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Enhancing Judicial Excellence

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FROM THE DESK OF THE EDITOR-IN-CHIEF

Ms. Jinx Bhoola Editor-in-Chief

The Legal Fraternity witnessed a flurry of amendments to various aspects of the laws in our country. One landmark amendment is the Children's Amendment Act 17 of 2022 (the Amendment Act), which was signed into law by President Cyril Ramaphosa in January 2023. This change introduced guardianship matters to the Children's Courts, which was previously the exclusive domain of the High Court. The implications of these amendments are far-reaching, and potentially alters the landscape of legal guardianship in South Africa. The Amendment Act is a move in the right direction, providing increased access to justice, easily accessible courts and simplified procedures in advancing Children's Rights in terms of section 28 of the Constitution. From a Constitutional perspective, this is definitely a call in the right direction.

Sections 45(3A) and 45(3B) of the Amendment Act now enables Children's Courts to assign, extend, restrict, suspend, or terminate guardianship rights. This development of jurisdiction is particularly significant for individuals who could not afford to litigate in the High Court due to exorbitant costs and complicated litigation processes. The Amendment Act aims to make the issue of guardianship readily accessible and advancing Constitutional Imperatives.

Guardianship is one of the key aspects of parental responsibilities and rights and encompasses three important duties. Whist the High Court still possesses exclusive jurisdiction in some aspects of guardianship (*see article by Mr Jaco Van Niekerk*), the Children's Court enjoys concurrent jurisdiction in most aspects. The Amendment Act allows for the guardian to:

1. Administer and safeguard the child's property and property interests: A guardian is responsible for managing the child's assets and financial interests to ensure their security and proper handling.
2. Assist in legal affairs: the guardian represents or assists the child in administrative, contractual, and other legal matters, ranging from signing legal documents to representing the child's interests in legal proceedings.

FROM THE DESK OF THE EDITOR-IN-CHIEF

3. Provides legal Consents: the guardian holds the authority to give or refuse legal consents on behalf of the child. This includes decisions relating to marriage, adoption, travel outside of the country, passport applications, and transactions involving the child's immovable property.

Guardianship applications pose a challenge to some Magistrates but the sharing and transferring of ideas and grappling with interpretation issues allowed for the smooth transition of this piece of legislation.

Section 45 (2) has been amended and provides *"(2) A children's court must refer any criminal matter arising from the non-compliance with an order of such court or a charge relating to any offence contemplated in section 305 to a criminal court having jurisdiction."*. Whilst this aspect is peremptory, no procedural directives has been provided by the Amendment Act. What is quite clear is that the legislature intended to remove dealing with the criminal aspect of non-compliance of Children's Court orders from the Children's Court to the Criminal Courts.

The amendment to section 150(1) of the Amendment Act creates confusion whether a child in need of care and protection should still be placed in foster care or whether guardianship would be the better option in the light of the amendment. The Amendment Act provides a *"(1) a child is in need of care and protection if such child: "(a) has been abandoned or orphaned and has no family member who is able and suitable to care for that child"* boarders on discriminately and unfair laws and could lead to the constitutionality of this aspect being challenged. Whilst a child might have family members to care for the abandoned or orphaned child, that family member might be disqualified or excluded from having the child placed with them on the basis that they are not "*able and suitable"* to care for that child. (*see articles by Ms Annamarie Van der Merwe*). The face of Social Workers reports has now changed to comprehensively address the aspect of being able and suitable.

Presiding Officers are encouraged to continue to share logistical practical problems encountered when applying the Amendment Act, to write articles and share experiences and the different approaches applied to the amended legislation. This will allow Judicial Educators at the South African Judicial Education Institute to address the challenges experienced during the training sessions.

FROM THE DESK OF THE CEO

Dr Gomolemo Moshoeu

Chief Executive Officer, SAJEI

This issue is special as most of the articles addresses pertinent issues relevant to Judicial officers, like Children Court legislation and discretionary powers of a presiding officers. Of note, is that there is a contribution from a Public Prosecutor, part of the critical key stakeholders within the criminal justice system. Also, Magistrates and a Judicial Educator penned interesting articles, and for that they are commended for excellent work. On behalf of SAJEI, I would like to congratulate all contributors for their selfless work despite the hectic court schedules and implementation of Annual Training schedule.

The Editorial team under the esteemed leadership of Ms Jinx Bhoola, Editor- in-Chief juggle work with reviewing submissions and providing comments. The team is indeed a great asset to the Institute.

What I would like to highlight in this issue, is the immense contribution to SAJEI made by the honourable late Justice Yvonne Mokgoro. She supported the Chief Executive Officer through mentoring during the inception of the Institute. It is through her efforts that the Institute is performing exceptionally well. Justice Mokgoro laid a firm foundation and for that we will remain eternally thankful. May her soul rest in everlasting peace and rise in glory. In this issue, she is featured on the Wall of Fame.

Lastly, I would like to encourage the Judicial officers to share their adjudication experiences for the next issue. Your contribution will be of great help to those who will be joining the bench. The Call of papers has been circulated by the SAJEI Research team. In case you missed it, please contact Ms Sizophila Sokhela on 010 493 2577 or SSokhela@judiciary.org.za. We are looking forward to your articles.

CASE SUMMARIES ON THE CHILDREN'S ACT 38 of 2005

In ***CM v NG***[1], the court favoured the view that the applicant need only give reasons why the child's existing guardian is not suitable to have guardianship if he or she is seeking sole guardianship. In this case, the applicant sought full parental responsibilities and rights in terms of section 23 and 24 in respect of a child who had been born as a result of the artificial fertilisation of her former life-partner when the life-partners were still living together. She did not seek termination of any element of her former life-partner's parental responsibilities and rights; she wanted to acquire full parental responsibilities and rights alongside her former life-partner. The court held that an interpretation of section 24(3) which would result in the termination of the existing guardian's guardianship would be 'absurd', and considered it 'clear' that section 24(3) applies only if sole guardianship is being sought. Invoking its powers as upper guardian of all minors, the court awarded full parental responsibilities and rights to the applicant without affecting the rights of the birth mother.

A second issue relating to section 24(3) is in which circumstances an existing guardian could be said not to be a suitable guardian of the child. The section does not list any specific factors the Court must consider in arriving at its decision. As in any other proceedings under the Act, the Court must apply the general principles that are set out in chapter 2. Because serving the best interests of the child is one of the central precepts of those general principles, the Court should find an existing guardian unsuitable if he or she does not exercise his or her guardianship in the best interests of the child. In reaching its conclusion on this question, the court would have to consider the factors that are listed in section 7(1).

In ***RC v HSG***[2], The appeal concerned whether a person may have guardianship of, and rights of contact with a child to whom they had no biological link and who already had a natural guardian. The appellant and the respondent had entered into a romantic relationship through a dating app named 'tinder'. The respondent had a child, Dennis (13) and pregnant with another child Brad (6) from her previous relationship. Parties moved together and the appellant formed a strong bond with the children and more especially with Brad. Parties after two years separated and had an informal contact agreement. Nine months later the respondent her consent. The appellant sought an order in two parts from the court a quo, Johannesburg High Court. Part A, appellant requested that a clinical psychologist be appointed to conduct an assessment and provide a recommendation as to whether it would be in the best interest of the Brad, that the appellant be awarded rights of contact with, care of Brad in terms of section 23 of the Children's Act 38 of 2005. The court a quo rejected the application on the basis that the appellant lacked standing, and accepted the respondent's allegations that the appellant's relationship with Brad had a harmful psychological effect on Dennis and the respondent's relationship with Brad.

The Appeal Court held that it was settled law that the absence of a biological link with a child was not a bar to an application in terms of section 23 of the Children's Act. It held further that the court a quo erred in finding that the respondent was not an interested person for purpose of the relief sought.

The Appeal Court granted the appellant interim order of contact pending the report of a clinical psychologist to conduct thorough investigation of the parties.

AK v LKG[3], The case concerned an urgent application sought by the applicant for the relocation of her minor child "A" a five-year-old girl, to New Zealand. The respondent, who is the biological father of the child refused consent for A's relocation to New Zealand and opposed the application. the facts of the case were, the applicant and respondent had been involved in a tumultuous romantic relationship from 2014 to March 2019 where they separated. Parties were never legally married. A was born of the relationship in May 2016. Since her birth, she had always been under the primary care of her mother, the applicant, and had never separated from her care save for a limited sleep over access which the respondent enjoyed.

