IN THE HIGH COURT OF SOUTH AFRICA
(KWAZULU-NATAL DIVISION, PIETERMARITZBURG)

CASE NO.: 9763/23P
NOT REPORTABLE

In the matter between:

T[...] M[...]-S[...]	First Applicant
G[...] S[...]	Second Applicant
and	
M[…]	First Respondent
ADVOCATE D[…] S[…]	Second Respondent

JUDGMENT

NOTYESI AJ

Background

[1] On 30 June 2023, the applicants launched an urgent interlocutory application seeking for a remedy to protect the identities of minor children from disclosure to the public during the review proceedings which are pending before this Court. In the review application, the applicants seek to set aside a ruling and recommendation by

the second respondent in terms of which the minor children had been expelled from the first respondent. The minor children were implicated as perpetrators and complainants in respect of certain misconducts which were committed at school. The applicants' contented that, because there are minor children involved, the matter should be confidential. The interim order was obtained on an urgent basis. This is an opposed hearing for final relief pending review.

[2] The interim relief was granted in these terms –

'1. 1.1 That the main application herein shall be carried on in open court.

1.2 That the following limitations are to apply to the main application and any reporting or disclosure thereof:-

(i) That the names of the Applicants may not be used and may only be referred to as TS (First Applicant) and GS (Second Applicant).

(ii) That the names of the minor learners which appear in the application and any annexure to the affidavits may not be used except in the unredacted version provided to the Court and the School.

(iii) That the annexures to the founding papers may be withheld from the Court File and provided in a confidential bundle to the Court and the Respondents at an appropriate time.

(iv) That the pseudonyms of Minor 1, Minor 2 etc used in the redacted version are the only method of reporting on this application that is allowed.

1.3 In reporting on this matter outside of Court no person may use the true names of the minors.

2. An interim order be and is hereby granted in terms of paragraph hereof.

3. The costs of this application will be costs in the cause.'

[4] The above interim order was obtained by the applicants *ex parte*[1]. The applicants had contended that the identity of the minors should be withheld and not be published in any report. According to the applicants, a reference to the minors by unidentified codes (eg Minor 1, Minor 2, and so forth) and the applicants by their initials would suffice for purposes of identification in the review proceedings. The first respondent had filed an answering affidavit and counter application after the grant of the interim order.

[5] The first respondent is in agreement that there ought to be confidentiality put in place as minors are involved. Whilst conceding the need for confidentiality, the first respondent had contended that the reliefs sought and obtained by the applicants were inadequate for the protection of the minors. In this regard, the first respondent contended that the entire court file should be declared confidential. The counter application is opposed by the applicants.

[6] On a proper conspectus, the parties are in agreement that there ought to be measures of confidentiality in the proceedings. The difference between the parties is the extent of confidentiality to be afforded. On the one hand, the first respondent is obdurate that, in addition to the interim relief, the file should be confidential, whilst, on the contrary, the applicants maintain that the interim relief sufficiently protects the identities of the minors. At this stage, the parties expressly agreed that it is not necessary for the court to determine whether the review proceedings should be held in open court or in camera.

[7] The application seeks to maintain a balance between section 28(2) of the Constitution of the Republic of South Africa, 1996[2] and section 32 of the Superior

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[1] 'Ex parte' is a Latin legal term that means 'from one side only' or 'by or for one party'. In legal contexts, it refers to a proceeding or application where only party is present or represented, and the other party is not notified or represented. – Oxford Dictionary

[2] Section 28(2) of the Constitution reads as follows: 'A child's best interests are of paramount importance in every matter concerning the child.'

Courts Act 10 of 2013.[3] Against this background, I set out the basis of the application.

Material facts

[8] On 31 October 2022, the second respondent ruled that the applicants' minor son, a former learner at the first respondent, be expelled from school. The ruling by the second respondent followed a finding that the applicants' minor son was guilty of certain serious acts of misconduct. The charges against the applicants' son and the evidence upon which he was ultimately found guilty, involved highly sensitive issues, implicating several minor children, and disclosed events that would seriously infringe the physical integrity, dignity and privacy of the minor children, either as perpetrators or as complainants. On the strength of the findings by the second respondent, the minor child was expelled from school.

