**REPUBLIC OF SOUTH AFRICA**

**IN THE HIGH COURT OF SOUTH AFRICA**

**(WESTERN CAPE HIGH COURT, CAPE TOWN)**

Case no: 2822/12

In the matter between:

**JONATHAN CORR** **Applicant**

and

**DEIDRE CORR** **Respondent**

Heard: 22 January 2013

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**JUDGMENT**

**DELIVERED: 19MARCH 2013**

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SAVAGE AJ:

Introduction

[1] This matter came before this Court on the extended return date of a rule *nisi* granted on 17 February 2012 by Bozalek J. The interim order required the respondent to furnish reasons why she should not be held to be in contempt of court and sanctioned either by way of imprisonment or by way of some other appropriate sanction; why she should not be directed to return the three minor children born of the marriage between her and the applicant to Somerset West; and why she should not be directed to pay the costs of the application on the scale between attorney and client.

[2] On the return date, the applicant sought a final order holding the respondent to be in contempt of court, with no order of committal; a finding that the respondent removed the three minor children unlawfully from the Republic of South Africa; an order that subject to any finding and order of the High Court of Zimbabwe hearing the pending application in terms of the Hague Convention on the Civil Aspects of International Child Abduction in regard to the minor children, the minor children should be returned to the Western Cape in the Republic of South Africa; and costs on an attorney and client scale. On 22 January 2013 a final order was granted in these terms. These are the reasons for that order.

Background

[3] The background to the matter is as follows. The applicant and respondent were divorced by order of this Court on 29 April 2011. The decree of divorce incorporated the terms of a consent paper to which a parenting plan

was annexed regulating the parties' shared parental responsibilities and rights pertaining to their three minor children, born in 2001, 2005 and 2006.

[4] In terms of clauses 1.2.1 and 1.2.2 of the parenting plan, the parties are co-guardians of the minor children and are jointly responsible for the children's care. Clause 1.3 requires the parties to –

'…*give due consideration to the views of the other parent when making decisions that may impact on that parent's exercise of parental responsibilities and rights. In respect of the following issues, joint decisions will be required:*

*1.3.1 the children's enrolment in any creche, preschool, school, after-care, extra tuition, or tertiary institution;*

*1.3.2 the children's choice of subjects and enrolment in any extramural and sporting activities;*

*1.3.3 any elective medical treatment that may be required by the children, which are not include their day-to-day medical care or emergency treatment, but which shall include them receiving any therapeutic assistance;*

*1.3.4 any significant change in the rearing of the children with regard to their religious beliefs and cultural or traditional values;*

*1.3.5 any decision to change the children's residence in either party's home from the Cape Peninsula and immediate surrounds or to remove the children from the aforesaid area, other than for a holiday period of short duration;*

*1.3.6 any decision which is likely to change significantly, or to have a significant adverse effect on, the co-holders exercise of parental responsibilities and rights in respect of the children;*

[5] Clause 1.4 provides that the applicant –

'… *shall have contact with the children as follows:*

*1.4.1 every alternate weekend by collecting the children from school on the Friday and returning them to school on the Monday, provided that should such weekend be preceded or succeeded by a public holiday, the public holiday shall then be deemed to be incorporated in the weekend in question;*

*1.4.2 every alternate public holiday which is not attached to a weekend as envisaged in paragraph 1.4.1 above;*

*1.4.3 every Wednesday when [applicant] does not have a weekend contact with the children, by collecting them from school on the Wednesday and returning them to school on the Thursday*…

[6] The pertinent remaining provisions of the parenting plan provide that –

*…1.5 Both parties shall, upon receipt they asked, ensure that the other party receives copies of the children's school reports and any correspondence or documentation received by them which relates to the children's progress at school and/or to any problems that*

*they may be experiencing and provide the other party with copies of any reports that they may receive;*

*1.6 Should either party not to be able to care for the children during their respective contact periods, such party shall first approach the other party to ascertain whether they are available to care for the children prior to a third party being appointed to do so.*

[7] On 4 January 2012 the applicant e-mailed the respondent indicating that she may not remove the children from South Africa without his consent and that if she did so, she risked being stopped at the airport, removed from the flight and that she could be charged and detained.The respondent received the email but did not reply to it and on 5 January 2012 left South Africa for Harare, Zimbabwe with the parties' three minor children on a one-way ticket.