The applicant married her husband RH in September 2020 and gave birth to their son in 2021. RH had a close bond with A, actively participated in her care and contributed substantially in her financial wellbeing. The applicant and respondent concluded a contact agreement whereby the applicant enjoyed primary care of A and the responded, contact rights, as per a psycho forensic assessment they all had undertaken. A dispute arose between the applicant and respondent pertaining to the sleepover contact and the applicant ceased such contact during January 2021 pursuant to certain concerns including respondent's alleged alcohol abuse, substance abuse, uncontrolled rage and addiction to pornography.

The court had to determine whether it was in A's best interests to relocate to New Zealand. The court referred to section 7 of the Children's Act, which list factors to consider the best interests of a child. The court held that the applicant had comprehensively placed the relevant facts pertaining to her relocation. On the other hand, the respondent did not present any countervailing evidence, but instead criticised the completeness of facts presented by the applicant without factual basis underpinning his objections. Further, the applicant bore the primary responsibilities in relation to A, and that if relocation was not granted, it would have a disproportionate impact on her own interests and personal choices would be subverted. In considering all factors referred to, the court concluded that it would be in A's best interests to grant relief sought in the face of the respondent's refusal to consent to her relocation.

Central Authority, Republic of South Africa and Another v YR[4], The second applicant and respondent were married in November 2011. At the time, they both lived in South Africa and worked in South Africa. During 2014, they decided to relocate to Canada. A child was born to the couple in 2020 whilst in Canada. After the birth of the child the respondent suffered from postpartum depression, and the second applicant became very involved in the child's daily care. The relationship between the couple deteriorated, but in 2022 they decided to take a holiday in South Africa. On arrival in South Africa, the respondent informed the second applicant that she had no intentions of returning to Canada.

CASE SUMMARIES ON THE CHILDREN'S ACT 38 of 2005

An application was brought under schedule 2 of the children's Act 38 of 2005; brought in terms of the provisions of the Hague Convention of the Civil Aspects of International Child Abduction. The court had to determine whether the child was "habitually resident" in the contracting state immediately before any breach of custody or access rights, whether, at the date of commencement of the Hague Convention proceedings, a period of less than one year had lapsed from the date of wrongful removal or retention. Furthermore, whether the second applicant had acquiesced to the removal or retention, and whether the exceptions in Article 13 of the Hague Convention regarding the child's return, had been established.

The court held that the respondent's contentions that the child's habitual residence was South Africa due to the time he had spent living there and the bonds he had established, brought into play Article 12 of the Hague Convention. In terms thereof, where a period of less than one year has lapsed from the date of the wrongful removal or retention, "the authority concerned shall order the return of the child forthwith", and the only exceptions are those in Article 13 of the Hague Convention.

The issue of whether the child is settled in its new environment is only triggered when proceedings have commenced after a period of one year. The child's habitual residence at the time of his retention was Canada. It could thus not be said that the second applicant's return to Canada without the child constituted acquiescence to the child's retention in South Africa.

The court held further that with regard to the Article 13 defence, the court confirmed that a requested state is not bound to order the return of the child if the person, institution or other body which opposes its return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation. The court found that due to the child's medical history, to return him to Canada would expose him to an intolerable situation. The application was thus dismissed.

V.L v F.N[5]***,*** the case concerned an urgent application for the relocation of a minor child aged 12 years old from South Africa to Germany. The applicant had accepted a job opportunity in Germany. The applicant and respondent were married in 2009 in South Africa and had one minor child born of the marriage. Parties subsequently divorced in 2015 by way of a settlement agreement. Both parties had almost equal parental responsibilities and right save that the minor child primarily resided with the mother, the applicant. Prior to the application, parties met to discuss the matter including practical issues and considered options as to how they could make relocation work between them and their son. Parties could not come to an agreement as responded indicated he was not prepared to give his consent and he was unhappy with seeing his child only three (3) times a year. Both parties appointed clinical psychologists to prepare an assessment and provide a recommendations as to whether relocation of their son would be in his best interests.

CASE SUMMARIES ON THE CHILDREN'S ACT 38 of 2005

The Court held that section 28 of the Constitution provides that the best interests of the child are of paramount importance in every matter concerning a child. Section 7 of the Children's Act 38 of 2005 ("Children's Act") provides factors that are taken into account when determining what would be in the best interests of the child. Section 10 of the Children's Act provides that due consideration must be given to the child's views, with regards to his or her age, maturity and development level.

The court accepted that relocation involves loss for the child and requires adjustments. In a situation where the potential losses and adjustments required for the child would have long-term damaging effects on his or her development and psychological functioning, as upper guardian of minors, the court has the duty to consider and evaluate as many factors as possible to decide whether relocation is in the best interests of a minor. The court considered arguments raised by both parties and analysed the expert reports by the clinical psychologists, and concluded that it would be in the best interests of the minor child to relocate. The also gave due consideration to the minor's wishes to relocate with his mother to Germany and granted the application.

MAKING SENSE OF THE GUARDIANSHIP JURISDICTION CONFERRED UPON THE CHILDREN'S COURT BY THE CHILDREN'S AMENDMENT ACT 17 OF 2022 (WITH EFFECT FROM 8 NOVEMBER 2023)

Mr. Jaco Van Niekerk

Acting Senior District Magistrate

Introduction

In the 19th edition of the Judicial Education Newsletter, published in December 2023[1], I provided a summary of the amendments effected to the Children's Act[2], which came into effect on 8 November 2023.

One of the major amendments to the Children's Act was to confer onto the Children's Court the substantive jurisdiction to deal with matters in respect of guardianship, whilst at the same time reserving certain aspects of guardianship for the exclusive jurisdiction of the High Court. In this publication, the aspects that remain in the exclusive jurisdiction of the High Court are highlighted, so as to alert presiding officers of the Children's Court of what may not be done in respect of guardianship, despite the apparent illogical nature of these retained exclusivity.

All references to a section are references to that section of the Children's Act, unless specifically indicated otherwise.

Jurisdiction over the 'exercise' of Guardianship

What guardianship consists of, is set out in section 18(3). Sections 18(3)(a) and (b) requires of a Guardian to render assistance to a child is matters listed in these subsections. Section 18(3)(c) requires of a guardian to give or refuse consent, required by law, in respect of matters listed therein. Of relevance presently is the requirements set in section 18(3)(c) for the guardian to give or refuse:

(iii) Consent to the child's departure or removal from the Republic; and

(v) Consent to the alienation or encumbrance of any immovable property of the child"

The departure or removal of a child from the Republic is therefore an instance of the exercise of guardianship. Despite the general jurisdiction conferred upon the Children's Court in section 45(3B) "…over the assignment, exercise, extension, restriction or termination of guardianship in respect of a child", section 45(3) list aspects which are in the exclusive jurisdiction of the High Court, including:

(d) the departure, removal or abduction of a child from the Republic; and

(g) the safeguarding of a child's interests in property.

MAKING SENSE OF THE GUARDIANSHIP JURISDICTION CONFERRED UPON THE CHILDREN'S COURT BY THE CHILDREN'S AMENDMENT ACT, 17 OF 2022 (WITH EFFECT FROM 8 NOVEMBER 2023)

To ensure compliance with the scope of this publication, the aspects of a child's property will not be discussed, although much of the same considerations that will be expanded on in respect of a child's departure or removal of a child from the Republic, would find equal application.

The departure or removal of a child from the Republic, perforce section 18(3)(c)(iii), requires of a guardian to exercise guardianship by giving or refusing consent. Section 45(3B confers the Children's Court with concurrent jurisdiction with the High Court, amongst other things, in respect of matters concerning the exercise of guardianship. But section 45(3)(d) specifically retains this incidence of guardianship for the exclusive jurisdiction of the High Court.

The practical effect hereof is that a child who wishes to go on holiday outside of the Republic of South Africa, will have to approach the High court where a guardian's consent is lacking. But the Children's Court, being much easier to access, at least geographically and financially, can be approached to terminate that guardian's guardianship which will have the effect that that person's consent will no longer be a requirement. It appears absurd.

A rule of statutory interpretation is that absurdities are not intended. However, all ways to find the legislature's "non-absurd" intention reap no rewards. This absurdity can only be cured by either ignoring the expressed words or to 'read in' of words that do not appear in the provision; something that the Children's Court may not do. It is submitted that this absurd situation, will have to be endured until further amendments removing this absurdity, if any, are made to the Children's Act.

