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**HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, JOHANNESBURG)**

- (1) REPORTABLE: Electronic reporting only.
(2) OF INTEREST TO OTHER JUDGES: No.
(3) REVISED.

18 February 2021

.....
Judge P.A. Meyer

Case no: 34446/2019

In the matter between:

N[....] I[....] M[....]

Applicant

and

M[....] M[....]

Respondent

Case Summary: Practice – Separation of issues in terms of r 33(4) of Uniform Rules of Court – The parties entered into a customary marriage in community of property and some years later into a civil marriage that excludes community of property, community of profit and loss and the accrual system – An issue in the divorce action is whether the civil marriage and antenuptial contract should be set aside as void *ab initio* – Applicant seeks such issue to be separated and decided before any other question in the action.

Separation not appropriate, given the anticipated course of the litigation between the parties as a whole, that it will facilitate the proper, convenient and

expeditious disposal of the litigation between the parties and that it will be appropriate and fair to both of them.

JUDGMENT

MEYER J

[1] The applicant, Mr N[....] I[....] M[....], seeks a separation of issues in terms of r 33(4) of the Uniform Rules of Court in a pending divorce action, which the respondent, Mrs M[....] M[....], has instituted against him on 2 October 2019.

[2] From the pleadings in the divorce action, which have closed, the affidavits in this application and counsel's heads of argument it transpires that it is common cause that the marriage relationship between the parties has broken down irretrievably and that there are no reasonable prospects of the restoration of a normal marriage relationship between them. Both parties seek a decree of divorce.

[3] It is also common cause between the parties that both of them should have full parental responsibilities and rights in respect of the two minor children born of their marriage. They are *ad idem* that the respondent should have primary residence in respect of the two minor children and that the applicant should have reasonable rights of contact with them subject thereto that his contact should not interfere with their social, educational, religious and extra-mural activities.

[4] The respondent initially claimed no maintenance for herself and maintenance 'for the minor children in the amount of R40 000.00 per month.' Two days before the filing of her answering affidavit in this application, she filed a notice of intention to amend her particulars of claim to include a claim of maintenance for herself and to increase the maintenance claim in respect of the two minor children to 'the amount of R40 000.00 per child per month. In respect of herself, she intends to claim the following:

'9.1 Payment of the sum of R50 000.00 per month for a period of 5 (five) years from the date of the divorce, with such amount increasing at the rate of the CPI on the anniversary of the divorce annually;

- 9.2 The Plaintiff's medical, dental, hospital surgical, ophthalmic, orthodontic and prescribed pharmaceutical expenses, for a period of 5 (five) years from the date of the divorce;
- 9.3 The Defendant to transfer into the Plaintiff's name, at no costs to herself, a residential dwelling of her choice, having a value of no less than R13 000 000.00 (Thirteen Million Rand);
- 9.4 The Defendant to make available the sum of R1 500 000.00 (One Million Five Hundred Thousand Rand) to enable the Plaintiff to purchase household furniture and effects;
- 9.5 The Plaintiff to retain the motor vehicle currently in her possession as her sole and exclusive property and that the Defendant purchase for the Plaintiff on the fifth anniversary of the divorce a new vehicle of her choice in the same category as the Plaintiff's current vehicle.'

[5] The applicant objects to the amendment. He denies his liability to pay any maintenance to the respondent and the *quantum* of her claim. He admits his liability to pay maintenance in respect of the two minor children but denies that the amounts claimed by the respondent represent their actual and reasonable requirements. I accept for present purposes (without deciding the issue) that the respondent will be permitted to amend her particulars of claim in accordance with her notice of intention to amend.

