



**IN THE HIGH COURT OF SOUTH AFRICA,
MPUMALANGA DIVISION, MBOMBELA (MAIN SEAT)**

In the application between:

CASE NUMBER: 2026-173170

(1) REPORTABLE: **NO**
(2) OF INTEREST TO OTHER JUDGES: **NO**
(3) REVISED **YES/NO**

DATE 30 JULY 2026

H.F. FOURIE
SIGNATURE

M[...] V[...] V[...]

APPLICANT

And

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

RESPONDENT

JUDGMENT

FOURIE AJ

INTRODUCTION:

- [1] The Applicant under the auspices of Rule 6(12) of the Uniform Rules of Court seeks, on an urgent basis herein, relief in terms of Section 18(5) of the Children's Act, 38 of 2005, for the removal of a minor child, 7 years of age, to the Republic of Mozambique for a period of four days to attend the wedding celebration of the Applicant with her husband to be.
- [2] The application is not opposed, as an application of this sort normally would be, but the Respondent wishes the Court to impose certain conditions on the Applicant in respect of the removal of the minor child for the period in question.

RELEVANT BACKGROUND FACTS:

- [3] The Applicant and the Respondent were formerly married and are the biological parents of the minor child concerned.
- [4] At the time of the hearing of this matter, there is an active Children's Court matter between the same litigants, seemingly dealing with many of the issues the court is currently confronted with, pending in the Children's Court for Thaba Chweu held at Mashishing, in which an outcome is still awaited. For purposes of the current application, it is not necessary to deal with that application.
- [5] The Applicant is to be married to her fiancé, one Mr L[...], in the Republic of Mozambique on 8 August 2026, for which she requested the Respondent to consent to the removal of the child for the period of 7 August 2026 until 10 August 2026.

- [6] The Respondent has never outright refused his consent in respect of the attendance at the wedding outside the country, but the required documentation in this regard has also not been signed despite several requests by the Applicant and her legal representatives.
- [7] The Applicant alleges that the refusal to sign the relevant documentation is part of a pattern of conduct wherein the Respondent waits until the very last moment to sign relevant documents for the minor child to travel with the Applicant, alternatively waits until legal action is taken to enable such travel.
- [8] It is noteworthy that the minor child has on the evidence available, travelled with the Applicant outside the jurisdiction of the country at least on three occasions already in 2026.
- [9] Of further importance for the matter is that the minor child ordinarily resides with the Applicant and L[...]. The Respondent opposes the application premised firstly thereon that, according to the Respondent, the application is not urgent and that there has been non-compliance with the Practice Directives of this Court and thereafter indicating that the Respondent, as stated, does not oppose the minor attending the wedding in the Republic of Mozambique but seeks certain requirements to be embedded into the order of Court ultimately granted and to be imposed in the Applicant for purposes of, as the Respondents states, the protection of the minor child.

[10] The concerns raised by the Respondent seemingly relate to incidents ranging from September 2023 until the latest travels to Mozambique on 1 July 2026, and concerns allegations of alcohol abuse by the Applicant and L[...] whilst in Mozambique and an incident in the June holidays of 2026 wherein the minor child bumped her head while travelling at the back of a vehicle in Mozambique.

[11] It is noteworthy that the Respondent made no counter application in the current application but sought both in their answering papers as well as in argument for the following conditions to be incorporated into any Order the Court might make:

[11.1] The child would not be exposed to any harmful behaviour.

[11.2] Any vehicle in which the child travels would not be operated in a reckless or negligent manner.

[11.3] Mr L[...] would not injure or harm the child.

[11.4] The child would not be exposed to any violent or aggressive outbursts by L[...].

[11.5] The child would not be exposed to any verbal or physical altercations between the Applicant and L[...].

[11.6] The child would not be exposed to any person who had consumed alcohol in excess or who was intoxicated.

[11.7] Upon the return from the trip, the child would be evaluated by Ms Hatting to investigate the repeated allegations mentioned previously.