Jurisdiction to record as order a Parental Responsibilities and Rights agreement ('PRRA') relating to guardianship

Section 22 allows for the holder of parental responsibilities and rights (PRR) to enter into a PRR providing for the acquisition of PRR in respect of a child by another person.

Despite the jurisdiction of the Children's Court to deal with all aspects of guardianship, including the assignment of guardianship to a person that does not have it, in terms of section 24, the provisions of section 22(7) state:

"Only the High Court may confirm, amend or terminate a parental responsibilities and rights agreement that relates to the guardianship of the child."

The effect of a PRRA is to confer upon a person PRR which that person does not have, by agreement with the holder of PRR. Hence, where the holder of PRR agrees to confer such PRR on the non-holder of PRR, they cannot be assisted in the Children's Court by virtue of section 22(7), but, should there be a dispute on whether the non-holder of the PRR of guardianship may be assigned guardianship, the Children's Court have jurisdiction to determine that dispute.

This flies in the face of sections 6(4) and 60(3) which requires of the Children's Court to deal with matters concerning a child in a non-adversarial, reconciliatory and co-operative manner.

But there is no way around it, barring a declaration of unconstitutionality.

However, as is the case of the High Court's exclusive jurisdiction over the departure and removal of a child from the Republic, there is no way around the exclusivity of the High Court referred to in section 22(7).

In *National Credit Regulator v Opperman and Others*[3], in a minority judgment set out the following approach in respect of legislative provisions that are not constitutionally complaint which, it submitted, should be applied here, subject to changing the stated principles on constitutionality, to absurdity:

Interpretation is a cooperative venture between legislature and judge, bounded by mutually understood rules, in which the latter seeks to give meaning to the text enacted by the former. The mutual suppositions, and the constraints of principle and constitutional precept on the judge's role, enable the joint process to reach a coherent and practical outcome. For this, it has to be assumed that the legislature's enacted text includes only words that matter. For to enact words that do not would violate the most basic supposition of the shared enterprise. Hence none can be ignored. … This case signals, in my respectful view, the limits of cooperative effort in giving meaning to ill-chosen words. To virtually ignore the wording of the provision, and then find it constitutionally bad, seems to me an unnecessary dissonance. Put differently, once the words taken, as a whole, preclude constitutionally compliant interpretation, the conclusion beckons that no constitutionally rational meaning can be given to the provision.

The result may be that the provision is constitutionally void for vagueness. But if constitutionally impermissible vagueness is not the result, then it seems there is little constitutional purpose in examining alternative meanings that will result in unconstitutionality or depriving the provision of the purpose for which it seems to have been enacted. There is then no particular constitutional imperative to squeeze a meaning from the provision. Rather, we must accept the words of the provision for what they say, even at the cost of accepting that the provision is ineffectual. It is better, in my view, to acknowledge the drafting error and to leave it to parliament to correct it.

The illogical approach for the legislature to vest the Children's Court with the power to determine all matters relating to guardianship, yet at the same time, keeping a very small part thereof for the exclusive jurisdiction of the High Court, is something that cannot be avoided and will have to be tolerated. Presiding Officers in the Children's Courts will have to ensure that they do not transgress on these matters that have been retained to be in the exclusive jurisdiction of the High Courts.

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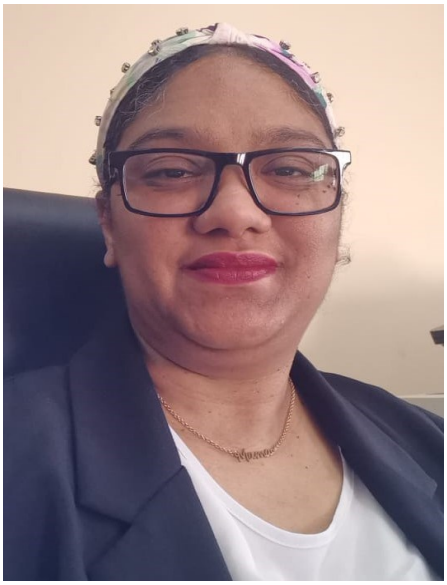
[1] On pages 21 and 22.
[2] Act 38 of 2002
[3] 2013 (2) SA 1 (CC) (2013 (2) BCLR 170; [2012] ZACC 29), (paras 99 and 105).

THE AMENDMENT TO SECTION 150 OF THE CHILDREN'S ACT 38 OF 2005, AND HOW IT AFFECTS FOSTER CARE APPLICATIONS



Ms. Chantal Cummings

Magistrate

When the Children's Amendment Act[1] ("the Act") came into operation on the 11th of November 2023, it had a great effect particularly on three specific sections i.e. section 150(1)(a), section 159 and section 24 of the Act. These sections relate to foster care extensions and guardianship applications. Section 150(1)(a) was drastically transformed to such an extent that a family member who wants to make such an application, has a number of requirements to fulfil in order to be successful. Foster care applications where the carer is a family member is more difficult now with the amendments to the Act. Section 150(1) indicates that a child is in need of care and protection if the child:

"(a) has been abandoned or orphaned and has no family member who is able and suitable to care for that child;"

The section seems to suggest that if there are family members of the child, then the child is not in need of care and protection. Secondly, if the family members are found to be suitable and able to care for the child then again, the child is not in need of care and protection. The word "care" is defined in Section 1 of the Act and has a vast definition which must be considered. Part of that definition is the financial means the applicant has to have to care for the child. When the Children's Court consider this application, it relies on the investigations that are done by the designated social worker and the recommendations in the report.

The implementation of the Act, particularly to foster care extensions was to rectify the problems that the Department of Social Development had, with the volume of orders they needed. However, it also created a new dilemma experienced by the Children's Court, which is whether a family member, can still bring a foster care application for the child given the amendment. Currently, I have numerous social workers coming to me with foster care applications requesting that a child be placed in foster care due to mother and father being deceased and or the whereabouts are unknown.

Some of the applications, the child has no other family but the aunt, uncle or grandmother whom the child has been residing with since birth. Would it now not be in the interest of justice for that child to be placed in foster care with that family member? I would think that the report of the social worker as well as what would be in the best interest of this child would play a role here. I would take into account the relationship this child has with that family member, the fact that there must be stability in his or her life. In those circumstances, placing that child in a child and youth care centre or with a non-family foster parent would not be in the child's best interest.

THE AMENDMENT TO SECTION 150 OF THE CHILDREN'S ACT 38 OF 2005, AND HOW IT AFFECTS FOSTER CARE APPLICATIONS

There are two schools of thought regarding foster care applications where the applicant is a family member. These schools of thought are discussions that I had with Magistrates regarding the amendments to foster care applications. The one school is of the opinion that a family member cannot apply for foster care of the child due to the amendment of section 150 (1) (a), because family members do not automatically have a duty to support such a child.

They must apply for those rights in terms of section 23 of the Act. Whereas another school of thought is of the opinion that the family member can apply for a foster care order, and follows the judgment in the case of *SS v Presiding officer, Children's Court Krugersdorp*[2]. I am in agreement with the thought that foster care applications can still apply even after the amendment took place but in exceptional circumstances based on the fact placed before me. If the facts are of such a nature that the best interest of the child would be to be placed in foster care with a family member as the only means of support and no other family is available, then I would be amenable to such an application.

When looking at the amendments, one must consider the child's rights in terms of section 28 of the Constitution, as well as the purpose of the Children's Act[3]. The sections must be purposefully interpreted in such a manner that the child's best interest is always of paramount importance in any application placed before the court.

I do not think it was the intention of the legislature to stop family members from becoming foster parents to a child placed in their care. In the current dispensation, after the COVID-19 pandemic, parents also passed away and the only family the child has is maybe the uncle, aunt or grandparent looking after them. In my view, I believe that family members can still apply for foster care, this is also supported by section 180 of the Children's Act. Section 180(3)(b) of the Children's Act indicates that a child may be placed in foster care with a family member who is not the parent or guardian.

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[1] Act 7 of 2022.

[2] 2012 (6) SA 45 (GSJ).

[3] Act 38 of 2005.

THE "FAMILY MEMBER" PROBLEM IN SECTION 150(1)(A) OF THE CHILDREN'S ACT 38 OF 2005

Ms Annamarie van der Merwe

Senior Magistrate

Section 150(1)(a) of the Children's Act[1] ("the Act") was recently amended to provide that "a child is in need of care and protection if such a child has been abandoned or orphaned and has no family member who is able and suitable to care for that child".