[9] Unhappy with the rulings and recommendation(s) by the second respondent and the decision of the first respondent, the applicants instituted the review proceedings. Following the launch of the review proceedings, this interlocutory application was filed for relief regarding the protection of the identities of the minor children. The first respondent also filed a counter-application. In the counter application, it seeks for the file to be declared confidential. The basis of the counter application is that the first respondent is an institution with the responsibility to act in *loco parentis* in respect of the minor children enrolled or previously enrolled by the first respondent. Out of that responsibility, the first respondent has a duty to ensure that the identities of the minor children are adequately protected in circumstances such as the present case.

[10] The main dispute between the parties is that the applicants insist that there is no need for the court file to be declared confidential in view of the fact that pseudonyms for the minor children would be used and that the confidential documents would be kept out of the court file until the hearing of the review. On the

[3] Section 32 of the Superior Courts Act 10 of 2013 states: 'Save as is otherwise provided for in this Act or any other law, all proceedings in any Superior Court must, except in so far as any such court may in special cases otherwise direct, be carried on in open court.'

one hand, the first respondent is of the view that the notices and affidavits reflect the parties' names and that the court file is open to the public. In such circumstances, according to the first respondent, there is a risk of disclosure of the minor children's identities.

[11] In summary, the applicants' minor child was found guilty of serious counts of misconduct following a disciplinary hearing conducted by the second respondent. The serious misconduct in which the applicants' son engaged himself in, involves other minor children, both as perpetrators of the misconduct and as complainants.

Legal framework

[12] Section 32 of the Superior Courts Act provides, save as is otherwise provided for in this Act or any other law, all proceedings 'for all proceedings in any Superior Court to be carried on in open court', except in so far as the court may in special circumstances, direct otherwise. In other words, the default position is that proceedings must be conducted in an open court. The underlining purpose of proceedings being heard in open court is to ensure that justice is seen to be done. Both parties agree that the section is in accordance with the provisions of the Constitution. Section 34 of the Constitution provides that –

'Everyone has the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court or, where appropriate, another independent and impartial tribunal or forum.'

[13] Our courts have consistently confirmed the importance of open court hearings. Open court hearings confirm the values of the Constitution of transparency and openness.

[14] In *City of Cape Town v South African National Roads Authority Ltd*[4] Ponan JA stated-

[4] *City of Cape Town v South African National Roads Authority Ltd and others* [2015] ZASCA 58; 2015 (3) SA 386 (SCA); 2015 (5) BCLR 560 (SCA) para 47 (*City v SANRAL*).

‘The animating principle therefore has to be that all court records are, by default, public documents that are open to public scrutiny at all times. While there may be situations justifying a departure from that default position – the interests of children, State security or even commercial confidentiality – any departure is an exception and must be justified. The high court’s judgment, which is inconsistent with that basic principle with regard to both the rule and subrule, cannot be endorsed by this court. Its interpretation of the subrule creates a default rule of secrecy for all court records. In addition, its application of the rule limits the ability of litigants to ensure publicity when they challenge the actions of the State. In order meaningfully to exercise the right to open justice, members of the public (and the media) cannot simply be relegated to the role of spectator. While the gist of the matter may be apparent to a person attending the hearing, it is only through an understanding of the background and issues raised on the papers that proper comprehension and critical analysis of the proceedings, and ultimately the court’s findings, is possible. This is especially so in motion proceedings, which are based on the affidavits before the court and their annexures, and where oral evidence is not given in open court. This means that court challenges to government action will be less open than they currently are. Thus where openness is most sorely needed – the consideration of government conduct – the high court judgment limits openness the most. The blanket of secrecy it throws over previously open proceedings undermines the legitimacy and effectiveness of the courts.’

[15] Unquestionably, the provisions of section 32 of the Superior Courts Act is the default position. The court proceedings, should be conducted in line with that section and therefore, court proceedings should be open to the public, including court documents, unless there are exceptions. Accordingly, in my view, the court is empowered and compelled, where there are competing rights in a particular given case, to balance those rights proportionally, taking into account the facts specific of each case. In other words, the court has a discretion to exercise and there can be no blanket approach that informs the assessment to be conducted by the court for each and every set of facts.

