

## SCHUTTE v JACOBS (Nr 2) 2001 (2) SA 478 (W)

### Headnote : Kopnota

The applicant, the custodian parent of her four-year-old daughter, R, applied for leave in terms of s 1(2)(c) of the Guardianship Act 192 of 1993 to remove the child to Botswana to enable the two of them to live there with her new partner, one B. The respondent brought a counter-application for an order awarding the custody of R to him. The parties were divorced in November 1998 and custody of R was awarded to the applicant, while the respondent was given extensive rights of access. The issue was whether the Court had to order that the respondent's permission for the removal of R from South Africa be dispensed with. The Court initially postponed the case in order to obtain the Family Advocate's opinion on certain issues. In his report the Family Advocate pointed out, *inter alia*, that R's relationship with both her parents was good; that the applicant and B were involved in a steady and apparently long-lasting relationship; and that it was in R's interest to have regular contact with the respondent. The Family Advocate also made certain suggestions as to how such contact should be arranged.

*Held*, that three factors had to be weighed up in cases such as the instant one: the interests of the child, the right of the custodian parent to carry on with his or her life and the impact of the emigration on the other parent's right of access. It also had to be kept in mind that circumstances and lifestyles were subject to constant change. (At 481H/I - I/J.)

*Held*, further, that the Family Advocate's proposed arrangements for the respondent's access to R were eminently reasonable, that the applicant's relationship with R was clearly of a steady nature and that there was no reason to question the applicant's bona fides. Although the implementation of the proposed arrangements would entail a curtailment of the respondent's access to R, it had to be kept in mind that Gaborone was not far away. (At 485C - E.)

*Held*, further, that it was clear that the respondent's counter-application was nothing more than an attempt to challenge the instant application on an alternative ground. If the application were to be granted and the respondent were subsequently to succeed with his counter-application, it would mean that R would have to return to South Africa. The applicant's undertaking that she would comply with any future order regarding the custody of and access to R and the suitability of the arrangements for R's custody in Gaborone would also be of relevance during the consideration of the counter-application. (At 485B and E - H/I.)

*Held*, further, that the application had to be granted: the applicant was bona fide, she had given a reasonable and acceptable explanation for her desire to emigrate, and reasonable arrangements for the respondent's access to his daughter would exist. (At 487B - B/C.)

The Court accordingly made the following order: that the respondent's consent to the issuing of a passport to R as required by s 1(2)(d) of the Guardianship Act would not be necessary; that a passport endorsed only to allow her ingress into and egress from Botswana had to be issued to R; that the applicant was entitled to remove R to live with her in Botswana; that the applicant would retain custody of R; that the respondent would have access to R on every second weekend; that the respondent would be entitled to visit R in Gaborone once a month; that the respondent would be entitled to have R with him for a part of every school holiday; that the parties would consult each other regarding which schools R would attend; that G the applicant would submit to the jurisdiction of the Court in respect of any issue having a bearing on the custody of and access to R; and that the applicant would not move to any country except South Africa. (Some of the elements and details of the order have been left out.) (At 487C - 488I/J.)