An orphaned child, or a child abandoned by biological family members, but cared for by another, is in light of the amendment not necessarily a child in need of care and protection and liable for foster care placement. This scenario brings to mind a child that is in the care of a step-parent or the live-in partner of a deceased parent, or a child being cared for by a Good-Samaritan neighbor. It also addresses the so-called "Granny placements".

This article will propose an approach for the Children's Court to determine the question whether a child is in need of care and protection, in circumstances where the child is orphaned, or abandoned but cared for by another person, be it family or a neighbor.

The application and interpretation of section 150 (1)(a) of the Act was discussed in detail in *SS v Presiding Officer of the Children's Court: District of Krugersdorp and Others*[2] *("SS")*. The judgement was delivered at a time when the provisions of section 150(1)(a) were substantially different from its current wording. We believe that the practical implementation principles, as set out in the SS judgment, remained the same.

The Court in *SS* found that "the application of section 150(1)(a) of the Act involves a factual inquiry that enables a determination that is consistent with the best interests of the child, abides by the spirit of the Act and is consistent with the Constitution of the Republic of South Africa ("the Constitution")[3].

In order to determine whether a child is in need of care and protection, the Presiding Officer in the Children's Court will rely on reports[4] from social workers deployed to carry out investigations. The reports must include investigations into the current living arrangements of the child, the identity of the present and prospective caregivers and their relationship with the child[5]. It will deal with factors pertaining to the minor child's emotional, physical and psychological wellbeing[6] and, as required by the amendment to section 150(1)(a)[7], the prospective caregiver's ability and suitability in relation to the care of the child. It will in essence therefore cover issues such as meeting the child's tangible needs (housing, food, clothing, schooling) as well as the child's intangible needs for love, security, belonging and stability.

THE "FAMILY MEMBER" PROBLEM IN SECTION 150(1)(A) OF THE CHILDREN'S ACT 38 OF 2005

It is proposed, as was done in *SS*[8]*, that the court approach the inquiry in stages.*

The first stage of inquiry under section 150(1)(a) is to determine whether the child is "orphaned" or "abandoned". This is a factual inquiry which must be determined with reference to the definitions as contained in section 1 of the Act[9]. Should the inquiry reveal that the child is abandoned or orphaned, then the child may become a ward of the state and may be assigned to the care of foster parents[10], but only if that child "has no family member who is able and suitable to care for that child"[11].

The Court will then turn to the second stage of the enquiry[12] that deals with the question whether the minor child has a "family member" who is "able" and "suitable" to care for the child. We are of the view that the focus of the investigation for the second stage is on the proposed caregiver of the child and specifically that person's ability and suitability to care for the child. We submit that the proposed caregiver of the child must meet three requirements before the court will be able to find that an orphaned or abandoned child is not in need of care and protection.

The first requirement is that the proposed caregiver must be a "family member". Section 1 of the Act defines "family member" in relation to a child as –

(a) a parent of the child;

(b) any other person who has parental responsibilities and rights in respect of the child;

(c) a grandparent, brother, sister, uncle, aunt or cousin of the child; or

(d) any other person with whom the child has developed a significant relationship, based on psychological or emotional attachment, which resembles a family relationship.

This definition is much wider than the traditional understanding of the concept of family members, being blood-related or affiliated through marriage or adoption. In respect of (a), (b) and (c) the test will be, whether the child and the proposed caregiver are related in the traditional understanding of "family members", and if not, whether there is a court order assigning parental rights and responsibilities to any particular person. The provisions of (d) however widens the definition to include non-related persons who were, or can be the caregivers of the child. In this instance the child's relationship with a step-parent, the live-in partner of a deceased parent or the Good-Samaritan neighbor comes to mind. The child's relationship with the person in whose care her or she is must be scrutinized for the court to determine whether there is an attachment between the child and the person "which resembles a family relationship"[13].

The second and third requirements focus on the person and circumstances of the prospective caregiver of the child. The words "able" and "suitable" must be given their ordinary grammatical meanings. The online edition of the Merriam-Webster dictionary[14] defines able as *"having sufficient power, skill, or resources to do something; having the freedom or opportunity to do something; having a quality or nature that makes something possible; susceptible to some action or treatment"*[15].

Suitable is defined[16] as *"adapted to a use or purpose; satisfying propriety, proper; able, qualified".*

In order to determine whether a person is able and suitable to care for a child, I submit that the report of the social worker must deal with the personal circumstances of the current and/or proposed caregiver of the child. The investigation must therefore look at the fitness and competency of the person to be a caregiver to the child, but also at the person's ability to provide for the child, financially and otherwise.

Two problem scenarios may present itself in this regard. The first is where there is a "family member"[17] who appears to be able and suitable to care for the child, but is unwilling to. It is submitted that the willingness of a person to care for a child runs hand in hand with the person's ability to care for the child. In the event a child has a family member who appears to be suitable to provide for the child, but the person is unwilling to take the child in, that person cannot be found as being "able" to care for the child. The court will be able to find that the is a child in need of care and protection and place the child in foster care with an alternative caregiver.

The second scenario includes the so-called "Granny placements" where the only family member of an orphaned or abandoned child is suitable to look after the child but not able to provide for the child without additional financial assistance. It is submitted that in this instance the caregiver will not pass the ability test and the court can find that the child is a child in need of care and protection. The court may then proceed to place the child in the foster care of that family member.

Only in instances where the care giver of a child meets all three criteria namely (1) he or she is a family member who is (2) able and (3) suitable to care for that child, will the court be able to find that an orphaned or abandoned child is not in need of care and protection.

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[1] Act 38 of 2005.

[2] [2012] ZAGPJHC 149; 2012 (6) SA 45 (GSJ) (29 August 2012).

[3] See footnote 2 above at par 27.

[4] Section 155(2) Act 38 of 2005 read with Regulation 55 of the General Regulations regarding Children (GNR.261 of 1 April 2010).

[5] See footnote 2 above at par 29.

[6] See footnote 2 above at par 29.

[7] Act 38 of 2005.

[8] See footnote 2 above at par 28 and 30.

[9] See footnote 2 above at par 28.

[10] See footnote 2 above at par 29.

[11] Section 150(1)(a) Act 38 of 2005.

[12] See footnote 2 above at par 30.

[13] Par (d) of the definition of "family member" in section 1.

[14] https://www.merriam-webster.com/dictionary/able#:~:text=%3A%20having%20sufficient%20power%2C%20skill%2C,or%20opportunity%20to%20do%20something accessed 15 May 2024.

[15] https://www.merriam-webster.com/dictionary/suitable#dictionary-entry-1 accessed 15 May 2024.

[16] As per the definition of "family member" in section 1 Act 38 of 2005

THE CONUNDRUMS OF SECTION 60(12) AND ITS RELATED PROVISIONS OF THE CRIMINAL AND RELATED MATTERS AMENDMENT ACT 12 OF 2021

Mr Telanthiran Govender

Senior Magistrate

The commencement of the Criminal and Related Matters Amendment Act[1], ("the Act") was fixed at 5 August 2022 as the date on which the Act came into operation. The commencement of the Act brought with it a conundrum of misunderstanding in the methodology of implementation, practicality, interpretation and lack of training. The specificity for the lack of understanding was the issues relative to the provisions brought about by the amendments to section 59 read together with s60(12) as introduced into the Criminal Procedure Act[2]. Magistrates were not left behind in that train of confusion. Due to the length of the article and editorial limitations the article is to be dealt with in two parts. There is a need for comprehensive consideration.

In short, the amendments to section 59 of the Act entail that it limited the ability and recourse of the police to grant bail before the accused's first appearance in Court, for the offences listed in section 59 of the Act. Now, apart from either the negligent, erroneous or even ignorance of the amendments, accused persons were released before their first appearances. This also led to some unenviable and precarious situations, which led to accused's release on bail or warning being rescinded, without due process.

The criticisms levelled against the relevant stakeholders followed with ease and in some instances with justification given the blatant non-compliance with the legislation, processes and procedures of law.

