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IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

In the matter between:

CASE NO: 2026-252910

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
(3)	REVISED: YES/NO
_____	_____
DATE	SIGNATURE

E. S. C. Applicant

and

L. L. M. C. 1ST Respondent

THE MAGISTRATE TSHWANE CENTRAL
(DOMESTIC VIOLENCE COURT) 2ND Respondent

JUDGMENT

VAN ASWEGEN AJ:

INTRODUCTION:

[1] This urgent application concerns G, a three-year-old girl whom the 1st Respondent unilaterally relocated to South Africa from her habitual home at

House 3[…], The V[…], N[…] Road, E[…], Kingdom of Eswatini. She lived there with her father, the Applicant; her mother, the 1st Respondent; and her two carers (nannies), Ms. Rhoda Mand and Ms. Khanyi Masilela, who have been part of her daily life since infancy.

[2] G currently resides with the 1st Respondent at her maternal grandmother's home, *1[…] O[…] Avenue, S[..], Pretoria, Gauteng*.

[3] The Applicant approached this Court, as Gia's upper guardian, to order her return to her habitual home in Eswatini within seven days, pending the divorce proceedings there. He seeks terms allowing G to remain with her mother if she accompanies her, a declaration that the order constitutes the "*court order*" contemplated in paragraph 4.1.6 of the interim protection order, and authorisation for G to cross the border.[1]

[4] The Hague Convention on the Civil Aspects of International Child Abduction, an international treaty designed to protect children from the harmful effect of wrongful removal or retention across does international borders, do not apply between South Africa and Eswatini, because Eswatini is not a contracting state. There is accordingly no Central Authority route by which Gia's return can be sought.

FACTUAL MATRIX:

[4] The relevant facts in this matter are summarized here in after. In 2026, the parties experienced marital difficulties involving serious disagreements, mutual allegations of infidelity and frequent verbal conflict.

[5] On or about *8 or 9 September 2026*, the First Respondent informed the Applicant that she planned to take G to visit her family in South Africa for approximately three days from *16 September 2026.*

[6] On *14 September 2026*, the Applicant booked and paid for return flights for himself, the First Respondent and G to visit his family in the United Kingdom.

[1] NOM at 001-3

They were to depart Johannesburg together on *27 September 2026* and return on *7 October 2026*.[2]

[7] The planned UK holiday was a family visit to G's paternal grandmother and aunts, after which all three would return home to Eswatini. Nothing at that stage suggested that the Applicant and G would remain in South Africa.

[8] On *15 September 2026*, the Applicant, the First Respondent and G travelled by car from Eswatini to Midrand for the family dog's surgery at Fourways Veterinary Hospital the following day. They stayed at their P[…] apartment. The First Respondent had brought her passport and G's but left both there when she departed. Both these passports remain with the Applicant.

[9] On *16 September 2026*, the First Respondent left the apartment with G to visit family members staying at a hotel in Sandton. The Applicant expected her to return on *17 September 2026*. She had their vehicle, and the agreed arrangement was that she would return temporarily so that they could collect the dog after her discharge from the veterinary hospital and take her home to Eswatini to settle back in.

[10] The parties had also agreed to return to Eswatini together only on *19 September 2026*. The First Respondent's refusal to return as agreed forced the Applicant to borrow a vehicle to collect the dog and make alternative arrangements.

[11] On the evening of *17 September 2026* the First Respondent sent the Applicant a series of messages:[3]

[11.1] At 20:46 she wrote:

> *'I'm so sorry my love for everything I've done by not making you and T[…] my priority. I'm so sorry my love / should have come home to you at night*

[2] ESC7 at 001-77

[3] ESC8 at 001-83

and spent that time with you during this time in our relationship and kept us close."

[11.2] At 20:54:

"*I have broken so many of my promises to you and it's so unfair to you with everything you have been doing and the promises you have made and kept."*

[11.3] At 21:01:

"You have been so amazing my love and so helpful and I'm so lucky to have you and I've just taken you for granted."

[11.4] At 21:35:

"I'm feeling very remorseful and taking full accountability of my wrongdoing and poor decisions my love."

[11.5] When the Applicant replied that he did not know whether the relationship was fixable, she answered at 23:24:

"It is fixable my love.

[12] On the morning of *18 September 2026*, the Applicant asked the First Respondent to come home so that they could return to Eswatini.