[16] In the *City of Cape Town v South African National Roads Authority Limited*[5] the Supreme Court of Appeal confirmed that –

'The principle of open justice has its limits of course and concomitantly a commitment to open justice does not mean that there should always be unrestricted reporting, nor that there may not be good and genuine reasons why information should sometimes be restricted. But whether that be so, falls to be determined on a case by case basis.'

[17] This court is acutely aware that the principle of 'open courts' dates back centuries ago and it has been incorporated into our Constitution.[6] The reason is to ensure openness, accountability, transparency and ensure public confidence to the court processes. There is always a suspicion of prejudice regarding proceedings that are conducted behind closed doors and the allegations of prejudice are always eminently threatening from the disgruntled or unhappy litigant. All those negative factors carry with them a threat to the rule of law.

[18] In *Independent Newspapers (Pty) Ltd v Minister for Intelligence Services: In re Masetlha v President of the Republic of South Africa*[7] at para 40 –

'This systemic requirement of openness in our society flows from the very founding values of our Constitution, which enjoin our society to establish democratic government under the sway of constitutional supremacy and the rule of law in order, amongst other things, to ensure transparency, accountability and responsiveness in the way courts and all organs of state function.' (footnote omitted)

[19] It may be added that the right to an open court hearing and the right to report on it does not automatically mean that court proceedings must necessarily be open

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[5] *City v SANRAL* para 46.
[6] *Financial Mail (Pty) Ltd v Registrar of Insurance and others* 1966 (2) SA 219 (W) at 220H-221A (*Financial Mail*); *Independent Newspapers (Pty) Ltd v Minister for Intelligence Services: In re Masetlha v President of the Republic of South Africa and another* [2008] ZACC 6; 2008 (5) SA 31 (CC); 2008 (8) BCLR 771 (CC).
[7] *Independent Newspapers (Pty) Ltd v Minister for Intelligence Services: In re Masetlha v President of the Republic of South Africa and another* [2008] ZACC 6; 2008 (5) SA 31 (CC); 2008 (8) BCLR 771 (CC) (*Independent Newspapers*).

in all circumstances. There may be instances where the interests of justice in a court hearing dictate that oral evidence of a minor or of certain classes of rape survivors or confidential material related to police crime investigation methods or to national security be heard in camera. In each case, the court will have to weigh the competing rights or interests carefully with the view to ensuring that the limitation it places on open justice is properly tailored and proportionate to the end it seeks to attain. In the end, the contours of our constitutional rights are shaped by the justifiable limitation that the context presents and the law permits.[8]

[20] In these proceedings, this court is required to strike a balance between the provisions of section 32 of the Superior Courts Act and section 28(2) of the Constitution. In essence, this court must weigh the right of open court hearings and disclosures on one hand and the interests of minor children on the other hand. This is an important balance that should always be maintained as the rights are constitutionally ordained. The limitation must therefore be justified in terms of section 36 of the Constitution.

[21] In *Centre for Child Law v Media 24*[9] it was held –

'Finally, the right to dignity in section 10, while related to the right to privacy in section 14, is also infringed. In *De Reuck*, this Court held that "constitutional rights are mutually interrelated and interdependent and form a single constitutional value system." The rights of children and their dignity and privacy are inherently intertwined, as each child has their own "individual dignity, special needs and interests". To not have control over how some of the most traumatic and intimate moments of a child's life are shared with the public strikes at the very core of the child's dignity.' (footnotes omitted).

Contentions by the parties

[22] The case of the applicants is straightforward. Mr *Dickson,* who appeared for the applicants, had contended that there was no basis for the file to be declared

[8] *Independent Newspapers* para 45.
[9] *Centre for Child Law and others v Media 24 Limited and others* [2019] ZACC 46; 2020 (4) SA 319 (CC); 2020 (3) BCLR 245 (CC) para 50 (*Centre for Child Law v Media 24*).

confidential. In advancing the submission, Mr *Dickson* had submitted that the interim relief granted on 30 June 2023 had sufficiently protected the identities of the minor children. He conceded that as the review involved children, a measure of protecting their identities was required. In this regard, Mr *Dickson* submitted that the protection of the minor children is accomplished by referring to the minors by unidentified codes and the applicants by their initials.

