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THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

JUDGMENT

Not Reportable

Case no: 1107/2024

In the matter between:

I[...] F[...] S[...] G[...] **APPLICANT**

and

S[...] S[...] G[...] (born R[...]) **RESPONDENT**

Neutral citation: *G[...] v G[...]* (1107/2024) [2026] ZASCA 157 (20 November 2026)

Coram: MOLEFE, UNTERHALTER JJA and PHATSHOANE, DIPPENAAR and KOOVERJIE AJJA

Heard: 27 May 2026

Delivered: 20 November 2026

Summary: Section 17(2)*(f)* of the Superior Courts Act 10 of 2013 – reconsideration of the refusal of leave to appeal – threshold of grave injustice or bringing administration into disrepute – best interest of a minor child – care, contact and primary residence of a minor child – risk of international child abduction – lifelong spousal maintenance – expert witnesses' fees – punitive costs

order – whether grounds for reconsideration and for granting leave to appeal established – petition decision affirmed – application struck from the roll.

ORDER

On application for reconsideration: (referred to the Court by the President in terms of s 17(2)*(f)* of the Superior Courts Act 10 of 2013):

1 The application for reconsideration of the decision refusing leave to appeal is struck from the roll.

2 The applicant is ordered to pay the respondent's costs incurred in opposing the application for reconsideration on an attorney and client scale.

JUDGMENT

Molefe JA (Unterhalter JA and Phatshoane, Dippenaar and Kooverjie AJJA):

[1] This is an application in terms of s 17(2)*(f)* of the Superior Courts Act 10 of 2013 (the SC Act),[1] for the reconsideration of an order by two judges of this Court refusing the applicant's application for leave to appeal. The applicant sought leave to appeal against the order of the KwaZulu-Natal Division of the High Court, Durban (the high court).

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[1] 'The decision of the majority of the judges considering an application referred to in paragraph *(b)*, or the decision of the court, as the case may be, to grant or refuse the application shall be final: Provided that the President of the Supreme Court of Appeal may, in circumstances where a grave failure of justice would otherwise result or the administration of justice may be brought into disrepute, whether of his or her own accord or on application filed within one month of the decision, refer the decision to the court for reconsideration, and if necessary, variation.'

[2] The high court granted a decree of divorce and ordered the parties to share the primary residence of their minor child. It dismissed the applicant's application for leave to appeal. On 29 August 2024, two judges of this Court dismissed the applicant's leave to appeal in terms of s 17(2)*(b)* of the SC Act. Subsequently, on 9 December 2024, the President of this Court referred the decision refusing leave to appeal for reconsideration, and if necessary, variation, in terms of s 17(2)*(f)* of the SC Act.

[3] The applicant, Dr I[...] F[...] S[...] G[...] (Dr G[...]), a South African, and the respondent, Ms S[...] S[...] G[...] (Ms G[...]), a Pakistani national, were married on 23 April 2018, out of community of property with the exclusion of the accrual system. One minor child was born of the marriage on 27 December 2018. The marriage was short-lived and the parties ceased cohabiting on 27 December 2019, when Ms G[...] obtained an ex-parte interim protection order against Dr G[...]. She removed the minor child from the matrimonial home until such time as 'a parental plan was approved by a competent court'.

[4] The relationship between the parties became deeply acrimonious and resulted in protracted litigation. The matter generated five urgent applications, a rule 43 application,[2] a rule 43(6) application and a trial running over 15 days in which ten witnesses testified. A recurring theme throughout the litigation has been Dr G[...]'s allegation that there is a risk that Ms G[...] will abduct the minor child from South Africa and relocate to Pakistan.

[5] Pursuant to the protection order, on 13 January 2020, Dr G[...] instituted an urgent application to restore his rights and responsibilities in respect of the

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[2] Rules regulating the conduct of the proceedings of the several provincial and local divisions of the High Court of South Africa, GN R48, *GG* 999, 12 January 1965 (Uniform Rules of Court).

minor child. He recorded Ms G[...]'s threats of removing the minor child from South Africa and her inability to care for the minor child. Ms G[...] opposed the application. The high court awarded the primary place of residence of the minor child to Ms G[...], and the parties were to share care and contact on a weekly basis.

