

REPUBLIC OF NAMIBIA



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

JUDGMENT

Case no: HC-MD-CIV-ACT-MAT-2020/04528

In the matter between:

GK

PLAINTIFF

and

SK

DEFENDANT

Neutral citation: *GK v SK* (HC-MD-CIV-ACT-MAT-2020/04528) [2023] NAHCMD 382 (6 July 2023)

Coram: RAKOW J

Heard: 8 March 2023

Delivered: 6 July 2023

Flynote: Family law – Custody of minor child – Section 3 of the Child Care and Protection Act 3 of 2015 – Court to determine where this child will stay – The experts referred to the happy place of this child as being the farm – Custody and control of the minor child born from the marriage is awarded to the plaintiff subject to the defendant's reasonable rights to access.

Summary: The parties were married to each other on 22 December 2017 out of community of property, after the birth of their son whose birth was subsequently legitimized by the marriage. He was born on 22 June 2017. The defendant was still at school when she fell pregnant with the minor child and at that stage was staying with her parents. After the birth of their son, the parties decided to get married, which then happened on 22 December 2017. By the year 2020, it seems that the marriage was over and the plaintiff filed for divorce. The defendant defended the divorce and brought a counterclaim. Both parties applied for custody, albeit the plaintiff supervised access to be granted to the defendant, and the defendant requesting reasonable access to be awarded to the plaintiff. Plaintiff claimed a N\$1 500 contribution as maintenance and defendant N\$2 500 from him. Both parties were *ad idem* on an equal contribution towards scholastic and related expenses and that the minor child be retained on the plaintiff's medical aid scheme.

Halfway through these proceedings, the defendant admitted that she committed adultery during the period that she and the plaintiff were already separated and the court therefore granted the divorce order as sought by the parties which left the ancillary matter regarding the custody of the child to be dealt with only.

Held that: both parents are loving and caring towards the child and both parents will be suitable for placement of the child. The problem, however, is that these parents do not stay in one town but in Walvis Bay and Gobabis, with the distance between these towns complicating visitation. The plaintiff made an offer to pay the expenses of the defendant to come and visit her child in Gobabis but the court finds that although made with good intentions, it is a bit unrealistic for the defendant to travel after work on a Friday, drive about six hours, see the child on Saturday and return to Walvis Bay on the Sunday. The costs pertaining to these visits might in the long run also be unpayable by the plaintiff.

Held further that: the decision the court is going to take is in the court's opinion, in the best interest of the child. Throughout the evidence of the experts, they referred to the happy place of this child as the farm. He engaged in playing with farm animals during play therapy almost exclusively and the highlights in his life seem to be the times he spent on the farm with the animals there and interacting with his cousins.

For this reason, custody and control of the minor child born from the marriage are awarded to the plaintiff, subject to the defendant's reasonable rights to access.

ORDER

1. The defendant's counterclaim is dismissed.
 2. Custody and control of the minor child legitimized by the marriage is awarded to the plaintiff subject to the defendant's reasonable rights to access.
 3. The defendant is to pay maintenance for the minor child, in the amount of N\$1500 (One thousand five hundred Namibian Dollars) per month, free of bank charges and without deductions payable on/or before the 7th of each consecutive month. The first payment is to commence on 1 August 2023.
 4. That costs are awarded to the plaintiff, such costs to include the costs consequent upon the employment of one instructing and one instructed counsel.
 5. Each party is to pay the disbursements, expenses, qualifying fees, and attendance fees of their respective expert witnesses.
 6. The matter is finalised and removed from the roll.
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JUDGMENT

RAKOW J

Introduction

[1] The plaintiff is Mr K an adult male residing at plot 114 Gobabis and employed at the Veediens Bonemeal factory in Gobabis. The defendant is Ms K, residing at 29 First Road, Meersig in Walvis Bay, and employed at Grindrod Maritime in Walvis Bay. The parties were married to each other on 22 December 2017, out of community of property after the birth of their son, whose birth was subsequently legitimized by the marriage. He was born on 22 June 2017.

Divorce claim and counterclaim

[2] The defendant was still at school when she fell pregnant with the minor child and at that stage was staying with her parents. After the birth of their son, the parties decided to get married, which then happened on 22 December 2017. By the year 2020, it seems that the marriage was over and the following claims were instituted in October that year. This was based on:

- ‘1. The defendant shows no love and affection towards the plaintiff;
2. There is no meaningful communication between the parties;
3. The parties lived with the maternal parents as the plaintiff was employed in the United States of America and the defendant left the common bedroom on the 20th of September 2020 when the plaintiff returned from America.
4. The defendant entered into extramarital affairs with other men;
5. The defendant refuses the plaintiff his marital privileges;
6. The defendant emotionally abuses the plaintiff by blocking all means of communication with the minor child, after the plaintiff could not see the minor child for a period of 7 months while he was supporting his family financially in the USA.
7. The defendant has changed her physical appearance (by obtaining tattoos and a nose ring) to such an extent that the plaintiff finds her appearance out of the ordinary and she is no longer the woman he married.
8. The defendant assaulted the plaintiff by beating him on the chest when he wanted to discuss problems with her and the defendant shows no intention of continuing with the marital relationship.
9. The defendant abuses the plaintiff financially.’

[3] The defendant denied the allegations and counterclaimed on the basis of:

- ‘1. He has failed to meaningfully communicate with the Defendant;
2. He has failed to show love and/or affection towards the Defendant;
3. He has failed to emotionally support the Defendant;
4. He verbally and emotionally abused the Defendant;
5. He frequently and unnecessarily quarreled with the Defendant;
6. He failed to show any serious intention to continue with the marital relationship;
7. He humiliated and insulted the Defendant;
8. He threatened and intimidated the Defendant;
9. He indicated to the Defendant that he is not interested to continue with the marital relationship;
10. He falsely accused the Defendant of engaging in adulterous relationships

11. He treated Defendant as his personal chattel and did not allow Defendant to make her own choices regarding Defendant's routine, clothing, friends, exercise, etc.'

[4] Both parties applied for custody, albeit the plaintiff supervised access to be granted to the defendant, and the defendant requesting reasonable access to be awarded to the plaintiff. Plaintiff claimed a N\$1 500 contribution as maintenance for the minor child and defendant N\$2 500 from him. Both parties were ad idem on an equal contribution towards scholastic and related expenses and that the minor child be retained on the plaintiff's medical aid scheme. None of the parties claimed spousal maintenance but all maintenance claimed is for the minor child.