[13] The First Respondent at 09:57 replied:

"*Sorry my hubby I'm almost finished and almost leaving*".

and at 10:39 she wrote:

"No sorry my hubby I'm just saying goodbye to everyone. I'l see you soon. I love you so much".[4]

[14] At 10:00 that morning, between the two messages, Lynette Alberts Attorneys sent the Applicant a letter by WhatsApp and email.[5]

[14.1] The letter stated that the First Respondent and G "*will remain in the Republic of South Africa and have no intention of returning to the Kingdom of Eswatini*" and

[14.2] that the First Respondent had "*endured an abusive relationship*".

[14.3] The letter warned the Applicant not to contact the First Respondent or her family, or to remove or arrange the removal of G from South Africa.

[14.4] It also announced urgent applications for a protection order and for G's care and custody. This was the first indication to the Applicant that G would not return home.

[15] The Applicant neither visited the First Respondent's mother's house nor confronted the First Respondent or attempted to take G. He collected the dog, returned to Eswatini and packed the First Respondent's and G's clothes and belongings.

[16] On *19 September 2026*, he drove the First Respondent's Jeep to Midrand, left the vehicle and belongings at the P[…] apartment, and flew to London that evening to stay with his family. At 15:43 that day, he messaged their mutual friend, Ms. Tshidi Joss ("Tshidi"), confirming that he had left the belongings and vehicle at the apartment and was "*not allowed to contact them*".[6]

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[4] ESC 9" at 001-85
[5] ESC 10 at 001-86
[6] ESC 11 at 001-89

[17] Between *20 and 22 September 2026*, while in London and in considerable distress, the Applicant sent the First Respondent messages expressing his love and apologising for the pressure he had placed on her. He offered to do whatever was needed to repair the marriage, encouraged her to use the apartment and their funds, and said he had instructed his attorney not to escalate matters. He also wrote: "*Just know I would never take your little tot from you regardless of what you decide*" and "*Even if you decide its the end for us, she will be with her mum.*" The Applicant explained that the latter message was premised on G and the First Respondent remaining in Eswatini.

[18] On *24 September 2026* the First Respondent informed G's school, I[…] M[…], that G would not be returning because *"we have moved to South Africa".*[7]

[19] G has further been unilaterally enrolled in a new school on *28 September 2026* ten days after the retention.

[20] Of particular importance, *G is three years old and has* speech delays and sensory-related difficulties that affect her participation across several developmental areas. She struggles to sustain attention and shared engagement, remain regulated during activities and maintain age-appropriate focus. She frequently shifts from one task to another.

[21] To address G's difficulties and support her communication development, intensive occupational therapy, a speech therapy assessment and ongoing speech therapy were recommended. Following these recommendations, arrangements were made for her to begin weekly occupational therapy in Eswatini with Lungile Mathabela.

[22] On *19 October 2026*, six days after service of the application, a therapist was approached in South Africa after a month in which a child whose therapists had prescribed weekly intervention had none.

[7] ESC14 at 001-92

THE INTERIM PROTECTION ORDER

[23] On *18 September 2026* the First Respondent applied to the Tshwane Central Magistrates' Court for a protection order under the Domestic Violence Act 116 of 1998.

[24] *On 21 September 2026* Ms. L Perel, Senior Magistrate, granted an interim protection order in the Applicant's absence, with a return date of *20 October 2026* at *08:30.* The order, the application form, the First Respondent's founding affidavit and the suspended warrant of arrest were sent to the Applicant by the First Respondent's attorneys by WhatsApp on *25 September 2026.*[8]

[25] The interim order prohibits the Applicant from committing acts of domestic violence against the First Respondent and G, from entering the First Respondent's mother's residence, from assaulting, threatening or abusing the First Respondent or G and from blocking the First Respondent's access to funds on her debit card. It directs that a firearm in the Applicant's possession in Eswatini be seized. The Applicant has complied with the interim order. The firearm has been handed to and is lodged with Diplomat Eswatini, Shop 6, The New mall, Mbabane, on 13th October 2026 for safe storage.

[26] The provisions of the order[9] which concern G are the following:

[26.1] Paragraph 4.1.4:

> "The Respondent is ordered <u>not to have any contact with the following child(ren): minor child G J C until an enquiry has been concluded in terms of the Children's Act. The matter is referred to the Children's Court for an enquiry</u>"; and

[26.2] Paragraph 4.1.6:

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[8] ESC15 at 001-93
[9] CaseLines 001-96

"The respondent shall not remove the minor child from the complainant's care without a court order."

