

# Balancing Urgency and Best Interest of the Child

## *The Role of Mediation in Parental Disputes Over Child Education*

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### INTRODUCTION

In the case of *DWD v ILL and Another* (16939/2024) [2024] ZAWCHC 119 (20 August 2024) the court reiterated that “self-created urgency is not a basis for circumventing the normal rules of Court and procedures of the Court”. This paper will focus on the argument of urgency that was brought forward to the Court by the Applicant to direct the First Respondent (“**respondent**”) to sign documents required for the admission of their minor biological child, N, to a prestigious school. The Applicant argued that the imminent closure of the registration period for the 2025 academic year and the Respondent’s delay in agreeing to the child’s registration would negatively impact N’s best interests. This case reiterated the trite principle that self-created urgency in respect of judicial process is frowned upon, discouraged and does not come without repercussions.

### BACKGROUND

The Applicant, father of N, and Respondent, mother of N, are the biological parents of N. The dispute at hand is in respect of N’s education. The Applicant secured admission for N to Herschel Girls School (“**Herschel**”), regarded as a prestigious educational institution. However, the Respondent applied to Curro Academy School for N. The Applicant approached the court on an urgent basis citing that he had no alternative after a failed attempt was made with the Respondent to reach a compromise to decide which school is suitable for N by way of a roundtable. The Applicant furthermore threatened the use of urgent courts and failed to acknowledge that the Respondent provided adequate warning to him that costs would be sought against him in the event that he persists with his premature urgent application instead of exploring alternative dispute resolution options as proposed by the Respondent.

### URGENCY – TWO SIDES OF THE STORY

Although the Applicant claimed and maintained that the Respondent was not cooperative, the timeline leading towards the urgent application says otherwise.

Prior to the urgent application, the Respondent agreed to engage with the Applicant through a dispute resolution process and cautioned the Applicant that it would be premature for him to seek an urgent order in respect of N’s school registration and further warned that if the Applicant persists with the application, same would be opposed and an order of costs would be sought against him. The Respondent requested information from the Applicant about Herschel and invited the Applicant to agree to a Parenting Coordinator. The Applicant’s attorney requested a round table with the Respondent to discuss N’s attendance at Herschel, however because the Applicant failed to provide the Respondent with the information requested in order to have a meaningful discussion with the Applicant, the Respondent called the meeting off and requested postponement of the meeting. After unsuccessful attempts to reach a compromise and hold roundtable meetings, the Applicant believed that he had no choice but to bring the matter before Court on an urgent basis.

### SELF CREATED URGENCY?

The Applicant argued that the Respondent’s delay in cooperating with the Applicant would result in the prejudice of N as she will be deprived of an opportunity to attend one of the best institutions in the country. The Respondent countered this by arguing that the Applicant’s urgency is self-created because the Applicant waited until the eleventh hour to enrol N and N is not yet three years old as such, her admission to a school is not urgent nor are there indications that she will suffer emotional or development damage due the alleged delay. In addition, the Respondent asserted that she cautioned the Applicant that bringing an urgent application is premature and would be opposed. The nature of the dispute is centred around the fact that the Applicant used the action of approaching the urgent court as an ultimatum posed to the Respondent rather than utilising mediation as mode of resolution taking into account the best of interests of N in the circumstances. This is due to the fact that effective communication between the Applicant and Respondent was acrimonious at that stage and was proving to be ineffective.

At no point was an educational psychologist considered as an alternative resolution by the Applicant until the Applicant acquiesced to it at the hearing, following the commencement of urgent proceedings. The Applicant chose to try and expedite a process that did not require such fast tracking and was guilty of giving rise to self-created urgency.

### COURT'S INTERPRETATION

The court emphasised that a case involving determination of the best interest of a minor does not automatically render it urgent. The court explained that in situations that involve joint decision such as this are suitable for mediation yet there was no meaningful mediation as per Rule 41A prior to the urgent application brought by the Applicant. The court considered the advantages of mediation compared to litigation by stating that mediation is cheaper than an urgent application to the High Court and that decisions can be made quicker, as such, a court should be the last resort if alternative avenues to reach a resolution are available. The various alternative dispute resolution methods are to be exhausted prior to approaching the courts at any and every instance.

Furthermore, the court found that the Applicant's application was self-created urgency. The court considered the fact that the minor is barely 3 years of age and still in nappies and a few months delay would not prejudice the minor. The court acknowledged the nature of deadlines in schools however it deemed it to be an abuse of the Court to skip avenues to reach an amicable decision, more specifically the mediation process set out in Rule 41A which provides that parties of a dispute ought to consider mediation before pursuing litigation. The court further warned litigants against treating the Rule 41A process as a mere tick box exercise and that mediation must be proven to have been considered by the parties. The court stated that granting the relief sought by the Applicant would not maintain the integrity of the urgent Court processes. The court dismissed the application and stated that it hopes doing so would encourage the parties to improve on their communication skills and make effort in reaching mutual decisions that are in the best interests of their child rather than approach the Court. The Court encouraged the use of alternative dispute resolution methods as opposed to using the Courts as a first resort. Accordingly, the urgent application was dismissed with costs.

### CONCLUSION

The court dismissed the Applicant's urgent application, finding that the urgency was self-created and that the matter could have been resolved through proper mediation. The court reiterated that cases involving minors do not automatically qualify as urgent, especially when alternative dispute resolution methods have not been fully explored. Emphasizing the importance of cooperation and communication between parents in matters concerning the best interests of their children, the court ordered the Applicant to bear the costs of the dismissed application.

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