IN THE NORTH WEST HIGH COURT
MAHIKENG

CASE NO. M204/2018

In the matter between:

M[...] M[…] (BORN M[…]) **Applicant**

and

T[...] P[…] M[…] **1st Respondent**

MAGISTRATE MAMABOLO NO **2nd Respondent**

MAGISTRATE RAMPE NO **3rd Respondent**

REVIEW APPLICATION

GURA J & KGOELE J

DATE OF HEARING : **22 MARCH 2019**

DATE OF JUDGMENT : **22 MARCH 2019**

DATE OF REASONS : **02 MAY 2019**

FOR THE APPLICANT : **Mr Maroke**

FOR THE 1st RESPONDENT : **Adv. Monnahela**

REASONS FOR JUDGMENT

KGOELE J.

INTRODUCTION

[1] This is an application in which the applicant seeks a review and setting aside of the Children's Court Order **(the reconsideration Order)** granted by the

second respondent (Magistrate Mmamabolo) in the Rustenburg Magistrate Court on the 23rd March 2018.

[2] The application is vehemently opposed by the first respondent on the grounds that it is baseless and constitutes an abuse of the processes of the Court. The application was heard by this Court on the 22nd March 2019 and the following Order was granted:-

> *"1. THAT: The application is dismissed.*
>
> *2. THAT: The Status quo in terms of the order of the Children's Court granted on the 28 OCTOBER 2015 remains pending the finalisation of the Divorce proceedings instituted in this Division under Case No: 3/2015 and or until varied by a competent Court.*
>
> *3. THAT: The Applicant (who is the Plaintiff in the Divorce proceedings) is directed to apply to the Registrar within 14 days from the date of this order for a date of hearing of the Divorce case failing which the Respondent (who is the defendant in the Divorce proceedings) shall approach the Registrar of this Court in writing to allocate a date of hearing.*
>
> *4. THAT: The Applicant is ordered to pay the costs on an attorney and client scale.*
>
> *5. THAT: Reasons for this order are reserved."*

[3] The reasons so reserved follows hereunder.

FACTUAL BACKGROUND

[4] The applicant and the first respondent are still married to each other although Divorce proceedings are still pending in this Court and also in the Regional

Court. This anomaly clearly demonstrates that the litigation between the parties is acrimonious. A central issue in this application including a series of other litigations between them relates to the care and primary residence of their minor child who is 10 years old. The minor child is currently in the primary care of the applicant since an *interim Order* which was granted by the third respondent (Magistrate Rampe) of the same Magistrate Court, Rustenburg.

[5] The series of litigation between the parties were initiated by the applicant by instituting Divorce proceedings under case number **DIV3/2015** in this Division during January 2015. I pause here to indicate that the Divorce proceedings are still pending in this Division for a period of more than three years since they were instituted. This Court was told during the hearing of this application that this is so despite the fact that the matter has been ripe for hearing since 2016. This factual assertion constitutes one of the reasons why the first respondent claims that the applicant, instead of setting the matter down for hearing, is engaged in spurious litigation against him with the effort to escape the recommendations which the Family Advocate made in the reports pending before this Court dealing with the care and primary residence of the child in the Divorce proceedings.

[6] Coming back to the factual background of this application, it appears from the papers before Court that the applicant also instituted a Rule 43 application before this Court in 2015. Amongst other things, she claimed maintenance of the minor child despite the fact that the minor child was already at that particular stage staying with the first respondent in terms of a Children's Court Order dated 28 October 2015 (**the Tlhabane Order**) by Magistrate Becker at Tlhabane Magistrate office. This application was dismissed by **Djaje AJ** (as she then was) on the 3rd December 2015. The first respondent in his papers before this Court, further alleges that the reports of the Divorce proceedings from the Family Advocate which recommended that he be awarded care and primary residence of the minor child, also served before Djaje AJ, as they

were already finalised by the 17th September 2015. According to him, this is one of the reasons why the applicant's Rule 43 application was dismissed.