[5] Halfway through these proceedings, the defendant admitted that she committed adultery during the period that she and the plaintiff were already separated and the court therefore granted the divorce order as sought by the parties which left the ancillary matter regarding the custody of the child to be dealt with only.

The evidence

For the plaintiff

Mr K

[6] He testified that he is the plaintiff in the action for divorce. He and the defendant got married on 22 December 2017 and had one child together. They initially had a good marriage and he worked for his father at the Bone Meal Factory in Gobabis. This did not go very well and he left that employment. He and the defendant then moved to South Africa for a time but the defendant could not adjust anywhere and was always unhappy. They then decided that he would work as a farmhand in the United States of America. The plaintiff left for America in 2019, and the defendant and the child came to visit him for a few months in America. The plaintiff and the defendant also discussed the possibility that she would relocate to America but after a few months she expressed her wish to come back to Namibia. She and the child returned to Namibia and in June 2020, the plaintiff was informed by the defendant that she wants a divorce.

[7] He returned to Namibia in September 2020, while his work permit was still valid till December 2020. The defendant and their child resided with her parents. She never made an effort to get a place of her own and did not have a fixed abode when he arrived in Namibia. Upon his arrival, he went straight to see his child and to find out the reasons for the proposed divorce. He found that she had changed in many ways. She had piercings and tattoos which she did not discuss with him before. When he was in America he transferred cash to her, some of which was for the purchase of cattle. He alleged that she did not save any of the money but wasted it. He testified that the defendant moved out temporarily to her grandmother upon his return, but that she even attended to the house to dress the child. That was when the altercation started when he blocked the door demanding a talk. He never complained of her wanting to secure employment, but they agreed that he will provide for them. Despite this, he persisted with his claims of the defendant having squandered away his money and despite the calculation presented to him that she had about N\$8 000, a month to maintain both herself and the minor child. At this stage, he decided to institute divorce proceedings against the defendant and the combined summons was issued on 29 October 2020. She further had come to his place of residence in Gobabis under false pretenses to fetch their child. She brought along seven armed men and a lady, a social worker to scare them. He indicated that he asked the defendant to allow him to visit with his parents with the child for an extended period, which she refused to do and that is why she came to collect the child.

[8] The defendant lives with her parents with whom she frequently quarrels and then she would move out of their house with the child and move in with her grandparents. She has no insight into the necessity that the child needs a stable environment and routine during his days. The child is further in a daycare center where one of his grandmothers is working and she allows him to behave a certain way which other children in the class are punished for. This creates the wrong impression with the child.

[9] During the mediation session, the parties reached an agreement as far as access to the child was concerned. The plaintiff would see the child every weekday from Monday to Friday from 14h00 – 17h00, and then one evening sleepover during weekends. He also had to register the child on his medical aid scheme.

[10] The child was hospitalized from 15 – 17 April 2021, as a result of dehydration and this happened whilst the child was under the care of the defendant. The plaintiff would fetch the child from the residence of the grandmother of the defendant and return him by 17h00 because his mother worked till 17h00. She further had to send a list of items needed by the child every Sunday and sometimes only managed to send it on Tuesday. There was very little if anything healthy on this list. It consisted of bread, yogurt, green grapes, cheese, six viennas, juice, chips to bake, a packet of mince, pizza, chicken pops, tomato sauce, Coco Pops for breakfast, and long-life milk. The mince is the only nutritious food on the list.

[11] The defendant allowed the plaintiff to take the child to the plot of his parents in Gobabis from 16 July 2021 to 1 August 2021 but attached certain undertakings to it. He testified that he enjoyed the stay at the plot very much and played with the animals and drove with the motor bicycle that the plaintiff bought for him. He also enjoyed healthy meals that were cooked by the mother of the plaintiff at home.

[12] On 23 October 2020, he had the child with him at Gobabis when an incident took place. He asked to have the child with him for a few days and the plaintiff unreasonably refused to have their stay extended. All of a sudden the defendant arrived at the plot accompanied by about seven armed men, some from the Namibian Police and some from the Namibian Defence Force. The defendant took the child and left with her grandmother, who also accompanied them.

[13] The plaintiff submitted that he is in a much better position to take care of the child as he has been his sole concern and his health and wellbeing are taken care of only by the plaintiff as the defendant does not even have a place to stay. The plaintiff testified that he stays with his parents where it is only his parents and himself and the child with enough space for everybody. His mother is still fit and takes care of the child's needs in conjunction with him and the child is extremely happy on the plot – or farm as the child refers to the plot.

[14] He testified that he started to speculate with cattle and that his mother financially assists him when he needs money. His cattle sales for the year yielded N\$90 000 and he also breeds puppies which he sells for N\$8 500 – N\$12 000 per puppy. The Plaintiff was recalled after Dr Bailey, an expert witness testified, to testify

on his employment status, that he owned 20 percent of his mother's farming activities, which operates from farms between 60 and 120 km from his residence, and that the minor child will accompany him and that he will leave when he finishes school or that he will have to stay on the plot. He indicated that he would comply with his financial obligations, despite indicating that it is dependent on eventualities, and conceded that the defendant is in a better financial position than him. He conceded, after being recalled that his financial position was not possible to determine at that stage. His expenses as initially set out are as follows:

- a) N\$2000 rent in Walvis Bay (no longer applicable);
- b) N\$1000 for electricity;
- c) N\$410 insurance for his car;
- d) N\$2 250 grazing of his cattle;
- e) N\$1000 for lick;
- f) N\$2000 for petrol (using less petrol when staying in Gobabis);
- g) N\$830 towards the child's school (pay the child's school fees in Gobabis);
- h) N\$1500 for food for the child (no longer pay for food for the child);
- i) N\$2000 for own food;
- j) N\$1000 for clothing;
- k) N\$2100 medical aid;
- l) N\$5600 every three months for the maintenance of his car; and
- m) N\$2730 for the hire purchase of the car.

[15] At a time he stayed in Walvis Bay full time, to be close to his child but moved back to Gobabis at the time of the trial and worked full time for his father. He argued that he has the same rights as the defendant to their child. In December 2021, he took the minor child earlier than what the defendant allowed, without informing her.

[16] Whilst the child was in his care, he took him to Ms van Rooyen in October 2020 already, without informing the defendant. He admitted to having rejected to participate in Ms Nependa's investigation on the advice of his lawyer.

