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FOR IMMEDIATE RELEASE

South Gauteng High Court ruling on foster care grants makes the Child Justice Act 38 of 2005 a reality for orphaned children

Legal Aid SA has hailed as a victory for thousands of orphaned children in the country, the overturning by the South Gauteng High Court, of a judgment in the Krugersdorp Children's Court, whereby a caregiver with a duty of support towards her orphaned grandchildren was denied the appointment as a foster parent.

The Krugersdorp Children's Court judgement, barred the appellant, a pensioner from Kagiso in the West Rand, from receiving foster care grant to assist in caring for her grandchildren.

Due to its commitment to the commitment to protecting the rights of children, Legal Aid SA entered into a cooperation partnership with Black Sash, that resulted in the in the successful appeal for against the Krugersdorp Children's Court judgement. On Friday 12 April (more than four years since the appellant first applied for state support), the order was overturned by the South Gauteng High Court.

To that effect, Legal Aid South Africa has called on all courts in the country to reconsider all matters dismissed on similar grounds, in the interest of justice.

"This judgement calls us to be proactive and think of a way forward in terms of an application for matters dismissed on similar grounds to be reconsidered," says Legal Aid SA's Civil Attorney, Michael Motaung, who was the legal representative for the client in the matter.

Welcoming the ruling, Legal Aid SA stated that the spirit of the Children's Act 38 of 2005 had been realised, in that orphaned children would no longer have to be separated from their families in order to qualify for foster care grants.

“We are confident that the ruling will strengthen the legal status of orphaned children, benefitting thousands of other children out there who have been deprived of similar rights,” says Motaung, who presented strong arguments in the matter.

He said the ruling had clarified the principles of *duty of support* in terms of *section 150(1)(a)* of the Children’s Act 38 of 2005 and entrenches into law that a caregiver that does owe a legal duty of support may be appointed as a foster parent and is entitled to receive a foster care grant. The Court furthermore provided guidelines for the enquiry. These included enquiring whether the children are firstly in need of care, and thereafter ascertaining whether the children have a visible means of support. It was stressed that when determining the ‘visible means of support’ the focus needed to be on whether the children had a visible means of support and not on whether the caregiver has a visible means of support.

The confusion surrounding the eligibility of grandparents to receive Foster Care Grants has now finally been clarified. “In essence, the ruling clarifies the fact that orphaned children under the care of grandparents qualify for foster care grants, subject to a financial inquiry being conducted on the caregivers having a common law duty of support.” says Motaung.

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