

Judgment snag blocking father's route to appeal

Western Cape High Court Judge Siraj Desai has failed to provide written reasons for a November 2018 judgment involving the removal of a child from the US to SA, says a **GroundUp** report. Desai was one of three judges reported to the JSC this year for late judgments. The report says the Desai matter relates to an original application, in terms of The Hague Convention on the Civil Aspects of International Child Abduction, which was filed in the Western Cape High Court in March 2016, presided over by Desai. **The application was filed after a child's mother travelled to SA from Ohio, where the child had been born, but did not return to the US – where the father was resident.** After Ohio courts found that the marriage was valid and the mother did not have sole custody of the toddler, Desai was set to hear the case on 7 June 2018. But the hearing was postponed when the high-profile sentencing of murderer Henri van Breda was scheduled for the same day – and then postponed a second time while Desai recovered from surgery. The case was eventually heard in September 2018 and judgment handed down on 5 November 2018, without reasons. Three weeks later, the child's father requested that Desai supply reasons for his judgment, which, the father claimed, required him to pay the mother more than he could afford.

On 14 June attorneys representing the child's father met Desai in his chambers to discuss the delay in providing reasons. According to an e-mail sent to the judiciary, Desai explained that he was 'under the impression the matter had been resolved' and so did not have to provide reasons. He offered to provide the attorneys representing the child's father with reasons for his judgment by 28 June, notes the **GroundUp** report. A spokesperson for the judiciary, Nathi Mncube, said: 'Due to the length and complexity of the matter the order was made without reasons being furnished at that stage. Honourable Judge Desai was under the impression that the matter had been resolved by the parties. **When it was brought to his attention that the matter had not been settled, he undertook to furnish the reasons as soon as possible.**' Mncube said reasons would be provided by Tuesday, 27 August. On that day the judiciary spokesperson said reasons would be handed down the following day. On the 28th, lawyers representing the father were told that Desai's registrar had mixed up the dates and reasons would be handed down on the 29th. Desai handed down verbal reasons for his 5 November 2018 ruling on 29 August 2019. However, at the time of publishing, notes **GroundUp**, no written and signed reasons had been handed down. Without a typed copy of the reasons, no application for leave to appeal can be made.