

Submission to the
South African Law Reform Commission (SALRC):

**Request for Investigation into Gender Bias and Unconstitutional
Application of Maternal Preference Rule in Child Custody Cases**

By

Salatiso Lonwabo Mdeni

Email:

salatiso@saltiso.com/

salatiso.mdeni@gmail.com

31/03/2024

Declaration

I, Salatiso Lonwabo Mdeni, declare the information in this submission to the SALRC is true and reflects my experiences, alongside those of other fathers, navigating the child custody system.

As a father impacted by the maternal preference and gender bias in Children's Courts, I aim to expose these issues and advocate for reform. This fight extends beyond my struggles; it's for the well-being of my son, nephews, and all children missing equal parental involvement. To this effect thus far;

- **Evidence of Bias:** I possess my case documents, submissions, and the final order as evidence of bias of the children's court.
- **Missing Affidavit:** The court has yet to provide the respondent's affidavit, I've escalated this to the Magistrate's Commission (see Annexure 1).
- **Gender Equality Concerns:** Given gender bias concerns, I have also notified the Commission for Gender Equality (see Annexure 2).

To support my claims, I can provide sworn affidavits detailing personal experiences and offer previously submitted affidavits to Children's Courts, documenting biased practices.

Understanding the gravity of these issues, I take responsibility for providing accurate information and cooperating with inquiries.

This declaration affirms my commitment to Equality before the Law and the Best Interest of the Child Principle.

Signed,



Salatiso Lonwabo Mdeni

31/03/2024

iSazisi

[Declaration](#)

[iSazisi](#)

[1. Background and Motivation](#)

[2. Alignment with SALRC Selection Criteria](#)

[3. Conclusion](#)

[Annexure 1](#)

[Annexure 2](#)

[Annexure 3](#)

1. Background and Motivation

I, Salatiso Lonwabo Mdeni, hereby request that the SALRC conduct an investigation into the pervasive gender bias against fathers and the continued unconstitutional application of the maternal preference rule in child custody decisions by the Children's Courts and legal practitioners in South Africa.

Despite the equality clause in the Constitution and the established best interests of the child principle, I contend that Children's Courts routinely discriminate against fathers by imposing additional burdens and presuming them less fit parents compared to mothers from the outset. This not only violates fathers' constitutional rights, but deprives children of meaningful paternal involvement crucial to their wellbeing and development.

In my own case involving my minor son, the mother was empowered by her legal representatives to deny me equal custody and access from birth, in clear breach of constitutional provisions, going as far as to fabricate lies under oath. When I approached the Children's Court for relief, the court failed to uphold the equality principle and instead reinforced the biased maternal preference rule by granting the mother primary custody without valid justification.

Disturbingly, this appears to be common practice rather than an exception, as numerous fathers report facing similar anti-male bias and unfounded assumptions of maternal superiority in custody matters. Mothers are incentivized to make false allegations and obstruct paternal contact, knowing courts will side with them regardless of merits.

I believe my case presents an opportunity to expose and rectify this systemic injustice through an in-depth investigation by the SALRC. Neither my son, nor any other child,

should be denied the benefits of equal shared parenting by both fit parents simply due to archaic gender stereotypes.

2. Alignment with SALRC Selection Criteria

2.1. This submission satisfies the SALRC's initial screening criteria for an investigation:

- 2.1.1. The issues of gender discrimination and unconstitutional application of maternal preference in custody are predominantly legal, involving fundamental constitutional rights.
- 2.1.2. Resolving this issue hinges on children's court judges rigorously applying legal and constitutional principles like "equality before the law" and "best interests of the child" in all child custody cases.
- 2.1.3. The paternalistic approach of the court, which seeks to protect or favour mothers based on historical gender inequalities, is unjustified and perpetuates a form of reverse discrimination. As demonstrated in Annexure 3, the specific circumstances and backgrounds of the individuals involved must be considered, and the legal system must treat both parents as equals, without any bias or preferential treatment based on gender.
- 2.1.4. Some difficulties cannot be resolved without substantive legal reform, as they are entrenched in the operation of the courts and statutes like the Children's Act itself. Improved implementation alone is insufficient.
- 2.1.5. As the law reform body tasked with enhancing access to justice and constitutionality, the SALRC is best placed to handle this complex matter implicating multiple stakeholders.
- 2.1.6. Recent judgments like the Van Wyk and others v Minister of Employment and Labour case on paternity leave equality ruling show the urgent need and receptiveness for reform in this area. An

SALRC investigation would complement and consolidate these progressive developments.

- 2.1.7. The conduct of the entire legal fraternity, including private legal practitioners, magistrates, and court personnel in children's courts, needs to be investigated for compliance with ethical standards prescribed for their respective roles, especially when children are involved by the outcome of a case.