[8] In her answering affidavit, the respondent stated that the applicant knew in advance of the children going on holiday to Zimbabwe '*as I informed him about it when I asked him to furnish me with their passports. I cannot recall the exact date, but it was during telephonic conversation which we had during November 2011*'. The respondent stated that she had been discussing the possibility of moving to Zimbabwe to live there permanently with her new partner but wanted the children to visit the country first. It was not in dispute that this had not been discussed with the applicant. In September 2011 the respondent discovered that she was pregnant with her new partner's child and realised that '*I would have to resolve the question of relocating with the children*

*as soon as possible*.' She stated that she intended to use the holiday to make enquiries about the availability of adequate schooling for the children.

[9] The applicant established in January 2012 from the headmaster of Rhenish Primary, where the children attended school in South Africa, that the respondent had in October 2011 indicated an intention to enrol the children at St John's Preparatory School in Harare. The headmaster of St John's confirmed with the applicant that Rhenish Primary had been approached as certain pre-admission tests were required by St John's. These approaches were made without the knowledge of the applicant.

[10] Following receipt of this information, the applicant approached the Department of Home Affairs with the request that the children's passports be blocked for any future outbound travel and, through his attorneys, sought the return of the children to South Africa by the respondent. The respondent indicated that the children were due to return to Somerset West on 14 January 2012 but that she refused to return to South Africa without an undertaking from the applicant that he would not 'proceed to issue a warrant' and therefore place her at risk of arrest on her arrival. The respondent proposed that the '*matter concerning (her)… alleged emigration …be referred to the facilitator as per the consent paper'*. The applicant denied having consented to the removal of the children from South Africa and attached his email of 4 January 2012 to his reply to the respondent. He sought an assurance from the respondent that the children would commence schooling on 16 January 2012 in South Africa, having missed the first week of school and provided the respondent with a copy

of his e-mail to the Department of Home Affairs indicating that he had not requested a warrant of arrest to be issued against the respondent.

[11] On 16 January 2012 through her attorneys the respondent denied that she had breached the court order in removing the children from South Africa and indicated that she had intended to return to South Africa after her holiday but that the applicant had '*ordered Home Affairs to block the children's passports. In lieu hereof, our client will not be coming back to South Africa until such time when she has obtained, in writing, correspondence from Home Affairs stating that the children's passports have not been blocked pursuant to your client's unlawful instructions and that there are absolutely no pending actions contemplated against her'.* In addition, the respondent demanded a letter be sent to the headmaster of St John's in Harare confirming that no court order or warrant of arrest had been issued against her.

[12] On 17 January 2012 the applicant informed the respondent that '*you are free to contact the Department of Home Affairs who will confirm that the children's passports have not been blocked*'. The following day the respondent's attorneys replied that their instructions were that '…*our client insists that your client provides us with written confirmation that the statements made to the Headmaster of St John's were not true*'. On 23 January 2012, the respondent's South African attorneys informed the applicant's attorneys that they were instructed not to act as correspondent for the respondent's attorney in Harare in the matter regarding the minor children.

[13] The applicant contacted the South African Police Services who in turn made contact with the respondent via e-mail. In a letter dated 20 January 2012 addressed to the respondent by the SAPS it was confirmed that no criminal charges had been laid against her and that no warrant of arrest had been issued for her arrest. The respondent was informed that should she not return with the children she would be in contravention of the South African Children's Act 38 of 2005 and '*a court order (final order of divorce)*'.

[14] On 22 January 2012 a further email was sent to the respondent by SAPS. In this reply, the respondent claimed there to be a dispute between the parties as to the interpretation of the court order and denied deliberately leaving South Africa with the children intending to remove them permanently from the country. She stated that the involvement of the police in a purely domestic matter had led her to conclude that '*she and the children will indeed be subjected to further intimidation and threats upon their return to South Africa'*.

[15] On 26 January 2012 the applicant replied that he had become aware that the respondent had arranged with Biddulphs to remove her household furniture to Zimbabwe on the 25 January 2012, having obtained a quotation to do so on 6 December 2011. He recorded that he had had no contact with or access to his children since the 4 January 2012 and was unaware as to where in Zimbabwe the children were as no contact numbers or address had been provided. The same day, the respondent's attorney replied stating that her return to South Africa had been made impossible by the '*irrational'* behaviour of the applicant. The applicant thereafter laid charges against the respondent in terms the Children's Act 38 of 2005.