[6] On 10 February 2020, Dr G[...] brought a second urgent application to have the first order amended. Although this application was opposed, by consent between the parties, an order that the primary place of residence of the minor be shared between the parties was granted. The parties were interdicted from obtaining any travel documentation or unabridged birth certificate from either the Department of Home Affairs or the Pakistani authority in respect of the minor child.

[7] Dr G[...] then brought a third application on 2 March 2020 in respect of the injuries sustained by the minor child after having been in Ms G[...]'s care. This was pursuant to the expert report of Dr Dinesh Patel who made the finding that 'the injury was suggestive of the child being struck by a blunt force to the face'. This application was also opposed. The high court, in its order dated 2 March 2020, referred the matter to lead expert evidence pertaining to whether Ms G[...] had assaulted the minor child as alleged. Dr G[...] also opened a criminal case of assault against Ms G[...].

[8] At the hearing of oral evidence, the high court on 23 March 2020, directed the Office of the Family Advocate to deliver a report on care and contact of the minor child by no later than 27 March 2020. The Family Advocate recommended that the shared residency regime continue on a week-on/week-off schedule. This third application was adjourned to be heard with the divorce action.

[9] In October 2020, Ms G[...] brought a rule 43 application wherein she claimed maintenance for herself and the minor child in the sum of R28 000 per month and a R200 000 contribution towards her legal costs. Dr G[...] opposed the application but tendered R16 000 for maintenance for both Ms G[...] and the minor child, as well as a R20 000 contribution towards the legal costs. He simultaneously brought a counter-application in which he sought that the primary place of residence of the minor child be awarded to him and that Ms G[...] exercise specific contact on alternate weekends. At the hearing, after argument, Dr G[...] withdrew the counterclaim. He was ordered to pay maintenance for Ms G[...] and the minor child in the sum of R22 000 per month, together with R50 000 contribution towards the legal costs.

[10] On 19 November 2020, Dr G[...] brought a fourth application in which he sought the primary residence of the minor child, with Ms G[...] to exercise defined and supervised contact under supervision of a registered social worker. The basis upon which he brought this application was, inter alia, that Ms G[...]'s spousal visa had expired on 26 June 2020, and he had been advised by a Department of Home Affairs official that Ms G[...] was in the process of being deported. Furthermore, Dr G[...] alleged that he received an anonymous email on 11 November 2020, in which he was advised that Ms G[...] was planning to escape South Africa with the minor child.

[11] Ms G[...] opposed the application on the basis that her visa would be renewed because she is a mother of a South African minor child, and that the validity of the expired visas had been extended until January 2021 due to the Covid 19 crisis. She denied that she intended to remove the minor child from South Africa and that she was a flight risk. The high court dismissed the application and directed Ms G[...] to make herself available to be contacted telephonically during the periods when the minor child was in her care.

[12] On 13 May 2021, Dr G[...] instituted a fifth application, seeking inter alia, primary residence of the minor child, and directing that Ms G[...] exercise specified contact under the supervision of a registered social worker. The application was based on allegations that fraudulent documents purporting to emanate from Ms G[...] had been used to procure a spousal visa for her; that the Department of Home Affairs intended charging her with fraud and revoking her spousal visa; that she faced possible deportation; and that she had allegedly provided a false telephone number to one of Dr G[...]'s expert witnesses.

[13] Although Ms G[...] opposed the application, the matter culminated in a consent order in terms of which Dr G[...] was granted primary residence of the minor child, while Ms G[...] was granted specified contact under the supervision of a social worker at her residence. Dr G[...] has accordingly exercised primary care of the minor child since May 2021.