[7] Whilst the minor child was in the care of the first respondent pursuant to the Tlhabane Order, the applicant approached the Rustenburg Magistrate Court in March 2018 alleging that the minor child was being maltreated by the first respondent. It appears that this particular application was brought on an urgent and *Ex-parte* basis because a *Rule nisi* was granted by Magistrate Rampe (third respondent) for the immediate removal of the child from the primary care of the first respondent and a return date was also made. The minor child was removed from the care of the first respondent pursuant to this *Interim* Order. The return date of this *Rule nisi* was 6 July 2018.

[8] Aggrieved by this arbitrary removal of the minor child, the first respondent filed an application to anticipate the return date of the *Interim* Order. The reconsideration application was set down by the first respondent to be heard on the 3 April 2018. The reconsideration application served before the second respondent, who after hearing submissions from both legal representatives of the parties, withdrew the *Rule nisi* granted by the third respondent on the 23rd March 2018 in terms of Section 46(2) of the Children's Act, 2005 (Act No. 38 of 2005) (**the Act**) as amended. She furthermore ordered the applicant to return the child to the first respondent on or before the 10 April 2018, a time when the schools were to reopen.

[9] The applicant did not comply with this Order. In another attempt to keep the minor child, the applicant instituted another application in May 2018 in this Division under case number **M134/2018**. We were not given the file or papers of this application except a withdrawal notice by the applicant. The first respondent contends that the relief sought and the allegations made in the founding affidavit supporting the said application were similar to the current application, a fact which had not been denied by the applicant. That application did not proceed as it was withdrawn by the applicant.

[10] During the arguments in Court we were further referred by the first respondent's Counsel, Advocate Monnahela, to a document indicating the fact that the applicant, whilst the Divorce proceedings in this Court are still pending, has also instituted Divorce Proceedings in the Rustenburg Regional Court in August 2017. He further indicated that the proceedings are still pending in the Regional Court and primary residence and care of the minor child is a hotly contested issue before the Regional Court as well. These factual averments were confirmed by the legal representative of the applicant, Mr Maroke.

[11] The current review proceedings were instituted by the applicant on the 1st June 2018 and the following prayers are sought:-

> *"1. Reviewing and setting aside the decision of the second respondent taken on the 3rd April 2018:-*
>
> *1.1 Withdrawing the Court Order granted on the 23rd March 2018 in terms of Section 46(2) of the Children's Act,*
>
> *1.2 Ordering the applicant as per Court Order of Tlhabane Magistrate's court dated 28th October 2015 to return the minor child on or before the school re-opens on the 10th April 2018, and*
>
> *2. Directing and ordering that the matter at Rustenburg Magistrate's (Children's) Court under case number 117/2018, be referred to a designated social worker to make a determination in terms of Section 155 of the Children's Act 41 of 2007, whether or not Gosego Kganyeso Maloma is a child in need of care and protection and;*
>
> *3. Directing and ordering that a designated Social Worker must investigate the matter and within 90 days compile a report in the prescribed manner on whether the child is in need of care and*

protection and the said report must be filed with the Clerk of Rustenburg Children's Court;

4. *Directing and ordering the first respondent to pay the costs of this application in the event of unnecessary opposition."*

Postponement Application

[12] When this application was to be heard in this Court, the legal representative of the applicant Mr Maroke, moved an application from the bar for the postponement of the matter. He gave a reason that he has received instruction from Raikane Attorneys, who are the current attorneys of record of the applicant, that the parties are reaching a settlement agreement at Rustenburg. He was at pains to explain what the settlement agreement entailed and could only indicate that it might influence the outcome of this matter.

[13] This application was vehemently opposed by Advocate Monnahela representing the first respondent. He indicated firstly that, his instructions are that there is no such settlement agreement been negotiated. Secondly that, the applicant is again deploying her delaying tactics in finalising the current application and the Divorce matter which is still pending before this Court. He gave a detailed account of the history of the tyranny of litigations embarked on by the applicant since the Divorce summons were issued in this Court and her conduct of forum shopping. This history was summarised in the factual background above and need not be repeated here.