I believe the SALRC has the capacity and expertise to prioritise this investigation, given the gravity of the rights violations and severe consequences for children if the status quo persists.

2.2. The matter also strongly aligns with the SALRC's second-phase criteria:

- 2.2.1. The current legal regime is unsatisfactory and unconstitutional in its differential treatment of fathers and disregard for the benefits of equal parental involvement in children's lives.
- 2.2.2. The scale of the problem is immense, affecting a significant proportion of the population, as the number of custody disputes and single-parent households continues to rise.
- 2.2.3. Potential benefits of law reform are profound and far-reaching, promising to advance gender equality, advancement of mothers in formal education and careers, child welfare, and respect for paternal caregiving as a social good. Restoring father-child relationships can break cycles of fatherlessness.
- 2.2.4. The investigation would advance the transformative constitutional vision of a society free from unfair discrimination and affirm the state's duty to protect the best interests of children.
- 2.2.5. Dismantling the maternal preference rule is essential to realising substantive gender equality and equitable co-parenting, which in turn promotes children's constitutional rights to parental care and dignity.

- 2.2.6. Examining the intersection of parental rights and children's rights would deepen our constitutional democracy and balance the interests of all family members.
- 2.2.7. The issues profoundly impact vulnerable groups like children and unmarried fathers who are disproportionately disadvantaged under the current dispensation. Meaningful engagement with affected communities is vital.
- 2.2.8. Custody law reform requires a systemic, sustained analysis of how multiple legal frameworks (like the Children's Act, Divorce Act, Customary Law and Practices requiring damages and Domestic Violence Act) operate in practice to prejudice fathers.
- 2.2.9. Extensive public participation with anecdotal evidence prioritised over statistical abstraction, and expert input, including from child psychologists and family law scholars, would be essential to crafting nuanced, evidence-based solutions.
- 2.2.10. An independent investigation is necessary to objectively dissect the structural biases entrenched in the child custody system, without undue influence of interested parties who benefit from the status quo. The SALRC's positioning and expertise is ideal for this.
- 2.2.11. The investigation would undoubtedly stimulate crucial public discourse about parental responsibilities and rights in the 21st century, as well as the evolving role of fathers across our diversity of family forms.
- 2.2.12. Ultimately, overcoming the divorced dad paradigm and equalising parental involvement would yield immeasurable benefits for children, who then have the best chance to become productive, well-adjusted citizens. This strengthens the family as the foundational unit of a stable, thriving society.

3. Conclusion

For these reasons, I implore the SALRC to undertake an urgent investigation into the identified issues of gender bias and unconstitutional application of maternal preference in child custody matters. The stakes could not be higher - for fathers, for children, and for the very fabric of our constitutional democracy.

I am committed to assisting the SALRC in this vital endeavour in any way possible. Please do not hesitate to contact me for any further information or input. I eagerly await your response on this crucial matter.

Annexure 1

salatiso.mdeni@gmail.com

From: Maleyana Shirley <SMaleyana@justice.gov.za>
Sent: Monday, 18 March 2024 10:04
To: salatiso.mdeni@gmail.com
Cc: Nieuwoudt Michael; Botes Lourens
Subject: REF 6/5/5/1-128/2024: Complaint Regarding Failure to Provide Court Records - Children's Court Case No: 14/1/4 - 39/2024
Attachments: Complaint Regarding Failure to Provide Court Records - Children's Court Case No.pdf; Children's Court Email Thread.pdf

Dear Ms Mdeni

I acknowledge receipt of your complaint dated 13/03/2024.

Your complaint has been brought to the attention of the Ethics Division of the Magistrates Commission. The matter is receiving attention and a further communication in this regard will be addressed to you in due course.

Your file is allocated to senior magistrate Ms Teresa Swart, email address: TeSwart@justice.gov.za

Your reference number is 6/5/5/1-128/2024

Kind regards

Ms Shirley Maleyana
Magistrates Commission
SMaleyana@justice.gov.za
012 395 0075

Subject: Complaint Regarding Failure to Provide Court Records - Children's Court Case No: 14/1/4 - 39/2024

*To:
The Secretary
Magistrates Commission
Private Bag X193
Pretoria
0001*

Dear Secretary,

I wish to lodge a formal complaint against Acting Magistrate VS Mose of Children's Court for the District of Johannesburg regarding their failure to provide me with a complete record of proceedings as requested and required.

During the court hearing on 26 February 2024, I explicitly requested that I be furnished with a copy of the Respondent's replying affidavit. The presiding Magistrate acknowledged and confirmed on record that this document would be provided to me.

However, when the court order was issued, the replying affidavit was not included despite my subsequent reminders to the Magistrate and court clerk requesting it be supplied to me. To date, I have still not received this crucial documentation from the court records.