[17] He further showed the court video footage of the child crying on different occasions when he had to leave the child. The video footage portrays the minor child crying to go to the farm, despite him being in the plaintiff's lap at the time and he

admitted that he wanted to record the trauma the child endures. He could not explain how he knew the child would make random comments, whilst simply watching television and that he coincidentally managed to film it. He then conceded to having made the videos in anticipation of his last urgent application. He also conceded that the child was crying at the end of a visit and that he chose to rather take a video than console him. He could not explain why his returning the child from the farm in December 2021 was not recorded nor his reunion with his child on 9 January 2022.

[18] The plaintiff seeks sole custody of the child. He is concerned about the child being exposed to variable sexual partners of the defendant. It is common cause, and as the court rightly observed, there is a lack of communication between the plaintiff and the defendant. Their variable parenting styles render a joint custody order impractical.

[19] During the latter part of 2022, the plaintiff indicated that his circumstances has changed from what was previously testified in court. He was no longer full time employed at the bone meal factory, but farming full-time together with his mother. He takes the child to school in the morning and then starts with his farming activities. His income has also since changed as it now depends on farming activities. It seems that his mother at this stage was looking for a farm to purchase but was renting farmland for their animals. His share in the proceeds was about 20 percent. One of these farms is about 60km from their residence and the other 120km. He would wait for the child to come from school and then drive to either of these farms to look after the animals. He estimated his income as about N\$60 000 a year. He later increased this amount to about N\$10 000 per month. He conceded that the defendant was at that stage in a better financial position than he was.

[20] He further testified that his medical aid costs about N\$2800 a month, his car insurance is carried by his father, he spends about N\$2500 per month on feed, he uses super aweh which is N\$60 a month, the fuel he uses to travel to the farms is paid by his mother, school fees for the child is N\$1 789 per month and groceries and toiletries are about N\$1500 per month. He further testified that his mother is providing him with N\$10 000 for looking after her cattle.

[21] The plaintiff filed a supplementary witness statement in September 2022 at the end of the plaintiff's case in which he explained that the videos and photos shown to Dr Calitz, an expert witness was of the defendant. It shows the defendant attending some party after midnight on 9 October 2021. There were also photos of a photo shoot for her birthday and some photos showing a tattoo. In this supplementary statement, he further clarified his income which is mainly arrived from dog breeding, keeping a boerbok goat stud, cattle farming, and bean planting.

Katherina du Toit (expert)

[22] The witness is a qualified social worker and registered with the Health Professions Council of Namibia. She holds a master's degree in child protection as well as a certificate in 46-hour family law mediation. She had prepared a report in respect of the plaintiff and the defendant and the child in question. She assessed the plaintiff and had approximately three sessions with him whilst she did not speak to the defendant but Ms Olivier a colleague of hers in the Erongo region spoke to the defendant. She had two consultations and one parent-child observation session of one hour. She used various standardized questionnaires and she and Ms Olivier observed the parent-child interactions. The child was referred to Dr Malrize Calitz for an evaluation.

[23] In her report, she pointed out that the best interest of the child encompasses many diversities and therefore it is a challenge to balance the various perspectives of the involved parties. When determining the best interest of the child, the following factors must be taken into consideration. Factor one is the child's age, maturity and stage of development, sex, background, and any other relevant characteristics of the child. This child at that stage was a 4-year-old boy who has been subject to a lot of instability marked by multiple movements, constant moving of parents between homes, hostile environments due to the antagonistic nature of the relationship between the parents, and the continued trauma due to the harsh removal from a known environment and the uncertainty of his future. Both Dr Bailey and Dr Maralize Calitz confirmed that the child is confused and anxious about his current circumstances and there is a definite need for stability in order to ensure the healthy development of the child.

[24] The second factor is the child's physical and emotional security and intellectual, emotional and social, and cultural development. Dr Calitz saw the child for these tests and she quoted from the report of Dr Calitz in that the child, according to Eric Ericson stages of psychological development, is in his developmental stage that requires children to be inquisitive and explorative, even more so, children develop their self-esteem and the moral compass for all future interactions, thus children in this developmental stage need a lot of positive responses from care givers and negative responses, such as contradictory actions can lead to feelings of insecurity and lower their self-esteem. The child has developed poor numerical skills and this can be a result of elevated stress levels, continued stress will result in further cognitive challenges and the child needs a consistent predictable, and distinctive discipline routine and structure. The child's emotional state as derived from the results of the EEG does seem overactive with indications of anxiety and a low mood.

[25] Both the witness and Ms Olivier found the current battle between the parents and all role players has had a negative impact on the emotional security of the child. The custody battle over the past two years has made the child vulnerable to trauma and unfavourable development. Urgent stability is needed so that the child can function in an environment that is safe, predictable, and constant. The child has a positive attachment with both his parents but expressed a clear and definite need for "living on a farm" (the father resides with the grandparents on a plot). During an interview with the child, he did not refer to persons or activities in Walvis Bay but referred to his friends (his cousins) and life on the farm.

[26] At the time of the investigation, Ms Olivier confirmed that the child did not have his own sleeping space but rather slept with the mother in her bed. This was of concern to the witness as the mother at that time had a relationship with another person who posted on social media, creating the impression that the child shared the bed with him and the mother. The witness was further concerned with the defendant's relationship exploits in that it might have an impact on the child. The witness further found that the child spent a great amount of time with his great-grandparents and that the defendant did not have ample time to prepare food for the child which caused friction between the plaintiff and the defendant.

[27] At the time of the investigation, the witness and Ms Olivier found that the child had too many authority figures and that the child traveled between five households when he was in Walvis Bay. He traveled between both sets of maternal great-grandparents, grandparents as well as his mother and his father who at that stage rented a room in Walvis Bay. The child lacks stability due to too many households and not due to unfit parents.

[28] During cross-examination, this witness admitted to being familiar with the plaintiff and his family. She only conducted the home investigation at the plot. She maintained that the minor child is well established in relationships with the role players in his life and with the necessary support for both him and his parents he will be able to adjust to a change in environment. She then proposed that the mother has access to every alternative weekend and that the family should decide who will travel with her.

[29] She reported on photographs allegedly sent by the defendant to other men and admitted that it was only sent to her just before the trial. She refused to accept that the diet of the minor child might be different from what was reported to her by the plaintiff. The question was why the minor child was troubled if he spent every afternoon with his father, she complained about the lack of structure. She then conceded that the mother's daily routine was not checked with her. She confirmed her opinion that the plaintiff was overly invested in the minor child. She testified that she doubted Ms Olivier's assessment of the defendant having positive parenting characteristics during her assessment as it only was for one hour. Her recommendation was based on the father being more capable of managing visitation as the defendant has shown herself to be inconsistent and denying access and allowing it again. On the question of how the mother will remain involved in daily caretaking, she recommended that the parties need to come up with a communication strategy to make sure she stays involved.

