

**IN THE CHILDREN'S COURT FOR THE DISTRICT OF JOHANNESBURG CENTRAL
HELD AT JOHANNESBURG**

CASE NO: 14/1/14-39/2024

In the matter between:

MDENI, LONWABO SALATISO

Applicant

and

MKOSANA, MPHO MIMMI

Respondent

IN RE: LUKHANYO SAZI MKOSANA

("the Minor Child")

CLOSING: HEADS OF ARGUMENT ON BEHALF OF THE RESPONDENT

1. INTRODUCTION:

- 1.1. These heads of argument are delivered on behalf of the Respondent, Mpho Mkosana, in a matter concerning the care and contact arrangements of the Minor Child, Lukhanyo Sazi Mkosana.
- 1.2. The Applicant launched these proceedings in January 2024 and demanded primary residence of the Minor Child. The Respondent opposed the application as she had primary residence since the birth of the Minor Child.
- 1.3. The Parties to these proceedings are as follows:

- 1.3.1. The Applicant is Salatiso Lonwabo Mdeni, with identity number: 820916 5689 083 ("the Applicant").
 - 1.3.2. The Respondent is Mpho Mimmi Mkosana, with identity number; 820709 0735 088 ("the Respondent").
 - 1.3.3. The minor child is Lukhanyo Sazi Mkosana, with identity number: 180228 6062 085 ("the Minor Child"). He is currently 7 (seven) years old.
- 1.4. On the first appearance in the matter on 26 February 2024, the Honourable Acting Magistrate made the following interim order:

"After having considered the best interests of the child in terms of section 7 of the children's Act 38 of 2005 and facts put forward before this court, the INTERIM ORDER granted as follows:

1. *The Child's primary residence remains with the mother respondent.*
2. *Father applicant to exercise reasonable access every Thursdays(after school), Fridays(after school)and Saturdays consecutively and return the child Saturday in the evening.*
3. *The order is effective immediately, pending investigations and finalisation of the matter, unless varied by a competent court.*
4. *Section 35(1) and (2) of Act 38 of 2005 as well as non-compliance with this order is noted.*
5. *Matter postponed to 28 MAY 2024".*

("the interim order")

A copy of this interim order is annexed hereto and marked **"MM1"**.

- 1.5. The interim order has been in place since 26 February 2024 until even date.
- 1.6. Since the granting of the interim order the Applicant elected to not exercise contact with the Minor Child on Thursdays and rather exercised contact from Friday afternoon (after school) until Saturday evening on a weekly basis. This contact is still in place.
- 1.7. At the most recent court appearance, the Applicant stated on the record, that he does not care about the recommendations of the Family Advocate and Counsellor, nor the directives of this Honourable Court or submissions of the Respondent's legal representative. He stated that he merely seeks a final outcome so that he may escalate the matter to the Equality Court, alleging that he has been prejudiced on the basis of his gender. The Respondent strongly rejects this assertion and is concerned that the Applicant's approach amounts to a waste of this Honourable Court's time, particularly in light of his own admission that he anticipated the outcome but required it to be documented solely to facilitate an appeal and/or review.
- 1.8. Furthermore, it is of concern that the Applicant has made scandalous, frivolous and vexatious allegations and lodged formal complaints against each Magistrate previously seized with this matter and has expressed his intention to file a formal complaint against the Family Advocate as well. These actions reinforce the Respondent's contention that the Applicant is pursuing this matter to advance his own interests, rather than those of the Minor Child. The record of Court appearances reflects this troubling pattern.
- 1.9. In summary: the Respondent seeks relief consistent with the recommendations made by the Office of the Family Advocate and the appointed Counsellor, with one critical qualification: that long-holiday contact with the Applicant be phased in gradually in the best interest of the Minor Child.

2. THE LEGAL PRINCIPLE: BEST INTEREST OF THE MINOR CHILD:

- 2.1. At the heart of this matter lies the constitutional imperative that *a child's best interests are of paramount importance in every matter concerning the child*, as enshrined in Section 28 (2) of the Constitution¹. This principle is the cornerstone of all decisions involving children and has been affirmed repeatedly by our courts, including in *S v M* (CCT 53/06) [2007] ZACC 18; 2008 (3) SA 232 (CC); 2007 (12) BCLR 1312 (CC); 2007 (2) SACR 539 (CC) ("*S v M*") , *AD and Another v DW and Others* (CCT48/07) [2007] ZACC 27; 2008 (3) SA 183 (CC); 2008 (4) BCLR 359 (CC) , and other leading Constitutional Court judgments.
- 2.2. The courts now adopt a child-centred, rights-based approach, as seen in *S v M*, where Sachs J emphasised that statutes must be interpreted, and the common law developed, in ways that protect and advance children's rights. The child's unique, real-life circumstances must be at the forefront of every inquiry.
- 2.3. Statutory Codification - the Children's Act 38 of 2005:
- 2.3.1. This approach finds extensive statutory expression in the *Children's Act 38 of 2005*. Sections 7, 9, 10, and several others throughout the Act operationalise this standard across matters of care, protection, contact, adoption, and surrogate motherhood. Notably:
- 2.3.1.1. Section 7² provides a detailed, though not exhaustive, list of relevant factors, including the child's relationships, emotional needs, maturity, background, security, and development.
- 2.3.1.2. Section 10³ recognises the child's participatory rights—affirming that their views must be heard and considered in proceedings affecting them.