[23] The submission was that the annexures will also remain intact and unredacted and will only be provided to the judge and that is a sufficient safeguard of disclosure. Mr *Dickson* stressed, in his submission, that the effect of the embargo on reporting the names of the minors outside of court should settle any doubt that there is a risk of publicising the names of the minors. On Mr *Dickson*'s submissions, the declaration of confidentiality of the court file would render the file secret and therefore, amount to a blanket denial or absolute limitation of the right of open justice. In this regard, Mr *Dickson* contended that section 28(2) of the Constitution served to protect the identity of minors and it does not extend to the school, the school management or administration, the second respondent nor to the activities at the school. The contention was that the public is entitled to know the activities at the school or the conduct of the school.

[24] On the contrary, Mr *Watt-Pringle*, relying on *Centre for Child Law v Media 24* and the authority of *City v SANRAL*, submitted that it has always been accepted by our courts that the principle of open justice has its limits and it does not mean that there should always be unrestricted reporting and that each case must be determined on its own specific merits. He contended, in this regard, that the court is therefore empowered and in certain circumstances, compelled where there are competing rights to balance those rights proportionately taking into account the circumstances of the case. As I understand the submission of Mr *Watt-Pringle*, there can be no blanket approach that informs the assessment by the court of the circumstances of each case.

[25] The contention made on behalf of the first respondent is that the rights and interests of the minor children will inevitably be undermined if the court file is not kept confidential and that risk exists even with the implementation of measures to

safeguard the anonymity of the learners concerned. Mr *Watt-Pringle* conceded that the default position in terms of section 32 of the Superior Courts is that court proceedings should be open to the public, although the court retains a discretion to vary the default position in certain circumstances. The contention in this regard was that the discretion of the court in terms of section 32 is consistent with the inherent power of the courts to regulate their own processes in the interest of justice.

[26] Mr *Watt-Pringle* submitted that in circumstances such as the present case, the court should exercise its discretion in favour of the minors' rights to dignity and privacy. In this submission, Mr *Watt-Pringle* relied on the authority of *South African Broadcasting Corporation Limited v National Director of Public Prosecutions*[10] where it was held –

'When courts exercise the power to regulate their own process, it is inevitable that that power will affect rights entrenched in chapter 2 of the Constitution. A court must regulate the way proceedings are conducted and this will inevitably affect both the right to a fair trial (section 35 of the Constitution) and the right to have disputes resolved by courts (section 34). Courts are bound by the provisions of the Bill of Rights and therefore bear a duty to respect those rights. In exercising the power, therefore, they must take care to ensure that those rights are not unjustifiably attenuated.' (footnote omitted)

[27] The contention of the first respondent is that should the file not be declared confidential, there exists a real risk that the identities of some or all of the minor children who were involved in the incidents that form the subject matter of the review, either as perpetrators or as complainants, would inevitably have their identities disclosed to their detriment. The submission is that the contents of the file would be distributed via media, which may include social media and if that happened, may leave an irreversible or permanent mark on the dignity and the reputation of the minors concerned.

Analysis and evaluation of the submissions

[10] *South African Broadcasting Corporation Ltd v National Director of Public Prosecutions and others* [2006] ZACC 15; 2007 (1) SA 523 (CC); 2007 (2) BCLR 167 (CC) para 37 (*SABC Ltd v NDPP*).