[30] She then testified that even if the litigation is finalised, the animosity between the families will ensue if the minor is placed in his mother's care as she believes that the maternal family will not allow the plaintiff reasonable access despite conceding to never having met them. She conceded to not being aware of the lack of telephonic access to the defendant during the December 2021 holiday when the child spent time

with his father and admitted to having advised the plaintiff to always do the right thing, despite her role as an independent evaluator. When posed with the question of the child's weight loss over the December holidays, she responded that she needed to highlight that the question was not which parent was wrong at the time. She then conceded that the minor child, as confirmed by Ms Olivier was a dainty eater and that the effects of the situation escalated possibly affecting his eating habits.

[31] She did not support Dr Bailey's initial findings of the plaintiff being self-deceptive and that his traits might lead to other deceptions. She was, however, able from her limited sessions with the defendant to conclude that it was a possibility that she pretended during her assessment with Ms Olivier. In re-examination, she conceded that with relationship proximity in question, the maternal family is the most prominent role players in the child's life. On the questions from the court on the plaintiff's conduct relating to his adhering to timelines in relation to farm visits, the witness blatantly indicated that the focus should not be on what he did wrong, but look at instances where he did comply. When compared to the instances of the text messages showing the defendant's refusal to allow access, she indicated that the fact that the plaintiff is more mature and less spiteful is still an indication that he will be better able to handle visiting hours.

Estelle Bailey

[32] Dr Bailey was initially an expert witness for the defense but was called on behalf of the plaintiff. She is a psychologist specializing in marriage and family therapy. She is also an educational psychologist registered with the Health Professionals Council of Namibia. She has 14 years of experience working with children and families. She has the necessary qualifications and experience to express an expert opinion on this matter. In the current matter, she scheduled appointments with the minor child and his parents. After the conclusion of the aforesaid appointments and consultations, she reported her findings in a report dated 29 January 2021. The report emphasizes what in her opinion, is the best interest of the minor child with specific reference to custody and access. Her conclusion is that both parents were accessed and presented as adequate within the demeanor of parental capabilities.

[33] She further testified that the plaintiff has difficulty separating his anger and needs from the needs of the child. The defendant indicated that she applied for a protection order because she does not want to again have the anguish of not having her son returned as discussed and agreed. The defendant expressed that she wants the plaintiff to leave her alone and to proceed with his life and for them to focus on raising their son together. The witness initially recommended joint custody with the child being 10 days with the mother and 10 days with the father. It is in the child's best interest to have a quality relationship with both his parents. This recommendation was part of her first report. She drew up an accompanying report which aims at assisting the court to guide it. She provided the background of the parties' relationship as well as the incident where the defendant had to forcefully remove the child from the custody of the father. She conducted clinical interviews with both parties. The defendant indicated that she does not use alcohol or drugs although the plaintiff indicates that she has used cannabis on occasion. The defendant also disclosed that she had to be hospitalized with an STD which she contracted from the plaintiff. At that stage, she was living with her parents and shared a bedroom with her son. The defendant further explained that she found the plaintiff physically controlling as he refused that she be employed and was financially controlling.

[34] The defendant reported that she was the child's primary caregiver and that although the plaintiff and the child had a very good relationship, she was still the one who took care of the child. The witness found the defendant's thought process clear and coherent with no delusions or thought disturbances. She showed good insight and judgement in general. Her profile suggested an emotionally stable well-balanced individual who prefers to be self-reliant and organized and self-disciplined.

[35] Regarding the plaintiff, she reported that he loves his wife but wants mostly to be an active presence in his son's life. The plaintiff felt they could not afford to live by themselves and as a result, went to work overseas because he wanted to get some money to save in order for him to provide for his family in the long term. The plaintiff is very concerned about his son. He felt his child needed a bedtime routine and his own place to sleep as he could not sleep with his mother anymore. He does not use drugs or alcohol and stopped smoking (but with later evidence indicating that he is vaping). He showed good insight and judgment in general. He tends to present

himself to others in a desirable way. This can be interpreted as an attempt to impress people with his best qualities in order to establish himself as the more competent parent. He will adapt to his environment and accommodate other people's wishes instead of being wilful.

[36] The witness experienced the child as a playful sweet little boy. She initially saw him with his mother where after his father joined the session. He appeared well cared for and approached the unfamiliar situation in a relaxed manner and very quickly engaged in play once he found the selection of farm animals in the playing room claiming each one. His speech is well-developed and articulate and he could articulate his thoughts and feelings clearly. The defendant showed love towards the child which is aimed at protection and emotional expressions while the plaintiff showed physical affection, lots of verbal interest, and verbal expressions. It was clear that he was loved and cared for and securely attached to both his parents. The child seems to experience a level of confusion regarding where his father is. He relies on his mother for care and nurturing but he misses his father's presence. He experiences his mother and father in an equally positive way with a slightly stronger dependence on his father. Developmentally at this age, it is normal for children to form gender identification, hence the reliance on some experience. The mother's role is to facilitate the child's imaginal process and development of the true self. The importance of the mother figure does not imply that the father is not important or cannot fulfill the emotional needs. Fathers are increasingly able to provide care and nurturing as well as financial stability and security to children.

[37] To ascertain whether a situation is in the best interest of a child, two factors must be considered. The one being the child's developmental and attachment needs at that time and the parents' capability of being psychologically healthy and available to the child. Attachment is the child's instance of preserving intimacy with the caregiver. It provides the basis for effective functioning and adult relationships.

[38] The witness also filed a subsequent report on 12 September 2022. At that stage, she had sight of the reports of Dr Marlize Calitz. She explained that these reports indicated that the child had a continuously lower mood and general anxiety over quite a length of time. After he has been with his father for some time, his mood seemed to have improved, although there was still an indication of anxiety. With her,

he again expressed the need to go back to the farm and to be reunited with his father. His overall well-being seemed to have suffered which has affected and impacted him in numerous ways. She further referred to the videos of the child which were taken by the plaintiff and explained that the child has survived the conflict between the parents by tuning out or turning the anger towards himself and then hurting himself.

