



**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

**Date:** 19 September 2022

**Status:** Immediate

***The following summary is for the benefit of the media in the reporting of this case and does not form part of the judgments of the Supreme Court of Appeal***

*N S v J N (506/2021) [2022] ZASCA 122 (19 September 2022)*

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Today the Supreme Court of Appeal (SCA) handed down judgment dismissing, with costs on the attorney and client scale including the costs of two counsel, an appeal against the decision of the Gauteng Division of the High Court of South Africa, Pretoria (the high court).

The appellant (the father) and the respondent (the mother) were the unmarried biological parents of a minor child, D, born on 4 May 2018. The respondent, was a South African citizen and permanent resident of Malaysia. She resided in Malaysia with the child. The parents had functional arrangements relating to parental rights and responsibilities in respect of the child. By arrangement, the appellant visited the child in Malaysia and, on occasion, brought him to South Africa to visit his extended family and took him back to Malaysia. During March 2020 the respondent went to Cape Town with the child. On 7 March 2020, a day before she flew back to Malaysia, the appellant fetched the child with the understanding that he would take him back to Malaysia on 21 March 2020. As a result of the COVID-19 pandemic, Malaysia went into lockdown thus prohibiting commercial air travel from on 18 March 2020. South Africa followed suit on 26 March 2020. When the air travel restrictions were lifted, the appellant refused to take the child back to Malaysia which necessitated the respondent to travel to South Africa to fetch the child.

The father refused to return the child and approached the high court for an order that the Office of the Family Advocate as well as a social worker conduct an investigation into the best interests of the child and that the primary residence of the child should remain with him. His application was dismissed and the primary residence of the child restored to the mother.

The father approached the high court and obtained an order that the mother should not remove the child from Gauteng Province, or South Africa. It also ordered that he should retain the child's passport and birth certificate.

The orders pertaining to the child's passport and birth certificate as well as the order prohibiting her from leaving Gauteng or South Africa were subsequently set aside. The father applied for leave to appeal which was refused. During the hearing of the application for leave to appeal the court was informed that the mother and child left South Africa.

The father was granted leave to appeal to the SCA. This Court found that the appeal would have no practical effect because the mother and child already left the country and the family advocate would not be able to investigate the matter as they were in Singapore.

Because the appeal was vexatious the SCA dismissed it in terms of Section 16(2)(a)(i) of the Superior Courts Act 10 of 2013, with a punitive cost order.

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