¹ Constitution of the Republic of South Africa, Act 108 of 1996.

² the Children's Act 38 of 2005.

³ the Children's Act 38 of 2005.

2.3.1.3. Section 9⁴ reiterates that the best interest principle must be applied in *all matters* involving a child's care, protection, and well-being.

2.3.1.4. Sections 150, 156, 157, 230, 240, and 295,⁵ reinforce the best interest's standard in various substantive contexts—child protection orders, adoptions, and surrogate arrangements.

2.3.2. While the Act builds on principles previously laid out in a litany of cases, it goes further by expressly widening the scope to include caregivers and non-parents, de-emphasising economic factors, and embedding participatory rights in a manner aligned with international obligations.

2.4. Section 9 of the Children's Act 38 of 2005 provides that: *"In all matters concerning the care, protection and well-being of a child the standard that the child best interest is of paramount importance, must be applied"*.

2.5. The Constitutional Court in *S v M*⁶ held that the best interest of the child must be given due consideration in every matter affecting the child directly.

3. **SUMMARY OF FAMILY ADVOCATE AND COUNSELLOR REPORTS:**

3.1. The Family Advocate confirms that the Respondent has been the primary caregiver of the Minor Child and that the Minor Child is securely attached to her.

3.2. The reports reflect that the Minor Child's basic and emotional needs are being met in the care of the Respondent, and that the Applicant only recently re-established contact.

⁴ the Children's Act 38 of 2005.

⁵ the Children's Act 38 of 2005.

⁶ *S v M* (CCT 53/06) [2007] ZACC 18; 2008 (3) SA 232 (CC)

- 3.3. Both the Family Advocate and Counsellor recommended the following in their report:

“8.1 Both parties are to retain full parental responsibilities and rights with regard to care, contact, guardianship, and maintenance in respect of the child as contemplated in Section 18 (2) (a) (b) (c) and (d) of the children’s Act No 3 of 2005.

8.2 The Mother to retain the child’s residence.

8.3 The father to exercise contact with the minor child on alternate weekends, from Friday after school at 17h00, until Sunday afternoon at 17h00

8.4 The Father to exercise regular telephonic contact with the minor child. Both parties are to be permitted with reasonable telephonic or electronic contact when the child is not with the other parent.

8.5 The parties to alternate all short school holidays and share long school holidays.

8.6 The parties to alternate Easter, Christmas and New Year.

8.7 Further contact is to be arranged by the parties.

8.8 In the event that the above recommended contact does not work, the parties shall appoint a neutral mental health professional to facilitate contact.”

- 3.4. The recommendations favour maintaining primary care with the Respondent and providing the Applicant with contact rights, including long holiday visitation, a proposal which the Respondent does not oppose in principle, but only seeks to have same phased in.

- 3.5. A copy of the Family Advocate and Counsellors report is annexed hereto and marked "**MM2**".

4. **FACTORS FAVOURING THE RESPONDENT:**

- 4.1. The Respondent has been the sole and stable caregiver since the Minor Child's birth.
- 4.2. She has consistently promoted the Minor Child's welfare, emotional development, and education.
- 4.3. She is not seeking to obstruct contact, but proposes a phased approach to long stays to protect the Minor Child from psychological stress, based on:
- 4.3.1. The Minor Child's limited history of extended stays with the Applicant (no more than 1.5 days at a time).
- 4.3.2. Instances of distress expressed by the Minor Child while at the Applicants home.
- 4.3.3. Documented episodes of unsafe conditions and inadequate supervision at the Applicants residence.
- 4.4. The Applicant has ensured the Minor Child's holistic development through structured enrichment activities such as swimming, piano, coding, and gymnastics, and has taken the initiative to secure speech therapy to address developmental delays, all of which reflect a proactive and involved parenting style.

5. **CONCERNS ABOUT THE RESPONDENT'S PARENTING CAPACITY:**

5.1. The following incidents were documented:

- 5.1.1. A teenage cousin at the Applicants home allegedly choked younger children on a trampoline and spoke inappropriately to the Minor Child about sex.
- 5.1.2. Lack of adult supervision, including an incident where the Minor Child had to climb through a palisade fence and navigate a hazardous ledge to exit the property.
- 5.1.3. The Applicant's refusal to communicate with the Respondent when the Minor Child called her in distress.
- 5.1.4. An unexplained injury resulting in the Minor Child limping after a visit to the Respondent's home.
- 5.1.5. The above is not a closed list and these concerns were raised with the Family Advocate and Counsellor.

5.2. The Applicant's dismissive remarks, including telling the Respondent she was "*treating the Minor Child like a vagina*", raise serious questions about his judgment and insight as a parent.

5.3. The Applicant also proposed home schooling the minor child. The Family Advocate and Counsellor raised concerns regarding this suggestion. It was noted that the Applicant had not registered with the Department of Education, nor had he presented a clear educational plan or demonstrated adequate readiness to support such a change. In the context of the Minor Child's current structured and supportive schooling environment, this proposal was found not to be in the Minor Child's best interests.

5.4. *In F v F 2006 (3) SA 42 (SCA)*, the court emphasised that a parent's ability to place the child's needs above their own is paramount in determining care and contact.

5.5. *In V v V 1998 (4) SA 169 (C)*, the court declined to allow unsupervised contact where there were clear indicators of poor supervision and a lack of insight into the needs of a young child.

