

Court: Free State Division, Bloemfontein

Case No: 2849/2012

Date(s) heard: 16 May 2013

Delivered: 21 May 2013

Judge: Van Rooyen AJ

DESCRIPTION

Application for parental responsibilities and rights (guardianship) over a minor child by her Aunt

SUMMARY

(Par 1 - 7) Where an aunt of a minor child applied for parental responsibilities and rights in terms of section 23(1)(b), 24, 28 and 29 of the Children's Act 38 of 2005. The child's mother was murdered by a hit organized by her father. The father was currently serving a life sentence for the murder. The court granted the order requested.

Summarised by: Tshepo Munene (Admitted Attorney of the High Court of South Africa)



/hw

**FREE STATE HIGH COURT, BLOEMFONTEIN
(REPUBLIC OF SOUTH AFRICA)**

CASE NO: 2849/2012

In the matter between:

MMAKUNATU ANNA RAMABOLU

APPLICANT

and

APRIL JOSEPH MATHIBELA

RESPONDENT

HEARD ON: 16 MAY 2013

DELIVERED ON: 21 MAY 2013

JUDGMENT

VAN ROOYEN AJ:

- [1] Attorney Ngidi appeared on behalf of Applicant in this matter and there was no appearance on behalf of the Respondent. The Notice of Set-Down was properly served upon the Respondent on **18 April 2013**.
- [2] The Applicant applies for an order in terms whereof the parental responsibilities and rights in terms of Section 23(1)(b), 24, 28 and 29 of the Children's Act 38 of 2005 ("*Children's Act*") in relation to the minor Lerato Mathibela ("*Letato*") is granted to Applicant. The Applicant is the

maternal aunt of Lerato. The Applicant also seeks an order for determination of the parental responsibilities and rights of the Respondent who is the biological father of Lerato.

- [3] Lerato was born from a marriage between the Respondent and Mrs. Moipone Sannah Mathibela (*“the deceased”*). Lerato’s mother was murdered on **18 August 2010** by a hit man who had been hired by the Respondent. Respondent plead guilty to a number of offences, including the murder of Lerato’s mother, and was convicted and sentenced to a period ranging from three years to life imprisonment on **14 December 2011**. The Respondent is currently serving his sentence. Lerato was born on **12 December 2000** and has been in permanent care of the Applicant since the death of her mother and always lived between the Applicant’s house and that of her parents prior to the death of her mother.
- [4] The Applicant is a teacher by profession at Saaiplaas Primary School, Virginia and is a primary care-giver of Lerato and provides for all her needs as if she was her own child.
- [5] The National Director of Public Prosecutions has instituted proceedings against the Respondent for the forfeiture of a house in which Lerato may share as inheritance from the deceased. Applicant intends to intervene in the case and to oppose the forfeiture to safeguard Lerato’s interest in the house.
- [6] Respondent filed opposing papers, but I am satisfied that the order sought by the Applicant is in the best interest of Lerato.

[7] I therefore grant an order in terms of paragraph 1, 2, 3 and 4 (as amended by asserting the words “*as provided for in Section 18(3)*” after the word “*guardianship*”) of the Notice of Motion.

DATED at BLOEMFONTEIN this _____ day of MAY 2013.

VAN ROOYEN AJ

KARABO NGIDI
ATTORNEY FOR APPLICANT