THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

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The Central Authority for the Republic of South Africa v MV and Another (1396/2024) [2025] ZASCA 197 (18 December 2025)

Today, the Supreme Court of Appeal (SCA) handed down judgment upholding the Central Authority for the Republic of South Africa's appeal, with each party to pay their own costs.

This case concerned an appeal to the SCA involving the international wrongful retention of a minor child in South Africa under the 1980 Hague Convention on the Civil Aspects of International Child Abduction (the 1980 Hague Convention) .The core issues for determination were :whether the habitual residence of a four-year-old minor child, L, a boy , whose parents were not married, was in Italy or Switzerland; whether custodial rights acquired by operation of law in Italy continued to exist and were recognised under Swiss laws; whether the minor child, L, had been wrongfully retained in South Africa by Ms MV, his mother ;whether Mr VL , his father, had consented or acquiesced to the retention of the child in South Africa; and whether the minor child, L, should be returned to Switzerland.

The factual background is as follows. The minor child, L, was born in Italy in May 2021 to his unmarried parents, Mr VL and Ms MV. Both parents were Italian citizens, although Ms MV also holds South African citizenship. Before the minor child, L, was born Mr VL and Ms MV resided in Lausanne, Switzerland where Mr VL was employed. They travelled to Italy for the birth of the minor child, L. Shortly after the minor child, L's birth, the family went back to Geneva, Switzerland, where they lived together until May 2022. The father, Mr VL, at that time was working for the United Nations, in Geneva. He purchased an apartment in Geneva. The family moved into that apartment. Mr VL financially supported both Ms MV, the mother and the minor child, L. Plans were underway for the minor child, L to be enrolled in a Swiss crèche and to be registered with the Swiss authorities. Ms MV's brother was getting married

on 14 May 2022 and both Ms MV and Mr VL agreed to attend the wedding. They were to return to Geneva on 19 May 2022, according to their purchased return air tickets.

On or about 6 May 2022, the family travelled to South Africa for MV's brother's wedding. On their return date, 19 May 2022, Mr VL returned to Geneva alone because Ms MV tested positive for COVID-19. They agreed that Ms MV and the minor child, L would remain behind temporarily until Ms MV was cleared of the infection. However, instead of Ms MV returning to Geneva once she was cleared to travel, she made several excuses and even went to the extent of purchasing air tickets to Geneva in November 2022, evincing that she intended to return to Geneva. Thereafter Ms MV cancelled the ticket and decided unilaterally to remain in South Africa. She attempted to register the minor child, L as a South African citizen, without success as the Italian authorities refused to cooperate. She sought and obtained on an urgent and ex parte basis, an order granting her full parental rights. Mr VL, on realising that Ms MV did not intend to return to Geneva with the minor child, L, approached the Italian and Swiss authorities and initiated the Hague Convention proceedings to secure the minor child, L's return.

The High Court dismissed the convention application on , inter alia, the following grounds : That Switzerland was not the minor child, L's habitual residence, that Ms MV did not intend to settle in Switzerland permanently unless Mr VL married her; that Mr VL had acquiesced in the minor child's retention; and that removing the minor child, L from Ms MV's care would cause the minor child, L serious emotional harm. Although the High Court found, inter alia, that the parties had 'settled' in Switzerland ; and that there was no evidence that the minor child, L would be at grave risk of harm, if he were to be returned to Europe with Ms MV , it refused to order the minor child, L's, return to Switzerland.

On appeal the SCA, per Norman AJA, held that before this Court, the core issue for determination was the minor child, L's habitual residence at the time Ms MV retained him in South Africa. The SCA found that the minor child, L's habitual residence prior to his retention was clearly Switzerland. Ms MV and Mr VL went to Italy for the minor child, L's birth. After his birth, they returned to Geneva. Mr VL bought an apartment in Geneva where they stayed until they left for South Africa in May 2022 to attend a wedding that was held on 14 May 2022. Most importantly, they had booked tickets to return to Geneva on 19 May 2022 after the wedding in South Africa. Ms MV and Mr VL had also made arrangements for the minor child, L to attend crèche in Switzerland and to be registered with Swiss authorities. The name of the minor child, L was displayed on the door and letterbox of the apartment. Ms MV had spent almost two years in Switzerland. At some point, she accepted a temporal job to provide English lessons to an Albanian diplomat in Geneva. All these factors indicated that L's habitual residence and that of his parents was in Switzerland.

Under Swiss law, habitual residence does not require permanence, only that a person lives in a country '*for a certain period of time even if this period is of limited duration from the outset'* and they also had their establishment in Switzerland where the centre of Mr VL's professional work was. The SCA rejected Ms MV's claim that she never intended to live in Switzerland permanently, noting that her own conduct, such as application for the minor child, L's crèche enrolment, signing authorisation for his registration with Swiss authorities and purchasing return air tickets during November 2022, contradicted that assertion. The SCA further held that

Mr VL possessed full custodial rights by operation of Italian law, which automatically grants joint parental responsibility to unmarried parents. Those rights remained valid in Switzerland under the 1996 Hague Convention and could not be extinguished by MV's unilateral actions. The SCA found that the continuity of those rights where there is a change of habitual residence accords with the best interests of the child principle that the 1996 Convention seeks to protect. The retention of L in South Africa was therefore wrongful under Article 3 of the 1980 Hague Convention, as Mr VL's joint right to determine L's place of residence had been breached.

The SCA rejected Ms MV's defences under Article 13. It found no evidence that Mr VL consented to or acquiesced in the minor child, L's, retention in South Africa; on the contrary, Mr VL, acted swiftly by approaching authorities and pursuing formal legal remedies. The claim that the minor child, L, would be exposed to grave risk of harm if returned to Switzerland was also dismissed. Allegations concerning Mr VL's mental health were unsubstantiated, and the Court found that the fact that the minor child, L, spent 21 nights with Mr VL during July/ August 2025 in Geneva, without incident, dispels any alleged fears of harm. The SCA emphasised that the Hague Convention proceedings do not involve a full best-interests inquiry but rather seek to restore the pre-retention status quo and allow the courts of the minor child, L's habitual residence to decide full custody rights and access.

In conclusion, the SCA held that the minor child, L must be returned to Switzerland. It put in place detailed protective measures to ensure Ms MV and the minor child, L's well-being upon return, including requiring Mr VL to provide accommodation, maintenance, medical cover, childcare costs, and travel arrangements. Ms MV was given the option to accompany the minor child, L, and the Central Authority for the RSA, was mandated to oversee compliance with the court order. Recognising the unnecessary litigation delays caused partly by both parents and the *curator ad litem* the court ordered each party to bear their own costs.

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