

**REPUBLIC OF NAMIBIA**



**HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK**

**URGENT APPLICATION  
EX TEMPORE JUDGMENT**

Case no: HC-MD-CIV-MOT-GEN-2021/00505

In the matter between:

**GILLIAN PICKERING**

**APPLICANT**

And

**HITJEVI TJIROZE**

**RESPONDENT**

**Neutral citation:** *Pickering v Tjiroze* (HC-MD-CIV-MOT-GEN-2021/00505) [2022]  
NAHCMD 2 (05 January 2022)

**Coram:** COLEMAN J

**Heard:** 05 January 2022

**Delivered:** 05 January 2022 (Ex tempore)

**Judgment Released: 11 January 2022**

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**ORDER**

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1. The applicant's non-compliance with the Rule 73 (1), (3) and (4) of Court, in so far as it pertains to the form and service of this application is condoned, and this application is heard as one of urgency.
2. The application to interdict the respondent from removing the minor child from Namibia is dismissed;
3. The respondent is ordered to grant the applicant reasonable access at all times to the minor child and is in particular ordered to grant full access of the minor child to the applicant before they leave Namibia;
4. As agreed, the respondent is ordered to allow the minor child to travel to Namibia for school holidays;
5. The respondent agreed to subject himself and the minor child to the jurisdiction of the Children's Court in Namibia should applicant institute custody proceedings. He is ordered to fully participate in the proceedings and service is to be accepted by his legal practitioner of record; and
6. Each party is to pay his or her own costs.
7. The matter is removed from the roll and regarded as finalized.

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## JUDGMENT

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COLEMAN J:

[1] This application was brought on an urgent basis on 21 December 2021. It was opposed and heard by the Honourable Justice Miller on the same day. He postponed it to 5 January 2022 to be heard by me.

[2] Mr Ndaitwah represented the applicant on 21 December 2021 and the respondent Mr Tjiroze appeared in person. Justice Miller made the following provisional order:

- '1. An order in terms whereof the applicant's non-compliance with the Rule 73 (1), (3) and (4) of Court, in so far as it pertains to the form and service of this application is condoned, including the defective certificate of urgency.
2. The Respondent shall file his answering affidavit on or before 28 December 2021.
3. The Applicant shall file her replying affidavit on or before 30 December 2021.
4. The case is postponed to 5 January 2022 at 10:00 for Urgent Application Hearing (Reason: Documents Exchange) before the Honourable Justice Coleman.
5. An order in terms whereof the Respondent is interdicted from removing the Minor Child from the Republic of Namibia up to and including the 5th of January 2022.
- 6 Cost for today's appearance to stand over for determination by the court hearing the matter.'

[3] This is an urgent application to interdict the respondent from removing the minor child from Namibia to Johannesburg, South Africa, where he and the minor child reside. The applicant is the biological mother of the minor child and the

respondent is her biological father. The parties were never married. The applicant's intention is to bring custody proceedings in Namibia, which is the basis for the application for an interdict.

[4] Respondent contends that it is not in the minor child's best interest that she is forced to remain in Namibia, as Johannesburg is her home and she is entering her final year in primary school in Johannesburg.

[5] During the proceedings two letters were handed up which were exchanged by the legal practitioners of the parties on the 3<sup>rd</sup> and 4<sup>th</sup> of January 2022, respectively. In my view these letters contain an agreement that the minor child could return to Johannesburg subject to certain conditions, at least until the end of her primary school year.

[6] In addition, the minor child is 11 years old, turning 12 on 26 January 2022 - in a few weeks' time. Ms Kirsten, representing the respondent, suggested that I speak to her. I do not understand Ms Kauta, representing the applicant, to seriously resist the notion that I speak to the minor child. I spoke to the minor child, first in the presence of her aunt as well as my research assistant for a few minutes and then only in the presence of my research assistant.

[7] The minor child struck me as an intelligent young woman, quite composed and articulate. She was clear in what she wants and in response to my direct questions she was unequivocal that it would be very bad for her if she was to be forced to remain in Namibia as she was looking forward to returning to school and going back to her friends. In my view both in terms of section 4 of the Child Care and Protection Act of 2015 and in terms of the common law, as I understand it, from the age of 10 years a child's opinion should be taken seriously. In my role as her Upper

Guardian I am of the view that I should take cognisance of the minor child's feelings and that to me is a strong factor to convince me that it might not be in her best interest to be forced to remain in Namibia.

[8] In light of the correspondence alluded to above and my discussion with the minor child, I am satisfied that it is appropriate and in her best interest that she is allowed to return to Johannesburg, South Africa, subject to certain conditions.

[9] This application was brought on an urgent basis. I am satisfied applicant established urgency.

[10] Accordingly, I make the following order:

1. The applicant's non-compliance with the Rule 73 (1), (3) and (4) of Court, in so far as it pertains to the form and service of this application is condoned, and this application is heard as one of urgency.
2. The application to interdict the respondent from removing the minor child from Namibia is dismissed;
3. The Respondent is ordered to grant the applicant reasonable access at all times to the minor child and is in particular ordered to grant full access of the minor child to the applicant before they leave Namibia;
4. As agreed, the respondent is ordered to allow the minor child to travel to Namibia for school holidays;
5. The respondent agreed to subject himself and the minor child to the jurisdiction of the Children's Court in Namibia should applicant institute

custody proceedings. He is ordered to fully participate in the proceedings and service is to be accepted by his legal practitioner of record; and

6. Each party is to pay his or her own costs.
7. The matter is removed from the roll and regarded as finalized.

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G Coleman  
Judge

APPEARANCES

APPLICANT : H Kirsten

Instructed by Dr. Weder, Kauta and Hoveka Inc.,  
Windhoek

RESPONDENT: V Kauta

Instructed by Ndaitwah Legal Practitioner,  
Windhoek