[12] In order for the timeline to reflect correctly, the consent for the travel to Mozambique for the purpose of the wedding was sought mid-June 2026, and the current application was brought 20 July 2026.

[13] It seems as if several of the issues complained of by the Respondent are issues currently serving in the Children's Court. In so far as it relates to the incident during the recent visit in Mozambique, the minor child was examined by a medical doctor on the insistence of the Respondent on 3 July 2026, after which the doctor states in his medical certificate that:

"On questioning the child I could not detect any signs of violence or abuse."

URGENCY:

[14] During the argument, the Court already pronounced on urgency and found the matter to be sufficiently urgent, and what follows is the reasoning therefor.

[15] A litigant who approaches Court for leave on an urgent basis must comply with

Rule 6(12)(b) of the Uniform Rules of Court. The Rule reads as follows:

“In every affidavit of petition filed in support of any application under paragraph (a) of this sub rule, the Applicant shall set forth explicitly the circumstances which he avers render the matter urgent and the reason why he claims that he could not be afforded substantial redress at a hearing in due course.”

[7] The importance hereof is that the procedure as set out in Rule 6(12) is not there for the mere taking. An Applicant has to set forth explicitly the circumstances which he avers render the matter urgent. More importantly, the Applicant must state the reasons why it claims that it cannot be afforded substantial redress at a hearing in due course. The question of whether a matter is sufficiently urgent to be enrolled and heard as an urgent application is underpinned by the issue of absence of substantial redress in an application in due course. The Rules allow the Court to come to the assistance of a litigant because if the latter were to wait for a normal course to be laid down by the Rules, it would not obtain substantial redress. It is important to note that the Rule requires the absence of substantial redress. This is not equivalent to the irreparable harm that is required before the granting of an interim relief. It is something less. He may still obtain redress in an application in due course, but it may not be substantial. Whether an Applicant will not be able to obtain substantial redress in an application in due course will be determined by the facts of each case. An Applicant must make out its case in this regard [1].

[8]. There are thus two requirements that must be set forth in the Founding Affidavit in order to satisfy the requirements of the Rule[2]. Whether an

Applicant has succeeded in satisfying the requirements for urgency must be determined from the contents of the Founding Affidavit[3].

[9] In **LUNA MEUBELVERVAARDIGERS (PTY) LTD V MAKIN & ANOTHER 1977**[4] Coetzee J held with reference to Rule 6(12)(b) the following:

“Mere lip service to the requirement of Rule 6(12)(b) will not do, and an Applicant must make out a case in the Founding Affidavit to justify the particular extent of the departure from the norm which is involved in the time and day for which the matter be set down.”

[16] The test, insofar as it relates to urgency, remains, at its core, whether, if the Court does not deal with the matter at the current juncture and allows the matter to be heard in the normal course, the Applicant will be able to obtain substantial redress. Substantial redress will depend on the facts of each specific matter. [5]

[17] The Court takes judicial notice of the fact that should a matter be enrolled to be heard on the opposed Motion Court roll as at the date of this judgment, the date obtained from the Registrar will be approximately one year from the date of such enrolment.

[18] Under the circumstances, if the Applicant was to wait for the matter to be heard on the normal roll, a period in excess of approximately eight months after the Applicant’s wedding would have passed by the time the application is ultimately heard.

- [19] It cannot seriously be contended by the Respondent that substantial redress would be forthcoming if the matter is heard in the normal cause.
- [20] The only other aspect the Court needed to evaluate was whether the urgency in respect of the matter was self-created.
- [21] After setting the wedding date, the Respondent was immediately approached for his consent, and the Court cannot find that the application was not brought within a suitable time after the Applicant exhausted all reasonable measures to attempt to resolve the matter without the need for litigation. The urgency cannot be said to be self-created.
- [22] The Respondents contend that there exists non-compliance with the practice directives of this Court.
- [23] Practice Directives and the Rules of Court serve as a guiding principle to facilitate the finalisation of matters. The Courts will not be tied down to Practice Directives or Rules where a deviation therefrom is justified or required.
- [24] In the current matter, the Respondents complain that the full bundles in respect of the matter ought to have been filed both by the Applicant and the Respondent by 12h00 on Thursday preceding the hearing date. Failing the aforesaid, the matter should be regarded as non-compliant and should be struck from the roll.