6. **PHASED APPROACH TO LONG DURATION CONTACT:**

6.1. The Respondent proposes that long-holiday contact be phased in gradually, with initial short stays increasing over time.

6.2. The phased in approach can be 3 (three) nights with the Applicant and then 2 (two) nights with the Respondent over long school holidays, until such time as when the Minor Child is comfortable and it is in his best interest to spend 50% of the long school holiday with the Applicant.

6.3. The Respondent further requests scheduled telephonic contact during these periods and that the Minor Child may return home if genuinely distressed, subject to the Respondents encouragement that the Minor Child bond with his father and extended family.

6.4. This proposal is consistent with the principle of *progressive realisation of contact*, recognised in *Potgieter v Potgieter* (215/06) [2007] ZASCA 47; [2007] 3 All SA 9 (SCA); 2007 (5) SA 94 (SCA), which upheld a cautious approach to expanded contact where prior history was limited or concerning.

7. **ADDITIONAL CONTEXTUAL BACKGROUND:**

7.1. The Respondent has demonstrated longstanding financial independence, professional stability, and has raised the Minor Child in a nurturing, middle-class environment with the assistance of her mother while she works.

- 7.2. The Applicant has demonstrated a pattern of controlling behaviour, mood instability, financial dependence, and at times, aggressive conduct, including incidents of animal abuse and abandonment of prenatal support obligations.
- 7.3. Despite repeated attempts at counselling, the Applicant failed to engage meaningfully in co-parenting discussions or in the Minor Child's early medical and developmental needs.
- 7.4. The Applicant has failed and/or refused to make any contribution toward the maintenance needs of the Minor Child, despite the Respondent bearing the full financial burden of his care.
- 7.5. The Respondent is currently solely responsible for all maintenance-related expenses, including but not limited to school fees, food, clothing, healthcare, and extracurricular activities. The issue of maintenance will be dealt with in due course.

8. **CONCLUSION:**

- 8.1. The Respondent supports the recommendations of the Family Advocate and Counsellor with the reasonable qualification of a phased implementation for long holidays.
- 8.2. The relief sought promotes the best interests of the Minor Child, balances the Minor Child's emotional wellbeing with the right of the Respondent to foster a relationship, and ensures the Minor Child's safety and psychological development remain protected.
- 8.3. Accordingly, the Respondent prays for an order in the following terms:
 - 8.3.1. That the primary residence of the Minor Child remains with the Respondent.

- 8.3.2. That the Applicant be granted contact as recommended by the Family Advocate, subject to a phased-in approach to long-holiday visitation.
- 8.3.3. That the Respondent may communicate with the Minor Child at agreed-upon times during such periods.
- 8.3.4. That the Applicant shall ensure a safe, supervised, and appropriate environment for the Minor Child during visits.

SIGNED AND DATED AT JOHANNESBURG ON THE 17TH OF APRIL 2025.



KERN, ARMSTRONG & ASSOCIATES
Attorneys for the Respondent

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REF: G ARMSTRONG/M19

**TO: THE REGISTRAR OF THE COURT
 JOHANNESBURG**

AND TO: SALATISO MDENI LONWABO
The Applicant
 22 Lineata Avenue
 Glenvista
 Johannesburg



**Magistrates' Court Judiciary
Republic of South Africa
JOHANNESBURG**

Private Bag 4 JOHANNESBURG 2001 – Tel (011) 639 0300 Fax (011) 838 0544
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IN THE CHILDREN'S COURT FOR THE DISTRICT OF JOHANNESBURG

HELD AT JOHANNESBURG CENTRAL

CASE NO: 14/1/4 –39/2024

In the matter between:

MDENI, SALATISO LONWABO

APPLICANT

MKOSANA, MPHO

RESPONDENT

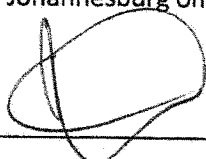
CHILD- MKOSANA, LUKHANYO SAZI

-MALE- 28/02/2018

After having considered the best interests of the child in terms of section 7 of the Children's Act 38 of 2005 and facts put forward before this court, the INTERIM ORDER granted as follows:

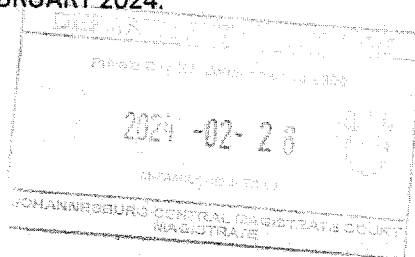
1. The child's primary residence remains with the mother respondent.
2. Father applicant to exercise reasonable access every Thursdays(after school), Fridays(after school) and Saturdays consecutively and return the child Saturday in the evening.
3. The order is effective immediately, pending investigations and finalisation of the matter, unless varied by a competent court.
4. Section 35(1) and (2) of Act 38 of 2005 as well as non compliance with this order is noted.
5. Matter postponed to 28 MAY 2024.

Dated at Johannesburg on this 26 FEBRUARY 2024.



ACTING MAGISTRATE: VC MOSE

CHILDRENS COURT: JOHANNESBURG.