[26.3] Paragraph 4.6 of the order directs the First Respondent to immediately approach the Children's Court for investigation into the assault of the minor child and file proof of same on the return date"[10]

[27] The effect of the aforesaid provisions of the interim protection order is that G remains in South Africa in the First Respondent's care without the Applicant having any contact until conclusion of the Children's Court Enquiry. An enquiry, which has not yet commenced.

[28] The interim protection order in actual fact sanctions G's unilateral removal from Eswatini and the First Respondent's and G's stay in South Africa.

[29] Paragraph 4.1.6 of the interim protection order prohibits the removal of G from the First Respondent's care but opens a window for court intervention when it states:

"*Shall not remove the minor child from the complainant's care without a court order."*[11]

[30] The Applicant asserts that the urgent application serves that purpose.

URGENCY

[31] The Applicant argued that the urgency lies in the fact that this matter concerns a three-year old girl who has unilaterally been relocated from her habitual home in Eswatini across the border to South Africa. Every week in Pretoria serves to entrench and create, it is contended, a "*settled*" environment on which the First Respondent already relies in this application.

[10] CaseLines 001-97
[11] CaseLines 001-96

[32] Gia's developmental needs underscore the urgency. Children with her sensory profile rely more than most on structure, predictability, familiar surroundings and familiar carers. She is separated from her home, her two nannies and the Applicant. Her therapists stress the importance of structure, predictability and continuity. Four weeks without school, therapy or her carers is not a neutral interruption: it creates a risk of regression requiring attention.

[33] The First Respondent's position has similarly been inconsistent. On *18 September 2026*, her attorneys stated that she would not return to Eswatini. *On 25 September 2026*, they qualified this by saying she did not intend to return "*at this stage*". Between *26 September and 6 October 2026*, she told the Applicant that she loved him and that their marriage could be repaired. On *6 October 2026*, she said she wanted to return home, yet on *9 October 2026*, her attorneys refused to agree to G's return. G remains caught in this uncertainty and needs the security and stability of her home environment and nannies.

[34] The First Respondent asserted that the urgency is self-created as nearly four weeks have lapsed prior to launching this application.

[35] The Applicant has explained the four weeks as follow:

[35.1] On *18 September 2026* the attorneys' letter indicating non return to Eswatini. Thirty-nine minutes later the First Respondent wrote to the Applicant:

"*I'll see you soon. I love you so Much*."

[35.2] On *24 September 2026*: the Applicant's attorneys propose video contact and mediation.

[35.3] On *25 September 2026*: mediation was refused.

[35.4] On *26 September to 6 October 2026*: daily reconciliation discussions, which the First Respondent calls "*appeasement"*.

[35.5] On *29 September 2026* her attorney invites video calls between G and the Applicant;

[35.6] On *2 October 2026* the First Respondent writes: "*I love you ... Mwahhh"*

[35.7] On *8 October 2026* a with prejudice proposal.

[35.8] On *9 October 202*6 the rejection of the proposal.

[35.9] On *13 October 2026* the urgent is issued and served.

[36] This Court accepts that a father does not forfeit urgency by first attempting to secure contact, pursue mediation and reconcile before resorting to litigation.

[37] In *East East Rock Trading 7 (Pty) Ltd and Another v Eagle Valley Granite (Pty) Ltd and Others (11/33767) [2011] ZAGPJHC 196 (23 September 2011*) at paragraph 8 Notsche AJ confirmed that a delay may be caused to settle:

"*A delay might be an indication that the matter is not as urgent as the applicant would want the Court to believe. On the other hand a delay may have been caused by the fact that the Applicant was attempting to settle the matter or collect more facts with regard thereto."*[12] *(my emphasis)*

[38] I agree with the Applicant that anticipating the return date under section 5(5) of the Domestic Violence Act is not an effective alternative remedy. It could not secure Gia's return or determine her residence; at most, it could vary contact arrangements while she remained in Pretoria.

[39] I am satisfied that this matter is urgent. G, a three-year-old with developmental

[12] Nelson Mandela Metropolitan Municipality v Greyvenouw 2004 (2) SA 81 (SE) at 94C–D; Stock v Minister of Housing 2007 (2) SA 9 (C) 12I–13A.

needs, has been unilaterally relocated from her habitual home in Eswatini to South Africa. Her tender age and developmental needs make security and stability particularly important. The First Respondent took her across the border under false pretences, intending not to return to G's home country, without seeking the Applicant's consent or judicial approval for the relocation. In my view, this amounts to self-help.