Domestic Violence is a serious social evil and there is a high incidence of domestic violence within South African society. The victims of domestic violence are among the most vulnerable members of our society. Remedies available to the victims of domestic violence have proved to be ineffective having regard to the Constitution of the Republic of South Africa and in particular the right to equality and to freedom and security of the person, the international commitments and obligations of the State towards ending violence against women and children, obligations under the United Nations Conventions on the elimination of all forms of discrimination against women and the rights of children. Therefore, the purpose of the Domestic Violence Act[3] is to afford maximum protection from domestic abuse that the law can provide and to introduce measures which seek to ensure that the relevant organs of State are committed to the elimination of domestic violence (preamble to the Domestic Violence Act).

The promulgation of the Act seems, in part, to have aligned itself to the introduction of measures to curb Domestic Violence and related matters. It also seems to have conjured up the support of the State to fully understand its perfunctory obligations to support the weak and the vulnerable. It regrettably did not come with the ease of understanding, as regards its implementation. This is particularly more so in view of the fact that the specific sections were couched in such a manner. The conundrum therefore lies in an enquiry where there is a pending matter in the family court, the automatic outcome of a final order irrespective of the factual situation and whether an interim order vested in the family Court should now be finalised in the Criminal Court.

THE CONUNDRUMS OF SECTION 60(12) AND ITS RELATED PROVISIONS OF THE CRIMINAL AND RELATED MATTERS AMENDMENT ACT 12 OF 2021

A matter considered for bail in terms of the scheduling as determined above, was to be considered in terms of the introduction of section 60(11)(c) of the Criminal Procedure Act, which is detailed completely as follows:

(11) Notwithstanding any provision of this Act, where an accused is charged with an offence referred to: -

(a) in Schedule 6, the court shall order that the accused be detained in custody until he or she is dealt with in accordance with the law, unless the accused, having been given a reasonable opportunity to do so, adduces evidence which satisfies the court that exceptional circumstances exist which in the interests of justice permit his or her release;

(b) in Schedule 5, but not in Schedule 6, the court shall order that the accused be detained in custody until he or she is dealt with in accordance with the law, unless the accused, having been given a reasonable opportunity to do so, adduces evidence which satisfies the court that the interests of justice permit his or her release; or

(c) contemplated in section 59(1)(a)(ii) or (iii), the court shall order that the accused be detained in custody until he or she is dealt with in accordance with the law, unless the accused, having been given a reasonable opportunity to do so, adduces evidence which satisfies the court that the interests of justice permit his or her release.'' [the additives]

The bail application was in the circumstances to be considered as akin to a schedule 5 matter with the necessary onus to be discharged, following in the same vein. It is perhaps what followed in terms of the bail provisions that created the greatest confusion.

Section 60(12)(b) of the Criminal Procedure Act, states that, " If the court is satisfied that the interests of justice permit the release of an accused on bail as provided for in subsection (1), in respect of an offence that was allegedly committed by the accused against any person in a **domestic relationship**, as defined in section 1 of the Domestic Violence Act[4], with the accused, **and a protection order as contemplated in that Act has not been issued against the accused**, the court must, after holding an enquiry, issue a protection order referred to in section 6 of that Act against the accused, where after the provisions of that Act shall apply.'

What this now provided for, is that a bail court, also sitting as a family Court, is obliged to having to deal with a domestic violence order as envisaged in terms of section 6 of the Domestic Violence Act. The Court is constrained to consider a final order.

THE CONUNDRUMS OF SECTION 60(12) AND ITS RELATED PROVISIONS OF THE CRIMINAL AND RELATED MATTERS AMENDMENT ACT 12 OF 2021

The Constitutional impediments to fair trial proceedings seems in the thoughts of many, to have been impugned, more especially the right to remain silent. The accused person seeking his or her release having elected certain pre-trial rights to non-disclosure is now overcome between a conscious decision to incarceration and his or her liberty.

The provisions of section 60(12) must for its full appreciation, needs to be broken down in parts although ultimately considered as a whole. It is almost a case of mathematics, that parts are considered in a "parenthesis" then considered against other parts.

I have considered that the bail application must as a start, be appreciated that it must be considered as a "two stage" process. The obvious first one is that the accused must satisfy the Court that he or she is entitled to be released on bail.

Once this part has been satisfied, the Court is then constrained to deal with the second stage, which is, the Domestic Violence Enquiry.

Part 2 of this article will be continued in the next edition of the Judicial Education Newsletter (21st edition) wherein he discusses the Domestic Violence Enquiry.

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[1] Act 12 of 2021.

[2] Act 51 of 1977.

[3] Act 116 of 1998.

THE IMPACT OF THE CONSTITUTION ON THE DISCRETIONARY POWERS OF A PRESIDING OFFICER TO DISCHARGE AN ACCUSED PERSON FROM PROSECUTION

Mr Mputumi Mpofu

Acing Senior Magistrate

Generally, in almost all court proceedings, a Presiding Officer ("PO") is always armed with the discretionary power whenever he/she has to make either a ruling or a decision. This is no exception when a court has to consider whether to discharge an accused person after the closure of the state case in terms of section 174 of the Criminal Procedure Act ("CPA")[1]. Whether or not to grant a discharge at this stage is a 'decision that falls in the ambit of the trial court's discretion', a discretionary power that must be judicially exercised[2]. It is wrong to prescribe to the court how and when it should be exercised in favour of an accused[3]. There is 'no formula or test applicable to all circumstances when deciding whether or not to discharge. Each case must be decided on its own merits in order to reach a just decision[4].

This unyielding approach, which reigned until the dawn of the Constitutional era, was entirely dependent on the prevailing mood of a PO. As such this discretionary power was subject to abuse as there was no law to reign the PO in which parameter he/she must go. This route was further emboldened by the ungracious phenomenon that 'if discharge is refused, the accused still has the choice whether to testify or not'.

The influence of Constitution brought about some changes, which instilled a new approach in the manner POs deal with this issue. The view was expressed that the processes under section 174 of the CPA translate into a statutory capacity. That means it had to depart from discretionally approach. In certain specific and limited circumstances, to cut off the tail of a superfluous process[5].

In *S v Lubaxa*[6], the Supreme Court of Appeal ("SCA") regarded as an infringement of the accused's Constitutional Rights if a court allows an accused person to enter the witness box if there is no possibility of a conviction only to incriminate him/herself. The SCA squarely puts the duty on the PO to see to it that the accused person, whether represented or not, is not made vulnerable to this infringement.

An undisputed fact is, some practitioners are inexperience especially in the District Courts, as such, they sometimes fail to take advantage of this right. An exercise by a PO to apply his/her discretion in an inflexible manner will harm the Constitutional Rights of an accused person to a fair trial. This is so because if the application is not made by inexperienced practitioner then the PO may end up also ignore the processes. It must be borne in mind that section 2 of the Constitution[1] provides that law or conduct that is inconsistent with the Constitution is invalid. Sections 10 and 12 of the Constitution carry a right to human dignity, and freedom and security of the person respectively. A fair trial would be, at that stage of the proceedings be stopped, for it threatens thereafter to infringe other Constitutional Rights.

THE IMPACT OF THE CONSTITUTION ON THE DISCRETIONARY POWERS OF A PRESIDING OFFICER TO DISCHARGE AN ACCUSED PERSON FROM PROSECUTION

Therefore, the impact of the Constitution is that there is a formula designed on how a PO can use his/her discretion. A PO can no longer rigidly use his/her discretion in deciding whether or not to grant a discharge of the accused person. Firstly, it becomes peremptory for a PO to discharge an accused person at the closure of the case for the prosecution if conviction cannot be secured, other than the accused incriminating him/herself. Secondly, the Constitution puts an obligation on POs to protect an accused person against self-incrimination, and failure to discharge an accused in those circumstances, if necessary mero motu, is a breach to the rights that are guaranteed by the Constitution.

[1] Act 51 of 1977.
[2] R v Lakatula & Others 1919 AD 362 at 363 - 364. See also S v Golding & others (unreported, KZD case no CCC63/2019, 30 May 2023) at [87].
[3] S v Manekwane 1996 (2) SACR 262. See also E Du Toit et all, 4 E Du Toit et al Commentary on the Criminal Procedure Act (2020) at RS 64.
[4] S v NV 2017 (3) NR 700 (HC) at [27].
[5] S ve Lavhengwa 1996 (2) SACR 453 (W).
6 2001 (2) SACR 703 at 708-709 (SCA) para 18-19.
[7] Act 108 of 1996.