[14] He urged this Court to refuse the application and to take into consideration the fact that the application before Court deals with the best interests of the minor child and thus cannot be postponed further when all the papers are before Court. He indicated further that, even though he had not filed the heads of argument, he was in a position to argue the merits of this application as they were mainly concerned with some Points in Law. I may hasten to indicate that the applicant's heads of argument were already filed, although late.

[15] The Court refused / dismissed the application to postpone this application. There is no need to re-emphasize that a matter such as the current one, where there is a need to remove uncertainty about the current status, safety and a well-being of a minor child, will always be urgent. Apart from the fact that the parties dragged this application for such a long time, and unnecessary so in my view, the applicant has not as well made any case from the submissions made in support of the postponement application. From his own mouth, Mr Maroke appearing on behalf of the applicant, indicated that the purported settlement does not relate to this case. As to why this matter should be postponed if the settlement does not relate to this matter, was a difficult question for him to answer. Besides, he appeared not to have full instructions from his client and or attorney of record as he was unable to answer a question put to him by this Court, as to whether the settlement relates to the other Divorce proceedings instituted at the Regional Court or not. What made matters worse was that the instructions of Advocate Monnahela from his client and attorneys of record speak to the contrary, when it was expected from what Mr Maroke submitted, that they should be party to the purported settlement.

[16] In addition, the papers before Court reveal that the founding affidavit in support of this application was signed by the applicant on the 28th May 2018 and the application was filed in this Court on the 1st June 2018. It is significant to indicate that this Court is seized with the application today because the first respondent, and not the applicant, set the matter down for hearing. It therefore becomes clear that the applicant is dragging her feet because the child is still in her custody or primary care, unlawfully so because, she did not comply with the Order granted by second respondent. It appears to this Court that the applicant is once more attempting to apply delaying tactics. Unfortunately this Court cannot condone such an attitude in cases of this nature, especially in the circumstances of this matter and when we are not told what the purpose of the proposed postponement will achieve except to perpetuate an unlawful conduct.

[17] It was for these reasons that the application for postponement was dismissed and the merits of the application was proceeded with.

THE MERITS

[18] The papers of the applicant are clumsily couched and it is best to quote the grounds advanced for the review application as they are in the Notice of Motion. They were couched as follows:-

"*6.1* *Interest in the cause, bias or malice and Gross irregularity in the proceedings in terms of Uniform Rule 24 (1)(b) and (c)*

It can be inferred from the ruling of the Court a quo that there is indeed interest in the cause, bias and malice, which constitutes the first ground of review upon which the proceedings at the level of an inferior Court may be brought under review.

The application brought before the Court a quo was in terms of Section 151 of the Children's Act 38 of 2005 (hereinafter referred to as "the Act")

Cf. "Annexure B[1] and B[2]"

The Act lucidly states when a Court is approached in terms of Section 151 then it becomes peremptory that the Court must order an inquiry without consideration of the merits and refer the matter to a designated Social Worker for a report which must be submitted within 90 days.

Instead of doing this the second respondent made a ruling which is in direct contravention of the Act.

Cf. "Annexure B[1] and B[2]"

When I challenged the admissibility of the Answering Affidavit that was not properly served (as I did not consent to service by email in terms of rule 6 of the Magistrate's Court Rules of Court), the second respondent

merely said that she condones this irregularity without even giving reasons thereof.

In terms of the Act there is no provision for the Court to order costs against. However, the second respondent flatly refused to abide by the provisions of the Act and ordered costs against me without even giving reasons why such a drastic step was taken.

The second respondent was of the view that there are two contradictory orders and such a state of affairs cannot prevail. The second respondent erred in this approach, in that, referring the matter to Tlhabane Children's Court was not appropriate as this Court no longer has jurisdiction to hear this matter because the child in question in domicile in Rustenburg and only the Rustenburg Magistrate's Court has jurisdiction to hear the matter. After the ruling of the Tlhabane Magistrate's Court on the 28th October 2015, the minor child changed residence and moved to Geelhout Park which falls within the purview of the Rusteburg Magistrate Court. This is why I brought the application in terms of Section 151 of the Court a quo.