[28] I should commence my analysis and evaluation of the parties' submissions by making reference to a statement made by Mhlantla J in *Centre for Child Law v Media 24*,[11] –

'"Stories matter. Many stories matter. Stories have been used to dispossess and to malign. But stories can also be used to empower, and to humanise. Stories can break the dignity of people. But stories can also repair that broken dignity." This case is about real life stories, in particular, about children. It is about the way in which these are told, who decides when this should be done, and the numerous effects of storytelling' (footnote omitted)

[29] The subject matter of the review proceedings involve highly sensitive allegations. To this end, the applicants, on their own accord, had approached the court for a remedy to protect the identities of the minor children. The misconduct involves minor children, both as perpetrators and as complainants. The nature of the misconduct that forms the subject of the review is particularly sensitive, invoking the rights to dignity, privacy, and bodily and psychological integrity. I proceed on the basis that the Constitutional rights of the minors is what is at stake. I also accept that court proceedings should, in general, be conducted in openness. The rights of the minors implicated in the review, are contained in the Bill of Rights. The court should be careful in assessing limitation of the right to dignity and privacy. The infringement of the right to dignity may have permanent adverse consequences, especially to a minor. The circumstances of this case and the allegations which form subject of the review, are highly sensitive.

[30] Significantly, the first respondent has averred that the nature of the first respondent's school community is such that even where the names of specific learners may be redacted from the record, their identities will be easily ascertainable, and the disclosure of the information affecting their dignity, privacy, and bodily and psychological integrity will be inevitable. In such circumstances, the relief sought by both parties regarding protection of identities of the children would be rendered futile if their identities were to be revealed in one way or the other.

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[11] *Centre for Child Law v Media 24* para.

[31] The parties agree that protection of disclosure of the minor children, is required. I also agree. The parties only lock horns on a narrow issue of whether or not the file must be declared confidential. The court file is part of court proceedings. The parties have correctly submitted that the default position is section 32 of the Superior Courts Act. In terms of the section, all proceedings in any superior court must, except insofar as any such court may, in special cases, otherwise direct, be carried on in open court. There is an exception which is insofar as any such court may, in special cases, otherwise direct. These special cases are not specified and the power to deviate from hearing matters in open court is left to the judge concerned. In my view, departing from having proceedings open to the public, requires sufficient justification and in this regard, the court must set out the reasons why the proceedings cannot be open to the public and should set out the factors that it has taken into account.

[32] In this view, I am fortified by various provisions in the Constitution[12] which require that the court proceedings should be open to the public. The authorities in case law are in support of the proposition that court proceedings should be open to the public.[13]

[33] In *SABC Ltd v NDPP*[14] it was stated –

'Courts should in principle welcome public exposure of their work in the court room, subject of course to their obligation to ensure that proceedings are fair. The foundational constitutional values of accountability, responsiveness and openness apply to the functioning of the judiciary as much as to other branches of government. These values underpin both the right to a fair trial and the right to a public hearing (ie the principle of open court rooms). The public is entitled to know exactly how the judiciary works and to be reassured that it always functions within the terms of the law and according to time-honoured standards of independence, integrity, impartiality and fairness.'

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[12] Sections 16 and 34 of the Constitution and various other sections from the Constitution.
[13] *City v SANRAL*; *Independent Newspapers*; *Centre for Child Law v Media 24*; *Financial Mail*.
[14] *SABC Ltd v NDPP* para 32.

[34] In this case, minor children are involved. The parties agree that the minor children should be afforded protection. The applicants do not dispute that the charges against the applicants' son, and the evidence on which he was found guilty, involved highly sensitive issues, implicate several minor children and disclose events that seriously infringe the physical integrity, dignity and privacy of the minor children. I do not doubt that in these circumstances, the rights and interests of the minor children would be compromised if the file is open to the public and not kept confidential. The best interests of the minor children involved demand that more effective measures to safeguard the anonymity of the minor children are indeed required.

[35] In *Centre for Child Law v Media 24*,[15] the court held –

'I do not wish to deny the importance of public interest in respect of open justice, but I underscore the *distinction between public interest and what is interesting to the public*. There is indeed a difference between the two; the former is attached to a legitimate and genuine interest, one founded on fact and one that contributes towards the public's constitutional right to be informed.' (footnote omitted, my emphasis)

[36] I have considered the cases of *Centre for Child Law v The Governing Body of Hoerskool Fochville*,[16] *AB v Pridwin Preparatory School*,[17] *J v Director General: Home Affairs*,[18] *MEC for Education, KwaZulu-Natal v Pillay*,[19] and *Le Roux v Dey*.[20] These cases confirm the importance of the best interests of the minor child, taking into account the right to dignity, privacy and physical integrity. I do not understand the cases as limiting the right to privacy in cases where minor children are involved. I