[14] Pursuant and subsequent to the above order, Dr G[...] brought a rule 43(6) application in which he sought a reduction of the monetary maintenance payable in terms of rule 43 order. This was based on the fact that the parties were no longer sharing a primary residence with the minor child. The application was opposed by Ms G[...] who counter-applied, inter alia, that the primary residence of the minor child be shared as she had been under duress to consent to the order of 28 May 2021. Dr G[...] withdrew the application for maintenance reduction on 26 October 2021 and there was no order made. The costs of the application were reserved. The primary care of the minor child had been with Dr G[...] since May 2021, with Ms G[...] exercising specified, supervised contact pending finalisation of the divorce.

In the high court

[15] Throughout the divorce proceedings, Ms G[...] consistently denied that she ever intended to leave South Africa with the minor child. Both her parents had passed away and returning to Pakistan would place her life at risk. She could potentially become a victim of an 'honor killing', due to emails allegedly sent to her family in Pakistan by Dr G[...], tarnishing her reputation.

[16] Dr G[...], on the other hand, maintained that he should retain primary residence of the minor child and that Ms G[...] was a flight risk. His apprehension arose from statements allegedly made by Ms G[...], expressing her desire to reside in Pakistan with the minor child; an anonymous email allegedly indicating that she intended to abscond with the minor child to Pakistan; and that she possessed false travel documents for the child. Dr G[...] further alleged that during the periods when the minor child was in Ms G[...]'s care, she would frequently not be contactable, thereby reinforcing his suspicion that she intended to abduct the child.

[17] In evaluating the evidence relating to care and contact arrangements of the minor child, the high court observed that Dr G[...]'s concern regarding Ms G[...] being a flight risk stemmed largely from two considerations. The first was a series of anonymous emails received by Dr G[...], suggesting that Ms G[...] had devised a plan to abduct the minor child and relocate to Pakistan. The second was the discovery that Ms G[...] had obtained an unbridged birth certificate for the child and received her spousal visa without Dr G[...]'s knowledge.

[18] The high court held that Ms G[...]'s conduct in renewing her spousal visa was more consistent with an intention to remain in South Africa than to leave it. The court noted that Ms G[...] was unlikely to succeed in taking the minor child out of the country without a valid passport for the child. Accordingly, the high court found that she did not constitute a flight risk.

[19] In determining an appropriate spousal maintenance award, the high court took into account several relevant considerations, including Ms G[...]'s age, the duration of the marriage, and the standard of living she enjoyed during the subsistence of the marriage. The court then held that an amount of R27 500 per month was reasonable in the circumstances. Ms G[...] would receive maintenance until such time as she was able to obtain a work visa, secure employment, and be financially self-sufficient.

[20] The parties' marriage was terminated by the high court on 17 October 2023. The court ordered that the parties remain co-holders of parental responsibilities and rights in respect of the minor child, with shared unsupervised care and contact. Dr G[...] was ordered to pay maintenance to Ms G[...] in an amount of R27 500 per month and for the minor child at the rate of R13 000 per month, including all reasonable educational, medical and dental care expenses. Dr G[...] was also ordered to pay the costs of suit on an attorney and client scale, including inter alia, Ms G[...]'s expert witnesses' costs.

The reconsideration application

[21] The reconsideration of the application for leave to appeal raises the following issues for determination:

(a) the primary residence, care and contact of the minor child; (b) spousal maintenance to Ms G[...]; (c) the punitive costs order against Dr G[...]; and (d) the expert witnesses' costs. The threshold that governs all these issues is whether a grave failure of justice would result or the administration of justice may be brought into disrepute for purposes of s 17(2)*(f)* of the SC Act.

[22] This Court has produced a rich body of judgments on the new and old wording of s 17(2)*(f)* of the SC Act. It is clear that in order for a 'grave injustice

to result' or 'the administration of justice to be brought into disrepute', is a very high threshold. In the absence of such a finding, the matter is struck from the roll. In the event that such a conclusion is reached and the threshold for s 17(2)*(f)* as well as the threshold for leave to appeal are met, the next question is whether to proceed with the merits of the appeal.