NM333/2024

IN THE CHILDREN'S COURT FOR THE DISTRICT OF JOHANNESBURG CENTRAL

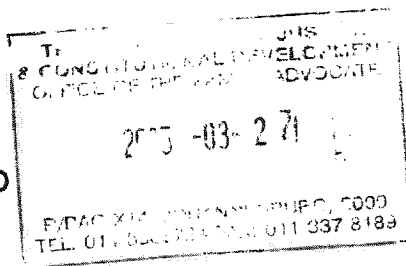
(HELD AT JOHANNESBURG)

CASE NO: 14/1/4-39/2024

In the matter between: -

MDENI: LONWABO SALATISO

APPLICANT



and

MKOSANA: MPHO

RESPONDENT

FILING SHEET

Presented for filing:

Original Report	X
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If the court file cannot be traced, kindly return documents to The Office of the Family Advocate, 13th Floor Schreiner Chambers, 94 Pritchard Street, Johannesburg.

FAMILY ADVOCATE

JOHANNESBURG

To:
AndThe Clerk of the above Honourable Court
salatiso@salatiso.com

-

Applicant (via email)

mphosuperstar@gmail.com

-

Respondent (via email)

IN THE CHILDREN'S COURT FOR THE DISTRICT OF JOHANNESBURG CENTRAL
(HELD AT JOHANNESBURG)

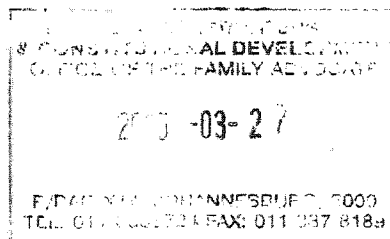
CASE NO: 14/1/4-39/2024

In the matter between: -

MDENI: LONWABO SALATISO

APPLICANT

and



MKOSANA: MPHO

RESPONDENT

REPORT OF THE FAMILY ADVOCATE

1.

INTRODUCTION

1.1 I, the undersigned **NONTANDO MATSHOTYANA** do hereby state that I am a Family Advocate duly appointed in terms of Section 2(1) of the Mediation in Certain Divorce Matters Act.¹

¹ 24 of 1987

2.

MANDATE

2.1 The Office of the Family Advocate, Johannesburg, was ordered by the above Honourable Court to assist the parties with mediation and to compile a parenting plan in the event they reach an agreement in respect of their dispute. Alternatively, conduct an enquiry and investigate the best interest of the below mentioned minor child and compile report with recommendations.

2.2 The enquiry and investigation are in respect of the following minor child: -

2.2.1 **LUKHANYO SAZI MKOSANA**, a male born on the 28th of February 2018.

3.

ENQUIRY PROCESS

3.1 The parties attended a mediation session at our Office on the 16th of July 2024 and it was unsuccessful. Subsequent thereto, the matter was scheduled for an enquiry and investigation for the 25th of November 2024. The parties honoured the appointment on the said date, and they were duly interviewed by the undersigned and Mr Nkosi who is a qualified and registered Social Worker duly appointed as a Family Counsellor in our Office.

3.2 On the above mentioned dated, Mr Nkosi conducted a separate interview with the minor child, his report incorporating the child's views is attached as **Annexure "FA1"** hereto. Furthermore, Mr Nkosi has canvassed the parties' background and submissions in paragraphs 4 and 5 of his report, the

undersigned does not deem it necessary to repeat same herein as it will burden the court with a repetitious and convoluted report. The court is therefore humbly requested to read this report in conjunction with the attached **Annexure "FA1"** hereto.

- 3.3 The file contents and relevant legislation were perused and considered herein.

4.

SUBMISSIONS

- 4.1 The above Applicant instituted these proceedings seeking to be vested with primary residence, alternatively, for the parties to exercise shared residence in respect of their minor child. The Respondent opposes the relief sought herein and desires for primary residence to remain with her. It is common cause that the above Honourable Court granted the Applicant interim relief to exercise day contact every Thursday, Friday and Saturday. According to the Respondent, the Applicant has not adhered to the order as he was under the mistaken belief that he was granted sleepover contact from Thursday to Saturday. Moreover, when he discovered that his contact was limited to day visits, he lodged a complaint against the presiding officer and threatened to institute proceedings in the Equality Court.
- 4.2 The undersigned finds it prudent to state from the onset that the Applicant's parental responsibilities and rights in terms of **Section 21 of the Children's Act 38 of 2005** were not in dispute. Notwithstanding, it is noteworthy mention

that the parties were not in a relationship when the child was conceived or at the time of his birth. It is common cause that the Applicant has paid damages, and he has contributed towards the child's upbringing. He does not pay maintenance however, the child is registered as a member on medical aid, and he purchases clothes for him.

4.3 The undersigned observed from the parties' submissions that their contention emanates from ineffective communication, different upbringings/ backgrounds and failure to comprehend the minor child's needs. The aforementioned will be elaborated herein below.

4.4 The Applicant contended that the Respondent lacks the capacity to care for the child as the child was frequently ill and hospitalized for the first two to three years of his life under her care. Additionally, the child spent weeks in hospital, however he had no knowledge what he was hospitalized for. He explained that he resides with his nephews and niece who have never been hospitalized for any ailments since they were born.

4.5 He contended that the child stopped falling ill when he began exercising contact at his residence. Furthermore, he has not been ill or hospitalized in the past three years. He attributed his frequent illness and hospitalization to instability caused by the Respondent constantly changing helpers and employing people who he believes are in the country illegally.