[6] The respondent is a freelance actress and it is common cause that the applicant is 'a world class disc-jockey' by profession. The respondent's averment in her answering affidavit 'that the Applicant is an extremely wealthy individual, earning up to R100 000 000.00 (One Hundred Million Rand) per annum' is not disputed by the applicant in his replying affidavit nor is issue taken with the following averments made by her:

- '18.1 I admit that the issues relating to contact and care will be settled as the minor children have always been in my primary care, whilst the Applicant travels the world to pursue his profession as a world class disc jockey, earning up to a minimum fee of US\$ 150 000.00 (One Hundred and Fifty Thousand US Dollars) to US\$ 299 000.00 (Two Hundred and Ninety Nine Thousand US Dollars) according to the Booking Agency Website where the Applicant's profile is listed.
- 18.2 The Applicant is a South African DJ, known as Black Coffee, and considered the second richest musician in Africa, with a net worth of US\$ 60 million (Sixty Million US Dollars), according to Glusea.com. . . . '

[7] The applicant does not dispute his ability to pay maintenance for either the minor children or the respondent. In this regard, he states *inter alia* the following in his founding affidavit:

‘6.2 I furthermore do not dispute my ability to pay maintenance in respect of the minor children as claimed by the Respondent at all, and will be readily able to comply with any reasonable order relating to the *quantum* of maintenance which the Court may find that I have to pay in respect of the minor children, should the issue not be settled between the Respondent and I’.

And in his replying affidavit he states:

‘4.2 I have repeatedly stated that I do not dispute my ability to pay maintenance for the children, but deny that the quantum of maintenance claimed by the Respondent is just and equitable in the circumstances.’

[8] The applicant is further confident that all issues relating to parental responsibilities, his reasonable contact with the minor children and maintenance payable in respect of the minor children ‘would be readily settled’ between him and the respondent. In their heads of argument the respondent’s counsel also accept that the issues relating to parental responsibilities, reasonable contact and maintenance ‘are in effect non-issues’.

[9] I now turn to what the parties are *ad idem* constitutes the real issue for determination in their divorce action. The parties entered into a customary marriage in community of property on 14 May 2011. On 5 January 2017, they entered into a civil marriage. Prior to entering into the civil marriage, they concluded an antenuptial contract in terms whereof they excluded community of property, community of profit and loss and the accrual system, which antenuptial contract was duly executed and registered on 21 December 2016 (the antenuptial contract). In terms of clause 4 of the antenuptial contract, the parties further agreed that upon dissolution of the marriage, the applicant would pay to the respondent an agreed amount of R4 million in complete discharge of all his patrimonial obligations to the respondent, including spousal maintenance.

[10] In her particulars of claim, the respondent avers that the ‘civil marriage concluded by the Parties in terms of the above ANC is unlawful, *contra bones mores*,

unconscionable and falls to be set aside and declared *null* and *void ab initio*'.

Pursuant to those averments, she claims the following order:

- '2. The civil marriage concluded on 5 January 2017, is declared null and void;
3. The Ante-nuptial Contract concluded on 21 December 2016 by the Parties is hereby declared unlawful and is setting (*sic*) aside;
4. Division of the joint estate;
5. An order appointing a Receiver and Liquidator'.

[11] In his plea, the applicant pleads that the parties intended and agreed to enter into a civil marriage out of community of property and to register an antenuptial contract before entering into the civil marriage. They agreed to perform the traditional rituals and customs of uniting their two families in terms of their culture. He denies that the civil marriage entered into between them, or their antenuptial contract, is unlawful, *contra bones mores*, unconscionable and fall to be set aside and declared null and void *ab initio*. In this regard, he counterclaims:

- '2. An order declaring the marriage relationship entered into between the parties as valid and legal;
3. An order declaring that the terms of the Ante-nuptial contract entered into between the parties are valid and enforceable.'

In his amended counterclaim, he claims a declarator that the provisions of clause 4 of the antenuptial contract entered into between the parties are *contra bonos mores*, and therefore null and void, which claim he withdrew by notice dated 19 December 2020.

[12] On 5 June 2020, the respondent instituted a Rule 43 application against the respondent. Therein, she claimed *inter alia* a contribution towards her legal costs in the amount of R4 million based thereon that she intends to appoint a forensic auditor to undertake a forensic investigation of the respondent's offshore and local assets and to do a comprehensive investigation to determine the value of the 'joint estate' that, according to her, still exists between the parties and in which she is entitled to share. In her founding affidavit she also states *inter alia* that '[t]he legal challenges to investigate all these assets would require research, legal opinion and advise by senior Counsel. An application for access to information may also be necessary' and that extensive trial preparation would be required, which will 'include the discovery of extensive documentation, Rule 35(1) processes, and then probably an

application to compel the required discovery of documents and information'. (On 11 November 2020, after I had reserved judgment in the present application, an order was made in the Rule 43, application *inter alia* for the respondent to make 'an initial' contribution to the applicant's legal fees of R100 000.)