A FAR-REACHING DISPENSATION: FROM THE CONSTITUTION TO THE CRADLE

Ms Thamandri Kengan

Public Prosecutor

Introduction

This is a discussion on the statutory developments surrounding guardianship and jurisdiction of the Children's Court. Since its enactment, the Constitution[1] has formed the core of our rule of law. The rights contained in Chapter 2 of the Constitution were specifically selected to ensure that fundamental rights of all South Africans are preserved and protected. Section 28 focuses on the rights of children. This fourfold article aims to provide insight on the development of the Children's Act[2] and the law pertaining to guardianship and jurisdiction.

It is imperative to firstly discuss the concepts of guardianship and children with the intention of removing various misconceptions in relation thereto. This note will display a background on the law surrounding guardianship by exploring the history of the High Courts' jurisdiction and its evolution over the past two decades. In an analysis of our constantly shifting laws, it is crucial that one looks at the intention of the legislature when developing any legislation.

The third leg of this article will visit that arena. In conclusion, we will discuss the impact that these developing laws have had in its entirety, looking specifically at children and guardianship.

Only in instances where the care giver of a child meets all three criteria namely (1) he or she is a family member who is (2) able and (3) suitable to care for that child, will the court be able to find that an orphaned or abandoned child is not in need of care and protection.

Children and guardianship – What do they mean?

Guardianship alone does not automatically flow from childbirth, and is only legally possible through an order of court. The High Court is the upper guardian of all children in South Africa, and was the only court that had jurisdiction to hear matters pertaining to guardianship. In an attempt to understand the development of laws applicable to children and guardianship, a dissection of both these terms is necessary.

The definition of a child

The United Nations Convention on the Rights of the Child[3] was signed by South Africa in 1993, and subsequently ratified on June 16, 1995. It is noteworthy that this was the first international treaty signed by our new democratic government. Further to this, the Bill of Rights under Section 28 defines a "child" as a person under the age of 18 years.

A FAR-REACHING DISPENSATION: FROM THE CONSTITUTION TO THE CRADLE

Who is a guardian?

A guardian is responsible for the care of a child, in that, all basic needs of the child are met. These needs include, but are not exclusive to, the child's need of care, safety, education and healthcare. A guardian is also responsible for the decision-making pertaining to all important aspects of the child's life. These aspects include decisions relating to the very basic needs of the child such as the child's schools, healthcare practitioners and day- to- day wellness. They also include decisions of a more intricate nature such as consenting to a child's marriage, adoption, removal or departure from the Republic, a child's application for a passport, as well as the sale of a child's immovable assets. These lists are not exhaustive as circumstances of different children vary.

Historical background

Previously in South Africa, Section 24(1) of The Children's Act governed the awarding of guardianship, and it read as follows:

"Any person having an interest in the care, well-being, and development of a child may apply to the High Court for an order granting guardianship of the child to the applicant"[4].

This legislation has since developed and has been amended by the Children's Amendment Act[5] wherein the Children's Courts have been given jurisdiction to hear and award guardianship to deserving applicants. This is seen under sections 45(3)A and 45(3) B as amended by section 3(h) of the Children's Amendment Act. In view of the difficulties surrounding access to courts, one can accept that the intention of the Legislature entailed many parts; the first of which, was to create a court system that was more accessible to the members of the public and not cause financial strain to prospective guardians.

This allowed a shift in focus to securing safe and loving homes for children in need.

It was necessary for the Legislature to create provisions that made the legal and financial affairs of children more manageable to concerned persons and potential guardians.

Inevitably, the COVID-19 pandemic was one of a number of causes of a rise in deaths nation-wide. This legal development would have also been in the best interest of children affected by COVID-19 insofar as the administration of deceased estates was concerned. The High court would have been over-burdened in dealing with an influx of guardianship matters in relation to the many minor beneficiaries that were left behind because of COVID-19 deaths.

Conclusion

The Legislature sought to promote the rights of children, as enshrined in the Constitution under section 28(2). Naturally, the implementation of recent legislation will have a domino effect on children. The increase in access to courts will create a rise in formal applications brought before the courts. The legality in these applications will create a more accurate account of statistics within the republic, thereby enabling the government to effectively account for, and provide for more children in need.

This discussion in its totality displays that the Judiciary is consistently working to enforce the rights preserved in the Bill of rights, and undoubtedly sustaining a Constitution that is far-reaching - A Constitution that now reaches as far as the cradle.

[1] Act 108 of 1996.
[2] Act 38 of 2005.
[3] United Nations Convention on the Rights of the Child (1989)
5 Act 38 of 2005.
[4] Act 17 of 2022.

5.2.2 ASSIGNMENT OF JUDICIAL OFFICERS TO SITTINGS

(I) The head of each Court must assign Judicial Officers for the hearing of cases. Such allocation must be done in an equitable, fair and balanced manner and must as far as practicable, be effected in a transparent and open manner. Exchange of cases between Judicial Officers is to be done through, or in consultation with the Head of Court or Senior Judicial Officer assigned for that purpose.

(II) The Head of each Court must ensure that there are Judicial Officers assigned for all sittings so that cases are disposed off efficiently, effectively and expeditiously.

(III) Every effort must therefore be made to ensure that an adequate number of Judicial Officers is available in all Courts to conduct the Court's business.

(IV) The Head of each Court must ensure that a written record is kept of vacation and other leave, or extraordinary absence afforded to all Judicial Officers.

(V) Where applicable, during each recess period the Head of court must ensure that an adequate number of Judicial Officers are available in that Court to deal with any judicial function that need to be dealt with.

(VI) Recommendations for the appointment of acting Judicial officers to a Court must be made in instances where Judicial Officers is not available to conduct the duties of that Court for whatever reason, or as the need may arise, for example to address the backlogs.

(VII) The Head of Court may from time to time assign other judicial or related duties to another Judicial Officer.

(VIII) A Judicial Officer shall not absent himself or herself without permission of the Head of the Court or designated Judicial officer where applicable.

WALL OF FAME:

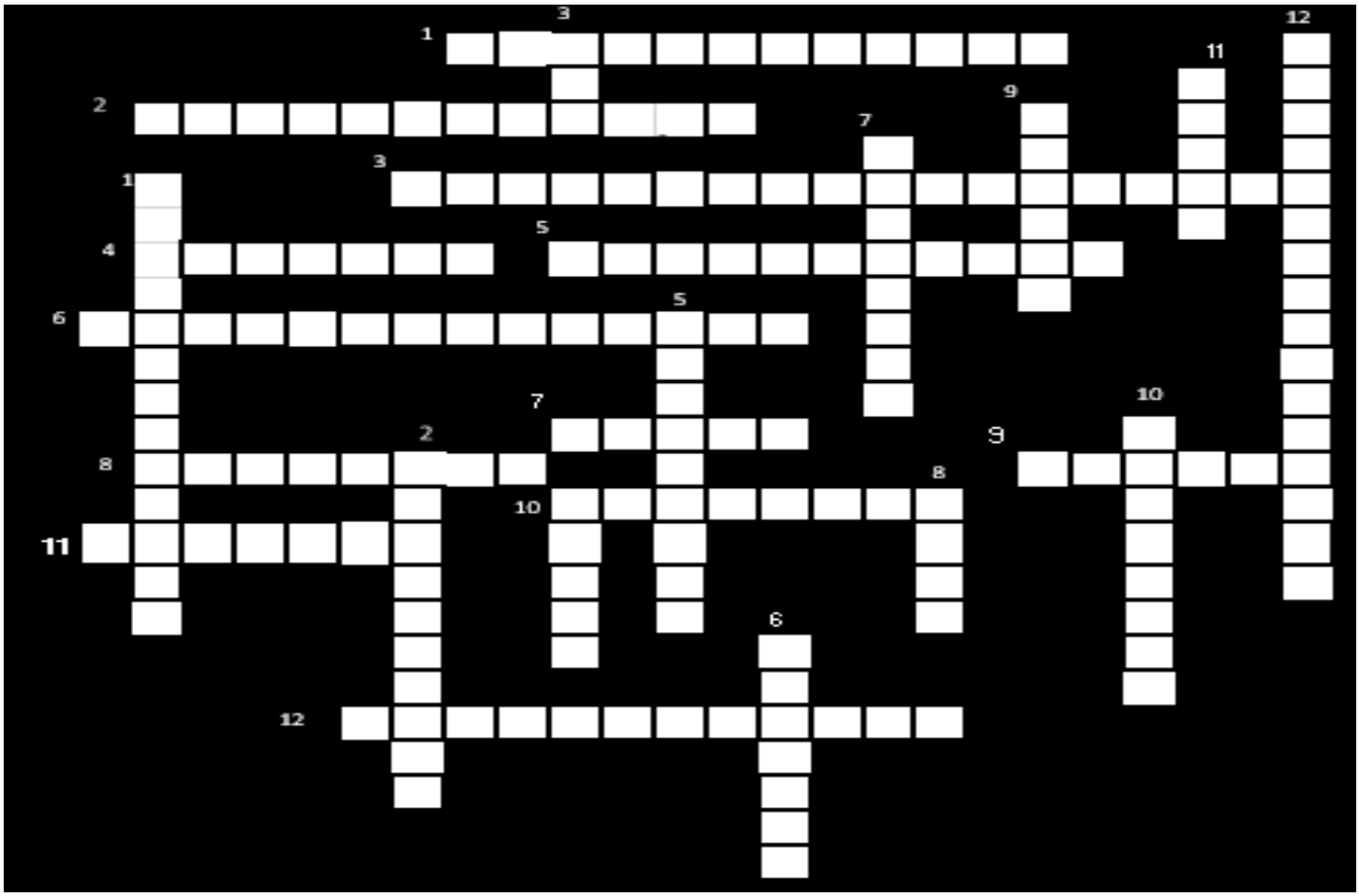
IN MEMORIAM OF LATE JUSTICE YVONNE MOKGORO