[39] During cross-examination, she persisted that the reason for the minor child's anxiety, depression, and delayed development was because he wants to go to the farm and the fact that he cries when he must be dropped off with the defendant. She conceded that when she was approached to testify in Court, she spoke only with the plaintiff because she had no reason to believe that defendant will be willing or open to hear anything she suggests. She conceded that she took Ms Priestling's (who saw the defendant during her break-down episode) report into consideration, but despite having consulted all the other experts, did not consult her. Even having been presented with the facts of the restricted telephone access to the defendant, she indicated that her understanding is that the plaintiff is not gatekeeping at all. On the gatekeeping issues relating to his refusal for the child to sleep over with the mother when visiting in Gobabis, despite him not being in town, she responded that he was on the receiving end on several occasions. She refused that his refusal to return the child for over two months to the defendant constitutes gatekeeping. Her proposal on a plan for the minor child was for him to attend school in one place and that the answer would be for the parties to move closer to each other, but the best would be holiday access to the mother and long weekends. On the question of whether limited access would be fair to the mother or holiday access to the father would also be fair, she testified that as a parent you have to choose what is in the best interest of the child. She conceded that the afternoon access arrangement was not conducive and that that might be the reason why his development was delayed. She indicated then that legal and physical custody must be awarded to the plaintiff.

Magdalene Gertruida Calitz (Marlize)

[40] Dr Calitz is a qualified Educational Psychologist and holds a doctoral degree in play therapy from the University of South Africa which she obtained in 2006. She completed two Master's degrees, one in specialized education at the University of

Stellenbosch in 1998 and one in Educational Psychology at the University of Namibia in 2015. Her skills include play therapy with children from three years of age to adulthood, neurofeedback, audio integration training, integrated learning therapy, learning readiness assessments including school readiness, assessment of scholastic skills, and potential intervention plans. She submitted that she was suitably qualified and had the relevant knowledge to assess the child's functioning on emotional and developmental levels as well as to assess his performance and relevant emotional and general mental state of well-being. She further presented Mrs du Toit and Dr Bailey with her findings for them to consider the recommendations concerning the custody and control of the said child.

[41] The initial report prepared by the witness was dated 5 to 7 October 2021. She was requested by Ms du Toit to evaluate the child. She had three sessions of assessment and it was observed that the child was anxious if he was separated from the parent that was present, in both the case of his mother and his father. He showed aggression in play and found it difficult to stay focused on a task even for the amount of time expected from a 4-year-old. He found it very difficult to follow instructions and seemed relative and angry during play therapy time as well as during the other assessments. She initially started her evaluation at the outer layers of the brain dealing with the cognitive part of the brain and did a cognitive assessment. She found that his brain was developed concerning thinking and verbal skills more or less on par with his age. The right side of his brain dealing with reason with shapes and moral insightfulness was slightly more developed than for his age. She also tested his numerical skills and found that he performed on a slightly lower level than for his age. This also relates to his ability to focus and his concentration skills.

[42] She further used both a Kenestatic test and the Natolin brain instrument to find the dominant side of the brain. She explained that this helps to understand what happens to the child when he is put under stress. The child's brain showed dominance of the right brain and because of that he loves movement, exploring things and new information. When he is stressed, the right side of his brain becomes more dominant and becomes more scatter-brained and busy. He has good insight into what is happening around him but might not have the right words to express himself. She further used an EEG to test electrical brain activity. This test was conducted by placing two probes on the skull of the child at different places and then

sending an electric current through the brain and then observe how these areas in the brain react on specific stimulation. When she interpreted the findings, she found him phasing out of reality, similar to a toddler's level of brain functionality. This often happens when little children are exposed to traumatic environments. She further indicated that his frontal lobes are over active and that is an indication of high stress and anxiety levels. Initially she also found him in a low mood state.

[43] As part of her assessment, she also asked the child to draw his family. He preferred to draw himself playing with a tortoise on the farm. When he was asked to draw his parents, he drew his father with a long arm chasing cattle on the farm and he said he was not going to draw his mother. When she asked him where he would like to stay he said he would like to stay at the farm. After three therapy sessions, asking him to draw his family as well as play therapy playing with a family she concluded that he does not know who his maternal family is. She found that he loves his mother and his father but he enjoys staying on the farm.

[44] She again saw the child on 7 April 2022, because Ms du Toit was very concerned about the child as he seemed depressed to her. At that stage, he was a week and a few days with his father, after returning from his mother in Walvis Bay. She found that his brain activity improved a little bit, but he was still in a negative state of mood.

[45] On 13 July 2022, she again saw the child and again performed brain activity testing. He just returned from spending six weeks with his mother and she found him again phased out and this was a bit more than on his previous visits. This indicates higher stress levels. He had a concerning low mood and negative thinking but his general anxiety levels were less. He was however confident and happy that day as he was returning to the farm.

[46] On 1 September 2022, she saw him again to assess his general school readiness as he would have started grade R the next year (2023). She found his performance not on par with his age level. She again tested his brain waves and found that they indicated a positive mood on the date that she did the school readiness evaluation. This was after he spent some time at the farm. He was preparing to go to Walvis Bay for the holidays and that resulted in a slight elevation in

anxiety in the EEG. The court was further urged to finalise the placement of the child as this has a huge impact on his life as his EEG indicates that he stays in a very stressed state and he is very unsure of what is going to happen next and that causes continuous anxiety.

[47] During cross-examination, Dr Calitz, after having been presented with the timelines and the reports made to her by the plaintiff, conceded that there is a possibility that the child might be manipulated into making negative reports. She conceded that she did not have reason to believe the defendant was incapable of assisting and taking care of the minor child. On the issue of the video and photographic evidence presented, she indicated that the distribution of such material was not completely appropriate, but also not inappropriate, because it was a private picture and on the video of the laughing and dancing, she did frown upon it. She concluded her testimony by stating that she is disappointed with the plaintiff for having gone to great lengths to expose pictures of the defendant and that such conduct would not be healthy for the minor child as it is preferable that no one parent badmouths the other parent.

[48] The plaintiff then closed his case and the defendant proceeded with her case.

Defendant's case

Ms K

[49] She testified that she got married to the plaintiff in December 2017, but that the relationship was turbulent since the date of marriage. The father of the plaintiff planned the marriage and she had little or no say in the arrangements. They were married out of community of property. The minor child was born in June 2017, and the plaintiff was not present at the birth because he was in America at that stage. She has always been the primary caretaker of the child and looks after his daily needs, including his physical and emotional needs. She took care of her minor child with the support of her family. She moved to her parents' residence during 2017 and they assisted her in taking care of the child.

