**REPUBLIC OF NAMIBIA** **REPORTABLE**


**HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK**

In the matter between: Case no: A 244/2015

**JOHAN HENDRIK McDONALD** **1ST APPLICANT**

**MARTIE McDONALD** **2ND APPLICANT**

And

**SAMANTHA BAILLIE MOOR** **RESPONDENT**

**Neutral citation:** *McDonald v Moor* (A 244-2015) [2015] NAHCMD 235 (21 September 2015)

**Coram:** GEIER J
**Heard**: **17 - 18 September 2015**
**Delivered**: **21 September 2015**
**Released:** **5 October 2015**

**Flynote**: Minor - Custody - Legal proceedings - Best interests of child - Court to consider all relevant facts - Not bound by procedural strictures or limitations of evidence presented - Nor should court be hampered by jurisdictional formalism - Court thus taking cognisance of report of educational psychologist concerning children possibly obtained in contravention of Section 17 of the Social Work and

Psychology Act, No 6 of 2004 at the instance of applicant in spite of the respondent not wishing court to do so.

**Summary**: Applicant had brought an urgent application for the interim variation of an existing court order regulating custody and access to the parties' minor children pending the finalisation of an application, to be launched in terms of section 12 of the Children Statute Act 2 of 2008 by the applicant. After some protracted proceedings the parties agreed to having certain relief made an order of court. In such order the parties also recorded various additional undertakings given by them. The parties agreed also that the only issue which the court should still determine was whether or not the two younger children should be enrolled, pendent lite, in a Windhoek hostel. In the course of determining this issue the court considered itself at liberty to also have regard to a disputed expert report, seemingly obtained contravention of Section 17 of the Social Work and Psychology Act, No 6 of 2004.

Held: That when the court, as the upper guardian of minors, has to determine issues of custody and access, it is empowered and under a duty to consider and evaluate all relevant facts placed before it with a view to deciding the main issue which is of paramount importance in such enquiry: the best interests of the child.

Held: That the court in determining the issue of custody and access has extremely wide powers in establishing what is in the best interests of the minor or dependent children involved and that it is not bound in this regard by procedural strictures or by the limitations of the evidence presented or contentions advanced by the respective parties. It may in fact have recourse to any source of information, of whatever nature, which may be able to assist it in resolving custody and related disputes.

Held: That the interests of minors should thus not be 'held to ransom for the sake of legal niceties' and held that in the case before it the best interests of the child 'should not be mechanically sacrificed on the altar of jurisdictional formalism'.

Held: As the disputed expert report, as well as one of the respondents experts had recommended the enrolment of the two minor children involved at the hostel of a private school in Windhoek ‘to remove them out of the conflict zone’ the court ultimately and reluctantly found that - at the moment - it would be in the children’s best interests to enroll them in the hostel in the interim as this would keep them ‘out of the middle of the conflict’ – which - in all probability was about to escalate again - also for the reason of the imminent proceedings, which were to be launched by the applicant, in the Children’s Court.

---

**ORDER**

---

By agreement between the parties and in the interim, and pending the finalisation of an application, to be launched in terms of section 12 of the Children Statute Act 2 of 2008, by the applicant, it is ordered that:

**1.** The status quo pertaining to Jessica Patricia McDonald, the parties’ eldest daughter, remains, that is to mean that Jessica will be allowed to complete her schooling at Edugate Academy in Otjiwarongo,

**2.** The two younger children of the parties Karlien Martie McDonald and Samantha Sonja McDonald are to remain enrolled at the Windhoek Afrikaanse Privaatskool (WAP),

**3.** The access to all the aforesaid minor children of the parties is restored to the applicant with immediate effect,

**4.** Access to the said minor children continues to be regulated in terms of the existing agreement between the parties, that is the agreement concluded on 19 September 2013, annexed as JM1 to the founding papers in this application.