Unlike in cases of maintenance for example, the Act does not make provision for transfer of a case file in the Children's Court. The second respondent grossly erred in directing that this be done.

I requested written reasons for in terms of Rule 51(1) from the second respondent for the ruling handed down on the 3rd April 2018.

Cf. "Annexure F"

The purported reasons given by the second respondent are in terms of Rule 8(a)(1) are not in accordance with the relevant provisions of the Magistrate's Court Rules of Court.

Cf. "Annexure G"

6.2 <u>Admission of inadmissible evidence in terms of Uniform Rule 24(1) (c)</u>

By allowing an Answering Affidavit which was not properly served and condoning its admission, to my prejudice and detriment this portrays the admission of inadmissible by the Second Respondent"

This is despite the fact that I raised the irregular service of the Answering Affidavit and placed it on record that same was not before Court.

I classified the above grounds as follows:-

Irregularities

[19] The applicant contends that the second respondent's conduct of dismissing the *Rule nisi* was irregular. According to the applicant, it was not within the purview and ambit of the second respondent's discretion to depart from the peremptory statutory provisions of Section 155(1),(2),(3),(4),(5) and (6) of the Act. The applicant's legal representative submitted that the Act states very unequivocally that the Court in deciding this matter must follow what the Act determines.

[20] Mr Maroke submitted on behalf of the applicant further that, the *Rule Nisi* Order should not have been set aside, but recourse should have been had to the provisions of Section 155 of the Act because, the application was brought before the third respondent in terms of Section 151.

[21] As a second leg to this ground, the applicant contends further that, the second respondent set aside the *Rule nisi* because she was of the view that there were two contradictory Orders and such a state of affairs cannot prevail. The applicant's submission is that the second respondent erred in this regard as well. According to the applicant, referring the matter to Tlhabane Children's Court was not appropriate as that Court no longer had jurisdiction to hear the matter because the child was living in Geelhoutpark when the application which gave rise to the *Rule Nisi* was made. Geelhoutpark falls under

Rustenburg Magistrate's Court jurisdiction, as a result, the second respondent erred in this regard as well.

Inadmissible evidence

[22] The applicant's submission in support of this ground is to the effect that on the day the *Rule nisi* was set aside, the admissibility of the answering affidavit which served before the second respondent was challenged. The second respondent merely said that she condones this irregularity without giving reasons. The applicant's contention is that the answering affidavit was not properly served as it was served by email in the circumstances where the applicant did not consent to the service by email. This, according to the applicant, is an irregularity.

Costs

[23] The last ground of review the applicant relied upon was that the Court ordered the applicant to pay the costs when the Act does not provide for order of Costs to be made against litigants in Children's Court inquiries. However, the applicant submitted, the second respondent blatantly refused to abide by the provisions of the Act and ordered costs against her, without even giving reasons why such a drastic step was taken.

ANALYSIS

[24] I choose to start analysing this last ground because it can be summarily dealt with as it is based on shaky submissions. Condoning a procedural non-compliance with the Rules attracts a measure of discSretion upon the Court. From the applicant's own papers, this was not a case where they are claiming that there was no service at all but that they did not consent to a service by email. It suffices to say that the notice of removal of the child sent to the first respondent is urgent in itself. This is evident from the provisions of Section 2A of the Act. It is trite law that in urgent applications service by e-mail on the

legal representative of the other party suffices if they are known, and this was the case in the reconsideration application.

[25] The Constitutional Court in the matter of **AD and Another v DW and Others (Centre for Child Law as Amicus Curiae; Department for Social Development as Intervening Party 2008 (3) SA 183 (CC)** endorsed the view that the interests of minors should not be "held to ransom for the sake of legal niceties" and held further that in the case before it, the best interest of the child "should not be sacrificed on the altar of jurisdictional formalism." I therefore find that the applicant did not make a case that the discretion exercised by the second respondent was not exercised judicially on this aspect of having allowed the answering affidavit.