[50] The plaintiff was not constant in the child's life as he was working in America from time to time. The plaintiff did not want her to be employed and she could therefore not assist financially to care for their child. During this time, the financial provision of the plaintiff was not enough and she had to ask her family for assistance. When the plaintiff traveled to America in 2019, there was some discussion between him and the defendant that she and the minor child would join him there at a later stage. At that stage she again moved in with her parents but was not contributing anything towards their stay as the plaintiff refused. She did join the plaintiff in America but soon realized that he could not afford to financially support them and they discussed the return of the defendant and their child to Namibia. She again moved in with her parents. She received money from the plaintiff during the time he spent in America, some of which was for their personal care and some to pay expenses of the plaintiff like paying for the purchasing of cattle.

[51] She testified further that she and the plaintiff would argue quite a lot. His behaviour would be loving one moment and when he did not get his way, his behaviour would become aggressive and threatening. He would badmouth her to her friends and spread malicious stories about her character and the manner in which she takes care of the child. It further seems that the defendant stayed between her parents' house and the house of her one set of grandparents.

[52] She further testified that she gave leave to the plaintiff to take the child to Gobabis in September 2020. They left on 27 September 2020, and despite her request to keep her updated, she was never informed that they arrived safely. After about two weeks she was informed that the plaintiff's father was to have an operation and she agreed that the child could stay a little longer. On 8 October 2020, the plaintiff refused to return the child to the defendant as the child was at that stage in her primary care upon an agreement which was made an order of the court. She approached the offices of Women and Child Protection in Walvis Bay in order to obtain assistance to have her child returned. The plaintiff kept on refusing the request and this resulted in her with the assistance of the social worker of Gobabis, on 23 October 2020 going to the residence of the plaintiff together with a police escort to collect the child. This was to the defendant a clear indication of the plaintiff's malice towards her and it forced her to collect her child in this manner.

[53] Her current monthly expenses are:

- a) Fuel: N\$1 500;
- b) Groceries: N\$1 300;
- c) Clothes: N\$600;
- d) Toiletries: N\$500;
- e) Miscellaneous: N\$1 500; and
- f) Gym membership: N\$550

Total expenses: N\$5 950. These expenses exclude accommodation as she temporarily moved back into her parents' house. Her salary is N\$10 750 which leaves her with about N\$4 800 to pay rent should she decide to seek accommodation for her and her child again.

[54] She landed in the hospital because of an STD transferred to her during 2017 or 2018 from the plaintiff and in January 2020 they both went to hospital for treatment. She was subsequently hospitalized after a flare-up. During this time, the child stayed with her parents. The pictures the plaintiff had of her in hospital was taken during this period of hospitalization.

Jaqueline Sicilia Roetz

[55] She testified that she is the grandmother of the defendant. Her first impression of the plaintiff was that he is a pleasant person but as time passed she observed that he is a pretender and a narrator of many tales. It was further her impression that the marriage was not planned by the family of the defendant and that the father of the plaintiff is the one who insisted that they were to get married. She further indicated that the marriage of the plaintiff and the defendant was very unhealthy as they fought every day. She experienced the plaintiff as manipulative and that his word is the law. She and her husband financially assisted the defendant after the birth of the minor child.

[56] She was concerned for the minor child, because he is being thrown around and because the defendant was his caretaker up to now. She also testified that they did not deny the plaintiff any of his rights. She testified that her relationship with the plaintiff has soured, because he accused her of harming the minor child, despite her having helped raise the minor child when the plaintiff was out of the country. She

confirmed that the defendant spent 99 percent of her time with her before she started working and if not with her, she stayed with her parents. She never went out before deciding to get a divorce and only then started to go out with friends, but she would on such occasions leave the minor child with her and her husband. She testified that when the defendant obtained employment, the plaintiff was furious.

Mercia Nancy Nicole Nependa

[57] She is a designated social worker in the employ of the Ministry of Gender Equality, has 10 years of professional experience, and holds a Bachelor of Arts degree. She was requested by the defendant's lawyer to draw a report for the purposes of recommending a suitable custodian for the minor child. She had consultations with the defendant, the child, the defendant's relatives, and the child's school principal. She attempted to meet with the plaintiff, but his lawyer declined on his behalf. She did not attempt to involve the plaintiff's family during the course of her investigations.

[58] She found that the defendant has been caring for the child at all times, including the times the plaintiff spent in America, and provided the child with a stable environment. The maternal grandparents and great-grandparents of the child have been playing a positive role and have been helping to care for the child since birth. Her report refers to the time before the last custody order of the court when the child still stayed full-time with the mother, with the father having access to the child every afternoon and every alternative weekend.

[59] Her report was compiled and is dated 24 February 2022. She recommends that sole custody of the child be awarded to the defendant. She was alerted to the interim custody regime regulated by the court and indicated that the same does not affect her recommendation. She is not in favour of to-and-fro access and recommends that one parent gets custody. She accepts that the professional reports of the other experts were available at the time when she compiled her report and that she read the same, but was of the view that she wanted to render an objective opinion based upon her investigations. Her report does not speak to the observations and findings of any other expert, and the implications thereof are her finding.

The best interest of the child

[60] Article 15 of the Namibian Constitution states as follows:

‘(1) Children shall have the right from birth to a name, the right to acquire a nationality and, subject to legislation enacted in the best interests of children, as far as possible the right to know and be cared for by their parents.’

[61] The Child Care and Protection Act 3 of 2015 (the Act) must be read in conjunction with the Namibian Constitution to give effect to the rights of children as contained in the Namibian Constitution. The object of the Act is, amongst other things, to:

- a. protect and promote the well-being of all children;
- b. promote the protection of families and actively involve families in resolving problems that may be detrimental to the well-being of the children in the family.