[16] On 31 January 2012 the respondent enrolled the parties' oldest son into a private school in Harare '*when I was convinced that all attempts by my attorneys to get the necessary assurances from applicant that I could (return)...without threat of the loss of my personal freedom or other legal action, had failed*'. By this time the respondent had resigned from her job '*as I had already decided that I was not going to return to South Africa*'.

[17] During the course of 2012 the respondent enrolled all three minor children in weekly boarding school in Zimbabwe, without the knowledge or consent of the applicant. The children currently remain in Zimbabwe. Proceedings brought under the Hague Convention on the Civil Aspects of International Child Abduction remain pending in Zimbabwe.

Jurisdiction

[18] Ms Pratt contended for the respondent that this Court lacks jurisdiction to hold the respondent in contempt of the order of this Court made on 29 April 2011 given that she resides in Zimbabwe and is no longer domiciled in South Africa, having left South Africa on 5 January 2012 for Zimbabwe; and that no court, as a result, has jurisdiction to consider this application.

[19] Section 19(1) of the Supreme Court Act 59 of 1959 provides that –

> '*(a) A provincial or local division shall have jurisdiction over all persons residing or being in and in relation to all causes arising and all offences triable within its area of jurisdiction*…'

[20] The crucial time for determining the jurisdiction of a court to entertain an action is at the commencement of the action. (*Thermo Radiant Oven Sales Ltd v Nelspruit Bakeries* 1969 (2) SA 295 (A) at 310C).

[21] This Court has the power to adjudicate upon, determine and dispose of a matter within its territory with due regard to the nature of the proceedings or the nature of the relief claimed or, in some cases both, and whether the Court is able to give an effective judgment (*Gallo Africa v Sting Music* 2010 (6) SA 329 (A) at 331I, 332A-B and 3333D-E). The Court's *ratio jurisdictionis* may be founded on domicile, contract, delict or *rationereisitae* (*VenetaMineraria Spa v Carolina Collieries* (Pty) Ltd 1987 (4) SA 883 (A) at 893E-894B). Although effectiveness lies at the root of jurisdiction it is not necessarily the criteria for its existence (*EwingMcDonald & Co Ltd v M & M Products* 1991(1) SA 252 (A) at 259D-260E).

[22] Jurisdiction once established -

> '…*continues to exist to the end of the action even though the ground upon which the jurisdiction was established ceases to exist … If an action is instituted against a defendant on the ground of residence and he changes his residence during the course of the trial the Court similarly is bound to give a judgment which may not be effective (see Becker v Foster 1913 CPD 962). This principle is based on practical considerations because the due administration of justice might be seriously hampered if the rule were otherwise. This may well be a case*

*where logic should give way to expediency*.'(*Thermo Radiant Oven Sales Ltd supra* at 310 C-H).

[23] Where a court has jurisdiction at the commencement of proceedings, a successful party is entitled to an order to the extent to which it can be made effective, even though it may not be possible to do so immediately. *Cats v Cats* 1959 (4) SA 375 (C) per Rosenow J at 381A–D -

*'It seems to me also that, in so far as such an outcome can be prevented, an unsuccessful party should not be allowed to frustrate proceedings, in which he himself participated, by the simple process of removing himself from the effective jurisdiction of the Court'.*

[24] Contempt proceedings are not new proceedings, but merely a continuation of proceedings previously instituted (*James v Lunden* 1918 WLD 88 quoted with approval by Heher JA in *Els v Wideman* 2011 (2) SA 126 (SCA) at 134A-C). Consequently, it follows that this Court has jurisdiction in accordance with the provisions of section 19(1)(a) in respect of this matter as a cause arising within the jurisdiction of the Court.

[25] With regards to the effectiveness of a judgment made in this matter, it is material that the applicant does not pursue an order for the arrest or committal of the respondent but rather an order of contempt without sanction; an order that the removal of the children was unlawful; and an order that subject to the decision of the Zimbabwean Court in proceedings instituted under the Hague Convention, the children should be returned to South Africa. The nature of the relief sought is therefore in essence declaratory.

[26] This Court may grant declaratory relief in accordance with the provisions of section 19(1)(a)(iii) which provides that it has the power -

> *…(iii) in its discretion, and at the instance of any interested person, to enquire into and determine any existing, future or contingent right or obligation, notwithstanding that such person cannot claim any relief consequential upon the determination.'*

[27] In *Di Bona v Di Bona* 1993 (2) SA 682 (C) at 695A-D Rose-Innes J held that the Court lacked jurisdiction to entertain an action for the committal of the respondent to prison on the basis that –

> '*In my opinion, the doctrine of the continuance of the court's jurisdiction, once jurisdiction is established at the commencement of an action or other proceeding, does not apply to an application for arrest or committal for contempt where the respondent has left South Africa*.'