[13] In the present application, the applicant contends that the question relating to the validity of the civil marriage and the antenuptial contract entered into between him and the respondent will conveniently be decided before and separately from any other question in the action. It, according to the applicant, involves factual evidence relating to the background and circumstances under which the civil marriage and the antenuptial contract were entered into, as well as legal argument, which will require a preliminary hearing of no more than a day. He contends that the issue is discreet and a determination thereof would also obviate the need for any further litigation between the parties in respect of the relief claimed in prayers 4 (division of the joint estate) and 5 (appointment of a receiver and liquidator) of the respondent's particulars of claim. A resolution of the issue sought to be separated, according to the applicant, might also avoid the expensive undertaking of a forensic investigation that the respondent and her legal representatives intend to embark upon. In his replying affidavit, he states the following:

'4.3 I have brought this application to avoid having to incur substantial unnecessary legal expenses as envisaged by the Respondent in the affidavit deposed to by the Respondent in the Rule 43 application, where she stated under oath that she requires a contribution of R4 million in order to enable a "*forensic investigation*" into my financial affairs for purposes of determining *inter alia* the *quantum* of the Respondent's claim against half of the alleged "*joint estate*".

4.4 It is a matter of logic and common sense that in the event of the Respondent's claim that we are married in community of property being dismissed, and the Court upholding the civil marriage which we entered into, as well as the Antenuptial Contract that we entered into, it would follow that such intended "*forensic investigation*" will be unnecessary.'

[14] Rule 33(4) of the Uniform Rules of Court reads as follows:

'If, in any pending action, it appears to the court *mero motu* that there is a question of law or fact which may conveniently be decided either before any evidence is led or separately from any other question, the court may make an order directing the disposal of such question in such manner as it may deem fit and may order that all further proceedings be stayed until

such question has been disposed of, and the court shall on the application of any party make such order unless it appears that the question cannot conveniently be decided separately.'

[15] There is an abundance of authorities on the notion of 'convenience' contemplated in r 33(4). I mention a few. In *Molotlegi and another v Mokwalase* [2010] 4 All SA 258 (SCA), Bosielo JA explained the notion thus:

'A court hearing an application for a separation of issues in terms of rule 33(4) has a duty to satisfy itself that the issues to be tried are clearly circumscribed to avoid any confusion. It follows that a court seized with such an application has a duty to carefully consider the application to determine whether it will facilitate the proper, convenient and expeditious disposal of litigation. The notion of convenience is much broader than mere facility or ease or expedience. Such a court should also take due cognisance of whether separation is appropriate and fair to all the parties. In addition, the court considering an application for separation is also obliged, in the interests of fairness, to consider the advantages and disadvantages which might flow from such separation. Where there is a likelihood that such separation might cause the other party some prejudice, the court may, in the exercise of its discretion, refuse to order separation. Crucially in deciding whether to grant the order or not the court has a discretion which must be exercised judiciously. The court cannot simply grant such an application because it is unopposed. I regret to say that the court below failed in this respect. See *Denel (Edms) Bpk v Vorster* 2004 (4) SA 481 (SCA) paragraph 3 [also reported at [2005] 4 BLLR 313 (SCA) – Ed].'