- 4.6 Contrary to the Respondent, he does not have helpers at his residence as he planned the child's life. He works from home and his family is his support system. There are other children in his home who the child bonds with as he is an only child. He believes there will always be familiar faces in his home. His mother who is also available to care for the child took care of him (the child) when he was sickly.
- 4.7 He wants to homeschool the child; in fact, he homeschools him during his contact. He believes homeschooling will be beneficial for the child as he has conducted extensive research on this issue.
- 4.8 He accused the Respondent of frustrating his contact and failure to consult him on pertinent issue involving the child. He averred that the Respondent refused to allow him to spend consecutive days with the child. Furthermore, the child has never spent a week at his residence.
- 4.9 In support of her opposition to the relief sought by the Applicant, the Respondent confirmed that the child was sick and hospitalized but contended that it was not as frequent as the Applicant alleges. She elucidated that the child was born with jaundice and they stayed in hospital for twenty-four hours only. His jaundice reoccurred and he was hospitalized for four weeks. Subsequently, the child had a tummy bug, he was throwing up and had diarrhea. The Doctor advised her to stay in hospital for treatment. He thereafter had a UTI caused by goldstones, he had to be admitted because of Covid restrictions further, he required a drip to be administered on him.

- 4.10 Lastly, he was spending a lot of time at the Applicant's residence and she narrated an incident where he returned from one of his visits with a limp. She called the Applicant to establish the cause however, he responded by saying the child was fine. It transpired that the child had something on the back of his foot. The following day his face was swollen and he had welts on his back. She took him to the Doctor where he started to throw up and passed out. He allegedly suffered from shock as a result of being beaten. She provided feedback to the Applicant and his response was that they experience swelling in their family.
- 4.11 In respect of her ability to care for the child, she averred that her mother relocated from Port Elizabeth when the child was born and she has always been the caregiver when she (Respondent) is not home. She confirmed employing helpers some of which were not South African nationals to assist with caring for the child. However, she refuted the allegations that she constantly changes helpers. She elucidated that in the first year and a half of the child's life her relative assisted with the child. Furthermore; her current helper has been with her for two years.
- 4.12 She raised objections to the child being homeschooled, she explained that when she enquired from the Applicant who was going to teach the child he failed to provide a straightforward response. As a result, homeschooling will be detrimental to the child's development. He is strong in Mathematics and he is a bright child. He has attended crèche since he was two/three years old

therefore failure to provide him with the best tools in life will be negligent. Furthermore, the child is very social, denying him the opportunity of being with his friends will not be beneficial. She does not want the child to a failed project as she has never received any reassurance from the Applicant that homeschooling will be successful. Furthermore; she has friends who were homeschooled and it stunted their careers.

4.13 She refuted allegations that she denied the Applicant contact, she averred that she permitted him to exercise contact from the child's birth. In fact she tried to get him involved prior to the child's birth by inviting him to attend antenatal appointments and the child's birth which he refused. He wanted to exercise sleepover contact when the child was six months old but she was still breastfeeding. His solution was that she must pump and he will get the milk from her. He came to her residence more than once to see the child, he has never not seen him for longer than seven days except during Covid due to restrictions.

4.14 They subsequently implemented sleepover contact in March 2022 from Thursday to Saturday and his contact was flexible as the child attended creche. However, he requested for more contact, as a result, she would take him back on Sunday and the Applicant's sister would return him on Monday morning before work. The Applicant stopped returning the child and this was an issue as the child had delayed speech and was attending occupational therapy. The Applicant was aware of the child's speech impediment and he said he also had delayed speech. His nephews and niece also had delayed

speech. When she suggested therapy, the Applicant said he had written a book about how stupid therapy is. However, if she wants to waste her money she can. She took the child for an assessment and he was diagnosed with **Attention Deficit Hyperactivity Disorder "ADHD"**.

- 4.15 The child's speech improved within three months of therapy. However, when the Applicant failed to bring him on time on Mondays she informed him she was stopping sleepover contact as the child was missing both his therapeutic sessions and school.
- 4.16 She disputed that the Applicant's mother assisted with child when he was ill. According to her, his mother only advised her to use aloe vera for the child's allergies instead of allergex.
- 4.17 She in turn also raised concerns about the Applicant's home circumstances and care of the child. She averred that the child came back with a bump on his head and when she asked the Applicant, he said they were at the park, and it may be the result of testosterone due to excitement. She also discovered that the child's older cousin (fifteen years old) chokes one of their cousins who is the same age as the minor child. As a result, the child would choke her when he was frustrated with her. She sent the Applicant an email addressing this and his response was that she must stop treating the child like a vagina. He is raising a man and must not tell him how to treat his own child at his house.

- 4.18 The best interest of the minor child is a trite principle in our law. The Constitution as well as the Children's Act mandates us to apply it in all matters involving minor children. As alluded above, the parties have different upbringings/backgrounds. It is therefore expected that their views on raising a child, especially a boy child, will differ in material respects. The Applicant is a Xhosa man who was raised in the rural Eastern Cape, this information was elicited from his affidavit. He assumed responsibility to care for his family at a young age, undoubtingly this contributed to his perceived success.
- 4.19 The undersigned must not be perceived to purport to be an expert in culture or tradition, however Xhosa men are groomed and prepared from an early age to be "amadoda". As such being "indoda" is taken very seriously in Xhosa culture to such an extent that boys go through initiation to qualify as men. The preparation for becoming "indoda" involves testing/determining how much a boy can endure pain.
- 4.20 The undersigned does not in any way justify the Applicant's "lackadaisical" approach to reports pertaining to injuries sustained by the child at his residence or his nephew choking his younger cousins. However, he may genuinely perceive the child getting hurt as part of growing up especially for boy child for reason alluded herein above. He may very well also perceive the choking as innocuous play between boys. Understandably, the Respondent as a mother and with her background expects the Applicant to protect the child from exposure to harmful behavior and the undersigned supports her in this respect.