[26] In as far as the ground that relates to irregularities is concerned, which appears to be the ground heavily relied upon by the applicant in this matter, I fully agree with Advocate Monnahela that this ground is without basis as well and demonstrates that the applicant is abusing the processes of the Courts. I am saying this because apart from the fact that her application has been clumsily phrased, there are a number of irregularities which she raised, most of which are not even worth mentioning. It is quite obvious that the applicant on this ground is clutching at straws.

[27] It is important to set out at the onset the provisions of Section 151 of the Act as amended by the Children's Second Amendment Act No.18 of 2016 (**the Amendment Act**) which came into operation in **January 2018**. The importance of these provisions is that these are the applicable provisions which were governing the *Interim* Order issued by the third respondent at the time it was made in March 2018. As it will appear later, these provisions were not totally adhered to.

[28] The provisions of Section 151 in its amended form read therefore

thus:-

“151 Removal of child to temporary safe care by court order

(1) If, on evidence given by any person on oath or affirmation before a presiding officer it appears that a child who resides in the area of the children's court concerned is in need of care and protection, the presiding officer must order that the question of whether the child is in need of care and protection be referred to a designated social worker for an investigation contemplated in section 155(2).

(2) A presiding officer issuing an order in terms of subsection (1) may also issue an interim order for the temporary safe care of the child if it appears that it is necessary for the safety and well-being of the child.

(2A) The court ordering the removal of the child must simultaneously refer the matter to a designated social worker and direct that social worker to ensure that the–

(a) order in terms of subsection (2) is placed before the children's court, for review before the expiry of the next court day following the removal; and

(b) child concerned, and where reasonably possible the parent, guardian or care-giver, as the case may be, are present in the children's court for the purposes of assisting the court in making a decision which is in the best interest of the child.”

[29] It is clear from the above provisions that if the Presiding Officer decides that the information which was brought before him/her is reliable enough to indicate a *prima facie* case, the matter **must** be referred to a designated Social Worker for a proper investigation contemplated in Section 155 (2). It has been emphasized in numerous authorities that a Children’s Court Presiding Officer, who issues an Order that a child needs to be taken into temporary safe care in terms of this Section, will need to bear in mind that the consequences is likely to be a serious invasion of family privacy and forcible removal of a child in a situation where only limited information is available. That is why section 2A was introduced by the Amendment Act to safeguard this. In addition, the Act also gives powers to the Presiding Officer if he contemplates issuing a temporary safe care Order, to utilize the powers conferred to him/her by Section 50 of the Act, to order immediate investigation limited to establishing whether an emergency removal of the child concerned is indeed necessary.

[30] A thorough scrutiny of the Order given by the third respondent reveals that these provisions were not adhered to at all, and cautionary measures and safeguards introduced by Section 2A of the Amendment Act were not heeded to. This is so because, the *Interim* Order in the file does not contain a referral to the Social Worker with directions as contemplated in Section 2A (a) and (b) thereof. The second respondent did not even attempt to utilize the powers conferred to him Section 151 (3) of the Act by calling for an immediate report from the Social Worker. Instead, he just removed the child from the care of the first respondent, and gave the matter a return date which was more than three months and/or 90 days. What is disturbing is that there is no indication that the third respondent referred the matter for investigation as contemplated in Section 155(2).

[31] The manner in which the inquiry was conducted by the third respondent is worrisome to say the least. But what happened in this case was clearly foreseen by the Constitutional Court in the case of **C and Others v Department of Health and Social Development, Gauteng and Others 2012 (2) SA 208(CC)** when the Constitutional Court approved the fact that, the decision to undertake such a removal should be reviewed as soon as possible and that the rule of natural justice, the *Audi alteram Partem* rule, is paramount. The first respondent in this case, as the removal order took place in his absence, was, correctly so in my view, enjoined to anticipate the return date for him to place his version before the Children's Court.

