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IN THE HIGH COURT OF SOUTH AFRICA

(EASTERN CAPE LOCAL DIVISION, PORT ELIZABETH)

In the matter between: Case No: 4001/2015

A. B. Applicant

And

D. B. Respondent

Coram: **Chetty J**

Heard: **23 October 2015**

Delivered: **26 October 2015**

Summary: *Child – Application to compel father to sign visa documentation for children to travel abroad – Acrimonious relationship between spouses – Respondent's apprehension that alleged holiday a ruse to sever contact between himself and children well founded – Application dismissed*

JUDGMENT

Chetty:

[1] The applicant and the respondent are the biological parents of two minor children, D, a boy born on [….] 2005 and A, a girl born on [….] 2008. During the subsistence of their marital cohabitation, they were members of a religious order, referred to as, The Brethren. The marriage relationship has to all intents and purposes disintegrated beyond resurrection. Their estrangement and the consequent summary eviction of the respondent from the marital home precipitated an urgent application by the latter to this court during December 2014 for access rights to the minor children. Notwithstanding vehement opposition by the applicant, Revelas, J, granted the respondent structured access rights. Paragraph three (3) of the order, perhaps presciently made provision that ***"the Applicant shall be entitled forthwith, on these papers, as amended if need be, for appropriate relief including contempt of court".***

[2] The application presaged in the order of court as aforementioned, was filed with the registrar of this court on 11 September 2015. It is not in issue that the relief sought therein entails, *inter alia*, that the applicant furnish reasons for disregarding certain provisions of the order made by Revelas J and ensuring compliance with the respondent's court ordained access rights. The aforesaid application is opposed and awaiting adjudication. This and a plethora of associated applications raise issues which ultimately will be determined in the divorce action instituted by the applicant in January 2015. Therein the applicant seeks, *inter alia*, sole guardianship and sole care of the minor children pursuant to the provisions of sections 18, 28 and 29 of the Children's Act[1] as amended. Subsequent to the institution of the action, the respondent launched a Rule 43 application which, in conformity with the preceding

[1] Act No, 38 of 2008

litigation, triggered opposition from the applicant. Revelas J, before whom the matter once more served, granted relief substantially in accordance with that sought by the respondent and the order introduced the office of the family advocate into the proceedings. The common denominator in the raft of litigation between the parties is the minor children and the various affidavits deposed by her in such proceedings attests to her intractable stance apropos the respondent's rights of visitation and contact with them. I have purposefully chronicled the enmity between the parties for it has a direct bearing on the relief sought by the applicant.

[3] The orders sought, as one of urgency, are formulated thus: -

> "2. That the Applicant may take the minor Children, D and A B., born on [….] 2005 and [….] 2008 respectively, with her to the United States and Barbados over the period 1 November 2015 to 27 November 2015.
>
> 3. That the Respondent shall assist the Applicant in obtaining the necessary visas and travel documentation required by the minors for such travel, by providing the necessary consent and signing all necessary documentation.
>
> 4. In the event of the Respondent's failure to comply with paragraph 2 above, the (Deputy) Sheriff is authorised to sign all consents and all necessary documentation in the Respondent's stead.

5. That the Respondent shall pay the costs of this Application, if opposed on an attorney and client scale."

[4] The circumstance which allegedly renders the application urgent is the proximity of the applicant's date of departure to Atlanta in the United States of America. Suffice it to say that the urgency is self-serving. On that ground alone the application falls to be struck from the roll. There are however cogent reasons why the application should be dismissed.

[5] In argument before me, Mr *Dyke* submitted that ex facie the founding affidavit there was no sinister motive underlying the relief sought – the purpose for travelling abroad was work related and a vacation. The applicant's *bona fides*, he ventured, was beyond question. He submitted further that the respondent's belief that the holiday abroad was a mere ruse to spirit the minor children beyond the jurisdiction of the South Africa courts was unsubstantiated and completely unfounded. I disagree. In the historical overview of the litigation between the parties which I alluded to hereinbefore, the voluminous papers vouchsafe the concerted attempt by the respondent for access rights to the minor children. It required the imprimatur of this court for him to exercise his parental right to see and interact with his children. The pending contempt litigation bears testimony not only to the applicant's fervid stance denying him any parental role but her wanton disregard for previous court orders. That attitude, to my mind, fortifies the respondent's apprehension that the departure abroad is for an ulterior purpose.

[6] In applications of this and similar ilk, the primary consideration is of course, the best interests of the minor children. Whilst it may be so that a holiday on an idyllic island would be an unforgettable experience, staying at home would clearly not impact deleteriously on their well-being. In my judgment, the respondent's apprehension is well grounded and not capricious. In the result the following order will issue: -

The application is dismissed with costs.

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D. CHETTY

JUDGE OF THE HIGH COURT

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