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[15] *Centre for Child Law v Media 24* para 100.
[16] *Centre for Child Law v The Governing Body of Hoerskool Fochville* [2015] ZASCA 155; 2016 (2) SA 121 (SCA); [2015] 4 All SA 571 (SCA).
[17] *AB and another v Pridwin Preparatory School and others* [2020] ZACC 12; 2020 (5) SA 327 (CC); 2020 (9) BCLR 1029 (CC).
[18] *J and another v Director General, Department of Home Affairs and others* [2003] ZACC 3; 2003 (5) SA 621 (CC); 2003 (5) BCLR 463 (CC).
[19] *MEC for Education: Kwazulu-Natal and others v Pillay* [2007] ZACC 21; 2007 (2) SA 106 (CC); 2007 (3) BCLR 287 (CC).
[20] *Le Roux and others v Dey* [2011] ZACC 4; 2011 (3) SA 274 (CC); 2011 (6) BCLR 577 (CC).

disagree with Mr *Dickson*'s submission that the relief sought by the first respondent is inconsistent with these cases. The emphasis of the cases is that each case must be dealt with on its own merits. The import thereof is that the court retains its discretion in the application of section 32 of the Superior Courts Act. The importance of the court's discretion is that the court will be placed in a better position to evaluate the adverse effects of public hearing on the other rights of the minors which are guaranteed in terms of the Constitution. Section 28(2) is instructive that a child's best interests are of paramount importance in every matter concerning the child.

[37] As I understand, the parties have not decided on the question of whether the main review should be heard in open court. Taking into account that no decision has been made regarding the hearing of the main review and the fact that both parties agree that the identities of the minor children should be protected, I am inclined towards exercising the discretion of the court in favour of not disclosing the court file. I am aware that the contents of the court file may easily be accessed and once that happens, the risk of disclosing the identities of the minor children is very high. I have no doubt that the incident that had occurred at the school is already known amongst the school community. The evidence is that members of the school are very close and that intensifies the risk of the identities of the minor children being disclosed. Mr *Dickson* had submitted that section 28(2) of the Constitution served to protect the identities of minors in circumstances such as these and that it does not extend to the school, its management, or arbitrator, nor the activities at the school. I accept this submission, however, the issue, in my view, is whether or not the rights created by section 28(2) of the Constitution would be best served by upholding the contention that the file should be kept confidential. In coming to that conclusion, the court is obliged to evaluate the circumstances of the present case on its own merits and demerits. Only after such an evaluation, would this court be in a better position to determine whether confidentiality should prevail over the openness of court proceedings.

[38] My view of the matter is that the confidentiality of the file would not unduly limit the right to open justice and on the facts of this case, confidentiality of the file would not be contrary to the proper administration of justice and the constitutional values. I have taken into account the right to dignity and the right to privacy of the

minor children. I have also considered the fact that other minor children are involved in the matter and that they have not been afforded a hearing in circumstances where there is a real risk that their privacy, dignity and physical integrity would be compromised. All these factors, when considered in the circumstances of this particular case, do justify the confidentiality of the file. In *Teddy Bear Clinic for Abused Children v Minister of Justice and Constitution* it was held –

'Children are precious members of our society and any law that affects them must have due regard to their vulnerability and their need for guidance. We have a duty to ensure that they receive the support and assistance that is necessary for their positive growth and development.'

[39] In *Centre for Child Law v Director of Public Prosecutions, Johannesburg*,[21] the Constitutional Court opened its judgment with the above from *Teddy Bear Clinic*, and added:

'A child is precious and deserves special protection under the law. The drafters of our Constitution recognised this, and that is why the rights of the child are enumerated in section 28 of the Constitution. Section 28(2) states that "[a] child's best interests are of paramount importance in every matter concerning the child". Beyond the Constitution, international law also places strong emphasis on the rights of the child as well as her best interests.'