[28] The case of *Di Bona*is distinguishable from the current matter in that the applicant does not persist with an order for the arrest or committal of the respondent in this matter. I accept that an order of arrest or committal may not be capable of enforcement outside the territorial boundaries of South Africa and that if the applicant did persist in seeking such an order, the *ratio* in *Di Bona*would find application. I am persuaded for these reasons that this Court retains jurisdiction to determine the current application for contempt.

[29] Rose-Innes J concluded in *Di Bona*at 637 that given that a custody and access order is a variable order and not a final and conclusive judgment or

order, such matters are not *res iudicata* and will never be enforced by the courts of any other country. As a result, the court found that it lacked jurisdiction to make an effective order in respect of children who were no longer in South Africa. I am persuaded that the conclusion of the learned judge in this regard does not however preventthis Court from making an order in the current matter relating to the unlawfulness of the removal of the minor children and their return, subject to the determination of the foreign court in the Hague Convention proceedings. Such an order is declaratoryin its ambit, given that the children are no longer within South Africa.

[30] In considering the effectiveness of such an order, it seems to me that the decisions in *Cats* (*supra*) and the conclusion of Balcombe LJ in *Re D (a minor)* [1992] 1 All ER 892 are instructive. In the latter case the English court found that it was empowered to issue an order for the return of a child to its jurisdiction notwithstanding the fact that the child was not in its jurisdiction. At 895 the judge concluded that it was not pointless to make such order given that it would assist the father in foreign proceedings for the return of the child and that the court would not refuse to assist a parent where the other had acted in defiance of an undertaking voluntarily given to the court.

[31] The grant by this Court of an order which is declaratory in its ambit and effect is not a pointless exercise in the circumstances of the current matter. This is so for the reason that the order may be placed before the foreign court by the applicant in the pending Hague Convention proceedings so as to indicate the attitude of this Court to the conduct of the respondent. In addition, the applicant remains entitled on the basis of the finding of contempt to approach this Court

at any time when the respondent returns to the jurisdiction of the Court for an appropriate sanction to be imposed upon the respondent.

[32] This Court has jurisdiction to enforce its orders as a consequence of the binding nature of such orders in terms of section 165(5) of the Constitution. Where a personhas breached an order of this Court and yet remains outside the effective territorial jurisdiction of the Court,this does not lead to the inevitable conclusion that this Court is incapable of declaring such person to be in contempt of court. If this were so, this would have the result that the judicial authority of our courts, the rule of law and the administration of justice were unjustifiably undermined in circumstances where litigants remove themselves intentionally from South Africa so as to avoid the consequences of an order of Court. For the reasons stated above, it is only the imposition of a sanction as a consequence of such contempt that would be ineffective and accordingly it would be inappropriate to impose any such sanction at this time given the circumstances of this matter.

[33] Even if I am wrong and this Court's jurisdiction does not exist on the basis of the doctrine of continuance of jurisdiction, I am not persuaded that the respondent has acquired Zimbabwean domicile for the reasons set out below.

[34] A person must at all times be in possession of a domicile(Section 3(1) of the Domicile Act 3 of 1992; *Sukovs v Van der Walt* [1998] 3 All SA 664 (O) at 673). In terms of section 3(3) of the Zimbabwean Immigration Act of 1979, a person is not domiciled in Zimbabwe '…*unless he has lawfully ordinarily resided therein for a continuous period of two years*…'. The respondent has not been

resident in Zimbabwe for a continuous period of two years and accordingly, under Zimbabwean law, is not domiciled in Zimbabwe. While this Court will not determine the acquisition or loss of domicile of the respondent's South African domicile in accordance with the law of a foreign country, the fact that the respondent has not acquired a Zimbabwean domicile is a material fact to be considered in determining whether she remains domiciled in South Africa. For current purposes it is clear that this Court's jurisdiction is therefore not ousted by virtue of the respondent's domicile given that in terms of the provisions of section 3(3) of the Zimbabwean Immigration Act the respondent has not acquired Zimbabwean domicile.

