



**HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK
URGENT APPLICATION RULING**

Case Title: GERHARD JOACHIM KUHN // STEPHNIE KUHN (BORN DERKS), MINISTRY OF GENDER EQUALITY AND CHILD WELFARE, MINISTRY OF SAFETY AND SECURITY, DEPUTY SHERIFF OF THE HIGH COURT	Case No: HC-MD-CIV-MOT-GEN-2020/00420
	Division of Court: HIGH COURT, MAIN DIVISION
Heard before: HONOURABLE MR JUSTICE MILLER, ACTING	Heard on: 10 NOVEMBER 2020
	Delivered on: 16 NOVEMBER 2020
Neutral citation: <i>Kuhn v Kuhn</i> (HC-MD-CIV-MOT-GEN-2020/00420) [2020] NAHCMD 524 (16 November 2020)	
The order: Having heard MS FRIEDA SCHULZ , on behalf of the applicant and MS ANKIA DELPORT , on behalf of the first respondent and having read the pleading for (HC-MD-CIV-MOT-GEN-2020/00420) and other documents filed of record: IT IS HEREBY ORDERED THAT: <ol style="list-style-type: none"> 1. The application for an order directing that the minor child, to wit Nathan Gerhard Kuhn, born 22 June 2017, be returned to the applicant is hereby dismissed. 2. The applicant should pay the costs of this application. 3. The matter is removed from the roll and is considered finalized. 	
Following below are the reasons for the above order:	

MILLER AJ:

[1] In this matter before me, the applicant is seeking an order directing that the minor child by the name of Nathan Gerhard Kuhn, born on 22 June 2017, be returned to him immediately, after the minor child was removed from him.

[2] The applicant and first respondent are the biological father and mother of the minor child respectively.

[3] The applicant and the first respondent got married on 21 December 2017 at Gobabis, and they are now separated and in the process of divorce.

[4] The applicant is alleging that his wife is involved in an extra-marital affair, and for that reason she wishes to divorce him. The first respondent denies being involved in an extra-marital affair, but indicates her desire to divorce the applicant.

[5] The applicant worked in the United States of America as an independent contractor and during that period the minor child remained in the custody of the first respondent.

[6] Upon his return from the United States of America, the applicant collected the minor child from Walvis Bay, and took him to a farm in Gobabis.

[7] From the papers, it is apparent that the child was supposed to visit the applicant for an agreed period of time, but the applicant failed to return the child after the agreed time has expired, and further refused to return the child when the first respondent so requested.

[8] In the circumstances, the first respondent sought the assistance of a social worker and the Namibian police to have the child returned to her. On Friday, 23 October 2020, the first respondent, accompanied by a social worker and the Namibian police collected the minor child from the residence of the applicant. The minor child is presently in the custody of his mother, the first respondent.

[9] The applicant now seeks that the minor child be returned to his custody.

[10] What is of paramount importance to the court is the best interest of the minor child.

[11] The minor child is three years and four months old; he does not go to kindergarten and spends most of his time during the day with his maternal grandparents because his mother is employed. The minor child has been under the custody of the first respondent since birth and during the period that the applicant was working in the United States of America.

[12] I am of the view that it is not in the best interest of the child that he be subjected to the on-going tussle between his mother and father.

[13] I find that there is nothing to show that the safety or well-being of the minor child is at imminent risk.

[14] While this contested battle rages between the parties, the minor child must be kept as far as possible from becoming embroiled in that dispute.

[15] It is apparent from the papers that the minor child has been in the *de facto* custody of his mother for a greater part of his life. I am satisfied that in the present circumstances, it is in the best interest of the minor child that he stays with his mother as his primary custodian, as she has been in the absence of his father from the country, while the parties are going through the divorce proceedings until they are finalized and custody and right of access are determined. Pending the finalization of the divorce proceedings or in the absence of such proceedings, there are other avenues through which the applicant may seek custody of the child, or seek access to the child if that is denied.

[16] The applicant now seeks one prayer, viz that the minor child Nathan Gerhard Kuhn (born on 22 June 2017) be forthwith returned to the care and residence of the applicant at no. 114 Plot, Gobabis, Republic of Namibia, and that prayer is refused.

[17] In the circumstances, I hereby make the following order;

a) The application for an order directing that the minor child, to wit Nathan

Gerhard Kuhn, born 22 June 2017, be returned to the applicant is dismissed.

- b) The applicant should pay the costs of this application.
- c) The matter is removed from the roll and is considered finalized.

Judge's signature:	Note to the parties:
	Not applicable.
Counsel:	
Applicant	Respondent
MS FRIEDA SCHULZ On behalf of the Applicant Neves Legal Practitioners Windhoek	MS ANKIA DELPORT On behalf of the First Respondent Delpport Legal Practitioners, Windhoek