I am making this request because I plan to pursue additional legal action on this matter through the Equality Court. I am deeply troubled by the lack of transparency and public accountability in Children's Court proceedings, as they are not conducted in open court. This situation has, in my view, allowed discriminatory practices and gender bias to persist unchecked, to the detriment of the best interests of the children involved. My goal is to demonstrate that Children's Courts have consistently applied the unconstitutional maternal preference rule instead of adhering to the principles outlined in the constitution and Article 3 of the United Nations Convention on the Rights of the Child (CRC).

I have already alerted the Commission for Gender Equality to these concerns. However, to comprehensively present my case in the open courts, I require access to the full record from the Children's Court, including the Respondent's replying affidavit which has been withheld from me.

I have attached copies of the relevant email correspondence with the court, demonstrating my repeated requests for this document which have been ignored.

As an officer of the court and custodian of judicial records, the Magistrate's refusal to provide me with these documents is obstructive and violates the constitutional principles of access to court records and open justice.

I urge the Commission to investigate this matter urgently and compel the Magistrate to immediately furnish me with a complete record of the Children's Court proceedings, especially the outstanding replying affidavit. I have no problem instituting proceedings in its absence, however having it will aid transparency.

I am committed to following through on this complaint and related actions to expose and rectify any unconstitutional conduct within the children's courts, my son and nephews will not go through this.

I hereby affirm the contents of this correspondence as correct, evidence to that effect is attached.

Sincerely,
Salatiso Lonwabo Mdeni
salatiso.mdeni@gmail.com cc salatiso@salatiso.com

Annexure 2

Report of a Gender Complaint: CGE

Details of the incident:

What outcome do you propose or expect from this complaint (tell us what you would like to achieve with this complaint and the relief sought):

Further Details:

I am filing a complaint against the Johannesburg Children's Court for gender discrimination. In a recent judgement regarding my son, the court failed to consider the merits of the case and, more importantly, the best interests of the child. Instead, the court relied on the maternal preference principle, which is discriminatory based on gender. In a similar situation in 2019, the magistrate stated that custody could only be awarded to a father if the mother was proven to be incompetent. This behaviour is unconstitutional, lacks justification, perpetuates stereotypes and ultimately harms children, whose interests should be the priority.

I currently have a matter before this Court which involves primary care of a minor child. I am seeking full custody for my son who currently stays with his mother. To this effect;

- I have produced evidence in support of my approach, which neither the court nor his mother has disputed,*
- I have made allegations, some of which involve criminal conduct by his mother if confirmed, and have shown the impact this conduct has had in the wellbeing of the minor.*
- To date I am yet to receive any rebuttal to these allegations in the form of a replying affidavit from the mother, something the magistrate confirmed would be provided to me but I am yet to receive, so far I have reminded the magistrate twice to supply me with this documentation, I am still waiting.*
- I will be approaching the Equality Court as well as a superior court to review the magistrate's judgement because to date I am yet to receive any.*

I am alleging that the magistrate did not apply the principle of the best interest of the child, instead he defaulted to the maternal preference principle, an approach which is both unconstitutional and prejudicial, especially to the mother as it perpetuates stereotypes.

This is not the first time this has happened, the last time however I didn't know about the CGE and I was naive enough to think Children's Courts would be the solution to the legal problem instead of being the cause they turned out to be. Magistrate courts are shielded from public scrutiny since they are not conducted in open court and the prohibition placed by section 74 of the Children's Act on the publication of court records, to this effect;

- I will also be taking this issue to the Equality Court,*
- As evidence of discrimination I will be submitting all the court documents including application, affidavits and order from the court.*

I am convinced that this conduct, if it is as wide spread and far reaching as I think could actually explain more about the problems like Gender Based Violence, because;

- The discrimination by the courts results in children being raised in without their fathers to teach them to control their emotions,*
- The anger builds over the years as the male children learn the injustice that befell their father, costing them crucial relationships is awaiting in their future. It is easy to lie to a child, but adults learn.*

- *More importantly the male children miss out on learning crucial skills from their fathers that can help them to be self sufficient, which could explain the despondency in the youth in the country, high crime and unemployment.*

I am bringing this before the Commission, even though I am not sure if it falls within your scope. I am taking measures to resolve this myself, but I thought it responsible to inform the Commission in case this is something that indeed falls within your scope.

Based on the merits of my case alone, I will not only prove discrimination on the basis of gender, but I will also show that contrary to the stereotype, fathers are neither a monolith nor against taking primary care of our children. It is the odds we know they face with application of the Maternal Preference Rule that lead most to yield to pressure.