Contempt of court

[35] It is a crime to unlawfully and intentionally disobey a court order, thereby violating the dignity, repute or authority of the court (*S v Beyers*1968(3) SA 70(A) per Steyn CJ). Contempt proceedings are concerned with the unlawful and intentional refusal or failure to comply with the order of court. Although the object of such proceedings is the imposition of a penalty in order to vindicate the courts honour, a declaration of contempt in civil matters may be made and is appropriate in certain circumstances. The sanction for contempt committed may be imposed immediately or in due course where the respondent is not currently within the territorial jurisdiction of the Court. In *Fakie NO v CCII Systems (Pty) Ltd* 2006 (4) SA 326 (SCA) at 333 and 344, Cameron JA emphasised that what is contemplated is not a mere disregard of the court's order but the deliberate and intentional violation of the courts dignity, repute or authority.

[36] A private litigant who has obtained a court order requiring an opponent to do or not do something (*ad factum praestandum*) is entitled to approach the court again, in the event of non-compliance, for a further order declaring the non-compliant party in contempt of court, and imposing a sanction. *Fakie NO (supra)*at para 7. This is a civil proceeding that invokes a criminal sanction or its threat.

[37] The applicant must show the requisites of contempt, namely the existence of the order, service or notice; non-compliance; and wilfulness or *mala fides* beyond reasonable doubt. However, once the applicant has proved the order, service or notice and non-compliance, the respondent bears an evidential burden in relation to wilfulness and *mala fides* and if evidence is not advanced establishing reasonable doubt as to whether non-compliance was wilful or *mala fide*, contempt will have been established beyond a reasonable doubt.

> '*…(W)ilfulness and* mala fides *on the part of the respondent will normally be inferred and the onus will be on the respondent to rebut this inference*.'(*Max PollakVinderine v Menell Jack Hyman Rosenberg* 1996 (3) SA 355 (A) at 367I-J *per Corbett CJ).*

[38] At the hearing of the matter Ms Pratt conceded for the respondent that the removal and retention of the children in Zimbabwe by the respondent is unlawful. This was in spite of the respondent having denied the breach or an intention to breach the order in her answering papers. It is clear that the

unlawful conduct of the respondent exists in her infringement of legally protected rights and interests determined by the Court order.

[39] Any argument for the respondent that the order has not been breached in this country but in Zimbabwe where the refusal to return the children took place, cannot be sustained. The Australian case of *Ibbotson v Wincen* [1994] FamCA 103 is instructive in this regard. In that matter at para 28 the Family Court of Australia concluded that the obligation was on a husband to return a child to the wife in Australia and that the failure to do so was a breach of the court's order and that this breach occurred within the territorial limits of the Court. Quoting the trial judge at para 32 the court noted that –

> *'…It matters not in my view where the child was taken. If it can be established the respondent was responsible for depriving the applicant of custody and that such conduct constituted a flagrant breach of the Court order, it is irrelevant whether the child was held within or outside the jurisdiction of this court.'*

[40] Nothing has been placed before this court to show that the respondent did not act wilfully in refusing to comply with the Court order.The respondent was informed by the applicant that he had not consented to the removal of the children from South Africaand she was informed by the applicant and the SAPS that her conduct was in breach of the Court order. I am satisfied that the respondent possessed the knowledge that her retention of the children in Zimbabwe was in breach of the order of this Court and yet she nevertheless wilfully retained the children in Zimbabwe. Her defence turns on her *fides* in

claiming to be unable to return the children to South Africa in that she and the children would be subjected to 'further intimidation and threats' given the applicant's 'irrational' behaviour.

[41] In determining whether the respondent's conduct was *mala fide* the facts bear testimony to a wilful and orchestrated plan on the part of the respondent, pregnant with her partner's child, to remove the children from South Africa and retain them there in spite of the absence of the consent of the applicant and in breach of the Court order. This is illustrated by the following material facts:

42.1 following her pregnancy in September 2011 the respondent stated that she realised that she '…would have to resolve the question of relocating with the children as soon as possible' but failed to raise the matter with the applicant;

42.2 the respondent had in October 2011 made contact with a school in Harare seeking the admission of the children, following which pre-admission tests for the oldest child were arranged with Rhenish Primary, allwithout the knowledge of the applicant;

42.3 the respondent obtained a quotation for the removal of household contents to Harare on 6 December 2011;

42.4 the respondent removed the children from South Africa to Zimbabwe on 5 January 2012 on one-way tickets the day after the applicant had informed the respondent that he did not consent to the removal of the children from the country;

