



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

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Minister of Social Development and Others v TT and Others (862/2023) [2026] ZASCA 142 (20 October 2026)

Today, the Supreme Court of Appeal (SCA) dismissed an appeal by the Minister of Social Development, the Member of the Executive Council for Social Development in the Gauteng Province and the Head of Department of the Gauteng Provincial Department of Social Development (the government parties) against a judgment of the Gauteng Division of the High Court, Johannesburg (the high court).

The appeal concerned the correct interpretation and application of the provisions of the Children's Act 38 of 2005 (the Act) that regulate adoptions, in adoptions. The appeal relates to adoption of two minor children, B and L. Both children were born of single mothers who consented to their adoption before a magistrate in the Children's Court. The government social workers held the view that the children should be placed with their biological grandparents for maintenance of their culture. Despite repeated protest by B's mother, they informed the grandparents of B's birth, and obtained an order to remove B from hospital as a child in need of care and protection. The social workers disregarded orders of the Children's Court which found that B's adoption by the prospective adoptive parents was in B's best interests and that the social workers should make a recommendation to that effect. Instead, the Department of Social Welfare, Gauteng Province (the Department) issued a letter stating that it did not recommend B's adoption.

The high court, among others, found the implementation of the adoption procedure by the government social workers inconsistent with the law and the Constitution, and found the Departmental Guidelines in terms of which they purported to act, unconstitutional. The high court further referred the conduct of the implicated social workers to the South African Council for Social Service Professions.

In the SCA, the Court held that the high court was correct in its finding that the approach adopted by the Department and its social workers was incorrect. At the heart of the erroneous approach lay a conflation of Chapter 9 of the Act, which regulates children in need of care and protection (the care regime), and Chapter 15, which regulates adoptions. The SCA stressed that these are two different processes. The care regime is essentially a protective intervention initiated by the state, whereas adoptions mostly emanate from privately initiated processes, controlled by the state through a social worker driven fact finding process.

The SCA found that the mothers consented to the adoption, were not disqualified under s 236, and never withdrew their consent, and it dismissed the Department's argument that the consent was not exercised independently. Once consent was given, the role of the government social workers was limited to gathering information, counselling, assessment, and preparing the report and letter of recommendation under s 239. The SCA agreed with the high court that the Guidelines are impermissibly anchored on the premise that the bond between an adoptable child and its biological family, culture and community is paramount. It found that there is no provision made under the Act for adoption of the Guidelines, and they add further requirements for adoption to those prescribed under the Act. The SCA held that the relationship with the biological family, which naturally includes the family's religion and

culture, is not paramount in adoptions. The overarching consideration is the best interests of the child. The Act does not set out a hierarchy of relevant factors. The approach is flexible, child specific, rather than generic and rigid. The SCA found that the interests of B and L clearly lie with them remaining with their adoptive families.

The SCA described the conduct of the government social workers as brazen and unauthorised, and held that the affront to the independence and the rights to dignity and privacy of the children's mothers is inconsistent with the Act and the Constitution. Drawing the attention of the relevant professional body was necessary. It found that the high court made its orders in the exercise of its discretion under s 172(1)(a) of the Constitution, and there was no evidence that it exercised that discretion improperly.

As a result, the SCA dismissed the appeal with costs, including the costs of three counsel.

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