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IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION,

Case no: 037761/19

(1) REPORTABLE: NO/Yes	
(2) OF INTEREST TO OTHERS JUDGES: NO/Yes	
(3) REVISED	
2019	
DATE	SIGNATURE

In the matter between:

B: G

Applicant

and

B: M

Respondent

JUDGMENT

MOLAHLEHI. J

Introduction

[1] This matter which was brought on the urgent basis concerns the relocation of the parties' two children who are 12 and 16 years old. The Applicant, the father seeks to have the children permanently relocated from South Africa to the

Netherlands. The two parties are divorcees, and they currently share the residency of the children equally.

[2] The intended time of departure from South Africa to the Netherlands is 27, December 2019. If successful in this application, it means that the primary residence of the children shall be with the Applicant with the Respondent having reasonable contact with them.

[3] The Applicant asserts that from July to October 2019, the Respondent, in principle, agreed to the children's relocation to the Netherlands. The children would leave South Africa at the end of December 2019, for them to commence schooling in January 2020.

[4] The parties agreed to engage the services of an independent psychologist to assess the views and wishes of the children concerning relocation. The parties also agreed that the children would have to attend Dutch classes before leaving South Africa.

[5] The Respondent changed her view about the children leaving South Africa permanently to go and stay in the Netherlands. Her belief is that the children should go to the Netherlands for six months and come back to South Africa for an assessment as to how they would have coped during the stay for that period.

[6] It is common cause that the Applicant advised the Applicant about her changed view on 3 October 2019. She changed her view despite the findings of the

psychologist, Ms Johnson that it was in the best interest of the children to relocate to the Netherlands.

[7] The Applicant has since July 2019, made all the arrangements necessary for the travelling and accommodation of the children, including their schooling once they arrive in the Netherlands.

[8] The Applicant decided to move to the Netherlands after obtaining employment in that country. He is moving with his fiancée and her three children from a previous relationship.

[9] In the founding affidavit, the Applicant proposed various ways in which the Respondent would be able to contact the children once they have left the country. This includes the Applicant having to pay for a flight ticket once a year for the Respondent to visit the children. The Applicant further narrates various attempts to reach reaching consensus about how the Respondent could have contact with the children.

[10] According to the Applicant, the reasons for bringing this matter on the urgent basis was because he had a "volte face" when he was advised on 3 October 2019 that the Respondent was no longer consenting to the location of the children. In paragraph 13 of the founding affidavit he states, amongst other things, that the reasons for urgency are the following:

"13 The matter has become urgent because, to the Respondent's knowledge, I received a job offer from Rabobank in Utrecht,

Netherlands, and I am to commence my employment on 1 November 2019.

- 13.1. My home in Robindale has been sold, and the moving company is packing up the contents thereof [which includes the children's possessions) for shipping to the Netherlands.
- 13.2 I am to travel to the Netherlands on Sunday, 27, October 2019.
- 13.3 To ensure the children's enrolment at their new school in Gauda, I must have clarity, if not from the Respondent herself, from this Court that the children may relocate to the Netherlands.
- 13.4 M who has accepted a position with Expirian in Den Haag, will also be relocating with her three daughters to the Netherlands in December 2019. M's relocation is on the basis of an independent visa and not interrelated or as an adjunct to my visa.
- 13.5 Unless I have clarity on whether or not the children will be relocating to the Netherlands with me, M and I will be unsure of which home would be suitable for our reconstituted family – one that can accommodate 7 or 5."

Urgency

[11] This being an urgent application, the starting point, before dealing with the substantive issues, is to determine whether the requirements of urgency have been

satisfied. Put in another way, the first issue to determine before dealing with the merits is to determine whether the Applicant has made out a case for urgency.

[12] The approach to adopt in determining urgency was set out in *In re: Several Matters on the Urgent Court Roll*, 2013 1 SA 549; [2012] 4 All SA 570 where the court referred with approval to *East Rock Trading 7 (Pty) Ltd and Another v Eagle Valley Granite (Pty) Ltd and Others* [2012] JOL 28244 (GSJ) at paras 6-7 where it was held that:

“[6] The import thereof is that the procedure set out in rule 6(12) is not there for 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 he claims that he 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 the normal course laid down by the rules it will not obtain substantial redress.

[7] It is important to note that the rules require 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 his case in that regard.”

[13] The Respondents' counsel submitted that the urgency in this matter was self-created by the Applicant knew about the position of the Respondent on 3 October 2019. He did nothing until November 2019 when he launched this application. There is no explanation as to why the Applicant could not have brought the application earlier. He also did not explain the urgency of relocating on 27 December 2019. The only point made by the Applicant is that he found employment in the Netherlands. There is no explanation as to what circumstances made him relocate so hastily except that he the job in the Netherlands.

[14] The Applicant does not indicate in his papers what harm or prejudice the children will suffer if they were to relocate at a later stage. Put in another way, there is no indication in the documents what harm or prejudice the children would suffer if the application was to be heard in the normal course.

[15] In light of the above discussion, I find that the Applicant has failed to make out a case for urgency and for that reason his application stands to fail.

Order

[16] In the circumstances, I make the following order:

1. The application is struck off the roll for lack of urgency.
2. The Applicant is to pay costs of the application.

E Molahlehi

Judge of the High Court;

Johannesburg

Representation:

For the Applicant: Adv Sarita Liebenberg

Instructed by: Van Lille Attorneys

For the Respondent: Adv Shawn Swiegers S

Instructed by: Van Jonson Attorneys

Heard:

Delivered: 03 December 2019