In addition, and also by agreement between the parties, the following undertakings given, are hereby recorded, namely that:

**5.** The parties agree that the relationship between Jessica and the respondent is not what it should be. The applicant undertakes to support all bona fide efforts which are aimed at restoring a normal mother-daughter relationship between Jessica and the respondent,

**6.** The parties, once again, undertake to comply strictly with the time lines, set in the agreement, annexed as JM1 to the founding papers,

**7.** The respondent undertakes not to expose her minor children to any undesirable conduct or conflict,

**8.** Mr Frans Smith has given a similar undertaking.

**9.** The parties agree that they will not expose the aforesaid minor children to parental conflict and that they will refrain from influencing the children negatively against the other party.

Having heard **Mr Ravenscroft-Jones**, on behalf of the applicants and **Mr Mouton**, on behalf of the respondent on the 17th and 18th of September 2015 and having read the documents filed or record:

The court reserved judgment.

Thereafter on this day:

It is ordered that:

**10.** Karlien Martie McDonald and Samantha Sonja McDonald be enrolled at the hostel of the Windhoek Afrikaanse Privaatskool (WAP) as of Monday, 28 September 2015, pending the finalisation of the application referred to below.

5
5
5
5
5

**11.** The 1st applicant is directed to file and serve his intended application in terms of Section 12 of the Children's Status Act, Act 2 of 2006 within 7 days of this order.

**12.** Each party is to pay its own costs.

---

**JUDGMENT**

---

GEIER J:

[1] This is an instance where wiser counsel prevailed.

[2] What started out as a bitter and acrimonious battle for the variation of an existing custody order on an interim basis, which resulted in protracted proceedings, spanning over some two days, into the early evening hours of each day, ended in that the parties, obviously after some reflection, managed to achieve agreement on most of the issues which originally had to be determined by the court.

[3] The interim agreement, pending the institution and finalisation of proceedings in the Children's Court arrived at, was follows:

1. The status quo pertaining to Jessica Patricia McDonald, the parties' eldest daughter remains, that is to mean that Jessica will be allowed to continue and complete her schooling at Edugate Academy in Otjiwarongo;

2. The parties agree that the relationship between Jessica and the respondent is not what it should be. The applicant undertakes to support all *bona fide* efforts which are aimed at restoring a normal mother/daughter relationship between Jessica and the respondent;

3. The two younger children of the parties, that is K and S, are to remain enrolled at the Windhoek Afrikaanse Privaatskool, hereinafter referred to as 'WAP';

4. Access to the aforesaid minor children is restored to the applicant with immediate effect;

5. Such access continues to be regulated in terms of the existing agreement, concluded between the parties, that is the agreement, concluded on 19 September 2013, annexed as 'JM1' to the founding papers;

6. The parties undertake once again to comply with the time lines set in such agreement.

7. The respondent undertakes not to expose the minor children to any undesirable conduct and conflict;

8. It is recorded that Mr Frans Smith has given a similar undertaking.

9. The parties agree that they will not expose the aforesaid minor children to parental conflict and that they will refrain from influencing the children negatively against the other party.

[4] It does not take much to understand that the above recorded undertakings and agreements diffuse the conflict of the parties for the moment and it emerges that they were eventually, and in a mature- and rational manner, able to, at least, agree on an interim basis, on how their respective concerns would be addressed, pending the outcome of the proceedings which the applicant intends to institute in the Children's Court for the variation of the existing custody arrangement, even possibly also through arbitration, should that be agreed upon.

[5] As the issue of custody and access to children is essentially a private family affair, subject to the court's role as upper guardian of all minor children, the abovementioned interim agreement, which the court will sanction, is to be welcomed.

The court wishes to express its appreciation that the parties were ultimately able to achieve an amicable solution on the main issues of their current conflict.

[6] The parties were also agreed that the court should still determine the only issue on which they were not able to agree, namely the question whether or not their two younger children, K and S, should at least in the interim be enrolled in the hostel at WAP, in Windhoek, during weekdays, in order to address the applicant's concerns that his two younger daughters could still be exposed to unwarranted conduct, as such arrangement would ensure that the risk of exposure thereto, would be minimised.