[40] The matter is furthermore urgent because an interim order has been obtained to sanction what I would term a wrongful relocation. Wrongful in that no consent was obtained for the relocation from the co-holder of parental rights and responsibilities or sanctioned by a court order.

[41] Section 45(3)(d) of the Children's Act furthermore reserves "*the departure, removal or abduction of a child from the Republic*" to the High Court exclusively, and section 45(4) preserves this Court's inherent jurisdiction as upper guardian.

ASSESSMENT OF APPLICANT'S CLAIM

UNILATERAL RELOCATION:

[42] In evaluating this case it is important to have regard to the position prior to *18 September 2026*. We had a family unit consisting of the parties and G with their habitual residence situate at Eswatini. Both the Applicant and First Respondent had shared full parental rights and responsibilities in respect of G in terms of section 18(2) of the Children's Act, Act 38 of 2005 ("Act") including care and guardianship.

[43] Care of a minor child is a component of '*parental rights and responsibilities'* in terms of s 18(2) of the Act. '"*Care*", as defined in section 1 of the Act, includes, where appropriate and within available means, providing the child with a suitable place to live, proper living conditions and financial support. It also includes safeguarding and protecting the child from abuse and harm. It deals with guarding against any infringement of the child's rights, directing the child's education and upbringing, including religious and cultural education and upbringing, and guiding

the behaviour of the child in a humane manner. "*Care*" is also about maintaining a sound relationship with the child, accommodating any special needs that the child may have and ensuring the best interests of the child is the paramount concern in all matters affecting the child.

[44] Under section 18(3)(c)(iii), read with section 18(5) of the Act, both guardians must consent to a child's departure or removal from the Republic; their consent is also required for a passport application.

[45] To relocate permanently to South Africa with G, the First Respondent therefore had to obtain the Applicant's consent or seek a court order authorising the relocation.

[46] The First Respondent chose neither course, deciding instead to relocate permanently across the border unilaterally.

[47] The First Respondent's affidavit in support of her Domestic Violence Application makes it clear that the relocation was premeditated. It was not a decision taken on the evening of *16 September 2026* spent with her family, as her counsel suggested. In paragraph 10, headed **DEPARTURE, FLIGHT TO PRETORIA, AND CURRENT URGENCY**, she expressly states that she used the travel arrangements to escape permanently from an abusive environment to her mother's secure residence. The exact wording follows:

"10.1. On Tuesday, 15 September 2026, the respondent, our minor child, and I travelled from Swaziland to South Africa, bringing our pet dog ("Twinks") to Fourways Veterinary Hospital for a hysterectomy.

10.2 The surgical procedure occurred on Wednesday, 16 September 2026 (coinciding with my mother's birthday), and the dog was discharged on the night of Thursday, 17 September 2026.

10.3. Recognising that my life and the safety of my minor child were in grave danger, I used this travel opportunity to escape the abusive environment permanently on 18 September 2026.

10.4. My brother assisted in fetching G and me, transporting us to my mother's secure residence in Waterkloof Ridge." (my emphasis)

[48] The relocation was therefore planned in advance, not decided upon while the First Respondent was with her family in South Africa. She has not been candid with this Court about the prior planning of the relocation.

[49] In my view, her premeditated relocation without consent or a court order amounts to self-help.

[50] This Court is not called upon to review the Interim Domestic Violence Protection Order. I nevertheless am alive to the allegations of domestic violence made by the First Respondent over several years against the Applicant and of one alleged incident involving G in *May 2025.*

[51] The First Respondent, on her own version, together with the Applicant and G as a family, travelled to South Africa with their pet for the pet's surgery and to visit the maternal grandmother.

[52] The First Respondent deliberately used the family trip to escape what she described as an abusive relationship. After joining her family, away from the Applicant, she continued to send WhatsApp messages suggesting that she and G would return to depart for Eswatini. She for instance wrote: "*No sorry my hubby I'm just saying goodbye to everyone. I'll see you soon. I love you so much*".[13]

[53] Counsel for the First Respondent submitted that these messages were intended to appease the Applicant. I reject that explanation, as she and G were already beyond the alleged danger and no longer needed to pacify the Applicant.

[13] ESC 9 at 001-85

[54] Even after her attorney's letter on *18 September 2026* her communication with the Applicant was still aimed at deceiving the Applicant. On *2 October 2026* she wrote: "*I love you ... Mwahhh"*[14]

[55] In summary, the relocation was premeditated and orchestrated. The First Respondent continued to deceive the Applicant even after she and G were beyond the alleged danger.

