of the matter".*

[9] The Applicant effectively sought in the notice of motion an order that the order referred to *supra* granted on 14 May 2026 be set aside and the order referred to in paragraph 6 *supra* be reinstated.

#### **SERVICE OF THE APPLICATION:**

[10] Applicant deposed to an affidavit stating that he attempted to serve the application on Second Respondent personally, and she refused to accept service. The application was served on the other Respondents by email. No reasons are advanced why the application was not served in terms of the provisions of rule 4(1) of the uniform rules of Court. No cogent reasons exist why the matter was so urgent that non-compliance with Rule 4(1) of the uniform rules of Court should be condoned.

[11] In my view, there was no proper service of the application on any of the Respondents. The application seeks drastic relief which materially affects the rights of second Respondent and seeks to impugn an order of court. Proper service in terms of the rules is essential before such relief may be granted by this court, and paying mere lip service to the requirements of Rule 4(1) in the absence of compelling reasons erodes the rule of law. When this issue was raised with Applicant's counsel, no attempt was made to request that the matter be removed from the roll or postponed or stand down in order to cure the deficient service of the application on the Respondents. It thus follows that, on this ground alone, the application stands to be dismissed.

[12] However, for the reasons that follow, I am of the view that the application is devoid of merit.

#### **GROUND FOR THE RELIEF SOUGHT BY THE APPLICANT:**

[13] Counsel acting on behalf of Applicant argued that the Court is bestowed with the necessary jurisdiction to provide a "*declaratory order*" that the impugned order was granted unlawfully by virtue of the provisions of section 21(1)(c) of the Superior Courts Act 10 of 2013. In support of that contention, it was argued on behalf of the Applicant that the Magistrate who made the impugned order did so in the absence of the Applicant, without stating the reasons, and that such procedure is therefore "*unlawful*" and falls to be set aside. This submission is bad in law, as the provisions of section 21(1)(c) of the Superior Courts Act refers

to matters where no relief can be claimed consequential to a determination of some existing, future or contingent right or obligation, and is a discretionary remedy. That provision of the Superior Courts Act does not provide a remedy to a litigant to circumvent prescribed statutory or common law remedies, nor does it provide the court with an unfettered discretion to interfere with the orders made by another court without the appropriate remedies such as review or appeal being employed.

[14] The Applicant sets out averments in paragraphs 67 to 74 of the founding affidavit, which serves to disclose the grounds for impugning the order of 14 May 2026, and these allegations are summarised as follows:

[14.1] The circumstances under which the First Respondent made the order is not clear to the Applicant;

[14.2] The Applicant formally requested a postponement and indicated when the matter could resume; The order was thus made in the absence of the Applicant;

[14.3] When the First Respondent made the impugned order he did so when he was "*ex lege, functus officio*" and then Applicant proceeds to aver: "*I humbly submit that it is trite in South African law that a Magistrate generally cannot alter or set aside the decision, order or directives of another Magistrate*".

[15] A perusal of the aforesaid paragraphs in the Applicant's founding affidavit clearly disclose that the Applicant's grounds to impugn the order made by the First Respondent on 14 May 2026 is based thereon that such an order was incompetent because the Magistrate was not empowered to amend the order dated 20 March 2026 referred to in paragraph 5 *supra*, because First Respondent was "*ex lege, functus officio*".

**DID THE APPLICANT DISCLOSE GROUNDS TO SET ASIDE THE IMPUGNED ORDER?**

[16] On the Applicant's averments it is clear that the reasons why First Respondent granted the impugned order is not known to the Applicant. The reason for this lacuna is the fact that the Applicant was not present at Court when the impugned order was granted, nor did he request reasons and/or the record of that Court. If the reasons for making that order is not disclosed by way of an appeal or review, this Court does not have an unfettered jurisdiction to set the impugned order aside.

[17] The Children's Court is established in terms of chapter 4 of the Children's Act, No. 38 of 2005 ("*the Act*") and in terms of section 43 of the Act, a Children's Court is a Court of record and has a similar status to that of a Magistrate's Court at district level. The matters which a Children's Court may adjudicate are regulated in terms of section 45 of the Act, which includes an order for the temporary safe care of a child, care of or contact with a child. In terms of section

46 of the Children's Act, a Children's Court may make orders including an order that a child be placed in temporary safe care. Section 48 of the Children's Act provides additional powers to the Children's Court which includes the power to extent, withdraw, suspend, vary or monitor any of its orders

[18] In terms of section 46(2) of the Act, a Children's Court may withdraw, suspend or amend an order made in terms of sub-section (1) of section 46 of the Act. The Children's Court may therefore revisit any order made under the provisions of section 46(1) and withdraw, suspend or amend such order. The impugned order was clearly made in terms of the provisions of section 46(2) of the Act, and the grounds advanced by Applicant in paragraphs 68 to 74 of Applicant's founding affidavit are therefore legally untenable.

[19] The order made by a Children's Court is subject to appeal in terms of section 51 of the Act, which reads:

*"51. Appeals*

*(1) Any party involved in a matter before a Children's Court may appeal against any order made or any refusal to make an order, or against the variation, suspension or rescission of such order of the Court to the High Court having jurisdiction;*

(2) *An appeal in terms of sub-section (1) has been noted and prosecuted as if it were an appeal against a civil judgment of a Magistrate's Court, subject to section 45(2)(c)".*

[20] The impugned order is an order which falls under section 51(1) of the Act. The application *in casu* is neither a review nor an appeal. Where the Children's Act provides the Applicant with specific remedies to appeal against the impugned order, the present procedure followed by the Applicant is improper. In my view the High Court does not have unfettered jurisdiction to interfere in an order made by the Magistrate in Children's Court proceedings on vague allegations without the procedure of a proper appeal process where the reasoning of the Magistrate who issued the impugned order can be tested against the applicable facts and/or the applicable law.

[21] Applicant may approach the Children's Court and seek an amendment of the impugned order in terms of section 46(2) of the Act, which is a procedure which is best suited to the nature of the present dispute because the matter is pending in that Court, and that Court has already made extensive use of its power to investigate the matter by appointing various functionaries.

**As a result, the Application was dismissed and no order was made on cost.**

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**P A VAN NIEKERK  
JUDGE OF THE GAUTENG DIVISION,**

**PRETORIA**

APPEARANCES

**FOR APPLICANT** Adv M M Sono

INSTRUCTED BY

Samalenge Attorneys, Pretoria

**FOR RESPONDENTS** No appearance