

**Senior Family Advocate, Cape Town & another v Houtman
[2006] JOL 16644 (C)**

Reported in (Butterworths)	Not reported in any LexisNexis Butterworths printed series.
Case No:	7828 / 03
Judgment Date(s):	09 / 02 / 2004
Hearing Date(s):	22 / 10 / 2003
Marked as:	Reportable
Country:	South Africa
Jurisdiction:	High Court
Division:	Cape of Good Hope
Judge:	Erasmus J
Bench:	NC Erasmus J
Parties:	Senior Family Advocate, Cape Town (1At), JP Houtman (2At); Irma Houtman (R)
Appearance:	Adv PK Weyer, State Attorney (At); Adv BDJ Gassner, Stadler & Swart Attorneys (R)
Categories:	Application – Civil – Substantive – Private
Function:	Confirms Legal Principle

Key Words

Law relating to children – Abduction – Minor child – Return to the Netherlands – Proof of "habitual residence" in – Not satisfied – Application denied

Hague Convention on the Civil Aspects of International Abduction Act 72 of 1996 – Hague Convention on the Civil Aspects of International Abduction Act 72 of 1996, articles 3 and 12

Mini Summary

A married couple, who were South African citizens, had gone to live in the Netherlands. When the couple became estranged the mother returned to South Africa with their child of three who had been born there but who they had registered as a South African citizen. In this application a Family Advocate, who was joined by the father as the second applicant, sought an order for the return of the child to the Netherlands in terms of the provisions of the Hague Convention on the Civil Aspect of International Child Abduction 1980, which received statutory recognition in the Hague Convention on the International Child Abduction Act 72 of 1996. Article 12 provides for the return of a child if there has been wrongful removal in terms of Article 3 in which, *inter alia*, removal is considered wrongful where the removal is in breach of the law of the State in which the child was "habitually resident" immediately before the removal. The onus is on the party seeking removal to establish this requirement.

Held that it is clear that habitual residence must be determined from the circumstances of each case. The court was not persuaded that the parents ever formed a settled or shared intention to remain in the Netherlands. The father had not succeeded in proving "habitual residence" in the Netherlands on a preponderance of probabilities. The application was denied.