

6419/2010

**IN THE HIGH COURT OF SOUTH AFRICA**  
**(WESTERN CAPE HIGH COURT, CAPE TOWN)**

CASE NUMBER:

6419/2010

5 DATE:

7 APRIL 2010

In the matter between:

**ABDUL NASSAR LEVY**

Applicant

and

10 **TAMIYA TINA CHRISTIAN**

Respondent

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**J U D G M E N T**

**NDITA, J:**

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Having read papers filed of record and having heard argument tendered by both counsel for the applicant and the respondent, it is hereby ordered that:

- 20 1. The applicant's non-compliance with the Rules of this Court relating to form, time, periods and services hereby condoned and that a *rule nisi* is due issue, calling upon the respondent to appear and show cause, if any, to this Honourable Court on the 28<sup>th</sup> day of April 2010 at 10:00
- 25 or so soon thereafter as counsel may be heard, as to why

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an order in the following terms should not be made final.

2. The consent paper concluded between the parties during March 2003 made an order of this Court on the 25<sup>th</sup> day of March 2003 should not be varied in the following respects: By deleting paragraph 1 thereof in its entirety and replacing it with the following paragraph:

“Parental rights and responsibilities. Plaintiff and Defendant shall be co-holders of parental rights and responsibilities in respect of their minor son, Mikhail Levy as contemplated in section 18(2)(iii)(iv) and (v) of the Children’s Act 38 of 2005, subject to the provisions set as follows:

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2.1 Mikhail shall reside primarily with the Plaintiff, who shall be his primary carer.

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2.2 The parties shall make joint decisions about the following aspects of Mikhail’s life, major decisions about his schooling and tertiary education, major decisions about his mental healthcare and medical care, major decisions about his religious and spiritual upbringing, decisions affecting contact between him and the defendant and decisions which are likely

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to significantly change his living conditions or to have an adverse effect on his well-being. Decision affecting Mikhail's every day care and routine shall be made by the party in whose care he is at the relevant time. Defendant shall have reasonable time to contact Mikhail during term time and during school holidays, having due regard to his social, school and extramural activities."

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3. There will be no order as to cost of this application, as the costs will be determined at a later stage.

4. This order will operate as interim relief pending the return date and the family advocate is hereby requested to investigate the circumstances of the parties, as well as the minor child's and prepare a report for this Court with regards to the best interests of Mikhail and specifically his best interest regarding his living arrangements, care and responsibility over him.

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NDITA, J