[56] Section 31(2) of the Act required the First Respondent to consider the Applicant's views, as a co-holder of parental responsibilities and rights, before deciding to relocate. International relocation was a decision *"which is likely to change significantly, or to have a significant adverse effect on, the co-holder's exercise of parental responsibilities and rights*".

[57] Nevertheless, she crossed the border unilaterally, intending not to return, without the Applicant's consent or a court order.

[58] In the event of the Applicant not giving his consent she had to approach the court for leave to relocate and the sanction of the court.[15] Such a relocation had to serve the child's best interest. Section 28(2) of the Constitution of the Republic of South Africa states that a child's best interests are of paramount importance in every matter concerning the child.

[59] The First Respondent orchestrated the relocation under false pretences, then approached the Domestic Violence Court to obtain judicial sanction for a relocation which was not approved and to prevent contact between G and the Applicant, relying on an alleged incident in *May 2025* which is denied by the carers.

[60] Although the Hague Convention does not apply and there is no presumption that the First Respondent and G must return, this Court cannot and must not endorse or give effect to the First Respondent's unauthorised and preferred outcome. Self-

[14] ESC 22 at 001-158
[15] Jackson v Jackson 2002 (2) SA 303 (SCA) para 2; F v F 2006 (3) SA 42 (SCA) paras 10 to 13

help unilaterally changed the *status quo.*

[61] The courts of the parties' habitual residence are best placed to determine divorce and related family matters. In this case, those are the courts of Eswatini.

[62] Counsel for the First Respondent submitted that, even in Hague Convention matters, a court will refuse a child's return under Article 13(b) of the Convention if there is a grave risk that the return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation.

[63] If G was at grave risk the First Respondent would not in her application have sought daily video calls between G and the Applicant and that the prohibition on contact only remain in place until the return date. The interim protection order however went further, prohibiting all contact until the conclusion of a Children's Court Enquiry and thus granting relief beyond that sought.

[64] The following also refutes risk to the minor:

[64.1] The First Respondent's attorney invited video calls on *29 September 2026* with G at the Applicant's convenience.[16]

[64.2] The Respondent in the Heads of Argument also tendered daily telephonic or video calls between 17:00 and 18:00 and in person contact albeit supervised every alternate weekend if he is in Gauteng.[17]

[65] The First Respondent's offers of contact between G and the Applicant are inconsistent with the Interim Protection Order. Had G faced a grave risk of physical or psychological harm that was weighty and substantial, rather than trivial, such contact would not have been offered. These offers also indicate that

[16] ESC 21 at 001-154
[17] 000000-49

the First Respondent recognises that a complete absence of contact is not in G's best interests.

[66] The Applicant is adhering to the Interim Protection Order in that he has had no contact with the First Respondent.

[67] As noted above, the First Respondent has herself waived the provision prohibiting contact between the Applicant and G, despite the Interim Protection Order remaining in force.

[68] Paragraph 4.1.6 of the Interim Protection Order which orders no contact between the Applicant and G until conclusion of a children's court enquiry seems to contradict paragraph 4.1.4 which allows for the Applicant to remove the minor child from the First Respondent's care with a court order which would result in contact.

[69] The Applicant asserted that this application is in terms of paragraph 4.1.4 of the Interim Order.

[70] The First Respondent in terms of paragraph 4.6 furthermore had to immediately approach the Children's Court yet she waited 23 days to do this. She is therefore not complying with the Interim Order of which she is the beneficiary.

[71] It is trite that a High Court will not intervene in uncompleted proceedings of an inferior court, nor entertain reviews or appeals against interlocutory or interim orders, save in exceptional circumstances where a grave injustice would otherwise result and where no other adequate statutory remedy exists.

[72] The order is interim, and the Domestic Violence Act provides a separate, comprehensive mechanism for reconsideration through the return-date hearing under section 5(2) and the right to anticipate that date under section 5(5). Nevertheless, in my view, section 45(3)(d) of the Children's Act reserves "*the*

departure, removal or abduction of a child from the Republic" exclusively to the High Court, while section 45(4) preserves this Court's inherent jurisdiction as upper guardian.

[73] This Court accordingly has jurisdiction to hear the application. Paragraph 4.1.4 of the interim order, which permits the Applicant to remove the minor child from the First Respondent's care with a court order, further supports this Court's interference.