**THE ARGUMENTS ON BEHALF OF APPLICANTS**

[7] In support of his client's case Mr Ravenscroft-Jones, counsel for the applicant, requested the court to again have regard to the expert report compiled by Professor Naudé, which had recommended the relocation of the two younger children, to the Otjiwarongo Edugate Academy, where they would have had to be enrolled in the hostel, in any event, as both the applicant and the respondent, are not resident there, currently.

[8] He signaled the applicants' willingness to pay for the hostel fees at WAP which, so it was pointed out, he would have to pay in any event, in terms of the existing arrangement between the parties.

[9] He emphasised the fact that the applicant had brought this application in the first place to remove the children from their current environment in which they had been exposed to aggressive behavior and where they had, on occasion, been belittled. In this regard he referred to what had been set out in paragraphs 28.1 to 28.9 in the applicant's founding papers, where it had been alleged that:

> '28.1 The respondent belittles and insults the 2 minor children;
>
> 28.2 The respondent constantly uses foul language in front of the 2 minor children;

28.3 The household is subjected to aggressive and confrontational behavior stemming from the volatile relationship between the respondent and Frans Smith;

28.4 Both the respondent and Frans Smith use alcohol excessively on a daily basis and become intoxicated;

28.5 Frans Smith is aggressive and does not hesitate to lift his hands to his children;

28.6 It is also clear that Frans Smith is not adverse to physically assaulting his children with clenched fists and in a street fighter like manner head butting them;

28.7 The 2 minor children enjoy absolutely no parental supervision from the respondent until approximately 19h00 when she returns home from work;

28.8 The respondent's ability to exercise good judgment is severely retarded and this is clear from the fact that she seduced and entered into a physical affair with a child who is the same age as my eldest daughter. This is shocking and totally unacceptable. Not only did she then try and cover this up but she then threatened the child and her intimidation led to him becoming petrified;

28.9 There are also strong indications that Frans Smith abuses narcotics and this is indicative of the fact that Mrs Smith testifies that she was well aware that he had previously used crack, cocaine and marijuana on a regular basis. Abraham Smith further testifies in his affidavit that he has smelt the smell of marijuana on both his father and the respondent's clothes in the past and he goes on to say that he knows what marijuana smells like.' …

[10] Should the court thus accede to his client's request this would go a long way to address these concerns and the risks that K and S would potentially be exposed to.

[11] With reference to Annexure "SM5", a report compiled by Mrs Alta Vorback, a social worker, he pointed out that Mrs Vorback had suggested:

'My plea as the children's therapist and voice, is not to unsettle them anymore because of adult issues. The children's biggest need currently is an environment where they can have a healthy and loving relationship with both their parents without feeling in the middle or insecure about their future and care.

The children mentioned are in the pre-adolescent stage and meaningful connection with their peers have a huge impact on their self-esteem and sense of belonging. By moving the said children back into the school and hostel in Otjiwarongo would be experienced as a punishment. They will have to rebuild connections that might have outgrown over to the two years that they were away from Edugate. In order to keep them out of the middle of the conflict an option might be to move them to a hostel in Windhoek, but keep them at WAP, where the said children feel*(s)* secure and happy and where they have a support system that is available to them.

It is my professional opinion that it is in no child's best interest to be moved from a known and emotionally safe environment. Change for children are experienced as losses and these children already have to deal with tremendous losses. … '.

[12] The enrolment of K and S, so the argument went further, in the hostel at WAP, would thus address Mrs Vorback's expressed concerns.

[13] A hostel environment might also assist, especially S, who also requires learning support and who had complained that she had to do her homework unsupervised, as this aspect would now be regulated.

[14] S would also no longer have to feel lonely as she would now enjoy the company of the other hostel children.

[15] Ultimately the removal of K and S would reduce the risk that they could be exposed to unwarranted conduct which could endanger their well-being and allow them to settle down, which would obviously be in their best interest.