- [25] I do not agree with the Respondent's contentions. The Practice Directives indicate that a matter ought to be enrolled by 12h00 on a Thursday preceding the hearing date of a matter on the coming Tuesday in this Division. This is not, however, a rule that cannot be circumvented, and in appropriate circumstances and upon explanation by the parties, a deviation in respect hereof can be granted.
- [26] To find that a matter would only be enrolled once all the papers in respect of the matter had been filed by a certain date in Urgent Court proceedings would make no practical sense, as it would open the door for a Respondent to merely delay the finalisation and filing of their own answering papers to ensure non-compliance and to ensure that a matter would not proceed.
- [27] Insofar as it is necessary, the Court states that the Respondent's reasoning is not an acceptable evaluation or interpretation of the Practice Directives.
- [28] When the matter was brought to Court, ultimately all the issues were thoroughly canvassed, and full affidavits with supporting documents were filed by the respective parties. Given further the very crisp issues involved in respect of the matter, and the fact that the application and the relief sought are in essence not opposed by the Respondent, the allegations of prejudice as averred by the Respondent are simply non-existent.
- [29] For all the aforesaid reasons the matter was found to be urgent and was dealt with as such.

APPLICABLE LEGAL PRINCIPLES:

BEST INTEREST OF THE MINOR CHILD:

[30] Both the Applicant and the Respondent vehemently contended that the matter at hand concerned the best interest of the minor child.

[31] This Court aligns itself with the Court in ***LA v EFV*** [6] where Moshoana J indicated that there is a marked difference between the best interest of a minor child and the interest of the parents.

[32] The Court in the aforesaid matter expressed a strong view that matters such as the one at hand do not concern the best interest of a minor child but rather the exercise of parental responsibilities and rights. During argument in respect of the matter, this Court similarly expressed the same view with the respective legal representatives and indicated, as it hereby does again, that the current matter, although dealing with the travel arrangements pertaining to a minor child, does not concern the best interest of a minor child, but rather the interest of the respective parents.

[33] In coming to the conclusion the Court ultimately does, the Court needs to consider whether such a decision could adversely affect the rights of the minor child, but the motives in respect of the matter both by the Applicant and the Respondent are not premised, on the evidence presented to me, in what would be the best interest of the minor child; it is evidently rather a case of the respective parties trying to enforce their own rights.

[34] In **LW v DB**,^[7] the learned Satchwell J stated the following:

“The ‘best interest’ principle is used to provide a framework for addressing the entire range of major issues affecting children. The principle may be invoked in relation to and in the context of the separation of the child from the family setting, adoption and comparable practices, parental responsibility for the upbringing and development of the child, the child’s involvement with the police and the justice system, the provision of housing and social services, access to schooling and so on.”

[35] The learned Satchwell J continued and stated the following:^[8]

“A child’s best interest is the pre-eminent consideration amongst all other considerations. However, the Legislature did not intend the “best interest” of a child to be the sole or exclusive aspect to be considered because it did not prescribe that the child’s “best interests” are the only factors to be considered or the sole determinant of the exercise of the court’s discretion. The ‘best interests’ is the paramount consideration within the hierarchy or concatenation of factors but it is not always the only factor receiving consideration in matters concerning children.”

[36] This Court further aligns itself with the view in *LA v EFV supra* that applications in terms of Section 18(5) are not designed to be an application to compel a party to provide consent. Even though the Court might not agree with a party's refusal to provide consent, that is the reason the Court is then approached to intervene.

[37] Nothing in the papers indicates that the views of the minor child were obtained in respect of the matter at hand. Nothing before this court indicated that the minor child would not want to attend the wedding of her mother. It seems as if the minor child will be a flower girl at the wedding and that she will form part of the core functionaries at the occasion.