4.21 Children's rights are enshrined in legislation and parents have a duty to protect them. What may seem as innocuous play may be deemed as exposing the child to abuse and/or endangering the child's safety in law. The Applicant is therefore implored to address his nephew's behavior as he is exposing the child to harmful conduct which is not permitted by law. The Applicant is an educated person, as much as he is a raising a "man", he needs to raise him within the bounds of the law. The children's Act expects him to protect the child from any physical or psychological harm exposing him to harmful behaviour.²

4.22 In respect of the relief sought by the Applicant, the undersigned does not support changing the child's residence or shared residence for that matter. The undersigned does not believe the Applicant understand the child's need, he insists on homeschooling the child whereas he was diagnosed with ADHD. The Respondent furnished us with report form Gillian De Vos who is a pediatrician who conducted an assessment and diagnosed the child with ADHD. Although her report is not intended for forensic purposes, she noted that *"hyperlexia associated with language delay can be indicative of an autistic spectrum disorder and it will be essential to assess whether this diagnosis becomes more or less evident over time"*. Unfortunately, his previous responses to the child's medical challenges does not inspire any confidence that he will follow up or attend to the child's future assessments or medical needs. Just like the Respondent, the undersigned is not convinced

² Para 7(l)(ii) Act 38 of 2005

that homeschooling is in the best interest of the child especially with his current needs.

- 4.23 Lastly, the undersigned must admit that shared residence is a viable alternative and it would have been a suitable arrangement herein under different circumstances. The parties reside in close proximity to each other i.e 14 kms. The Applicant works from home therefore, he will be available and personally involved in the child's daily care. Furthermore; he has his family to support him with the child's needs. The child will have the opportunity to spend more time with his cousins.
- 4.24 Unfortunately, shared residence requires effective communication and decisions must be centered around the child's needs. The undersigned is not accusing the Applicant of anything but it appears from the evidence presented herein that he is dismissive of the Respondent. Furthermore; his responses to the child's medical challenges are not in the child's best interest. Their parenting styles are very different, although no one is suggesting that they must have the same parenting styles.
- 4.25 However, the child needs to be provided with a sense of stability and predictability at both residences. Furthermore; his emotional needs must be attended to at both residences. If he hurts himself at the Applicant's home, he must have the assurance that he will be attended there and not only when he returns to the Respondent's residence.

4.26 The undersigned therefore suggest that the parties attend parenting classes to learn to co – parent and communicate effectively.

4.27 The minor child's views and wishes were obtained as mandated by the provision of Section 10 of the Children's Act 38 of 2005, further, his views were considered in reaching the recommendation herein.

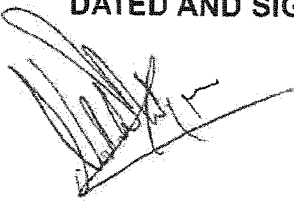
5.

RECOMMENDATION

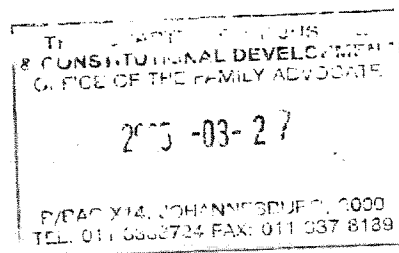
5.1 In light of the above, the undersigned concurs with Mr Nkosi's recommendation and is of the view that it is in the best interest of the minor child, if the court is satisfied, it is submitted that paragraph 8 of Annexure "FA1" be made an order of court.

5.2 In addition thereto, the undersigned recommends that the parties attend parenting classes.

DATED AND SIGNED IN JOHANNESBURG THIS 27th DAY OF MARCH 2025.



**N MATSHOTYANA
FAMILY ADVOCATE**



SN 333/2024

**IN THE CHILDREN'S COURT FOR THE DISTRICT OF JOHANNESBURG
CENTRAL**

HELD AT JOHHANESBURG

CASE NO: 14/1/4-39/2024

In the matter between:

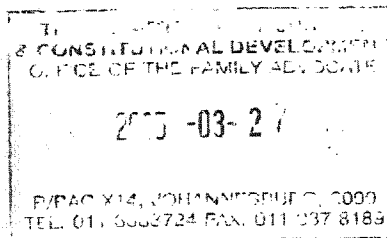
MDENI, LONWABO SALATISO

APPLICANT

And

MKOSANA, MPHO

RESPONDENT



REPORT BY THE FAMILY COUNSELLOR

1.

- 1.1. I, the undersigned, **SIMESO CRHITAN NKOSI**, declare that I am a registered Social Worker, SACSSP Reg No: 10-36898. I am employed by the Department of Justice and Constitutional Development, within the Office of the Family Advocate, Johannesburg. I was appointed in terms of **Section 3 (1) of the Mediation in Certain Divorce Matters Act, no 24 of 1987**, as a Family Counsellor.

- 1.2. Prior to working at the Office of the Family Advocate, I was employed at Joburg Child Welfare from November 2015 until December 2021.
- 1.3. I have eight years of experience as a Social Worker and commenced duty at the Office of the Family Advocate, Johannesburg on the 10th of January 2022.