**THE ARGUMENT ON BEHALF OF RESPONDENT**

[16] Mr Mouton, who appeared for the respondent, in answer, re-iterated his objection to having regard to Professor Naudé's report. It should here be mentioned that a major part of argument, before the above recorded undertakings and agreements had been forthcoming, had focused on the issue of the admissibility of Professor Naudé's report, one of the major pillars on which the applicant's case was founded. The objection was based on the seeming contravention by Professor Naudé in having compiled an expert report, relating to the custody of the minor children of the parties, in contravention of Section 17 of the Social Work and Psychology Act, No 6 of 2004, which criminalises the practice of the professions of, inter alia, clinical psychologist and educational psychologist, in Namibia, unless such person is registered in terms of the Act, for such purpose. A report, obtained in contravention of the statute, should simply not be admissible and should thus be disregarded.

[17] The objections to Professor Naudé's report were also founded on a number of other bases, ranging from the criticisms of some of her methods, which had been employed, i.e. that she had failed to interview the parents alone, in the absence of their children, to the fact that it had not been proved that Professor Naudé's registration, who claims to be registered in the Republic of South Africa, as a clinical psychologist and educational psychologist, there, had not lapsed, in the interim, due to her failure to pay the requisite fees.

[18] Mr Mouton, in turn, relied on a report, dated 5 February 2015, compiled by Mrs Marlette Brand, an educational psychologist, who had interviewed the children and who had on such occasion not recorded any complaints about aggressive behavior from Mr Smith or the respondent. The same argument was made with reference to Mrs Vorback's report.

[19] He argued further that the same reservations, pertaining to the relocation of K and S to the Edugate Academy in Otjiwarongo, would apply to their enrolment at the WAP Hostel in Windhoek. He pointed out that S currently receives counselling from a Mrs Bosch on Wednesdays.

[20] He stressed that the respondent was now self-employed, which allows her to keep flexible working hours and that she will thus easily be able to attend to the needs of her children. She would in any event have to take S to Mrs Bosch and collect her again on a weekly basis.

[21] He submitted that the interim agreement achieved between the parties had removed the children's fear to have to be relocated to a hostel. Hostel life would never be preferable to a life at home with a parent and the relocation to the WAP Hostel would now re-ignite that fear. This would also be experienced as a loss.

[22] In his submission there was simply no professional support for a relocation.

[23] The children's environment had also improved, given the undertakings that had been given.

[24] Important was the fact that K and S should be in the custody of their mother, which would satisfy the same- sex- matching principle.

[25] All in all nothing had been shown that the respondent was a bad mother who would not be able to exercise her obligations as custodian parent properly.

[26] He thus urged the court not to accede to the applicants' request as this would not be in the best interest of K and S.

**REPLY**

[27] In reply it was re-iterated that the allegations, especially those pertaining to the unsavory recent events, leading up to the bringing of the urgent application, remained un-contradicted. They could thus not be ignored. In addition counsel also pointed out that these allegations, which had been made under oath, in the papers before the court, could not just be brushed aside, simply because they were not reflected in some of the expert reports. Ultimately the applicant's case was

supported also by the guidelines, to which the court should have regard, in matters such as this, as listed in Section 3 of the Children Status Act No 6 of 2006.[1]

**RESOLUTION**

[28] When considering the various arguments made on behalf of the parties it should firstly be said that counsel for both sides raised certain valid points. It appears - and it does not take much to understand - that the relocation - to a hostel - of children - will always cause a certain degree of disruption in their lives and would upset a portion of their daily routine. This aspect is recognized - and is also emphasized - by the experts. I would even be inclined to agree with Mr Mouton's general submission that *'hostel life is not nice'* and that, ideally, children should be brought up in a secure home environment, as opposed to a hostel environment.

