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## **Urgent Access to Child**

### **Urgent Access / Contact Applications**

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Are you a father or mother of a child and the other parent refuses you access / contact with that child? If that is the case, you have a right to relief from the High Court.

A couple would bring a child into this world. Whilst the relationship is ongoing, they can see eye to eye on what is best for the child and both parties form a productive part of the child's life. Even if the couple is not living together, the father would see the child regularly and bond with the child as is needed. However, once the relationship has severed, it often happens that the parties cannot see eye to eye on what is best for the child regarding regular contact by the father. The mother would either blatantly refuse the father access or would place strict measures on when and how the father can see the child. Should the mother refuse access or prescribe access to the child which is not in the child's best interest, the father in this case would have grounds to urgently approach the High Court for relief. As the procedure is very complicated, it is strongly advised that you approach an attorney with knowledge and experience with these urgent applications. Furthermore, the attorney should have an advocate at hand to move the application with or without opposition at the High Court.

### **The Procedure**

Your application is urgent and therefore it's done on affidavit and not orally in Court. You may however be called to give oral evidence if the Judge so wishes to clarify certain issues. However this can mostly be avoided if your papers are properly drafted.

Your Attorney or Advocate would draft a document called a "Notice of Motion" and "Founding Affidavit". I will explain these documents to next.

### **Notice of Motion**

In this document you state exactly what you want the Judge to grant you. Almost like the prayers in a summons. Of course you want the

Judge to grant you reasonable access to your child. As you are making the application urgently and sidestepping some rules of Court regarding time periods and procedure, you would first ask the Court to condone non-compliance with its Rules. You will then ask the Court what relief you want usually in the form of an interim order to be finalised later. Usually you will ask for a rule nisi.

An example of the prayers in an urgent access application is as follows:

Condoning the Applicant's non-compliance with forms and service and time periods provided in the Uniform Rules of this Honorable Court and permitting this application to be entertained as a matter of urgency in terms of Rule 6(12) of the Rules of Court;

That a Rule Nisi be issued, calling upon the Respondent to appear before Court on \_\_\_\_\_2010 at 10:00, in order to show cause why an Interim Order should not be confirmed in the following terms:-

That the Applicant shall have unsupervised contact to the minor child as follows:

every alternative weekend commencing from Friday 18:00 to Sunday 18:00;

...

That the provisions of (2) above shall operate as an Interim Order, with immediate effect, pending the return date of the Rule Nisi;

...

This document is signed by your attorney or you if you are acting in person.

Founding Affidavit

In your Founding Affidavit you provide relevant information under oath. Here you would provide details of you, the mother and the child. You would also need to provide information on a few or more of the following matters:

Background information of your relationship with the mother of the child;

Past access to the child;

Past involvement in the child's life;

When access to the child seized / lessened and the circumstances surrounding it;

Past maintenance or attempts to maintain the child;

Why the application is urgent and substantive redress in due course would not be afforded to you; and

Any other relevant matter.

### **Issue and Service of the Application**

Once the Notice of Motion and Founding Affidavit is in order, your attorney would make the necessary copies of the application and have it issued at Court and a case number would be provided. If possible, you would have the application served on the mother of the child timeously as well as on the Office of the Family Advocate. Here you may make use of the office of the Sheriff or your attorney would serve the papers on the mother.

### **Opposition**

If the mother of the child opposes the relief sought after being served with the application, she should file an opposing affidavit to which you would have to reply. The parties would then have to argue the matter before the Judge.

### **Urgent Hearing at the High Court**

If your matter has been set down on the Motion Court Roll, the Judge would have already read over the papers filed and you would then wait for your matter to be called up. If your matter is to be heard before the Urgent Judge on duty that day, your Advocate would have to take the file to the Judge before hand to read. If the mother or her Advocate is present at Court and the parties cannot settle the matter, then they would have to argue before the Judge. If however the mother after having been duly served does not appear at court, then the process is a bit faster. After the judge decided on the matter, the following might happen:

The Judge would grant the urgent relief requested;

Grant you access but not on the terms as requested;

Refuse to grant you any relief without a family advocate's report;

Dismiss your application for lack of merits and / or urgency.

### **Success of the Application**

It is hard to predict the chances of success of your application without knowing exactly what the mother would say in her papers. However an experienced Advocate should be able to state based on what information is provided what the chances of success is.

Kind regards,

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