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REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

Case Number: 2026-193934

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: NO
<u>21 August 2026</u> DATE	

In the matter between:

A[...] O[...] K[...]

Applicant

and

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

First Respondent

THE FAMILY ADVOCATE, JOHANNESBURG

Second Respondent

JUDGMENT

Mahosi J

Introduction

[1] The applicant brought an urgent application seeking authorisation to relocate permanently with the children from South Africa to Fujairah, United Arab Emirates. The

relocation is said to be necessitated by a time-limited offer of employment that includes secure income, accommodation and schooling for the children.

[2] The first respondent, the minor children's father, is self-represented and opposes the application on the basis that it is not urgent and procedurally irregular. On the merits, he alleges that the relief sought cannot properly be granted on the papers as they stand.

[3] The applicant's first hurdle is that of urgency.

Urgency

[4] Rule 6(12) of the Uniform Rules of Court regulates urgent applications, and it requires the applicants to set out explicitly the circumstances rendering the matter urgent and the reasons why they claim that the application could not be afforded substantial redress at a hearing in due course. In this matter, the applicant contends that her need for urgency stems from a fixed employment schedule. She states that she received a job offer on 22 July 2026, which requires her to start work on 24 August 2026. The applicant explains that she initially planned to travel earlier to settle her children and manage onboarding arrangements. However, she has not been able to do so because she has respected the first respondent's refusal to consent and has not taken the children without legal permission.

[5] The applicant argues that the urgency did not arise from any delay on her part, as she approached the first respondent about relocation on the very same day the employment opportunity became available. She asserts that if the matter is dealt with through the ordinary legal process, she risks losing the job, accommodation, and related benefits, and that any later judgment would be ineffective. Furthermore, she believes that a later judgment affirming her right to relocate would provide no meaningful remedy if the employment opportunity that made the relocation possible has already vanished.

[6] The applicant states that her attorney, recognised for high-profile cases, prepared her application pro bono, despite managing multiple urgent matters during that period. While acknowledging that the first respondent may encounter challenges due to

increased geographical distance, the applicant believes these challenges can be addressed through electronic communication, structured physical meetings, professional intervention, access to school and medical information, and appropriate travel arrangements. She asserts that the proposed order aims to preserve the first respondent's parental rights while enabling necessary adjustments to facilitate the relocation.

[7] The first respondent contends that the applicant's statements contradict her claim for urgent court intervention. In her founding affidavit, the applicant suggests that her departure and the children's relocation are severable, as family members can assist with the children's travel to Fujairah if she must leave for her job first. This Court agrees that this concession undermines the urgency of the situation. If the applicant can secure her position while making proper arrangements for the children, there is no real urgency to relocate them.

[8] The first respondent argues that the timing and management of this application do not demonstrate the urgency that is now being claimed. He submits that the founding affidavit, certificate of urgency, and notice of set down were filed after the urgent roll had already closed. Additionally, the first respondent contends that the timeline set for submitting answering and replying papers did not comply with Consolidated Practice Directive 1 of 2003, which states that the urgent roll closes at noon on the Thursday prior to the following Tuesday and requires applicants to allow respondents adequate time to consider the appropriate notice.

[9] The record shows that the application was served on the first respondent on Thursday, 13 August 2026, at 23:36, but was filed only on Friday, 14 August 2026. According to the timetable outlined in the Notice of Motion, the first respondent was required to submit his answering affidavit by 17:00 on 16 August 2006. However, the replying affidavit was due on 12 August 2026, a day before the application was initiated. The applicant's attorney attributed the incorrect date of the filing of the replying affidavit to a simple typo but failed to explain why the founding affidavit was only filed on 14 August 2026. Additionally, the replying affidavit was delivered only on the eve of the

hearing, without any application to condone the resultant non-compliance. It is apparent that the applicant did not pursue her litigation with the urgency she requests this Court to acknowledge, suggesting that her self-imposed abbreviated timetable was inadequate.

[10] Even if urgency were established, the first respondent argues that this matter is not suitable for a final determination based on the current documents. He correctly points out that relocation disputes require a thorough, fact-intensive inquiry into the children's best interests, which remains materially incomplete herein. The Office of the Family Advocate has not prepared a relocation-specific report, and the existing report was compiled without interviewing the first respondent. Furthermore, the children's views have not been independently surveyed as required by section 10 of the Children's Act¹.

[11] The first respondent asserts that the United Arab Emirates is not a party to the Hague Convention on the Civil Aspects of International Child Abduction. As a result, he argues that any order this Court issues regarding the return of the child or contact arrangements would rely on the applicant's voluntary cooperation, rather than a reciprocal enforcement mechanism. This situation clearly warrants closer examination before making any decisions about permanently relocating the children to that jurisdiction. Additionally, the founding affidavit does not address the security conditions in the intended destination, including travel advisories and reported incidents in Fujairah.

[12] The first respondent notes that no parenting plan or court order governs care and contact arrangements. Further, the parties dispute the nature and history of contact, including the first respondent's previously rejected offers of supervised contact. Additionally, the first respondent's conviction for assault, which is pertinent to the assessment of contact and the child's best interests, is currently being contested. Furthermore, the parties still have unresolved financial matters. These are material disputes of fact that directly affect the children's best interests, and which cannot be

¹ Act 38 of 2005, as amended.

fairly or safely resolved through affidavits, especially not within the tight timeframe of an urgent application.

Conclusion

[13] In light of the above, the applicant has not demonstrated that this matter cannot be adequately addressed in the normal course, nor that any urgency which does exist is other than of her own making. The proper course is to ventilate the relocation application on a normal opposed motion roll, with the benefit of a completed Family Advocate's investigation addressing relocation specifically, an independent ascertainment of the children's views, and a full opportunity for both parties to place complete evidence before the Court.

[14] This Court is mindful that striking the matter off leaves the children's day-to-day situation unregulated in the interim. That is a legitimate concern, but it is a consequence of the manner in which this application was brought, not a reason to condone a defective urgent application or to grant final relief on an inadequate record. Either party may still approach the Court, on proper notice, for interim relief regulating contact pending the hearing of the relocation application in the normal course.

Order

[15] Accordingly, the following order is made:

1. The application is struck from the urgent roll for want of urgency.
2. There is no order as to costs.

D Mahosi
Judge of the High Court
Gauteng Division, Johannesburg

Heard on: 18 August 2026

Delivered on: This judgment was handed down electronically by circulation to the parties' legal representatives by email and uploaded on Caselines. The date and time for hand-down is deemed to be 21 August 2026.

Appearances

For the applicant: Mr Muhammed Vally of MViP Attorneys

For the first respondent: Self