[29] Hostel life on the other hand, also has certain advantages, as emphasised by Mr Ravenscroft-Jones. Homework will be done in a regulated environment,

[1]Guidelines to be applied in all decisions regarding custody, guardianship or access

(1) When making any decision pertaining to custody, guardianship or access, the best interests of the child are, despite anything to the contrary contained in any law, the paramount consideration and the children's court or any other competent court must take the following factors into consideration-

(a) the child's age, sex, background and any other relevant personal characteristics;

(b) the child's physical, emotional and educational needs;

(c) the capability of each parent, and of any other relevant person, to meet the child's physical, emotional and educational needs;

(d) the fitness of all relevant persons to exercise the rights and responsibilities in question in the best interests of the child;

(e) the nature of the relationship of the child with each of the child's parents and with other relevant persons;

(f) the degree of commitment and responsibility which the respective parents have shown towards the child, as evidenced by such factors as financial support, maintaining or attempting to maintain contact with the child or being named as a parent on the child's birth certificate;

(g) any harm which the child has suffered or is at risk of suffering, directly or indirectly, from being subjected or exposed to abuse, ill-treatment, violence or other harmful behaviour;

(h) in a case where an application has been brought before the children's court, the reasons for the application in question;

(i) any wishes expressed by the child or his or her representative, in light of the child's maturity and level of understanding;

(j) the practical difficulty and expense of present and proposed arrangements;

(k) the likely effect of any change in the child's circumstances; and

(l) any other fact or circumstance that the court considers relevant

(2) When deciding what is in the best interests of the child, the children's court must consider the financial positions of the parents, together with the guidelines enumerated in subsection (1), but-

(a) the financial positions of the parents are not the decisive factor; and

(b) the court may not approve an application for the custody of a child if the application is based on a desire to avoid the payment of maintenance in respect of that child.

supervised by duly qualified teaching staff. The hostel environment would indeed address loneliness in the sense that it would afford the continuous company of other children to the person that would experience such emotion.

[30] The respondent would in any event also see S, during the week, when she will take S to Mrs Bosch, for counselling, even if S should be enrolled in the WAP Hostel during week days.

[31] Sight should not be lost of the fact that even the respondent's expert Mrs Vorback, tentatively, suggests the WAP Hostel as a preferable alternative to the relocation of K and S to the hostel at Edugate Academy in Otjiwarongo. That would be apart from the recommendations made by Professor Naudé who, in any event, recommends the relocation to a hostel to remove the children out of the conflict zone.

[32] In regard to the admissibility of Professor Naudé's report it was noted that counsel for the respondent was unable to provide the court with any authority on which his clients quest, to have such report excluded, was based. The high-watermark of Mr Mouton's argument was that the court should not countenance and recognise a report which had been compiled illegally i.e. in contravention of the statute.

[33] Mr Ravenscroft -Jones, on the other hand, had urged the court to consider same as relevant, on the strength of the inclusionary rule of evidence.

[34] This aspect, seemingly, has also not be considered before by the Namibian courts.

[35] There are however certain dicta, emanating from the South African courts, which are to the effect that a court, in determining, what is in the best interest of minor children, when determining the issue of custody, does so as their upper guardian – and - because of this role - have held that the court has extremely wide

powers in establishing what is in a particular child's best interest. In this regard the court is apparently not even bound by procedural strictures, or by the limitations of the evidence presented, or even by the contentions advanced by the parties. The court may have recourse to any source of information, of whatever nature, which may be able to assist in resolving custody disputes. See for instance *Terblanche v Terblanche* [2] and also *AD v DW (Centre for Child Law as Amicus Curiae; Dept for Social Dev as Intervening Party)* [3]*,* a Constitutional Court decision, at [30], where the court, per Sachs J, approved in general a flexible approach to be followed, in determining what is in a particular child's best interest – and - that this path should not, mechanically *' … be sacrificed on the altar of jurisprudential formalism.'*

[36] The full bench of the Cape Provisional Division, per Justices Cleaver, H J Erasmus and Yekiso put the test as follows in *J v J* [4] :

'[20] As the upper guardian of minors, this court is empowered and under a duty to consider and evaluate all relevant facts placed before it with a view to deciding the issue which is of paramount importance: the best interests of the child.[5] In *Terblanche v Terblanche* [6] it was stated that when a court sits as upper guardian in a custody matter -

. . . it has extremely wide powers in establishing what is in the best interests of minor or dependent children. It is not bound by procedural strictures or by the limitations of the evidence presented or contentions advanced by the respective parties. It may in fact have recourse to any source of information, of whatever nature, which may be able to assist it in resolving custody and related disputes.

