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**IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN**

Not reportable

Case no: 6312/2024

In the matter between

A[...] E[...] (BORN S[...])

APPLICANT

and

T[...] L[...] E[...]

RESPONDENT

Neutral citation: *E[...] v E[...]* (6312/2024) [2026] ZAFSHC 424 (4 September 2026)

Coram: DANISO J

Heard: 5 March 2026

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email and released to SAFLII. The date and time for hand-down is deemed to be 14:00 on 04 September 2026.

Summary: Transfer of the divorce action from one division to another – aspect of convenience or appropriateness – best interests of the child – application dismissed.

ORDER

The application is dismissed with costs.

JUDGMENT

Daniso J

[1] The parties are biological parents of one minor child, a son born on 8 June 2023. On 6 November 2024, the applicant issued summons against the respondent in this Court seeking a decree of divorce to dissolve their marriage in community of property, that primary residence of the minor child be awarded to her, the respondent's contact rights in respect of the minor child as provided for in section 18(2)(b) of the Children's Act 38 of 2005 be suspended pending the final report of the family advocate. An order is also sought for the respondent to pay child maintenance and related medical and school expenses. The divorce action is defended.

[2] On 23 October 2025, approximately eleven months after the divorce summons was issued, the applicant launched these proceedings in terms of which she seeks an order for the transfer of the divorce action from this Court to the Eastern Circuit Local Division of the High Court, George, in the Western Cape (the Western Cape High Court Division).

[3] On the papers, it is common cause that prior to the institution of the divorce action, the parties and the minor child resided within the jurisdiction of this Court, in Bloemfontein. Towards the end of October 2024, the applicant relocated to the Western Cape with the minor child.

[4] It is the applicant's case that she relocated to the Western Cape in order to escape from the domestic violence the respondent has subjected her and the minor child to, which includes physical violence, emotional abuse, intimidation and harassment. She has two interim protection orders and a criminal case of assault that she also lodged against the respondent in Bloemfontein. In the Western Cape, she and the minor child live with her parents, who have become her support structure. The minor child has responded positively to the move and has also shown signs of development and emotional improvement. The applicant submits that the application is premised on the best interest and well-being of the minor child because, the minor child's pre-primary school teacher, Ms Coreen Hefer has reported that the minor child is being negatively affected when the applicant has to travel to Bloemfontein for the divorce case, the minor child is very attached to the applicant as she is his safe haven and he is still very young.

Annexure 'AE6' is Ms Hefer's letter dated 14 October 2025.

[5] The applicant points out that already in May 2025, the Bloemfontein family advocate had recommended that the primary residence of the minor child be vested with her and the respondent to have supervised contact. In the Western Cape, the applicant appointed a play therapist, Ms Sulindi van Wyk, to conduct sessions with the minor child to address his affected emotional well-being. The preliminary report in that regard is attached to the founding affidavit as Annexure 'AE8' and 'AE9.' The therapy sessions are ongoing. The investigation by the Bloemfontein family advocate was conducted while the minor child was still too young to participate. The office of the family advocate in George would be practical and accessible for any future evaluations instead of having the minor child travel to and from Bloemfontein. The minor child is also attending school and ongoing therapy in George. Based on all these reasons, it would be in the best interests of the minor child that the divorce case be transferred to the Western Cape High Court Division.

[6] According to the applicant, there would be no prejudice to the respondent as no order is sought against him; the application was merely served on him for notice purposes.

[7] In addition to opposing the application on the merits, the respondent also raised *in limine* objections directed at the defects pertaining to the commissioning and attestation of the founding affidavit and the applicant's misconstrued reliance on the provisions of the Uniform Rule 39(22) which refers to transfer of matters from the high court to the magistrates' courts instead of s 27 of the Superior Courts Act 10 of 2013 (the Act).