[74] The Applicant asserted that a party cannot simply unilaterally act and subsequently seek the court's intervention and sanction. In this regard I was referred to the following cases:

[74.1] L.C.E v C.E [2026] ZAGPJHC 1070 (Adams J, 29 September 2026):

a parent who retained a four-year-old and then sought endorsement had "*implemented his own preferred outcome and sought judicial endorsement thereafter*" [9]; the court "*cannot and should not countenance such conduct"* [13]; "*the status quo ante should be restored*" [20]. Immediate return was ordered, with the Family Advocate to investigate.

[74.2] *S.A.H v S.B.H [2025] ZAGPJHC 538 (Full Bench, 5 June 2025*):

return was ordered after a mother moved a child from Johannesburg to Durban without consent; a premature relocation "*poses a real and tangible risk of irreparable harm*" [34]

[74.3] *Family Advocate v R [2013] ZAECPEHC 10*:

allegations of abuse were "*no justification for removing the children without [the father's] consent*" [43]; the mother who "*resorted to self-help"* was penalised in costs [45]

[75] The First Respondent sought to distinguish these cases on the basis that she is the primary caregiver and had alleged abuse. I reject that distinction. The cases

demonstrate judicial disapproval of, and penalties for self-help, before court intervention, regardless of which parent provided care. Both parties here share parental responsibilities and rights concerning G's care and guardianship. In *Family Advocate v R*, cited above, a Hague Convention matter, the court ordered the children's return despite allegations of abuse.

[76] In *Sonderup v Tondelli 2001 (1) SA 1171 (CC*), the Constitutional Court ordered a child's return to the other parent's jurisdiction over the mother's allegations of risk of harm, with protective conditions attached to the order.

[77] The Respondent's Heads of Argument referred me to *Jackson v Jackson 2002 (2) SA 303 (SCA)* and *F v F 2006 (3) SA 42 (SCA*) and that:

[77.1] courts will generally not interfere with the *bona fide* and reasonable decision of the primary caregiver to relocate and

[77.2] the primary caregiver is entitled to make choices regarding where she and the child will live, provided the decision is bona fide, reasonable, and compatible with the child's best interests;

[78] The First Respondent's decision as primary caregiver is to remain in Pretoria.

[79] These cases are distinguishable from the matter before court. In *Jackson*, the parties were divorced and the Appellant had been granted custody; in F v F, the party had primary residence. Here, both parties are co-holders of parental responsibilities and rights concerning Gia's care and guardianship, although the First Respondent describes herself as the primary caregiver. Prior to *18 September 2026*, the parties and G lived as a family unit, with both parents contributing to her care.

[80] The First Respondent also invokes her right to freedom of movement under section 21 of the Constitution. That right is recognised, but permanent relocation with a child must be considered in light of the child's best interests. Here, she decided unilaterally to relocate without any investigation into G's best interests,

which are of paramount importance. A relocation order necessarily limits where a parent may take the child.

[81] The relief sought is furthermore interim, pending the finalisation of the divorce action in Eswatini. This Court need only determine where G should live in the meantime.

[82] The First Respondent's assertion that G is settled in Pretoria is of particular concern in light of the unilateral relocation. She clearly intended to establish a routine over five weeks. G's school was arranged on *28 September 2026*, ten days after the retention, and its name was deliberately withheld from the Applicant. Her first therapy sessions took place on *19 October 2026*, six days after service of the application, following a month without the weekly intervention prescribed by her therapists.

[83] A court cannot permit a party who resorts to self-help to defend her conduct by relying on the child's subsequent alleged settlement in another country. Such conduct must be condemned[18], not ratified.

[84] The First Respondent's premeditated relocation, without consent, judicial intervention or an assessment of G's best interests, deprived G, a three-year-old with documented speech and sensory delays, of her home, school, therapists, carers and contact with the Applicant. This disrupted G's stability and security. The First Respondent then approached the Domestic Violence Court, which prohibited contact between the Applicant and G pending a Children's Court enquiry, based on an alleged incident in *May 2025*. Despite that interim order, she allows telephonic and video contact, and also now proposes supervised in-person contact, between them.

[85] The First Respondent's actions (self-help) amount to the implementation of a relocation, a unilateral change of the *status quo*, the settling in of the parties

[18] L.C.E. v C.E

across the border in South Africa and litigation in two countries.

[86] It is clear that the parties agree that there must be contact between the Applicant and G to serve the minor's best interests and that their passports must be lodged.