In *P and Another v P and Another* [7] Hurt J stated that the court does not look at sets of circumstances in isolation:

I am bound, in considering what is in the best interests of G, to take everything into account, which has happened in the past, even after the close of pleadings and in fact right

---

[2] 1992 (1) SA 501 (W) at 503 I to 504 D

[3] 2008 (3) SA 183 (CC) (2008 (4) BCLR 359; [2007] ZACC 27)

[4] 2008 (6) SA 30 (C)

[5] *De Gree and Another v Webb and Others (Centre for Child Law as Amicus Curiae)* 2007 (5) SA 184 (SCA) para 32 at 200E; see also para 36 at 201B. See further below para [36]

[6] 1992 (1) SA 501 (W) at 504C

[7] 2002 (6) SA 105 (N) at 110C-D

up to today. Furthermore, I am bound to take into account the possibility of what might happen in the future if I make any specific order.

In *AD and DD v DW and Others (Centre for Child Law as Amicus Curiae; Department for Social Development as Intervening Party)* [8] the Constitutional Court endorsed the view of the minority in the Supreme Court of Appeal that the interests of minors should not be 'held to ransom for the sake of legal niceties' [9] and held that in the case before it the best interests of the child 'should not be mechanically sacrificed on the altar of jurisdictional formalism'.[10]'

[37] Given the latitude afforded by this approach, which I endorse, it would appear that I would be entitled to have regard to Professor Naudé's report in spite of the fact that it was seemingly procured in contravention of a statute. It should in this regard also be taken into account that Professor Naudé has not yet been criminally charged and at the moment merely faces an enquiry launched by the *Health and Professional Councils of Namibia* in this regard.

[38] What counsel also forgot to consider is that Professor Naudé's response to the complaint is still outstanding and that the presumption of innocence prevails at this stage, at least as far as a possible criminal prosecution is concerned.

[39] Even if one accepts that the report has certain additional technical shortcomings it appears - on the other hand - that it is a thorough report compiled meticulously with reference to seemingly applicable scientific tests and with regard to the applicable literature in point – and – that – ultimately - it is also - in principle - in agreement with the alternative option suggested by the respondent's expert Mrs Vorback, that the children, could be enrolled at a hostel in Windhoek:

---

[8] 2008 (3) SA 183 (CC) (2008 (4) BCLR 359) para 30 at 370A

[9] *De Gree and Another v Webb and Others (Centre for Child Law as Amicus Curiae)* 2007 (5) SA 184 (SCA) para 99 at 220I

[10] *AD and DD v DW and Others (Centre for Child Law as Amicus Curiae; Department for Social Development as Intervening Party)* 2008 (3) SA 183 (CC) (2008 (4) BCLR 359) para 30 at 370A

'…to keep them out of middle of the conflict' where Karlien and Sonja feel secure and happy and where they are they also have the necessary support systems available to them. … '.

[40] The hostel environment at WAP, if I understand Mrs Vorback's report correctly, would then also essentially ensure that they would not be dramatically removed from a known and safe environment.

[41] As far as the same- sex- matching principle would be concerned, that principle will not be materially be undermined by the relocation of K and S, to the WAP hostel - after all - the respondent is resident in Windhoek and she will at least see S once also during the week.

[42] Mr Mouton has argued that nothing was shown that the respondent is a bad mother. I will accept that proposition, as far as it goes, in general terms.

[43] It is, however, clear to me that the domestic situation at the respondent's home is not quite as tranquil as respondent's counsel tries to make out. It would appear also that there is no reason for me to doubt that the relationship between respondent and Mr Smith is potentially a volatile one - especially as it seems that Mr Smith is inclined to aggressive behavior, as the fact, that he has assaulted his 18-year old son by head-butting him and assaulting him with his fists, clearly demonstrates.