EVALUATION:

[38] During argument it was canvassed with the Respondent's legal representative that what the Respondent is seeking in the current application is, in essence, an order against L[...] to protect the minor child from potential harmful behaviour at the hands of L[...] and that such an Order would not be competent under circumstances where L[...] has not been joined to the proceedings.

[39] The principles pertaining to *audi alteram partem* form one of the cornerstones of the South African Procedural Law.

[40] If the Respondent intended to seek an Order against L[...] or any of the attendees of the Applicant's wedding, then the Respondent ought to have joined such parties to the current proceedings and ought to have sought relief in that respect by way of counterapplication.

[41] L[...] was neither joined in the proceedings nor is any relief sought against him, and as such the requirements the Respondent wishes to impose on L[...] cannot competently be granted by this Court.

[42] The Respondents further seek that the Court impose a *proviso* on the Applicant that the Applicant shall ensure that no harm befalls the minor child during the period in question. The Court expressed its concern with this *proviso* with the Respondent in that the *proviso* was unspecified and extremely wide and would be open to abuse by the Respondent. The Respondent fails to indicate what would ultimately constitute harm to be suffered by the minor child, and if such a *proviso* is ultimately inserted by the Court, any single occurrence in the minor child's life during the period in question which is not to the liking of the minor child could lead to the Applicant being found in contempt of the Order of Court the Respondent seeks. The Court is mindful that there are eventualities of life, and despite the best efforts of any parent, unforeseen circumstances might arise.

[43] The Orders the Respondent seeks to incorporate would be incorporated if the Court is persuaded to believe that the Applicant as the mother of the child, should be directed and guided on how to deal with the minor child, absent which the Court would believe harm could befall the minor child, and that as the upper guardian of the minor child the Court would need to impose certain conditions and restrictions.

[44] It is noteworthy and cannot be contested that the minor child ordinarily resides with the Applicant and L[...]. Although the Respondent indicates that the complained of actions generally occur when the Applicant and L[...] are on holiday in Mozambique with the minor child, if the complained of actions were of such a serious nature, the Court would have expected that the

Applicant would have sought immediate action against the Applicant and L[...] for the removal of the minor child from their care.

[45] The Respondent further does not oppose the minor child attending the wedding in Mozambique, and evaluating same against the aforesaid backdrop, the Court finds no reason why certain conditions or requirements ought to be inserted into the Order of Court as conditions to the minor child being removed from this jurisdiction.

[46] If the concerns of the Respondent were of such a serious nature, then surely the Respondent would have opposed the removal from this jurisdiction for the period concerned and would not have allowed the minor child to travel with the Applicant and L[...] under any circumstances.

[47] The court cannot accept that a concerned parent who seriously believes his child is being physically harmed by another man and has been for a period of time, somehow becomes rest assured that his child will be kept safe upon the written undertaking, not by that person but by another person. The court further fails to appreciate how a written undertaking not to harm a child serves any purpose. If an individual is of such a deprived state of mind that they harm children, a previous written undertaking not to do so by their legal representatives would not suddenly change their minds to refrain from such actions.

[48] The complained-of incidents are unproven and, at this stage, amount to speculation on the part of the Respondent.

- [49] The Court finds difficulty in imposing the requirements the Respondent seeks under circumstances where the Respondent has continuously allowed the removal of the minor child to attend holiday with the Applicant and L[...] and allows the minor child to remain ordinarily resident with the Applicant and L[...], but, when it pertains to the attending of the Applicant's wedding, certain restrictions ought to be applied.
- [50] It is an unthinkable proposition that the Applicant would wilfully allow any sort of harm to befall her minor child.
- [51] Given the concern the Respondent has displayed in respect of the matter, the Court is satisfied that, should any harmful action occur, the Respondent will be well within his rights to immediately approach this Court to vindicate the rights of the minor child.
- [52] None of the rights of the Respondent or the minor child will in any way be foregone if the conditions as sought by the Respondent are not imposed on the Applicant in the order ultimately made.
- [53] It is evident that the Respondent appreciates the importance of the Applicant's wedding and the fact that the Applicant wants her minor child to attend this day. The Respondent's requirements to impose certain restrictions on the removal of the minor child, and specifically the manner in which those requirements have been phrased, are not justified.