In Loving Memory of Justice Yvonne Mokgoro

1950 — 2024

PUZZLE

GUARDIANSHIP



Across

1. The legal authority and responsibility for the care, upbringing and decision-making on behalf of a child.
2. Child must be living within the courts area for the court to hear the matter.
3. The primary consideration and is of paramount importance in any decision making regarding guardianship
4. This is required by a guardian should a minor wish to apply for a passport or wish to get married
5. Applications for guardianship is usually brough bt this person when the mother of the minor child is deceased.
6. Difficult contentious guardianship applications are usually referred to these expert.
7. To complete application forms for any application in Children's Court
8. To call all the matters before comencing court to ascertain who is presnet or not
9. Decisions made by Courts
10. Term referred to offices where guardianship matters may be heard
11. Social workers usually file these documents before a presiding officer makes an order
12. Someone appointed by a parent in their will to act as the child's guardian if both parents pass away.

Down

1. Persons who conduct the investigation for guardianship
2. A term used when an assignor transfers rights to an assignee
3. Another word for legislation
4. Singular for children
5. A statement made under oath.
6. Biological parents are catercorised as this type of guardian
7. This person may be appointed as a legal representative.
8. Where only one person has guardianship.
9. A parent who often qualifies as a sole guardian.
10. Written consent is required by biologial parents or if there are no parents by guardians for another adult to have a child.
11. All documents for a particular matter is kept in folders
12. A type of guardianship where both parents have equal rights unless determined otherwise by a court order

LIST OF STRUCK-OFF AND SUSPENDED LEGAL PRACTITIONERS FOR THE PERIOD BETWEEN FEBRUARY 2024 - MAY 2024

NO	NAME	DESIGNATION	STATUS OF LEGAL PRACTITIONER	PROVINCE	DATE OF ACTION
1	Johannes Jacobus Bekker	Attorney	Struck – off	Free State	30 May 2024
2	Nicholas Malherbe	Attorney	Suspended	Gauteng	28 May 2024
3	Lerata Shadrack Mashee	Attorney	Struck – off	Free State	28 May 2024
4	Loriane Samantha Makin	Attorney	Suspended	Gauteng	27 May 2024
5	Dawid Nel	Attorney	Suspended	Gauteng	27 May 2024
6	Sive Dlula	Attorney	Struck – off	Gauteng	27 May 2024

LIST OF STRUCK-OFF AND SUSPENDED LEGAL PRACTITIONERS FOR THE PERIOD BETWEEN FEBRUARY 2024 - MAY 2024

NO	NAME	DESIGNATION	STATUS OF LEGAL PRACTITIONER	PROVINCE	DATE OF ACTION
7	Alwyn Abraham Myburgh	Attorney	Struck – off	Free State	20 May 2024
8	Shonene Edith Theunissen	Attorney	Suspended	Gauteng	20 May 2024
9	Basil Coutsoudis	Attorney	Struck – off	Western Cape	15 May 2024
10	Yolanda Madikizela	Attorney	Suspended	KwaZulu Natal	09 May 2024
11	Petrus Johannes Joubert	Attorney	Suspended	Free State	02 May 2024
12	Christopher Watney	Attorney	Suspended	Western Cape	30 April 2024

LIST OF STRUCK-OFF AND SUSPENDED LEGAL PRACTITIONERS FOR THE PERIOD BETWEEN FEBRUARY 2024 - MAY 2024

NO	NAME	DESIGNATION	STATUS OF LEGAL PRACTITIONER	PROVINCE	DATE OF ACTION
13	Stella Thabisa Bunyonyo	Attorney	Suspended	Eastern Cape	30 April 2024
14	Chabeli Johannes Molatoli	Advocate	Suspended	Gauteng	19 April 2024
15	Dlukula Ronald Ntombela	Attorney	Suspended	Gauteng	16 April 2024
16	Tinashe Martin Gede	Attorney	Suspended	Gauteng	13 April 2024
17	Sandra Lilian De Jager	Attorney	Suspended	Gauteng	13 April 2024
18	Kabelo Matee	Attorney	Suspended	Free State	13 April 2024

LIST OF STRUCK-OFF AND SUSPENDED LEGAL PRACTITIONERS FOR THE PERIOD BETWEEN FEBRUARY 2024 - MAY 2024

NO	NAME	DESIGNATION	STATUS OF LEGAL PRACTITIONER	PROVINCE	DATE OF ACTION
19	Bianca Gugu Gumede (Ndlovu)	Attorney	Suspended	Gauteng	09 April 2024
20	Liesl Du Plessis	Attorney	Suspended	Free State	05 April 2024
21	Maritza Wheeler	Attorney	Suspended	Gauteng	05 April 2024
22	Teboho Moses Sebogodi	Attorney	Suspended	Western Cape	05 April 2024
23	Yandisa Babalwa Mjikelo	Attorney	Struck – off	Eastern cape	02 April 2024
24	Erika Viljoen	Attorney	Suspended	Northern cape	25 March 2024

LIST OF STRUCK-OFF AND SUSPENDED LEGAL PRACTITIONERS FOR THE PERIOD BETWEEN FEBRUARY 2024 - MAY 2024

NO	NAME	DESIGNATION	STATUS OF LEGAL PRACTITIONER	PROVINCE	DATE OF ACTION
25	Marthinus Petrus De Jager	Attorney	Suspended	Free State	20 March 2024
26	Eon Lucian De Morney	Attorney	Suspended	Northern Cape	16 March 2024
27	Jacobus Cornelius Van Eden	Attorney	Struck – off	Gauteng	14 March 2024
28	Letlhogonolo Meisie Matjeni	Attorney	Suspended	Gauteng	13 March 2024
29	Kagisho Setati	Attorney	Struck – off	Gauteng	13 March 2024
30	Elizabeth Magdalena Van Coller	Attorney	Struck -off	Western cape	08 March 2024

LIST OF STRUCK-OFF AND SUSPENDED LEGAL PRACTITIONERS FOR THE PERIOD BETWEEN FEBRUARY 2024 - MAY 2024

NO	NAME	DESIGNATION	STATUS OF LEGAL PRACTITIONER	PROVINCE	DATE OF ACTION
31	Johannes Barnard Luttig	Attorney	Struck – off	Gauteng	07 March 2024
32	Petrus Makhabane Thobejane	Attorney	Struck – off	Gauteng	05 March 2024
33	Isiah Simon Mkwanazi	Attorney	Suspended	Gauteng	29 March 2024
34	Phillip Masiza	Attorney	Suspended	Eastern cape	29 February 2024
35	Mantladi Jo-Anne Mmela	Attorney	Struck – off	Mpumalanga	29 February 2024
36	Jarome Ashley Haywood	Attorney	Struck -off	Western Cape	22 February 2024