I will prove my case beyond reasonable doubt, so that my son will never have to.



cge.org.za/complaints-2/

HomeSchooling Learning Energy Saving Bookshelf-Home Home DIY Coding & Program... PigeetBack GV 2018 Websites & eMail Construction Academic TQFB _ Research Online Income stre... CyberSecurity

Complaints

[Home/](#) [Complaints](#)

Note on Information Security

The Commission can not guarantee the security of any electronic exchange of information. If you are concerned about providing your complaint by email or using the online complaint form, you can download the complaint form and post your complaint to the Commission For Gender Equality at the address listed above.

Note on Information Security

The Commission will send you a letter to acknowledge that we have received your complaint. If you do not receive an acknowledgement of your complaint within seven (7) days, you can send us an email or call us on +27 11 403 7182 After receiving your complaint an Investigation /legal Officer will be allocated to look into your complaint. The officer will contact you to discuss how the matter will proceed.

Thanks for contacting us! We will be in touch with you shortly.

Annexure 3

The Case Against Paternalism: Examining Gender Equality in the Context of Child Custody

Introduction

As a father fighting for equal rights and fair treatment in a child custody dispute, I have come to realise that the paternalistic approach towards women in such cases is not only unjustified but also detrimental to the principles of gender equality and fairness. In my case, involving the mother of my child, the evidence clearly demonstrates that a biased application of redress provisions and a skewed legal system favouring women is unwarranted and discriminatory.

1. Childhood and Upbringing

1.1 My Background

I grew up in rural South Africa, facing numerous challenges and responsibilities from a young age. I attended poorly resourced, no-fee schools and had to navigate the difficulties of a disadvantaged background. Despite these obstacles, I excelled academically and took on the responsibility of supporting my mother and sisters after the death of my father when I was just 11 years old.

1.2 The Mother of My Child

In stark contrast, the mother of my child enjoyed a privileged upbringing in an affluent urban neighbourhood. She attended top-rated schools, including a prestigious quantile 5 Christian school, and had the unwavering support of both her parents throughout her

childhood. As an only child, she was raised alongside her cousin and never faced the financial or familial obligations that I had to shoulder.

2. Education and Career Opportunities

2.1 My Journey

My pursuit of education was marked by self-reliance and determination. I funded most of my own studies from 18 years through loans, merit bursaries, and hard work, ultimately obtaining a National Diploma in Environmental Health. From the age of 20, I have been a consistent provider for my mother, sisters, nephews, and niece, fulfilling the responsibilities I inherited upon my father's passing.

2.2 The Mother of My Child

The mother of my child had every opportunity to pursue higher education, with her parents' financial means enabling her to attend tertiary institutions or even study abroad. However, despite these advantages, she dropped out of tertiary education, squandering the resources and opportunities available to her.

3. Family Background and Role Models

3.1 My Family

My primary role model died when I was young, thankfully my mother has been a successful matriarch, raising a man and providing me with the wisdom I needed to successfully succeed my father. My mother and sisters consequently are the biggest beneficiaries even beyond me as they live so far above their means that even as a unit they'd struggle to attain the same quality of life they have, because of me.

3.2 The Mother of My Child's Family

The mother of my child comes from a family of accomplished women. Her mother is a well-educated and successful career woman who has travelled extensively and has years of experience in public healthcare. Her grandmother, an accomplished homemaker, successfully raised her children and provided them with opportunities for further education and formal careers.

4. The Fallacy of Paternalism

Given our backgrounds and experiences, it is evident that there is no justification for a paternalistic approach that seeks to protect or favour the mother of my child based on historical gender inequalities. She has never faced oppression or denial of opportunities by men in her life, and in fact, has enjoyed privileges and advantages that I myself did not have.

The application of redress provisions and the skewing of the legal system in favour of women, in this case, is not only unnecessary but also perpetuates a form of reverse discrimination. The mother of my child and I are of the same age, nullifying any arguments of age-based power imbalances. The scales should not be tilted in her favour under the pretext of correcting past injustices, as there is no evidence of such injustices in her personal or familial history.

Conclusion

My case serves as a poignant reminder that the blanket application of paternalistic approaches in child custody disputes can lead to grave injustices. It is crucial to examine each case on its own merits, considering the specific circumstances and backgrounds of the individuals involved.

The evidence clearly demonstrates that the mother of my child and I are evenly matched, with her having had even greater opportunities and advantages throughout her life. The legal system must treat us as equals, without any bias or preferential treatment based on gender.

The pursuit of true gender equality demands that we move beyond statistical abstractions and consider the anecdotal evidence that highlights the complexities of individual lives. By doing so, we can ensure that the principles of fairness, equality, and the best interests of the child are upheld, free from the influence of outdated gender stereotypes and unjustified paternalism.

In conclusion, the case against paternalism in child custody disputes is strong, and it is time for the legal system to recognize and rectify the biases that have long disadvantaged fathers like myself. Only by embracing a truly gender-neutral approach can we hope to achieve justice and create a society where both parents are valued equally in the lives of their children.