[62] Section 3 of the Act sets out what must be considered in all matters concerning the care, protection, and well-being of a child arising under the Act or any proceedings, actions, and decisions by an organ of state in any matter concerning a child or children in general, the best interests of the child concerned is the paramount consideration. This embodies what must be taken into account in determining the best interest of the child. These are in terms of s 3:

- ‘(a) the child’s age, maturity and stage of development, sex, background and any other relevant characteristics of the child;
- (b) the child’s physical and emotional security and his or her intellectual, emotional, social and cultural development;
- (c) views or opinions expressed by the child with due regard to the child’s age, maturity and stage of development;
- (d) the right of the child to know and be cared for by both parents, unless his or her rights are persistently abused by either or both parents or continued contact with either parent or both parents would be detrimental to the child’s well-being;
- (e) the nature of the personal relationship between the child and other significant persons in the child’s life, including each of the child’s parents, any relevant family member, any other care-giver of the child or any other relevant person;

- (f) the attitude of each of the child's parents towards the child and towards the exercise of parental responsibilities and rights in respect of the child;
- (g) the capacity of the parents or any specific parent or of any other care-giver or person to provide for the needs of the child, including emotional and intellectual needs;
- (h) the desirability of keeping siblings together; (i) the likely effect on the child of any change in the child's circumstances, including the likely effect on the child of any separation from –
- i. both or either of the parents; or Republic of Namibia 18 Annotated Statutes Child Care and Protection Act 3 of 2015;
 - ii. any brother or sister or other child or any other care-giver or person, with whom the child has been living;
- (j) the practical difficulty and expense of a child having contact with the parents or any specific parent and whether that difficulty or expense will substantially affect the child's right to maintain personal relations and direct contact with the parents or any specific parent on a regular basis;
- (k) the need for the child to maintain a connection with his or her family, extended family, culture or tradition;
- (l) any disability that the child may have;
- (m) any chronic illness from which the child may suffer;
- (n) the need for the child to be brought up within a stable family environment and where this is not possible in an environment resembling as closely as possible a caring family environment;
- (o) the need to protect the child from any physical or psychological harm that may be caused by –
- (i) subjecting the child to maltreatment, abuse, neglect, exploitation or degradation;
 - (ii) exposing the child to maltreatment, abuse, degradation, ill-treatment, violence or harmful behaviour towards another person; or
 - (iii) any family violence involving the child or a family member of the child;
- (p) the need to avoid or minimise further legal or administrative proceedings in relation to the child; and
- (q) any other relevant factor.'

Other legal considerations

[63] For purposes of this judgement, it is necessary to deal with the findings made by the experts. In *Schneider NO & Others v Aspeling & Another*¹ Davis J discussed the issue of experts as follows:

¹ *Schneider NO & Others v Aspeling & Another* 2010 (5) 203 WCC at 211E-J to 212A-B.

'In this connection, it is necessary to deal with the role of an expert. In Zeffertt and Paizes, *The South African Law of Evidence* (Second Edition), at 330 the learned authors, citing an English judgment of *National Justice Compania Navierasa v Prudential Assurance Co Limited* 1993(2) Lloyd's Reports 68 at 81, set out the duties of an expert witness thus:

"1. Expert evidence presented to the Court should be, and should be seen, to be the independent product of the expert uninfluenced as to form or content by the exigencies of litigation;

2. An expert witness should provide independent assistance to the Court by way of objective, unbiased opinion in relation to matters within his expertise. . . An expert witness should never assume the role of an advocate;

3. An expert witness should state the facts or assumptions upon which his opinion is based. He should not omit to consider material facts which could detract from his concluded opinion;

4. An expert witness should make it clear when a particular question or issue falls outside his expertise;

5. If an expert opinion is not properly researched because he considers that insufficient data is available, then this must be stated with an indication that the opinion is no more than a provisional one. In cases where an expert witness who has prepared a report could not assert that the report contained the truth, the whole truth and nothing but the truth without some qualification, that qualification should be stated in the report.'

[64] As far back as 1948, the court has held in the matter of *Fletcher v Fletcher*² that the interest of the child is the deciding factor. The court held:

'With great respect, however, I do not like the expression "the rights of the innocent spouse" because when one talks of rights, it implies that the one spouse has rights against the other spouse to claim the custody of a child, as if that child were a mere chattel. What is really in issue in all custody cases is the interests of the child itself, and I would prefer to say that in such cases the fact that one of the spouses is innocent cannot altogether be ignored. The question, however, still remains as to the weight that should be attached to the fact that one spouse is innocent and the other guilty. I agree with the suggestion made by GREENBERG, J.P., in *Milstein v Milstein* (supra) that the question of innocence comes into account only when it is not clear what is best for the children.'

[65] As all aspects of the case have some weight to it, one will look at the adultery committed by the defendant but in our modern law and in light of the Child Care and Protection Act's guidance when looking at the best interest of a child, this issue has very little to no weight in the current matter.

² *Fletcher v Fletcher* 1948 (1) SA 130 (A).

[66] In *P v P*³ para 24 at 101J – 102A, the court held that:

'In determining what custody arrangement will best serve the children's interests . . . a Court is not looking for the perfect parent — doubtless, there is no such being. The Court's quest is to find what has been called the least detrimental available alternative for safeguarding the child's growth and development.'

[67] In *NS v RH*⁴ the court held the following regarding the determination of custody and control matters:

' that a court in these circumstances had extremely wide powers in establishing what was in the best interest of the child concerned, and that it was not bound by procedural structures or by limitations of evidence presented or contentions advanced by the respective parties.'

Evaluation

[68] Although a lot of evidence was presented regarding the relationship between the plaintiff and the defendant, it has little value in determining the best interest of the child. This evidence would have been relevant in the main dispute, the divorce proceedings, but since the defendant conceded that she committed adultery, the main proceedings have been finalized and the parties finally divorced. What remains, however, is the ancillary matter of the custody of the minor child and the maintenance money towards the care of that child.

[69] A number of experts testified for both the plaintiff and the defendant and the court finds the evidence of Dr Calitz extremely helpful. She gave the court a good insight into the feelings of the child as well as the brain activity and subsequent development of the child. The tests she performed were well explained and overall the court concludes that Dr Calitz's evidence was the least clouded in prejudice as she knew very little of the parents' pending divorce, custody issues or history. She

³ *P v P* 2007 (5) SA 94 (SCA).

⁴ *NS v RH* 2011 (2) NR 486 (HC).

focused in her reports, especially on the mood of the child, and explained how she arrived at her conclusions accurately and clearly.

[70] Ms du Toit, although concerned for the child's overall well-being, never interviewed the defendant and seems to have drawn a negative conclusion regarding the care of the defendant, although she never interviewed her, a colleague of hers performed the said interview. It seems that she does not agree with the conclusions her colleague reached. She also admitted to knowing the family of the plaintiff. Dr Bailey in essence prepared a second report in which she contradicted her initial report. She therefore came to a different conclusion and as such the court cannot place too high a value on her expert evidence. Ms Nependa's report unfortunately has only the side of the defendant investigated and reported on as the plaintiff did not want to submit himself to an investigation.

[71] Various allegations were made against the defendant i.e. that she enjoyed binge drinking on occasion, she had an affair with a married man, and she has obtained tattoos, but those allegations, except for the tattoo she obtained, seem to be mere allegations. What however was admitted to, was an affair with a man when the defendant already indicated to the plaintiff that she wants a divorce. These things seem to remain hard for the plaintiff to accept and he would rather choose to bring it under the attention of the experts via videos and photographs of the defendant. The court formed the impression that he finds it difficult to let go of the defendant.

