



**SUPREME COURT OF APPEAL OF SOUTH AFRICA  
MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF  
APPEAL**

**FROM** The Registrar, Supreme Court of Appeal

**DATE** 3 August 2021

**STATUS** Immediate

***L v The Ad Hoc Central Authority for the Republic of South Africa and Others  
(1143/21) [2021] ZASCA 107 (3 August 2021)***

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*Please note that the media summary is intended for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal.*

The Supreme Court of Appeal (the SCA) today dismissed an application for leave to appeal and upheld the order of the Western Cape Division of the High Court, Cape Town (high court). The issue before the SCA was whether there were reasonable prospects of success on appeal on the basis that the applicant Mrs J E L, the mother of the minor children, A K and M, had successfully raised a proper defence in terms of Article 13(b) of the Hague Convention on the Civil Aspects of International Child Abduction (the Convention).

The first respondent, the Ad Hoc Central Authority for the Republic of South Africa, and the second respondent, Mr T C L, the father of the minor children, made an application in the high court, against the applicant, to secure the prompt return of the children to Thailand, after the applicant removed the minor children unilaterally, and without the knowledge and consent of the second respondent, from Thailand and took them to South Africa. In opposing the second respondent's application, the applicant relied on Article 13(b) of the Convention, contending that the children should not be returned to Thailand because there was a grave risk that if the children were returned, they would be exposed to physical or psychological harm or would be placed in an intolerable situation. The applicant's opposition was based on allegations that the second respondent had sexually molested one of the children. Having considered the matter, the high court concluded, after dealing in detail with the allegations of the sexual molestation of A – one of the minor children – that the suggestion of grave risk or serious psychological harm had not been substantiated by the applicant and was not borne out by the evidence. Consequently, the high court ordered the summary return of the children to Thailand, subject to detailed and comprehensive conditions. The applicant thereafter sought leave to appeal against this order, which the high court dismissed. The applicant thereafter applied to the Supreme Court of Appeal.

The SCA held that if one interrogated the high court's order, it was clear that it was designed to mitigate interim prejudice which might be caused by the children's return to Thailand. There were built-in mechanisms and a wide range of protective measures in the high court's order. The SCA held further that as the applicant was accompanying the minor children, there was no immediate risk that the children would face harm and abuse at the hands of the second respondent. The SCA concluded that the second respondent had and continued to go to great lengths to be given the chance for meaningful contact with his children and that the facts did not justify a refusal for the return of the children to Thailand, as there was no evidence of a grave risk to the children. Moreover the substantial conditions imposed on the second respondent by the high court allowed for the necessary protection of the children in Thailand.