[8] At the commencement of the proceedings, the respondent abandoned the points *in limine* essentially on the basis that the errors in the founding affidavit are minuscule and in her replying affidavit, the applicant has conceded that the correct statutory provision governing applications of this nature is s 27 of the Act. The respondent objects to the applicant's reliance on Ms van Wyk's report dated 7 January 2026 and attached to the replying affidavit as Annexure 'RA2.' The basis of the objection is that the report raises new matters in that it recommends that the transfer of

the divorce proceedings to where the minor child is currently residing would be in the best interests of the child, as it would avert unnecessary trauma of further court proceedings. The respondent contends that the applicant is not entitled to raise new matters in reply, Ms van Wyk's report is accordingly *non pro scripto*, it must therefore be set aside.

[9] The applicant countered that the assessment of the minor child by Ms van Wyk is not a new matter. The applicant has already alluded to it in her founding affidavit, including the fact that the assessment was ongoing.

[10] I have considered the content of the applicant's replying affidavit accompanied by Ms van Wyk's impugned report. While I agree with the applicant's contention that the issue pertaining to the appointment of Ms Van Wyk's appointment to conduct the therapeutic assessment of the minor child has been dealt with in the founding affidavit, it is however clear that the report accompanying the replying affidavit raises new matters to counter the respondent's case. In the initial report, Ms van Wyk stated that she was requested to assess the minor child's well-being in relation to the effects of the previous as well as the current home life experiences including the traumatic repercussions of domestic violence on the minor child whereas, in the impugned report, Ms van Wyk digresses and states that it would be in the best interests of the minor child that the divorce action is transferred to where the minor child is currently residing because, he is familiar with the surroundings, the environment and attending school therefore there will be no added unnecessary trauma in further court proceedings.

[11] It is tested law that all the essential averments that an applicant relies upon must appear in the founding affidavit, an applicant is not entitled to make or supplement her case in her replying affidavit. I have found no exceptional reasons to permit the new matters raised in reply,¹ they do not take the applicant's case any further. The objection is accordingly decided in favour of the respondent; Ms van Wyk's report dated 7 January 2026 is struck out from the applicant's replying affidavit.

[12] The merits of the application are opposed on the grounds that s 27 of the Act empowers a Division, on application, to order that the proceedings be removed to

¹ *Mostert and Others v Firstrand Bank t/a RMB Private Bank* [2018] ZASCA 54; 2018 (4) SA 443 (SCA) para 13.

another Division where it appears that the divorce proceedings should have been instituted in another division or the proceedings would be more conveniently or more appropriately be heard by another court having jurisdiction or by a Division sitting at another place. In this matter, it is not the applicant's case that the divorce proceedings should have been instituted in another division; therefore, to succeed with this application, she must show good cause why it would be more convenient or appropriate that the matter be heard in the Western Cape High Court Division. In this regard, factors such as fairness between the parties, the interests of justice, the location of witnesses, costs and the stage of the proceedings play a role in the determination of applications of this nature.

[13] It is the respondent's case that the applicant has failed to discharge this burden in that, when she instituted the divorce proceedings, she had already relocated to the Western Cape with the minor child, thereby curtailing his contact rights. She accepted the inconvenience of a distant forum; she cannot rely on the same inconvenience to justify a later transfer. Not only did the applicant institute the divorce proceedings in this Court, but she also applied for the latest interim protection order and opened a criminal case against him in Bloemfontein a day before she issued the divorce summons. The applicant was legally represented at all times; she cannot repudiate her choice of court because it clearly no longer suits her litigation strategy. Relying on *Kamupungu v Road Accident Fund*,² the respondent argued that a transfer that merely substitutes one party's inconvenience for the other's does not constitute good cause, her choice of forum as *dominus litis* carries substantial weight and creates a strong presumption in favour of the existing forum.

[14] The respondent submits that the divorce case is at an advanced stage; the applicant participated at every stage of the proceedings, of her own accord, and referred the investigation pertaining to the child's best interests regarding primary residence and care of the minor child to the family advocate in Bloemfontein. Both parties attended the consultation with the family advocate, an investigation was duly carried out, and the reports of the family counsellor and family advocate were finalised on 9 August 2025 and 25 August 2025, respectively. The pleadings are now closed. The more advanced the proceedings, the stronger the case against the transfer.

² *Kamupungu v Road Accident Fund* [2023] ZAECKMKHC 37; 2023 (4) SA 627 (ECM); [2023] 3 All SA 176 (ECG) para 32.

