

1. Can you please add the following line:

The parties agree that in the best interest of the child they will endeavour to resolve any disputes amicably before proceeding to utilising dispute resolution methods covered in this agreement. This is on condition that both parties consent to such dispute resolution methods with such consent recorded. The plan sets the minimum provisions which may not be altered but does not prevent either parties by mutual agreement in writing to implement additional arrangements in the interest of the child.

This clause cannot be added to the Plan because the plan constitutes the entire agreement between yourself and Mpho. If we add this it will defeat the best interest of the child notion in the Children's Act as well as stated in various case law.

2. How do we quantify major? 3.1.18

Obviously major decision will be what is reasonably accepted as major taking into account the best interest of the child and public policy. This clause cannot be interpreted narrowly.

3. How did you come to this conclusion? Isn't this based on what is in the interest of my son and thus warrants an assessment to that effect?.

Primary residence

Mpho is given primary residence of Likhanyo because she is the natural mother and primary care giver. If you consider the Children's Act carefully you will note that fathers are given primary residence only in extreme circumstances. You were never married to Mpho at the time when the baby was conceived, and further Mpho is of sound mind and able to manage her own affairs. So in terms of the law and case law, she is the one who is entitled to get Primary residence of the child. Further take into consideration that the child is still breast fed, the child is very fragile and that the child is already used to a certain environment.

4. Can this be changed such that the party with whom he spends his birthday is where he will sleep? With regards to the choosing of where he spends his birthday it will be his choice effective from after 2 years but until then the parties agree to alternate by mutual agreement.

In terms of the principle of the Best interest of the Child, it will not be in the child's best interest to sleep over if he is still under 3 years. This has been shown in numerous case law as the court takes into account the circumstances of the child

The half day issue is something that has been accepted by the courts. It gives both parents an opportunity to have their child/children equally on a specific day.