[87] The First Respondent proposes supervised in-person contact between the Applicant and G. In response, the Applicant's counsel submitted that the Applicant had unrestricted daily contact with G from *May 2025 to 15 September 2026,* during which she was not exposed to harm.

[88] This court is mindful of the fact that the interim protection order stands pending the return day in *December 2026*. The First Respondent will have to address:

[88.1] her failure to act upon the incident of *May 2025* for more than one year

[88.2] whether her failure was in G's best interests.

[89] The Applicant has yet to respond to the alleged incident.

[90] The Applicant's mother is in Eswatini and can supervise contact pending determination of the Domestic Violence Proceedings. If the Interim Protection Order is discharged, supervised contact can automatically revert to normal, unrestricted contact.

CONCLUSION:

[91] In conclusion, this Court disapproves of the First Respondent's unilateral relocation, notwithstanding the allegations of domestic abuse. She could have sought relief from the courts of Eswatini, where the family's habitual home is situated, using the legal remedies available there. She had previously done so in relation to the firearm incident without repercussions. Instead, under the guise of visiting her parents and taking the dog for surgery, she left the country and

uprooted G. She deprived G of the structure, predictability and continuity vital to a child with sensory-processing and speech difficulties and excluded the Applicant from G's life as her father. This can never be in G's best interests.

[92] The First Respondent subsequently obtained an Interim Protection Order prohibiting the Applicant from contacting either her or G. The order enabled her to secure judicial sanction for the unilateral relocation and to attempt to settle with G in Pretoria.

[93] This Court is of the firm view that G must return to her home in Eswatini. The High Court of Eswatini and its supporting processes are best placed to investigate matters concerning her care and contact. The divorce action has already been instituted there; further litigation in South Africa would duplicate proceedings and incur unnecessary additional costs.

[94] Paragraph 4.1.6 of the Interim Order, Section 45(3)(d) of the Act and being upper guardian of the minor entitle this court to order the return of the minor to her country of residence.

[95] An order returning G to Eswatini and removing her from the First Respondent's care necessarily affects the Interim Order's prohibition on contact with the Applicant.

[96] G is only three years old and, as the Applicant's counsel rightly submitted, time is not neutral for a child of her age. Each day without contact with her father may substantially harm their relationship. For more than a year after the alleged abuse, G continued to have daily contact with the Applicant. The First Respondent's waiver of the no-contact provision, her allowance of telephonic and video contact, and her proposal for supervised in-person contact further indicate that she recognises that excluding the Applicant from G's life is not in G's best interests. No contact can accordingly not be in G's best interests as a 3-year-old. As upper guardian, this court will suspend paragraph 4.1.4 of the Interim Order in respect of the directive that there should be no contact between the Applicant and G until the conclusion of the Children's Court Enquiry. The suspension serves G's best

interests.

[97] The Court will make alternative orders for G's return to Eswatini: she may return accompanied by the First Respondent, if the First Respondent so elects; *alternatively*, G will return without her and be cared for by the Applicant and his mother in Eswatini.

[98] I conclude with Ernest Hemingway's words: *"You can't get away from yourself by moving from one place to another."* These words are apt here: moving to another country does not resolve matrimonial and domestic disputes pending in the country of habitual residence. Even where domestic abuse is alleged, as is in the present matter, the legal system of Eswatini offers remedies and remains better placed to assess those disputes.

[99] With these considerations in mind, and for the reasons set out above, I make the following order:

Order

[1] The Applicant's non-compliance with the Rules of Court, to the extent that it is necessary, is condoned and that the above Honourable Court hear this application as one of urgency in terms of the provisions of Rule 6(12)(a) of the Uniform Rules of Court.

[2] The minor child, *G. J. C*, born on 26 July 2023 ("G"), shall be returned to her habitual residence in the Kingdom of Eswatini within seven (7) days of the date of this order.

[3] The First Respondent may, within five (5) days of this order, elect by written notice to the Applicant's attorneys to return to Eswatini with G.

[4] In the event that the First Respondent elects to return to Eswatini:

[4.1] Pending the final determination of her care, residence and contact by the High Court of Eswatini in the divorce action between the parties G shall primarily reside with the First Respondent in Eswatini;

[4.2] Pending the finalization of the domestic violence proceedings in Tshwane Central the Applicant shall have contact to the minor child twice every week between the hours of 08:00 and 17:00 and every alternative weekend on a Saturday and Sunday between the hours of 08:00 and 17:00 in the presence of the paternal grandmother.

