

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: A186/2023

(1) REPORTABLE: **NO**

(2) OF INTEREST TO OTHER JUDGES: **NO**

(3) REVISED: **YES**

DATE: 3/9/2024

SIGNATURE

In the matter between:

K[...] R[...] S[...]

Appellant

and

C[...] L[...]

Respondent

JUDGMENT

NEUKIRCHER J:

1] On 21 June 2024 the Full Bench handed down judgment in an appeal noted against an order granted in the Children's Court, Soshanguve in which an agreement between the parties was made an order of court.

2] This court dismissed the appeal for the reasons set out in the judgment.

3] On 12 July 2024, the appellant filed an application for leave to appeal. This court subsequently asked for heads of argument on whether or not this application lies to this court in terms of section 16(1)(b) of the Superior Courts Act 10 of 2013.

4] Section 16(1)(b) states:

“an appeal against any decision of a Division on appeal to it, lies to the Supreme Court of Appeal upon special leave having been granted by the Supreme Court of Appeal”.

5] This court is not the court of first instance and therefore the application for leave to appeal is not properly before us. The appellant concedes this but argues:

“14. However, we humbly and respectfully request the Honourable Court to exercise its inherent jurisdiction or power as the upper guardian of the minor children and make a determination which will result in expeditious resolution of this matter and further serve the best interest of the Appellant’s children considering the suffering that they endure in enforcing the Court a quo Court Order and/or the irreparable harm they are likely to suffer when visiting the maternal family, including, inter alia, suspension of the court order pending the appeal decision.

15. Perhaps the hired SAPS officials will have no power should the Honourable Court made it clear and in unequivocal terms that the operation of the Court a quo order is suspended pending the outcome of the appeal as the Respondent is currently unlawfully enforcing it with the assistance of the police albeit Section 18 of the Superior Court Act providing that leave to appeal suspend it.

16. Thus, it will be in the interest of justice and the best interest of the minor children for the Court to make an order suspending the operation of the said Court Order. It is also in the best interest of the public to do so because the Respondent is using the public purse to pursue her own personal interest or agenda without any legal ground and the minor children ended up been neglected in a process.”

6] But this court has no power to entertain a matter that cannot be brought in terms of the Act. and if the relief the appellant seeks lies in other remedies than this

court is overstepping its boundaries. The relief that the appellant seeks lies in other remedies. This court, as a court of appeal, may only hear an appeal properly lodged. Otherwise, to entertain the matter as the appellant implores us will be overstepping its boundaries.

Order

The application for leave to appeal is struck off the roll.

**NEUKIRCHER J
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA**

I agree

**GWALA AJ
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA**

Delivered: 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 3 September 2024

Matter heard on : the papers by way of heads of argument
Judgment date : 3 September 2024