

IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE HIGH COURT, CAPE TOWN)

CASE NUMBER:

24215/2011

5 DATE:

26 SEPTEMBER 2012

In the matter between:

LISA MICHAEL

Applicant

10

and

**THE AD HOC CENTRAL AUTHORITY
FOR THE REPUBLIC OF SOUTH AFRICA
15 AND IVE GODECKE**

Respondent/s

J U D G M E N T

(Application for Leave to Appeal)

DESAI, J:

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This is an application for leave to appeal to the Supreme Court of Appeal.

25 In the application for leave to appeal four reasons are cited for the said appeal. The first two reasons relate to whether or not

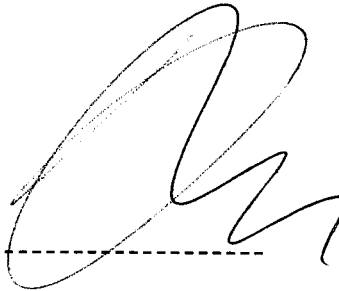
Belgium was the minor child's place of habitual residence. Ms De Vos, who once again appears on behalf of the respondent/applicant, has indicated that she no longer intends pursuing the issue of habitual residence. That concession is
5 wisely and advisedly made.

The remaining two reasons relate to whether the court took into account the best interests of the child as contemplated in the Constitution of the Republic of South Africa. It is patently
10 clear from the judgment itself that the Court was acutely aware of the best interests of the minor child in coming to its conclusion. Its findings are underpinned by that care and concern.

15 The final point raised by Ms De Vos is not contemplated in the notice of appeal. It was articulated by her this morning. She alleges that the Court in arriving at its conclusion made a factual finding that the child was not settled in the Republic of South Africa but did not thereafter exercise its discretion as to
20 whether or not the child had to be returned. Perhaps it may not have been clearly stated, but the Court did exercise its discretion as contemplated in the Hague Convention.

In all the circumstances, I see no prospects of any other court coming to a different conclusion in this matter. Leave to appeal is accordingly **REFUSED WITH COSTS.**

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A handwritten signature in black ink, consisting of a large, stylized 'D' followed by a series of loops and a final flourish. The signature is written over a horizontal dashed line.

DESAI, J