[4.2.1] In the event of the interim protection order being discharged in the Tshwane Magistrate's Court the contact rights shall revert to normal unrestricted contact rights and will be pending the finalisation of the divorce action in Eswatini.

[4.3] The Applicant shall provide and pay for suitable separate accommodation for the First Respondent and G in Ezulwini;

[4.4] The Applicant shall pay the First Respondent a monthly allowance of *R30 000.00,* and the debit orders listed by her from *1 December 2026*.

[4.5] The Applicant shall be liable for G's school fees, therapy, medical and related expenses.

[4.6] The First Respondent shall enjoy daily video call contact with G between 17h00 and 18h00.

[4.7] The Applicant shall pay the reasonable travelling expenses of the First Respondent and G to Eswatini

[5] Alternatively to paragraph 4, in the event that the First Respondent elects not to return to Eswatini:

[5.1] The First Respondent shall deliver G, together with her belongings, to the Applicant's mother, A. G., on Monday *16 November 2026* at 10h00 at Unit 9[…], The P[…] L[…] Estate, M[…], *alternatively* at such other place and time as the parties may agree in writing.

[5.2] G shall thereafter reside with the Applicant and his mother in Eswatini.

[5.3] The First Respondent shall have contact with G in Eswatini on reasonable notice whenever she wishes, and in Gauteng for one weekend per month from Friday at 16h00 until Sunday at 16h00.

[5.4] The Applicant shall bear G's travelling costs.

[5.5] The First Respondent shall enjoy daily video contact with G between 17h00 and 18h00.

[6] The Applicant and his mother, *alternatively* the First Respondent, is authorised to travel with G from the Republic of South Africa to the Kingdom of Eswatini, and to procure G's departure from the Republic through any port of entry, on production of this order. This order constitutes the consent of both parents and co-guardians of G to her departure from the Republic for the purposes of section 18(3)(c)(iii) of the Children's Act 38 of 2005 and regulation 6(12) of the Immigration Regulations, 2014, and the Director-General of the Department of

Home Affairs, the Border Management Authority and all immigration and police officials at the ports of entry are directed to permit G's departure from the Republic in the company of the person so authorised, on production of a copy of this order, without the need for any further parental consent affidavit or other documentation. The Applicant shall make G's passport available to the First Respondent for the purpose of her travel with G should she elect to return.

[7] Pending G's return to Eswatini, the Applicant shall have:

[7.1] Daily video contact with G between 17h00 and 18h00; and

[7.2] In-person contact in the presence of the Applicant's mother on the following Saturdays 7 November 2026, 14 November 2026 and the following Sundays 8 November 2026 and 15 November 2026 from 09h00 to 17h00 on each day, at a venue other than the First Respondent's residence, G to be handed over and collected by a person nominated in writing by the First Respondent.

[8] The Applicant shall not remove G from the Kingdom of Eswatini, save for the contact provided for in this order, without the prior written consent of the First Respondent or an order of court, and shall lodge G's passports with his attorneys of record on her return.

[8.1] If the First Respondent elects to return to Eswatini she shall not remove G from the Kingdom of Eswatini without the prior written consent of the Applicant or an order of court.

[9] The Applicant shall not attend at any residence of the First Respondent without her consent and shall communicate with the First Respondent concerning G in writing or through the parties' attorneys only.

[10] Paragraph 4.1.4 of the interim protection order granted on 21 September 2026 under case number 2415/2026 is suspended to the extent necessary to give effect to this order. This order constitutes the court order contemplated in

paragraph 4.1.6 of the interim protection order, and the residence, return and contact provided for in this order shall operate notwithstanding paragraphs 4.1.4 thereof as it is suspended.

[11] The orders in paragraphs 2 to 10 above shall operate as an interim order pending the final determination of G's care, residence and contact by the High Court of Eswatini in the divorce action between the parties, and shall prevail until that determination is made or until varied by a competent court.

[12] The Registrar is to restrict access to this case on CaseLines to only the parties and their legal representatives to safeguard the child's best interests.

[13] The First Respondent shall pay the costs of Part A of this application on scale C.

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S VAN ASWEGEN
ACTING JUDGE OF THE HIGH COURT
GAUTENG LOCAL DIVISION

This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the Parties/their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date for hand- down is deemed to be at 10h00 on 6 November 2026.

Date of hearing: 29 October 2026
Judgment delivered: 6 November 2026

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