[72] The court, however, finds that both parents are loving and caring towards the child and both parents will be suitable for placement of the child. The problem, however, is that these parents do not stay in one town but in Walvis Bay and in Gobabis, with the distance between these towns complicating visitation. The plaintiff made an offer to pay the expenses of the defendant to come and visit her child in Gobabis but the court finds that, although made with good intentions, it is a bit unrealistic for the defendant to travel after work on a Friday, drives about 6 hours, see the child on Saturday and return to Walvis Bay on the Sunday. The costs pertaining to these visits might in the long run also be unpayable by the plaintiff.

[73] From the current circumstances, it further seems that both the plaintiff and the defendant will for now reside with family members although the defendant indicated

that she wishes to obtain her own flat again if the child stays with her. Both the parents further generate an income although the income, of the defendant, is a salary and more regular than the income of the plaintiff. The plaintiff explained that he has several income streams and will be able to provide for the child, should the child stay with him. Both parties will be able to pay maintenance towards the upkeep of the child.

[74] What is however necessary is for the court to determine where this child will stay. He is becoming of an age where he needs to start with school and as explained by Dr Calitz, the fact that he does not know where he will go is causing stress and anxiety, which will ultimately have an impact on his mental health and overall development.

[75] The decision the court is going to take is in the court's opinion the best interest of the child. Throughout the evidence of the experts, they referred to the happy place of this child as the farm. He engages in playing with farm animals during play therapy almost exclusively and the highlights in his life seem to be the times he spent at the farm with the animals there and interacting with cousins. For this reason, custody and control of the minor child born from the marriage is awarded to the plaintiff subject to the defendant's reasonable rights to access.

Reasonable access as incorporated into the final order

[76] The parties must comply with the following directions regarding access:

1. During school holidays:

1.1 The defendant will have uninterrupted and overnight access to the minor child for the duration of the holiday available to him as set out in para 3.

1.2. In the event that the defendant wishes to take the minor child to a place outside Walvis Bay during the holiday period the defendant must furnish the plaintiff with the full details of the place where she and the minor child would stay. The same applies should the plaintiff take the child from Gobabis at any time during holidays. He should furnish the defendant with full details of the place where she and the minor child would stay

1.3 The defendant will receive the minor child at 13h00 on the first day of the holiday period and will deposit the child back at home no later than 9h00 on the last day of the holiday period in Walvisbay.

2.1 Visits outside of school holidays – Gobabis

1.2.1 When the minor child is in Gobabis with the Plaintiff, the defendant on prior arrangement with the plaintiff, will have free access to the minor child. The Defendant will inform the plaintiff on one week's prior notice in the event of the defendant visiting Gobabis. This access will include overnight access for the time that she is there.

2.2 Visits during school holidays:

2.2.1 The defendant will have uninterrupted and overnight access to the minor child for the duration of the holiday available to her as set out in para 3.

2.2.3 The defendant will receive the minor child at 13h00 in Walvis Bay on the first day of the holiday period and will deposit the child back to the plaintiff in Walvis Bay no later than 10h00 on the last day of the holiday period. The traveling costs to deliver the child to Walvis Bay will be for the account of the plaintiff.

2.2.4 In the event of the Defendant moving from Walvis Bay in the future the parties will revisit this point to establish alternative suitable arrangements.

3. School holidays and special days

Regarding school holidays the Defendant's rights of reasonable access, be as follows:

3.1 Every alternative short holiday with the effect that such access will fall over the Easter period every alternative year.

3.2 Half of every long holiday with the effect that such access will fall over the Christmas period every alternative year.

3.3 Each party to have access to the minor child on special days such as Mother's- and Father's Day, irrespective of it falling within the access period of the other parent.

3.4 Access to be managed to ensure that both parties have equal access to the minor child on his birthday.

4. Virtual access:

4.1 Defendant to have virtual access to the minor child via Skype or FaceTime or any other appropriate social-media application.

4.2 Defendant to have daily virtual access to the minor child from 17H00 to 19h00 daily. This shall also be the arrangement when the minor child is with the defendant unless otherwise agreed between the parties, on prior arrangement made.

4.3 Plaintiff to ensure that the minor child is indeed reachable at these indicated times.

4.4 If the minor child has a cell phone by which the defendant will be able to have contact with him, the plaintiff must ensure that the device remains in working condition at all material times.

4.5 The minor child is to be allowed free telephonic or virtual access to either of the parents whenever he initiates such contact.

5. School and School progress:

5.1 The plaintiff must ensure that the defendant's full and updated details are on record at the school and that the defendant is included in all school communication in as far as it is reasonably possible and within the control of the plaintiff.

5.2 The plaintiff must ensure that the defendant's details are on record with regard to extra-mural activities that the minor child attends and that the Defendant is included in all communication as far as it is reasonably possible and within the control of the Plaintiff.

5.3 The school must be requested to furnish the defendant with all school reports and the like pertaining to the minor child.

6. Medical Aid:

6.1 The minor child must be retained on a medical aid fund/scheme in Namibia paid for by the plaintiff.

6.2 The parties are to remain equally liable for all costs not covered by the medical aid fund/scheme in respect of the minor child.

6.3 Plaintiff shall advise the defendant of any surgery or any other invasive procedures, treatments, and/or prognoses without delay.

Order

[77] Judgment is granted in favour of the plaintiff in the following terms:

1. The defendant's counterclaim is dismissed.
2. Custody and control of the minor child legitimized by the marriage is awarded to the plaintiff subject to the defendant's reasonable rights to access.

3. The defendant is to pay maintenance for the minor child, in the amount of N\$1500 (One thousand five hundred Namibian Dollars) per month, free of bank charges and without deductions payable on/or before the 7th of each consecutive month. The first payment is to commence on 1 August 2023.
4. That costs are awarded to the plaintiff, such costs to include the costs consequent upon the employment of one instructing and one instructed counsel.
5. Each party is to pay the disbursements, expenses, qualifying fees, and attendance fees of their respective expert witnesses.
6. The matter is finalised and removed from the roll.

E RAKOW
Judge

APPEARANCES

Plaintiff: J Diedericks (with him M Petherbridge)
Instructed by Petherbridge Law Chambers, Windhoek

Defendant: A Delpport
Of Delpport Legal Practitioners, Windhoek