[54] If the Respondent seriously wished the Court to impose such sanctions, the Respondent ought to have joined L[...] in these proceedings and made an application against L[...] to protect the interests of the minor child which the Court could then evaluate.

[55] The argument could be raised that the Court should take an over-cautious approach and insert the required prayers into the Court Order as prayed for by the Respondent. The difficulty with the aforesaid approach would be that such an order would remain open to possible abuse and would encourage a principle whereby orders are granted by the Court at a party's mere say-so under circumstances where such orders are not justified.

[56] An order of Court should be granted upon justified facts and principles.

[57] In the current matter, it is not justified that the restrictions the Respondent wishes to impose are incorporated into the order ultimately made.

COSTS:

[58] During argument, it was conceded by the respective counsels, given the nature of the matter and the existing litigation between the respective parties, that it would be in the interest of justice for no cost order to be made. The Court aligns itself with this view.

CONCLUSION:

[59] The Respondent indicates that he has never refused consent for the minor to attend the wedding of the Applicant in the Republic of Mozambique. By failing to sign the relevant documentation, the Respondent's actions amount to nothing short of a denial of consent.

[60] The refusal to sign the required documentation is not justified and as such the relief as sought by the Applicant is to be granted.

ORDER:

[61] For all the reasons as stated before, the following Order is made:

61.1 The forms, service, and time periods provided by the Uniform Rules of Court are dispensed with, and this application is heard as one of urgency in terms of Rule 6(12).

61.2 In respect of Section 18(5) of the Children's Act, 38 of 2005, the requirement for the Respondent's consent as contemplated in Section 18(3)(c)(iii) of the said Act is dispensed with for departure of the minor, Z[...] v[...] V[...], a girl born on 8 October 2018, with Identity Number: 1[...] (the "minor child") from the Republic of South Africa for the period of 7 August 2026 to 10 August 2026.

61.3 The Applicant is authorised to remove the minor child from the Republic of South Africa for the purpose of travelling with the Applicant to Villa Mhabanga, Bilen, in the Republic of Mozambique for the period of 7

August 2026, and the Applicant is directed to return the minor child to the Republic of South Africa on or before 10 August 2026.

61.4 It is directed that this Order, alternatively a certified copy thereof, shall stand in the place of the Respondent's parental consent affidavit for all purposes contemplated in the Children's Act, 38 of 2005, the Immigration Act, 13 of 2002 and the Regulations promulgated thereunder and that same may be presented to the Department of Home Affairs, and Immigrational Board or Official of the Republic of South Africa, any official of the Republic of Mozambique, and any carrier or any other person enquiring proof of parental consent for the travel referred to in Order 3 above.

61.5 This Order shall be translated into Portuguese for the purposes of same being made available to the relevant officials of the Republic of Mozambique.

61.6 Each party shall pay their own costs.

H F FOURIE AJ
ACTING JUDGE OF HIGH COURT, MBOMBELA

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Matter heard on:

28 JULY 2026

Judgement delivered on:

30 JULY 2026

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- [1] Eastrock Trading 7 (Pty) Ltd & Another v Eagle Valley Granite (Pty) Ltd & Others (11133767) [2011] ZAGPJHC 196 (23 September 2011)
- [2] Salt & Another v Smith 1991 (2) SA 186 (NM) at 197 A
- [3] Il & B Marcow Caterers v Gretermans SA 1981 (4) SA 108 (C) at 111 A
- [4] Luna Meubelvervaardigers (Pty) Ltd v Makin & Another 1977 (4) SA 135 (W)
at
137 F
- [5] Swanepoel v Harris and Others [2025] JOL 73077 (MM)
- [6] LA v EFV (2024-017275) [2024] ZAGPPHC 213 (11 March 2024)
- [7] LW v DB 20 (1) SA 169 (GJ)
- [8] Id at para 61