[40] On the facts of this case and after careful consideration of the nature of the allegations contained in the review application which are common cause, I am satisfied that it is in the interest of justice and would serve the best interests of the minor children if the review file is declared confidential at this stage. It remains open to the parties to decide on whether the hearing of the review application would be on an open court in terms of section 32 of the Act. The review court would be best to decide regarding that question. It suffices for this Court to mention that the allegations involved against the minor children are very serious and I can safely say that the dignity and privacy of the minor children are likely to be adversely affected if

[21] *Centre for Child Law v Director of Public Prosecutions, Johannesburg and others* [2022] ZACC 35; 2022 (2) SACR 629 (CC); 2022 (12) BCLR 1440 (CC) para 2 (*Centre for Child Law v DPP*).

the matter is not carefully handled. On that basis alone, I am inclined to grant the relief sought in the counter application. I will also confirm the rule nisi issued by this Court.

[41] I am satisfied that both parties have made out a case for the protection of the identity of the minor children and it would be in the interest of justice to grant the relief.

Findings

[42] The applicants accept that the protection of the minor children would be achieved by referring to them by identifiable codes such as Minor 1, Minor 2 and so forth and the applicants by their initials. I agree. Whilst the applicants dispute the declaration of the file to be confidential, there are no reasons advanced by the applicants other than reliance on the provisions of section 32 of the Act. I do not agree. My view is that section 28(2) of the Constitution, the right to dignity of the minor children, and their right to privacy, should trump the right of open court under section 32. In my view, such limitation would accord with the values as the spirit of the Constitution. For all these reasons, the relief in the counter application would be granted. I am satisfied with the evidence presented that it would be in the interest of justice and the best interest of the minor children, to grant a relief for the file to be declared confidential.

Costs

[43] The general principle is that costs should follow the event. In the present case, both parties have achieved success. Both parties have agreed that there was a need for the protection of the identities of the minor children. In such circumstances, it would not be desirable to mulct any of the parties with an order of costs. The submissions by both counsels were mostly helpful in the outcome of these proceedings. Accordingly, I am not inclined to award a costs order. The result would be that each party should pay its own costs. The order that I intend issuing is consistent with the relief that both parties have sought.

Order

[44] In the result I make the following order –

1. The rule nisi issued on 30 June 2023, save for paragraph 1.1, is confirmed, incorporating the order below.

2. The court file in the review application and other incidental applications or any related applications, is declared confidential;

3. The court file and its contents shall be retained in the Chief Registrar's office in a secured place of safety and may only be accessed by the parties for purposes of filing court documents, pagination and indexing and preparation for the hearing of the review;

4. The annexures to all affidavits filed by the parties, as well as the contents of the rule 53 record, will be withheld from the court file and will be provided in a confidential bundle to the court hearing the review in the main application;

5. The identities of the parties to this application, or any facts which may cause them to be identified, shall not be published and/or made public:

   (a) The names of the applicants may not be used and the applicants will be referred to only as TS (in respect of the first applicant) and GS (in respect of the second applicant);

   (b) All minor children (including those who were minor children at the time that the relevant incidents arose) may only be referred to where necessary through the use of the pseudonyms minor 1, minor 2, etc in accordance with a schedule to be agreed to between the parties;

   (c) This applies to the parties and anyone in their employ to not intentionally or negligently allow the order to end up in public hands and/or cause the identities of the applicants and/or the minor children to be known.

6. The parties and anyone in their employ are prohibited from intentionally or negligently allowing the pleadings or their contents to end up in public hands and/or cause the identities of the applicants and/or the minor children to be known;

7. Each party shall pay its own costs.

M NOTYESI
ACTING JUDGE OF THE HIGH COURT

APPEARANCES:

Counsel for the Applicants	:	*AJ Dickson SC*
Attorneys for the Applicants	:	PKX Attorneys Pietermaritzburg
Counsel for the First Respondent	:	Mr *Craig Watt-Pringle SC* with *Nikki Steyn*
Attorneys for the First Respondent	:	Redfern & Findlay Attorneys Pietermaritzburg
Attorneys for the Second Respondent	:	No appearance
Date Heard	:	2 May 2024
Date Delivered	:	18 July 2024