2

MANDATE

- 2.1. The Office of the Family Advocate – Johannesburg was ordered by the above Honourable Court to conduct an enquiry with the parties in relation to their parental responsibilities and rights concerning their child, namely:

- 2.1.1. **Lukhanyo Mkosana (male), born 28 February 2018.**

3

ENQUIRY PROCESS

- 3.1 The content of the file has been perused and noted.
- 3.2 In this report the Applicant is referred as the "**Father**", and the Respondent as the "**Mother**".
- 3.3. The matter was allocated to the Family Advocate N. Matshotyana and the undersigned. The parties were jointly interviewed on 25th of November 2024.

- 3.4. The undersigned conducted an age appropriate interview with the child on 25th of November 2024.

LITERATURE REFERENCE:

- 3.5 Berk, 2006; Louw & Louw, 2007; Sigelman & Rider, 2009, Social Development Learner manual: safety and risk assessment of children in the field of child protection services.
- 3.6 The Children's Act (Act No. 38 of 2005).
- 3.7 Kelly, J.B & Lamb, M.E, 2003. Developmental issues in relocation cases involving young children: When, Whether and How? Journal of Family Psychology. 17 (2). P193-205.

4.

BACKGROUND

- 4.1 The parties separated when the mother was pregnant. After the separation the Mother continued to reside at the father's household in the cottage. According to the Father, the Mother wanted to have a second child with him after their separation, and he declined.

- 4.2 The Father is requesting the court for primary residence or shared residence of the minor child. The Mother believes that it would be in the best interest of the minor child for the child's primary residence to be vested with her, subject to the Father exercising contact with the child.

THE PARTIES SUBMISSIONS

The undersigned noted the parties' submissions and the following has been gathered:

- 5.1 The Father reported that his contact with the child was frustrated by the Mother. Furthermore, he wants primary residence or shared residence of the child. He exercises contact with the child every weekend from Friday until Saturday, since the beginning of 2024. He is concerned about the Mother's care of the child; he noticed changes in the child's behavior.
- 5.2 The Mother disputed the primary residence and shared residence of the child. She also denied frustrating the father's contact with the child. She reported that she told the Father that he is allowed to exercise contact with the child anytime he wants to. According to the Mother, the Father wanted sleepover contact with the child, when the child was six months old and she was still breastfeeding the child. Sleepover contact started in March 2022 at the father's residence, at the time the child was in creche. The Father used to exercise contact with the child from Thursday until Saturday. However, the Father wanted to extend it to

Sunday afternoon. She also mentioned that the child would refuse to exercise contact and would beg her not to visit his father. She would encourage the child to exercise contact with him. She asserted that the Father will home school the child like his nephews and niece.

- 5.3 The Father is concerned that the child has been in the care of numerous nannies, and some of them are not South African citizen. The Mother replied that two nannies were South African, two nannies from Lesotho and one nanny from Zimbabwe.
- 5.4 Prior to him exercising contact with the child, the minor child was hospitalized often. The child only started to be stable when he came to his house. The child would be hospitalized for five days or the whole week, however, he could not tell what was the child suffering from. According to the Father, the child's sickness attributed to the child's instability, as he further stated that ***"if the child is sick, that means there is a problem"***.
- 5.5 He planned to home school the minor child, as home schooling was discussed between him and the Mother before the child was born. He has enough support system, from nephews, niece and his mother. He home schools the child with his nephews and niece, when the child is in his house. His mother is the one who took care of the child when the child was sick. The child is no longer sick as he used to get sick previously, the child last got sick three years ago when the child came to his house.

- 5.6 The Mother articulated that the Father is not a professional teacher, she cannot imagine him teaching the child. She does not want the child to be a project that can fail. She further stated that the child is very good in Mathematics, the Mother stated that home schooling can supplement what the child is learning from school. Furthermore, the child is very social, he enjoys his friend and socializing at school. The child was at creche since he was two to three years old.
- 5.7 The Father is concerned that the Mother is unreasonable, she thinks that she can frustrate his contact with the child as she wants. The Mother does not consult with him, but she tells him what she wants to do. He has never spent more than a week with the child, but she would go on holidays with the child.
- 5.8 According to the Father, he shares a good relationship with the child, especially when the child is not coached. He stated that the child would say or do something, thereafter, he would say **"I'm not comfortable with this, my mom and gogo said this"**. He further mentioned that he thinks the child shares a good relationship with his mother.
- 5.9 He stated that he pays the child's medical aid and he buy clothes for the child. He paid damages prior the child's birth, and the mother's child confirmed that.
- 5.10 According to the Mother, there was an Interim Court Order, of which the Father did not follow. It stated that he has to exercise day contact with the child from

Thursday until Saturday, but the Father would not follow instructions as he would not adhere on scheduled time and exercise more days. She emphasized that the Father does not have the best interest of the child, it is all about him, whilst for her it is about the child.

6

CHILD PARTICIPATION

- 6.1. Section 10 of the Children's Act No. 38 of 2005 requires the participation of children in all matters concerning the child, and that the child's views should be given due consideration, considering the child's age, maturity and stage of development.

