

## Family Law

### Reinforcement of the Legal Standing of Grandparents' Rights with their Grandchildren

In a landmark decision, the Pretoria High Court in **K.R.S v C.L (A186/2023) [2024] ZAGPPHC 627** has reinforced the rights of grandparents to maintain contact with their grandchildren under South African law. This case, emerging from a complex familial dispute, underscores the judicial commitment to the principle of the best interest of the child, as enshrined in the Children's Act 38 of 2005.

The case originated from an order granted by the Children's Court for the District of Tshwane North on August 24, 2020, following an agreement between the father (appellant) and the maternal grandmother (respondent) regarding care and contact arrangements for three minor children. This order, incorporating recommendations from the Family Advocate, stipulated that the children's primary residence would be with their father, while the maternal grandmother retained specific contact rights.

Following the death of the children's mother on May 9, 2021, tensions escalated between the father and the grandmother's family, leading to various legal disputes. The father sought to rescind the court order, arguing it was *void ab initio*, obtained fraudulently, or based on a mistake.

The father's application for rescission was premised on several grounds, including the lack of a proper application under Section 23 of the Children's Act by the grandmother and allegations of fraud and mistake. He contended that he agreed to the Family Advocate's report being made an order of court under the misapprehension that it would only be valid while the children's mother was recuperating. He further argued that the order was ambiguous and that it interfered with his parental rights.

The High Court dismissed the appeal, affirming the Children's Court's decision. It found that a proper Section 23 application had been made by the grandmother and that the settlement agreement, which was made an order of the court, inherently implied the presence of a pending dispute. The court noted that the appellant was fully aware of the settlement's contents, which included the grandmother's contact rights.

Importantly, the court highlighted the thorough consideration of all relevant factors by the Children's Court, including expert reports from the Family Advocate and Social Worker. These reports investigated the background of the dispute and the parties' personal circumstances, confirming that contact with the grandmother was in the children's best interests.

The High Court applied the principle from **Attorney-General, Eastern Cape v Blom**, limiting appellate interference to



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cases of material misdirection or irregularity. Finding no such misdirection, the court upheld the original order.

This judgment reinforces the legal standing of grandparents to seek care and contact rights with their grandchildren under Section 23 of the Children's Act. It validates the process by which grandparents can apply for these rights, emphasizing the court's role in prioritizing the best interests of the child over conflicting familial interests.

The case underscores the importance of thorough investigations by Family Advocates and Social Workers in guiding court decisions. It highlights that courts will uphold contact rights for grandparents if deemed in the child's best interest, even in the face of parental objections.

Furthermore, the judgment clarifies the application of Rule 49(8) of the Magistrates' Courts Rules and Section 36(1) (b) of the Magistrates' Courts Act in family law contexts. It establishes that mere dissatisfaction with a court order or a change in circumstances is insufficient grounds for rescission.

The High Court's decision in **K.R.S v C.L** is a significant affirmation of grandparental rights within South African family law. It emphasizes the judicial commitment to the best interests of the child, providing a crucial precedent for future cases involving extended family contact rights. This ruling serves as a vital reminder of the complexities of family law and the judiciary's role in navigating these challenges to protect the welfare of children.





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## Practice Area News

**Crisis In Potchefstroom Maintenance Courts Leave Families In Desperation:** In Potchefstroom, maintenance court delays leave single mothers struggling as thousands of cases languish. Read more [HERE](#).

**Commencement of the Divorce Amendment Act 1 Of 2024 – May 14, 2024:** Amends the Divorce Act, 1979, to insert a definition for a Muslim marriage; to provide for the protection and to safeguard the interests of dependent and minor children of a Muslim marriage; to provide for the redistribution of assets on the dissolution of a Muslim marriage; to provide for the forfeiture of patrimonial benefits of a Muslim marriage; and to provide for matters connected therewith. Read more [HERE](#).

**Ad Hoc Central Authority, South Africa And Another V Koch No And Another 2024 (3) Sa 249 (Cc):** Hague Convention on the Civil Aspects of International Child Abduction — Interpretation of Article 13(b) — determination of the threshold for "grave risk" of psychological harm or an intolerable situation. Read more [HERE](#).

**Driving Divorce: Navigating Trusts as a Vehicle For Matrimonial Asset Division:** "The PAF v SCF 2022 (6) SA 162 (SCA) case constitutes a significant step towards combating unscrupulous "divorce planning". On the other hand, in **MJK and Others v IIK 2023 (2) SA 158 (SCA)** the court's failure to properly engage with the PAF case amounts to a loss". Practitioners should be alerted to these diverging SCA judgments on the scope of the 'control test'. This article attempts to shed some light on this issue, as well as on another crucial development caused by the PAF case. Read more [HERE](#).

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• On July 10, 2024 in the Northwest High Court, Mafikeng, in the appeal of Pitso Sekwae vs The State, Mr. Le Grange (Director of DRT SA) succeeded with an overall acquittal in favor of the Appellant against his conviction and sentence in the matter. Read more [HERE](#).