[16] In *Denel (Edms) Bpk v Vorster* 2004 (4) SA 481 (SCA) para 3, Nugent J said the following:

'[3] Before turning to the substance of the appeal, it is appropriate to make a few remarks about separating issues. Rule 33(4) of the Uniform Rules - which entitles a Court to try issues separately in appropriate circumstances – is aimed at facilitating the convenient and expeditious disposal of litigation. It should not be assumed that that result is always achieved by separating the issues. In many cases, once properly considered, the issues will be found to be inextricably linked, even though, at first sight, they might appear to be discrete. And even where the issues are discrete, the expeditious disposal of the litigation is often best served by ventilating all the issues at one hearing, particularly where there is more than one issue that might be readily dispositive of the matter. It is only after careful thought has been given to the anticipated course of the litigation as a whole that it will be possible properly to determine whether it is convenient to try an issue separately. But, where the trial Court is satisfied that it is proper to make such an order - and, in all cases, it must be so satisfied

before it does so - it is the duty of that Court to ensure that the issues to be tried are clearly circumscribed in its order so as to avoid confusion. The ambit of terms like the 'merits' and the '*quantum*' is often thought by all the parties to be self-evident at the outset of a trial, but, in my experience, it is only in the simplest of cases that the initial *consensus* survives. Both when making rulings in terms of Rule 33(4) and when issuing its orders, a trial Court should ensure that the issues are circumscribed with clarity and precision. It is a matter to which I shall return later in this judgment.'

[17] In *Consolidated News Agencies (Pty) Ltd (In Liquidation) v Mobile Telephone Networks (Pty) Ltd and another* 2010 (3) SA 382 (SCA), Navsa JA said this:

'[89] . . . Piecemeal litigation is not to be encouraged. Sometimes it is desirable to have a single issue decided separately, either by way of a stated case or otherwise. If a decision on a discrete issue disposes of a major part of a case, or will in some way lead to expedition, it might well be desirable to have that issue decided first.

[90] This court has warned that in many cases, once properly considered, issues initially thought to be discrete are found to be inextricably linked. And even where the issues are discrete, the expeditious disposal of the litigation is often best served by ventilating all the issues at one hearing. A trial court must be satisfied that it is convenient and proper to try an issue separately.

(Footnotes omitted.)

[18] In *Hotels, Inns and Resorts SA (Pty) Ltd v Underwriters at Lloyds and others* 1998 (4) SA 466 (C) para 10, Hlophe J (as he then was) said this:

'The Rule enjoins the Court to accede to the application and make the necessary order 'unless it appears that the questions cannot conveniently be decided separately'. It is incumbent on the applicant to satisfy the Court that the application be granted. Convenience must be demonstrated and the Court must have sufficient information to enable it to decide meaningfully upon the application. It has been held that 'convenient' connotes not only 'facility or ease or expedience', but also 'appropriateness' in the sense that the procedure would be convenient if, in all the circumstances of the case, it appeared to be fitting, and fair to the parties concerned. (*Minister of Agriculture v Tongaat Group Ltd* 1976 (2) SA 357 (D) at 363D; *Braaf v Fedgen Insurance Ltd* 1995 (3) SA 938 (C) at 940C.) The convenience of all concerned must be taken into consideration by the Court. Thus clearly where evidence is such that it would substantially overlap, no purpose would be served in granting the application to separate issues. While no doubt it might be convenient to the applicant to grant the application, surely it would be inconvenient to the other party and the Court. The hearing could be unduly protracted. It is, after all, in the interests of justice that litigation must

be finalised without inordinate delay. Such interests are better served by the disposal of the whole matter in one hearing (*Sharp v Victoria West Municipality* 1979 (3) SA 510 (NC) at 511H; *Minister of Agriculture v Tongaat Group Ltd* (supra at 362G).'

[19] In *CC v CM* 2014 (2) SA 430 (GJ), Mokgoatleng J said the following:

[25] In applying the provisions of rule 33(4), a court will consider whether questions of law or fact may be decided separately before others or whether the issues sought to be separated may be conveniently separated. In considering the question of convenience, a court will have regard to its convenience, as well as the convenience of the parties and the possible prejudice either party may suffer if separation is granted. The court is obliged to order separation unless it determines that the issues cannot be conveniently separated.

[26] I concur with Hancke J in *ABSA Bank v Botha* 1997 (3) SA 510 (O) at 513C, where in considering the predecessor to rule 33(4) he concluded that —

'the present rule differs from the previous one in the sense that the court should grant such an application unless it is inconvenient, *in other words the court is obliged to order separation except where the balance of convenience does not justify such separation*'. [My emphasis.]