[23] The purpose is not to afford a litigant a further opportunity to appeal what has already been refused on petition by the two judges of this Court. The case law is ad idem that a 'mere rehashing' of the facts aired in the application for leave to appeal will not suffice. This was already introduced by the watershed case of *Motsoeneng v South African Broadcasting Corporation SOC Ltd and Others*.[3]

Primary residence, care and contact

[24] Counsel for Dr G[...] strongly argued that the high court's order granting unsupervised primary residence and shared contact and care exposed the minor child to a real risk of abduction by Ms G[...], who has a history of fraudulent conduct regarding travel documents and her spousal visas. It was emphasised that the best interests of the minor child are paramount,[4] and that the high court failed to prioritise this principle. Counsel submitted that the high court recognised the risk of abduction by imposing a safeguard regarding the issuance of the minor child's passport, which is inconsistent with granting unsupervised care and shared residence to Ms G[...].

[25] It was contended by counsel that both Ms G[...] being a flight risk and posing a risk of abduction to the minor child is a central feature of this appeal,

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[3] *Motsoeneng v South African Broadcasting Corporation SOC Ltd and Others* [2024] ZASCA 80; 2025 (4) SA 122 (SCA); [2024] JOL 64831 (SCA) para 19. Dictum applied in *Bidvest Protea Coin Security (Pty) Ltd v Mabena* [2025] ZASCA 23; 2025 (3) SA 362 (SCA); [2025] JOL 75784 (SCA) para 9 and *Road Accident Fund v Lewis* [2025] ZASCA 174; 2026 (3) SA 490 (SCA); [2026] 1 All SA 70 (SCA) para 25.

[4] Section 28 of the Constitution of the Republic of South Africa Act 108 of 1996 and the Children's Act 38 of 2005.

and that this issue alone is an exceptional factor to be considered. The above-mentioned further issues are also exceptional and constitute sufficient reasons for the application for reconsideration to be granted.

[26] Counsel for Ms G[...] disputed that the necessary threshold for reconsideration has been met. He argued that Dr G[...] merely repeated the same complaints that have already been considered and dismissed by both the high court and this Court on petition.

Lifelong spousal maintenance

[27] The order for spousal maintenance to Ms G[...] is challenged on the basis that she is young, highly qualified, with a Masters degree in Biochemistry, and that she is capable of self-support. It was also argued that she has already received substantial interim maintenance and that the duration of the marriage was short. Furthermore, imposing a lifelong obligation on Dr G[...] to maintain a 39-year-old woman after a marriage of effectively 20 months is an exceptional factor to be considered.

[28] Counsel for Ms G[...] argued that the high court carefully considered all relevant factors in awarding spousal maintenance. Should circumstances change, the parties may apply to the maintenance court for variation of the maintenance order.

Expert witnesses' fees

[29] Dr G[...]'s counsel contended that Ms G[...]'s expert witnesses were not true experts as their evidence was factual rather than opinion-based and thus she should not have been awarded expert witnesses' fees. It was argued that they did not qualify to be reimbursed in their professional capacity as their evidence was irrelevant as an opinion.

[30] Counsel for Ms G[...] argued that these costs were properly allowed. The admissibility of the expert witnesses' evidence was not objected to at the trial and their necessity was established. The reasonableness of their fees is a matter to be determined by the taxing master.

Punitive Costs Order

[31] It was further argued that the punitive costs order against Dr G[...] was unjustified, as there was no finding of vexatious or egregious conduct, and that the high court gave no reasons for such an order. Ms G[...]'s counsel, on the other hand, argued that the high court's decision was exercised judicially and based on Dr G[...]'s conduct.

Discussion

[32] Reconsideration is an exceptional and narrow procedure aimed at preventing grave injustice rather than re-litigating settled issues. As stated by the Constitutional Court in *Liesching and Others v S*,[5] the power under s 17(2)*(f)* is not intended to afford a disappointed litigant further bites 'at the proverbial appeal cherry' or a further opportunity to procure relief that has already been refused.