[15] The respondent contends that the transfer of the divorce action has nothing to do with the convenience test as contemplated in s 27(1)(b); the motive of this entire application is merely to dispute the existing family advocate's report recommendations by seeking to appoint an alternative family advocate in George. She found the recommendations of the Bloemfontein family advocate unfavourable. Any expert required to conduct the assessment of the minor child, including a family advocate, can do so where the minor child is currently residing and file their report with this Court.

[16] In reply, the applicant explains that she was advised by her erstwhile attorney that she could not institute the divorce action in Western Cape High Court Division as she had been living there for about two weeks and due to the fact that she had also had a pending domestic violence and assault case involving her and the respondent in Bloemfontein it would be convenient that she also institute the divorce action in this Court. The applicant is adamant that the transfer of the divorce action is not for her own benefit but for the minor child, as in any family-related matter which involves children is litigated where the child is domiciled, whether it is maintenance or care and contact rights. She also points out that she intends to apply at the appropriate forum in George for assistance with a parenting plan.

[17] Section 27(1) of the Act deals with the removal of proceedings from one Division to another or from one seat to another in same Division. It provides thus:

‘(1) If any proceedings have been instituted in a Division or at a seat of a Division, and it appears to the court that such proceedings-

(a) should have been instituted in another Division or at another seat of that Division;
or

(b) would be more conveniently or more appropriately heard or determined-

(i) at another seat of that Division; or

(ii) by another Division,

that court may, upon application by any party thereto and after hearing all other parties thereto, order such proceedings to be removed to that other Division or seat, as the case may be.’

[18] On the facts germane to this matter, it is indisputable that this Court is the

proper forum to hear the parties' divorce. As regards the aspect of convenience or appropriateness of the hearing of the matter by another Division, the court has the discretion to transfer a matter if satisfied that the applicant has discharged the onus of not merely alleging but proving the jurisdictional facts required by s 27(1)(b)(ii) on a preponderance of probabilities namely, convenience to parties and witnesses, costs and the interests of justice. The best interests of the minor child as contemplated in s 28 of the Constitution also play a role.

[19] On the applicant's own admission, the fact that the parties are also embroiled in pending domestic violence and assault cases in this Court's jurisdiction was also a motivating factor in terms of convenience for instituting the divorce action in this Court. The child's best interest cannot be raised rhetorically but requires the court to exercise its discretion judicially upon a consideration of all the facts of the case and fairness to both sides. Most importantly, they must be demonstrated by the applicant as the party seeking the transfer.

[20] The proceedings sought to be transferred involve the dissolution of the parties' marriage, the jurisdiction is regulated by s 2 of the Divorce Act 70 of 1979. Matters which require the consideration of the best interests of a child when determining the territorial jurisdiction of the Court are those matters involving child issues such as maintenance, primary residence, guardianship and care. The Court which has jurisdiction to hear such matters is the Court within whose area of jurisdiction the child concerned is ordinarily resident.³ The applicant is alive to this fact; hence, it is her contention that she will be approaching the court in the Western Cape to assist her with a parental responsibilities and rights agreement which will outline their respective responsibilities and rights pertaining to the minor child.

[21] It is undisputed that the pleadings in the divorce action have closed. I am of the considered view that it is not in the interests of justice to transfer a matter which is at such an advanced stage to another Division, which would also offend the principle of finality in litigation. There is no hindrance to any family advocate or an expert required to conduct the assessment of the minor child to do so where the minor child is currently residing and file their reports with this Court.

³ Section 29 of the Children's Act 38 of 2005.

[22] In the light of the above reasons, I am not persuaded that the applicant has made out a proper case for the relief she seeks.

Costs

[23] With regard to costs, there is no reason why the costs should not follow the result.

Order

[24] In the result, the following is made:

The application is dismissed with costs.

NS DANISO
JUDGE OF THE HIGH COURT

Appearances

For the Applicant: JM Verwey

Instructed by: JM Verwey INC, George
C/O Hill McHardy & Herbst INC, Bloemfontein

For the Respondent: D Fouché

Instructed by: Vosloo Attorneys, Bloemfontein