[27] The purpose of rule 33(4) is to determine the fate of a plaintiff's claim (or one of the claims) without the costs of a full trial.

'An important consideration will be whether or not a preliminary hearing for the separation decision of specified issues will materially shorten the proceedings. The convenience must be demonstrated and sufficient information must be placed before the Court to enable it to exercise its discretion in a proper and meaningful way.'

See *Optimrops 1030 CC v First National Bank of Southern Africa Ltd* [2001] 2 All SA 24 (D) at 26f – g; *Sibeka and Another v Minister of Police and Others* 1984 (1) SA 792 (W) at 795H; *Denel (Edms) Bpk v Vorster* 2004 (4) SA 481 (SCA) ((2004) 25 ILJ 659; [2005] 4 BLLR 313) at 485A – B; *Rauff v Standard Bank Properties (A Division of Standard Bank of SA Ltd) and Another* 2002 (6) SA 693 (W) at 703.

(See *Erasmus Superior Court Practice* at B1 – 236.)

[28] 'The nature and extent of the advantages which would flow from the granting of the separation order sought in terms of rule 33(4) should be weighed up against the disadvantages. The court is obliged, to order the separation of issues unless it appears that the issues cannot conveniently be decided separately. Accordingly it is for the respondent to satisfy the court that the separation application should not be granted.'

[See *Erasmus Superior Court Practice* B1 – 235].

See *Braaf v Fedgen Insurance Ltd* 1995 (3) SA 938 (C) at 939. De Wet J pointed out in *Vermeulen v Phoenix Assurance Co Ltd* 1967 (2) SA 694 (O) at 697 'that there should

exist substantial grounds to justify the exercise of the power to grant separation of issues pursuant to Rule 33(4) . . .'. See *Minister of Agriculture v Tongaat Group Ltd* 1976 (2) SA 357 (D) at 363C – D; *Yeoman Credit Ltd v Latter* [1961] 2 All ER 294 (CA) at 299 per Harman LJ; and cf *Carl-Zeiss-Stiftung v Herbert Smith & Co and Another* [1968] 2 All ER 1002 (CA).'

[20] Applying these legal principles to the facts of the present case, I am not satisfied that it will be appropriate to grant the order separating the issues as contended by the applicant. The irretrievable breakdown of the marriage between the parties is common cause. I accept for present purposes, as contended by both parties, that the questions of parental rights and obligations, including the primary residence of the minor children and contact with them, as well as maintenance in respect of them and for the respondent must be considered as non-issues and will in all likelihood be settled between the parties.

[21] I also accept that the respondent's reliance on cases such as *CC v CM*, *Levy v Levy* 1991 (3) SA 614 (A) and *O v O* (6912/2013) [2017] ZAWCHC 136 (21 November 2017) does not advance her objection to the separation of issues which the applicant seeks. In *CC v CM*, the court ordered a separation of the issue whether the marital relationship had irretrievably broken down in a divorce action from the other issues of maintenance and redistribution of patrimonial benefits. The court held that 'the factor tilting the balance of convenience' was that the *consortium* between the parties had ceased nearly a decade ago (para 31). It further held that 'a separation order should be granted where a marriage in fact, substance and law appears to have irretrievably been broken down (para 39). It also held that the 'need decreed by public policy considerations to as soon as possible normalise the lives of the parties bound to a moribund broken-down marriage was highlighted in *Levy v Levy* 1991 (3) SA 614 (A), which militates against parties being shackled to a dead marriage'. A similar conclusion was reached in *O v O* paras 35-39. Relying on these authorities the respondent's counsel argues that a divorce action should be treated differently from other actions in which a separation of issues in terms of r 33(4) are sought. Convenience dictates, so he argues, that all the issues be tried at the same time in order to prevent the parties from 'being shackled to a dead marriage'. However, *CC v CM* and *O v O* are clearly distinguishable from the present case.

The question here is not whether a decree of divorce should be granted before the determination of the other issues in the divorce action at a later stage.