[33] In *Bidvest Protea Coin Security (Pty) Ltd v Mabena*,[6] this Court held that the existence of 'exceptional circumstances', is a jurisdictional fact that must be satisfied before reconsideration of the order refusing leave can be entertained. The decisions in *Motsoeneng* and *Bidvest* have been consistently reaffirmed in subsequent cases, most recently in *Rock Foundation Properties and Another v Chaitowitz*.[7]

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[5] *Liesching and Others v S* [2018] ZACC 25; 2018 (11) BCLR 1349 (CC); 2019 (1) SACR 178 (CC); 2019 (4) SA 219 (CC) paras 138-139; *Avnit v First Rand Bank Limited* [2014] ZASCA 132; 2014 JDR 2014 (SCA); [2014] JOL 32336 para 6.
[6] *Bidvest Protea Coin Security (Pty)Ltd v Mabena* [2025] ZASCA 23; 2025 (3) SA 362 (SCA); [2025] JOL 75784 (SCA).
[7] *Rock Foundation Properties and Another v Chaitowitz* [2025] ZASCA 82; 2025 JDR 2505.

[34] The high court's order for shared primary residence and care is supported by evidence and is in the best interest of the minor child. There is no basis to disturb that finding. The safeguards imposed by the high court on the perceived risk of abduction are sufficient. Since the flight risk argument cannot succeed, the application falls to be dismissed.

[35] However, I would also like to address the other grounds advanced in support of the reconsideration. The lifelong spousal maintenance challenge lacks merit as there is no misdirection by the high court in the exercise of its discretion. The high court ordered that spousal maintenance should be paid until Ms G[...] obtains a work visa and secures work employment. The order does not operate indefinitely. The question of the punitive cost order is in the discretion of the trial court, and this Court will not interfere with the exercise of such discretion, save where the discretion was not exercised judicially or the decision was influenced by wrong principles. No such case was made out.

[36] The applicant has not established that the refusal of leave to appeal would result in grave injustice or disrepute to the administration of justice. I find that Dr G[...] has failed to show exceptional circumstances. The arguments raised in this Court are the issues raised by Dr G[...] which have already been considered by two Justices in this Court, and they found no reasonable prospects or compelling reasons to grant leave to appeal. They were correct to so find. And hence, Dr G[...] cannot begin to meet the threshold required to show exceptional circumstances.

[37] The application for reconsideration is devoted to the repetition of the same arguments already raised and rejected in the trial. The jurisdictional prerequisite for reconsideration is absent. The application does not raise any unusual, novel

or exceptional circumstances to justify the extraordinary intervention contemplated in s 17(2*)(f)*. It therefore follows that the reconsideration application must fail. The appropriate order is to strike the application from the roll.

Defective reconsideration application and procedural irregularities

[38] Counsel for Ms G[...] has raised serious concerns regarding the preparation of the appeal record, noting the inclusion of numerous irrelevant documents (amounting to 1254 pages), the lack of chronological order in the record, and the inclusion of inadmissible evidence (such as an affidavit of Mr Makhaya and the report of Rick Crouch and Associates, neither of whom testified at the trial nor had their evidence been admitted by agreement or by a court order). Although Ms G[...]'s legal representative objected to the inclusion of the irrelevant material, it was never removed from the record nor corrected, resulting in a vast record detaining this Court in preparation.

[39] The reconsideration application is also defective; the papers are disorganised, with missing pages and irregular numbering of paragraphs. Despite this, Ms G[...]'s counsel requested that the matter be finalised on the papers as filed, given the protracted nature of the dispute and litigation.

[40] This Court records its displeasure with the manner in which the record was prepared and will thus make an appropriate punitive cost order.

[41] The following order is made:

1 The application for reconsideration of the decision refusing leave to appeal is struck from the roll.

2 The applicant is ordered to pay the respondent's cost incurred in opposing the application for reconsideration on an attorney and client scale.

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D S MOLEFE

JUDGE OF APPEAL

Appearances

For appellant:	I Veerasamy (with N Nickel)
Instructed by:	Gosai & Company Inc., Durban
	Webbers, Bloemfontein
For respondent:	A De Beer SC
Instructed by:	Shireen Amod & Company Attorneys, Verulam
	Honey Attorneys, Bloemfontein.