[44] While this court cannot prescribe to a party the choice of a partner the respondent's motherhood is not as perfect as Mr Mouton would have it as it is the choice of her life partner, which impacts negatively in this aspect.

[45] All in all, it seems to me that it cannot be said - (and in spite of the undertakings given) - that the risk - that K and S could not again be exposed to unwarranted conduct - endangering their emotional well-being - has been eliminated.

[46] Ultimately, I have to agree therefore - and this would also be the decisive factor in my ultimate decision - which I reluctantly make - with Mr Mouton's submissions in mind - that the enrolment of K and S at the WAP Hostel would - at the moment - and in the interim - be in their best interest - as this would keep them - as Mrs Vorback has put it – 'out of the middle of the conflict' – which - in all probability will escalate again - also for the reason of the imminent proceedings, which are to be launched by the applicant, in the Children's Court.

[47] As far as the costs of the application are concerned, and although it would appear on the one hand that it cannot be said that the applicant brought this urgent application without good reason, as well as the fact that, on the outstanding issue, the applicant has obtained a measure of success, that, on the other, and with reference, to what I have stated above, that it also cannot be said that both parties had no case. I further keep in mind the fact that the parties, during the proceedings, were able to achieve interim arrangements/agreements. I therefore believe that the fairest result, in this instance, would be to direct, and I exercise my discretion accordingly, that each party pay its own costs.

[48] Therefore and:

By agreement between the parties and in the interim, and pending the finalisation of an application, to be launched in terms of section 12 of the Children Statute Act 2 of 2008 by the applicant, it is ordered that:

**1.** The status quo pertaining to Jessica Patricia McDonald, the parties' eldest daughter, remains, that is to mean that Jessica will be allowed to complete her schooling at Edugate Academy in Otjiwarongo,

**2.** The two younger children of the parties Karlien Martie McDonald and Samantha Sonja McDonald are to remain enrolled at the Windhoek Afrikaanse Privaatskool (WAP),

**3.** The access to all the aforesaid minor children of the parties is restored to the applicant with immediate effect,

**4.** Access to the said minor children continues to be regulated in terms of the existing agreement between the parties, that is the agreement concluded on 19 September 2013, annexed as JM1 to the founding papers in this application.

In addition, and also by agreement between the parties, the following undertakings given, are hereby recorded, namely that:

**5.** The parties agree that the relationship between Jessica and the respondent is not what it should be. The applicant undertakes to support all bona fide efforts which are aimed at restoring a normal mother-daughter relationship between Jessica and the respondent,

**6.** The parties, once again, undertake to comply strictly with the time lines, set in the agreement, annexed as JM1 to the founding papers,

**7.** The respondent undertakes not to expose her minor children to any undesirable conduct or conflict,

**8.** Mr Frans Smith has given a similar undertaking.

**9.** The parties agree that they will not expose the aforesaid minor children to parental conflict and that they will refrain from influencing the children negatively against the other party.

Having heard **Mr Ravenscroft-Jones**, on behalf of the applicants and **Mr Mouton**, on behalf of the respondent on the 17th and 18th of September 2015 and having read the documents filed or record:

The court reserved judgment.

Thereafter on this day:

It is ordered that:

**10.** Karlien Martie McDonald and Samantha Sonja McDonald be enrolled at the hostel of the Windhoek Afrikaanse Privaatskool (WAP) as of Monday, 28 September 2015, pending the finalisation of the application referred to below.

**11.** The 1st applicant is directed to file and serve his intended application in terms of Section 12 of the Children's Status Act, Act 2 of 2006 within 7 days of this order.

**12.** Each party is to pay its own costs.

---

H GEIER
Judge

APPEARANCES

| | |
|---|---|
| APPLICANTS: | Mr JP Ravenscroft-Jones<br>Instructed by Theunissen, Louw & Partners,<br>Windhoek |
| RESPONDENT: | Mr CJ Mouton<br>Instructed by Conradie & Damaseb,<br>Windhoek |

20
20
20
20
20