[32] Ironically, the applicant in this review complains about the fact that the second respondent's Order did not comply with the peremptory provision of Section 151 and raised it as a gross irregularity. The applicant is completely closing her eyes to the Order she surreptisciously obtained wherein the third respondent was the one who was supposed to have adhered to the peremptory nature called for in these provisions. The irregularity which the applicant is complaining about actually started with the *Interim* Order of the third respondent. The applicant's submissions are actually attacking the Order they were granted by the third respondent. In my view, their

submissions are totally misplaced in as far as the second respondent's Order is concerned (the re-consideration Order). The *Interim* Order they obtained was in my view irregular as it did not comply with the Act. Section 2A of the Act is peremptory because the word must was used.

[33] The second respondent clearly, was made aware of the Tlhabane Order which placed the minor child in the first respondent's care. In my view, the second respondent was correct to have entertained the matter on the anticipated date because both parties were in Court and the first respondent's affidavit was also in Court. The affidavit considered by the second respondent assisted the Court to come to the decision it made. It clearly appears from the papers before this Court that the second respondent was alive to the discretion she had at the time she was hearing the reconsideration application and she exercised it, correctly so, because it was during the anticipated return date of the matter. Furthermore, the second respondent was empowered in terms of Section 46(2) of the Act to make the Order to withdraw the *Interim* Order. The applicant's legal representative also conceded to this fact that at that stage the second respondent had a discretion to withdraw, suspend or confirm the *Rule nisi*. He did not even advance any reason to support the version that the discretion was not properly exercised. I do not see any irregularity in this finding as well because the second respondent was having both parties in front of her at that particular time including the affidavit of the first respondent.

[34] If one looks at the conduct of the applicant since the Divorce was filed in this Court as espoused by the first respondent's Counsel, it clearly denotes that the applicant is trying at all costs to obtain care and primary residence of the minor child despite the recommendations in the reports filed in the Divorce matters. That is why she and her legal team are engaged in a series of litigation. She is clearly forum shopping. The application before the third respondent was, in my view, a disguised application for the minor child to be placed in the applicant's care varying the Tlhabane Order and not to place the

minor child in alternative care because he/she is in need of care as contemplated by the provisions the applicant used in that application. I am saying this because as correctly opined by the authors of the book **Commentary on the Children's Act**, which was edited by **CJ Davel** and **AM Skelton,** published in Revision Service 8 of 2018 **(2007)**, the terminology *"child in need of care and protection*" as used in the Act, has a special meaning. It refers to a child who requires additional or alternative care and protection services imposed as a compulsory measure by the State. At page 9-3 of the Commentary they remarked as follows:-

> "Chapter 9 creates and develops the legal concept of a child in need of care and protection. It is important to note at the outset that, although all children may ordinarily be said to require care and protection in various degrees, the terminology 'child in need of care and protection' as used in the Act has a special meaning. It refers specifically to a child who requires additional or alternative care and protection services imposed as a compulsory measure by the state. It replaces the previous concept of a 'child in need of care' utilised in the Child Care Act. The inclusion of the additional words 'and protection' in the wording now employed in the new legislation shows an intention to require the state to provide a broad range of support. It emphasises that not merely nurturing but also safety needs must be taken into account in the provision of mandatory welfare services for children.
>
> An entitlement to care and protection services provided by the state arises as a necessary consequence of the fundamental right of children to appropriate alternative care when family and parental care is inadequate. This right is created in s 28(1)(b) of the Constitution of the Republic of South Africa, 1996. The purpose of chapters 9 and 10 of the Children's Act is to provide the legislative detail needed to effectively implement the constitutional right of children to alternative care. It is important to note that this right arises where existing family or parental care is insufficient. Children in need of care and protection are therefore children whose current care is seriously deficient or who are

entirely without parental or familial care-givers." **[My Emphasis Added]**

[35] What happened in this matter is clearly the problems which were foreseen by the Constitutional Court in the matter of **C and Others** *supra* and that is why Section (2A) was ultimately introduced. Those problems were that Section 151 and 152 as they were before, might cause the person interpreting them to think that there is no right to judicial review of the decision to remove the child as they were silent on this aspect. Unfortunately in our matter, this is what the third respondent did. The second problem was that, it would simply be too onerous to expect a parent, guardian or care giver of a child when it had been subjected to a removal (in our case the first respondent) to bring an application of their own accord to either the Children's Court or the High Court. In our matter, we were lucky because the legal representative of the first respondent was alive to the fact that he can anticipate the Order, which he successfully did before the second respondent.