LUKHANYO SAZI MKOSANA, (MALE), BORN 28 FEBRUARY 2018

- 6.2. Lukhanyo was six (06) years old at the time of the interview and according to research, he falls within the Early Childhood Stage Development. **According to Sigelman, C.K. & Rider, E.A., (2009), "During the Early Childhood Stage of Development children become more self-sufficient and start caring for themselves. The emphasis is on developing cognitive, language and physical skills that prepares the child for school. They become egocentric as they believe others think, feel and perceive as they do. They do not have the ability to reverse their thinking and cannot always distinguish between fantasy and reality. The ability to regulate their emotions is an important developmental task of early childhood. Family relationships remain the most influential aspects in their developments. Attachment**

and parenting styles are crucial aspect in the development of the child. During the middle Childhood Stage of Development, a child's thinking is limited to concrete concept and reasoning abstractly and hypothetically is beyond the ability of the child."

- 6.3. Lukhanyo communicated with clear and meaningful language; he sufficiently expressed his views and wishes in an understandable manner during the interview which enabled the undersigned to gain insight and understanding about his best interest regarding the parties' dispute.
- 6.4 He was doing grade R at Mimosa Primary School, his mother and the maternal grandmother transports him to and from school. He stated that he loves school and he can count from one up to twenty, he is also able to differentiate colours.
- 6.5 Lukhanyo resides with his mother, maternal grandmother and aunt (Tshepiso, a helper). He mentioned that he enjoys staying with them. He exercises contact with his father on Fridays. The undersigned asked, if the child enjoys visiting at the father's place, and he stated that, "***sometimes I don't like and sometimes I do***", yet he did not provide any reason. He stated that he has forgotten who stays at the Father.
- 6.6 Lukhanyo described his relationship with his mother as very good, as he rated it 1000000/10. He also rated his relationship with the Father as good, as he

rated it 10000/10. He also confirmed that he shares a good relationship with his grandmother and the aunt. The child further stated that he likes both his parents, but he loves his mom the most.

- 6.7 The undersigned asked the child if there were changes that he would like to make with the current arrangement. The child articulated that he would like to exercise one sleepover at the Father's place.

7

EVALUATION

- 7.1. The primary residence of the minor child is in dispute. The child resides with the Mother, and exercises contact with the Father. The child's Father wants primary residence or shared residence of the child, whilst the Mother wants the primary residence of the child to remain with her.
- 7.2. Lukhanyo expressed his views and wishes that the undersigned is of the view they should be considered as he expressed himself in an understandable manner. The child would like to reside with the Mother, and exercise contact with the Father. The Honourable Court is referred to Section 10 of the Children's Act No. 38 of 2005 which states that ***"Every child that is of such an age, maturity and stage of development as to be able to participate in any matter concerning that child has the right to participate in an appropriate way and views expressed by the child must be given due consideration"***.

The undersigned is of the view that the child was able to express his views and wishes about his best interest.

- 7.3. It has emerged that the parents cannot communicate properly and be civil to each other. The Father believes that the child is sometimes coached. The Mother believes that the Father does not consider what is in the best interest of the child, but himself. The undersigned has considered Section 7(1)(ii) of the Children Act 38 of 2005 which indicates that ***"the need to protect the child from any physical or psychological harm that maybe caused by, exposing the child to maltreatment, abuse and degradation, violence or harmful, ill-treatment and violent behaviour towards another person and (m) any family involving another person the child or a family member of the child"*** must be considered whenever the provision of this Act requires the best interest of the child to be implemented. It will be in the child's best interest not to be further exposed to the parties' animosity, or any unwanted behaviour that may be detrimental to the well-being of the child. The parties are encouraged to put their differences aside when they are co-parenting. They need to focus on what is best for the child and how they can support the child.

- 7.4. Based on the information gathered, it was revealed in the interview that Lukhanyo has a good relationship with his both parents, however, he is closer to his Mother. The undersigned is of the view that the Mother should encourage the child to have a relationship with his father. She should assist the Father and the child to maintain their relationship. The parties are to refrain from talking negatively about each other to the child. They should portray a positive attitude towards each other and that would encourage the child to be positive too. The

undersigned has considered Section 7(1) (a) (i) of the Children's Act 38 of 2005 which clearly states that ***"the nature of the relationship between the child and the parents, or any other care-giver or person relevant in those circumstances"***, must be considered whenever a provision of this Act requires the best interest of the child standard to be applied. It would also be in the best interest of the child to maintain an active relationship with his Father.

- 7.5. The parties remain co-holders of parental responsibilities and rights towards the child as stipulated in Section 18(2) (a) (b) (c) and (d) of the Children's Act 38 of 2005. The parties are encouraged to put their differences aside and focus on what is best for the child and how they can support the child through their separation.


8.

RECOMMENDATION

- 8.1 Both parties are to retain full parental responsibilities and rights with regard to care, contact, guardianship and maintenance in respect of the child as contemplated in Section 18 (2) (a) (b) (c) and (d) of the Children's Act No 38 of 2005.
- 8.2 The Mother to retain the child's residence.
- 8.3 The Father to exercise contact with the minor child on alternate weekends, from Friday after school at 17h00, until Sunday afternoon at 17h00.

- 8.4 The Father to exercise regular telephonic contact with the minor child. Both parties are to be permitted with reasonable telephonic or electronic contact when the child is not with the other parent.
- 8.5 The parties to alternate all short school holidays, and share long school holidays.
- 8.6 The parties to alternate Easter, Christmas and New Year.
- 8.7 Further contact is to be arranged by the parties.
- 8.8 In the event that the above recommended contact does not work, the parties shall appoint a neutral mental health professional to facilitate contact.

DATED AT JOHANNESBURG ON THIS 27TH DAY OF MARCH 2025.



NKOSI S.C

FAMILY COUNSELLOR.