42.5 between 14 January 2012 and 22 January 2012 the respondent indicated a refusal to return to South Africa with the children in the absence of certain self-created conditions being met, namely the provision of an undertaking from the applicant that he would not issue a warrant of arrest against her, a letter from the Department of Home Affairs confirming that their passports had not been blocked and a letter to St John's school in Harare stating no warrant or court order had been issued against her. This when it was clear that the terms of the Court order were unequivocal and the respondent was not entitled to lay down conditions prior to her compliance with such order. In addition, when the respondent who was legally represented, would reasonably have been aware that the issue of a warrant of arrest or the imposition of restrictions on South African passports were not matters in respect of which the applicant was able or entitled to provide undertakings;

42.6 on 14 January 2012 the respondent proposed securing a facilitator to agree an amendment to the children's place of residence when

the children had already been removed by her to Zimbabwe, indicating her clear intention 9 days after her departure to retain the children in Zimbabwe;

42.7 on 25 January 2012 the respondent's household contents were moved to Harare, three days after she had informed the SAPS that there was a dispute regarding the interpretation of the court order, when no such dispute has been shown to exist;

42.8 on 26 January 2012, the day after the removal of her household contents, the respondent informed the applicant that her return to South Africa was impossible due to his irrational behaviour; and

42.9 the respondent proceeded to enrol the children in schools in Zimbabwe, including boarding school, without the agreement of the applicant and in further breach of the order of this Court.

[42] The respondent has failed to advance evidence establishing a reasonable doubt that her non-compliance with the court order was wilful and*mala fide*. I am satisfied that in removing the children from South Africa in the manner that she did, there is no evidence before me to prove that the respondent did not intend to act in breach of the Court order. I am satisfied that

the evidence shows that she did so both wilfully and in bad faith. The effect of her conduct has been to breach the order of this Court, to make material and far-reaching schooling and life decisions for the children unilaterally without the consent or agreement of the applicant and to deny the applicant access to his children and his right to make the necessary and appropriate decisions concerning their welfare, schooling and well-being. I find that the respondent has accordingly acted in contempt of the order of this Court made on 29 April 2009.

Removal of children

[43] As stated above, the applicant does not currently pursue an order of committal against the respondent and no such order is to be made given the absence of the respondent from the jurisdiction of this Court.

[44] I am satisfied however that that there exists no reason as to why an order should not be granted to the effect that, subject to any finding and order of the High Court of Zimbabwe which is to hear the pending application brought by the applicant in terms of the Hague Convention on the Civil Aspects of International Child Abduction in regard to minor children, the children should not be returned to the Western Cape in the Republic of South Africa. The granting of such an order is conditional upon the determination of the Zimbabwean High Court and to this extent declaratory within the ambit of section 19(1)(a)(iii). Furthermore, it confirms and accords with the terms of the order of this Court granted on 29 April 2011 and serves the purpose that it may be placed before the High Court in Zimbabwe in the pending Hague Convention proceedings.

Costs

[45] The applicant seeks an order as to costs on the attorney and client scale against the respondent. This Court may award attorney and client costs against an unsuccessful litigant where conduct has been 'unworthy', reprehensible or 'blameworthy' (*Hamsa v Bailen* 1949 (1) SA 993 (C)).

[46] I am satisfied that the failure to comply with the terms of the order of this Court that had been taken by consent between the parties constitutes blameworthy conduct that justifies a punitive costs order against the respondent. This is more so given that this application was capable of being avoided had there been compliance prior to the hearing of the matter with the terms of the order by the respondent.

Order

[47] In the result, the following order is made:

1. The respondent is found to be contempt of the court order under case number 2399/2010 on 29 April 2011, more particularly in regard to the provisions pertaining to the parties' minor children as set out in the Parenting Plan.

2. The respondent is found to have removed the three minor children unlawfully from the Republic of South Africa.

3. Subject to any finding and order of the High Court of Zimbabwe hearing the pending application brought by the applicant in terms of the Hague Convention on the Civil Aspects of International Child Abduction in regard to minor children, the minor children should be returned to the Western Cape in the Republic of South Africa.

4. The respondent shall pay the costs of this application on the scale as between attorney and client.

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KM SAVAGE

ACTING JUDGE OF THE HIGH COURT

Appearances:

Applicant: Adv J McCurdie

Instructed by Smith Symms& Associates

Respondent: Adv T-A Pratt

Instructed by HanlieVisser Inc.