[36] It appears that the second respondent was also alive to the observation that I am making above hence the stance the Court took of hearing the matter and withdrawing the *Rule Nisi*. The applicant clearly did not make out a case for the review of the second respondent's decision to set aside the third respondent's *Interim* Order. On the other hand, the applicant is clearly perpetuating her conduct of being engaged in a spree of litigations to clinch over the care of the minor child. This cannot be tolerated at the expense of the minor child. Of significance is the fact that when the minor child was removed from the first respondent, it was almost three years since the minor child was placed under the primary care of the first respondent. She removed the child and displaced her to go and stay with her at Johannesburg. This means that the *Interim* Order of the third respondent uprooted the child from the school environment where he/she was and wherein the first respondent had demonstrated that he was doing well academically. The second respondent ordered her to return the child to the first respondent. She did not comply. The Court cannot assist her in perpetuating this.

[37] The last ground in support of the review application by the applicant can be briefly dealt with. With due respect to the legal representative of applicant, it is not correct to submit that the Act does not make provision for the Children's Court to order costs against litigants. Section 48(1) of the Act gives the Children's Court under sub-section (d) the power to make appropriate orders as to costs in matters before it. This ground of review like the others, was ill conceived.

COSTS OF THIS APPLICATION

[38] As indicated above, the conduct of the applicant is clearly an abuse of the processes of the Court. This conduct is also demonstrated by her legal team. Advocate Monnahela indicated to this Court that he is abandoning the submission which he made against the legal team of the applicant for their conduct as he intends pursuing the matter with the Law Society in view of other recent developments which he was not prepared to disclose. This is the reason why their conduct was not analysed in this matter. But the conduct of the applicant requires that this Court should demonstrate a measure of displeasure about it. With the risk of repetition, I reiterate that the applicant once more approached the Rustenburg Court with a Section 151 application as a disguise to be awarded care of the minor child and/or review the initial Tlhabane Order instead of applying for the said Order to be reviewed, withdrawn or varied. She once more come to this Court with an ill-conceived application of review in my view, to buy time again because the child is now under her care pursuant to an Order that was irregularly granted. This is clearly a second bite to the same cherry. There is uncontroverted evidence before this Court that she also unsuccessfully brought a Rule 43 application claiming maintenance of the same minor child when the child was not under her primary residence. She is aware of the fact that there is a Divorce matter pending in this Court wherein reports of the Family Advocate had already been obtained. Instead of attacking the reports directly in this Court she

resorts to extraneous litigation all of which has been proven to be baseless. She is clearly abusing the processes of Court and that is why a punitive cost order was granted against her.

CONCLUSION

[39] In as far as the Tlhabane Order is concerned, there were no arguments advanced by the applicant why we should interfere with it. It does not form part of the grounds that were relied upon by the applicant therefore the Order stands. After all, the Order that was given by the second respondent effectively restored the *status quo* in terms of this Order as the second respondent explicitly ordered the applicant to return the child to the first respondent in terms of that Order after withdrawing or setting aside the third respondent's *Interim* Order. The plaintiff has to comply with the reconsideration Order of the second respondent by virtue of the fact that her application for reviewing same has been dismissed by this Court.

[41] The above are the reasons for the Order which was granted on the 22nd March 2019.

A.M. KGOELE

JUDGE OF THE HIGH COURT

I agree

SAMKELO GURA

JUDGE OF THE HIGH COURT

ATTORNEYS

For the Applicant	:	Raikane Attorneys C/O Ntsamai Attorneys Office No. 2, 1st Floor 102 Frans Vos Building Cnr Warren Shippard Street MAHIKENG
For the Respondent	:	Mahlokwane Attorneys C/O Mothusi Marumo Attorneys Office No. 1, Chubb Building 19 Hatchard Street MAHIKENG