LIST OF STRUCK-OFF AND SUSPENDED LEGAL PRACTITIONERS FOR THE PERIOD BETWEEN FEBRUARY 2024 - MAY 2024

NO	NAME	DESIGNATION	STATUS OF LEGAL PRACTITIONER	PROVINCE	DATE OF ACTION
37	Zietta Janse Van Rensburg	Attorney	suspended	Mpumalanga	22 February 2024
38	David Kagiso Mogwerane	Attorney	Suspended	Gauteng	20 February 2024
39	Hanro Erasmus Steffen	Attorney	Struck – off	Western cape	20 February 2024
40	Roux Barry Cloete	Attorney	Suspended	Eastern cape	29 February 2024
41	Paul De Lange	Attorney	suspended	Free State	20 February 2024
42	Marius Coertze	Attorney	suspended	Gauteng	20 February 2024

LIST OF STRUCK-OFF AND SUSPENDED LEGAL PRACTITIONERS FOR THE PERIOD BETWEEN FEBRUARY 2024 - MAY 2024

NO	NAME	DESIGNATION	STATUS OF LEGAL PRACTITIONER	PROVINCE	DATE OF ACTION
43	Zietta Janse Van Rensburg	Attorney	suspended	Mpumalanga	22 February 2024
44	Heinrich Francisco Gonzales	Attorney	Suspended	Western Cape	20 February 2024
45	Manakapedi Simon Letsoalo	Attorney	Suspended	Limpopo	19 February 2024
46	Sonette Van Loggerenberg	Attorney	Struck – off	Western Cape	15 February 2024
47	Maemo Johannes Chipu	Attorney	suspended	Gauteng	15 February 2024
48	Susanna Johanna Van Rooyen	Attorney	suspended	Gauteng	15 February 2024

LIST OF STRUCK-OFF AND SUSPENDED LEGAL PRACTITIONERS FOR THE PERIOD BETWEEN FEBRUARY 2024 - MAY 2024

NO	NAME	DESIGNATION	STATUS OF LEGAL PRACTITIONER	PROVINCE	DATE OF ACTION
49	Jeremy Alwyn Diedricks	Attorney	suspended	KwaZulu Natal	02 February 2024
50	Mthunzi Patrick Magwaza	Attorney	Struck – off	KwaZulu Natal	02 February 2024

UPCOMING WORKSHOPS

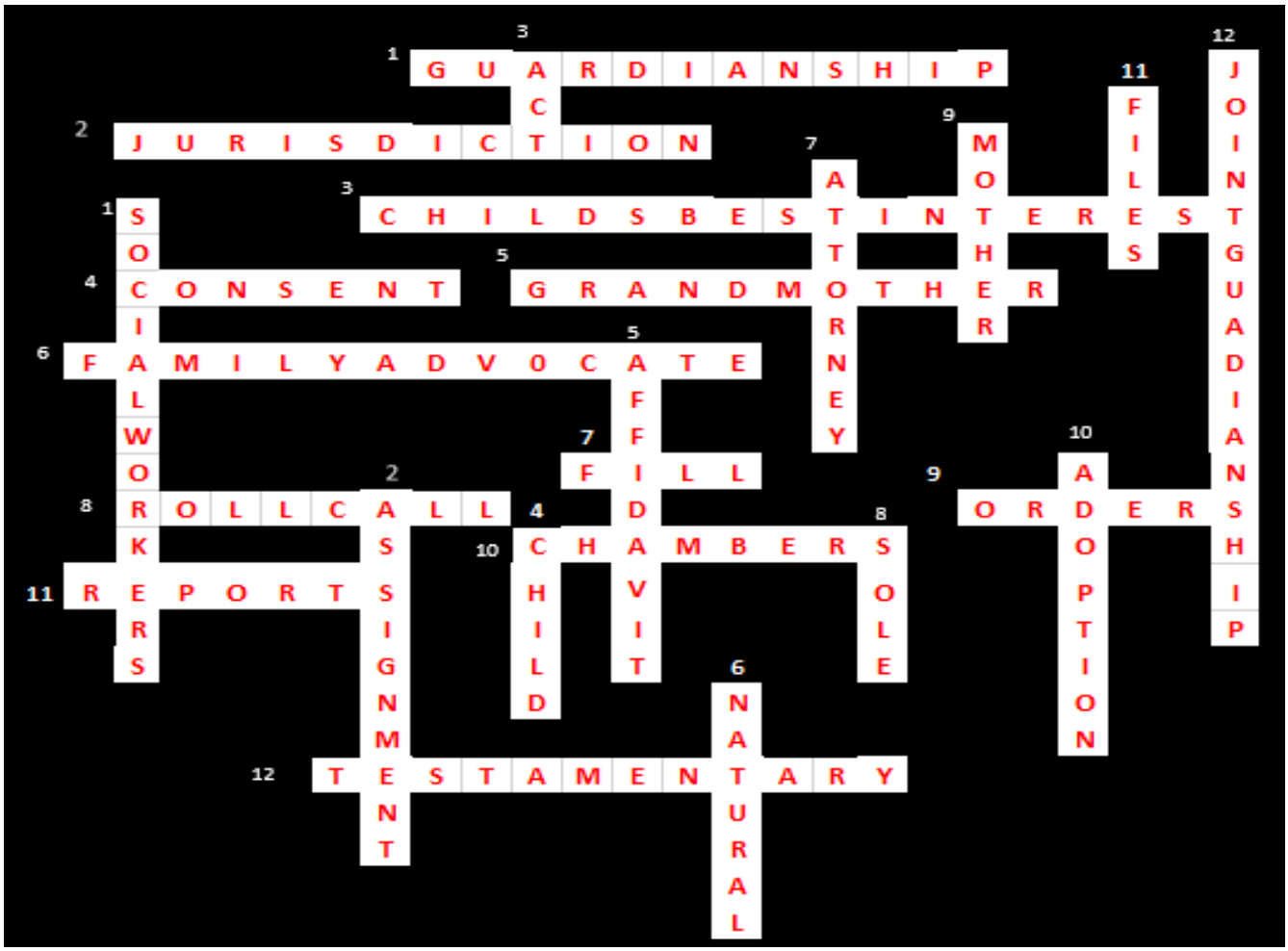
NO	COURSE CODE	COURSE	DATE	PROVINCE
1	DCM 71	Criminal Court Skills: Enquiries in terms of S 77-79 of and S342A of the Criminal	11 – 13 September 2024	Eastern Cape
2	DCM 72	Children's Court Skills: Adoptions (National and Intercountry) (In-person)	16 – 18 September 2024	Western cape
3	DCM 73	Civil Court Skills: Action procedure (In-person)	16 – 19 September 2024	Eastern Cape
4	DCM 74	Civil Court Skills: PAJA (Virtual)	16 – 18 September 2024	Gauteng
5	DCM 75	Criminal Court Skills: Electronic and documentary evidence, cybercrime. (In-person)	16 – 20 September 2024	Mpumalanga

UPCOMING WORKSHOPS

NO	COURSE CODE	COURSE	DATE	PROVINCE
6	DCM 76	Family Court Skills: Skills for adjudication of matters in the Family Court	19 – 20 September 2024	Limpopo
7	DCM 77	Children's Court Skills: Adoptions (National and Intercountry) (In-person)	16 – 18 September 2024	Western cape

PUZZLE

GUARDIANSHIP



Across

1. The legal authority and responsibility for the care, upbringing and decision-making on behalf of a child.
2. Child must be living within the courts area for the court to hear the matter.
3. The primary consideration and is of paramount importance in any decision making regarding guardianship
4. This is required by a guardian should a minor wish to apply for a passport or wish to get married
5. Applications for guardianship is usually brough bt this person when the mother of the minor child is deceased.
6. Difficult contentious guardianship applications are usually referred to these expert.
7. To complete application forms for any application in Children's Court
8. To call all the matters before comencing court to ascertain who is presnet or not
9. Decisions made by Courts
10. Term referred to offices where guardianship matters may be heard
11. Social workers usually file these documents before a presiding officer makes an order
12. Someone appointed by a parent in their will to act as the child's guardian if both parents pass away.

Down

1. Persons who conduct the investigation for guardianship
2. A term used when an assignor transfers rights to an assignee
3. Another word for legislation
4. Singular for children
5. A statement made under oath.
6. Biological parents are catercorised as this type of guardian
7. This person may be appointed as a legal representative.
8. Where only one person has guardianship.
9. A parent who often qualifies as a sole guardian.
10. Written consent is required by biologial parents or if there are no parents by guardians for another adult to have a child.
11. All documents for a particular matter is kept in folders
12. A type of guardianship where both parents have equal rights unless determined otherwise by a court order

10 YEARS
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