[22] The core issue *in casu* is which matrimonial property system regulates the marriage relationship between the parties. In terms of s 10(1) of the Recognition of Customary Marriages Act 120 of 1998 (the RCM Act) parties to a customary marriage are competent to enter into a civil marriage with each other provided the husband's other customary marriages (if any) are dissolved. If a couple who is married at customary law also enters into a civil marriage with each other, their marriage is in community of property unless they conclude an antenuptial contract. Section 10(2) of the RCM Act provides as follows:

'When a marriage is concluded as contemplated in subsection (1) the marriage is in community of property and of profit and loss unless such consequences are specifically excluded in an ante-nuptial contract which regulates the matrimonial property system of their marriage.'

[23] Professors Jacqueline Heaton and Hanneretha Kruger *South African Family Law* 4th Ed. At 236-7 argue that the RCM Act-

'[u]nfortunately does not adequately regulate the consequences of the interface between the couple's customary marriage and their subsequent civil marriage. . . .

The memorandum which accompanied the Recognition of Customary Marriages Bill states that clause 10(2) of the Bill (which reads like section 10(2) of the Act) "ensures that there is no implication that the customary marriage is superseded by a civil marriage when the parties have contracted both" and that the parties "are merely seen as converting from one set of consequences to another". However, the Act does not clearly set out the consequences of the "conversion". Does the "conversion" mean that the customary marriage continues to exist with the result that the spouses are simultaneously married according to two systems of law? If so, how are those instances when there are fundamental differences between the two systems to be handled? For example, what if a couple entered into a customary marriage in community of property, while their subsequent civil marriage is subject to the accrual system? In these circumstances the patrimonial consequences of the two types of marriages differ fundamentally. If one type of marriage is not to be regarded as subservient to the other, the recognition ought simultaneously to be given to both systems, but it is legally impossible to do so in a case such as this.

It is submitted that careful reading of the wording of section 10(2) reveals that, in the above example, community of property operates until the date of the civil marriage and that section

10(2) applies as from that date. This is so for the following reason: section 10 (2) prescribes the matrimonial property consequences in “the marriage” “[w]hen a marriage is concluded as contemplated in subsection (1)”. Section 10(1) governs the capacity of spouses who are married at customary law to “contract a marriage with each other under the Marriage Act”, that is, their capacity to conclude a civil marriage. Section 10(2) therefore only deals with the consequences of the civil marriage. Thus, in the above example, all assets acquired before the civil marriage are governed by the rules regarding community of property, while all assets acquired as from the date of the civil marriage are the spouses’ separate assets subject to accrual sharing upon dissolution of the civil marriage. Adopting the same reasoning in respect of the other consequences of the “conversion” of a customary marriage into a civil marriage, one concludes that the rules regulating the customary marriage and its consequences operate until the civil marriage is entered into and thereafter the rules regulating the civil marriage operate. In other words, the consequences of the customary marriage come to an end at the date of the civil marriage, but the termination is not retroactive.’

(Footnotes omitted.)

[24] It is trite that when a court grants an order of divorce any community of property previously existing between the spouses automatically ends, even though no order for the division of the estate is made. The community of property previously existing between the spouses then requires an equal division of a joint estate after payment of liabilities. (*Joseph v Joseph* 1951 (3) SA 776(N) at 778-9; *Meyer v Thompson* NO 1971 (3) SA 376 (D) at 377F.) The parties can divide the estate by agreement or they can appoint a liquidator to do so. Where they do not agree, the duty devolves upon the court to divide the estate, and the court has the power to appoint a liquidator to effect the division on its behalf. (*Gillingham v Gillingham* 1904 TS 609 Innes CJ said at 613.)

[25] In assessing the quantum to be awarded in a claim for a contribution towards costs in a matrimonial suit to enable a party seeking the contribution to present her case adequately before the court, regard is had to the circumstances of the case, the financial position of the parties and the particular issues involved in the pending litigation. In *Carey v Carey* 1999 (3) SA 615 (C) it was held that:

‘ . . . the applicant was entitled to a contribution towards her costs which would ensure equality of arms in the divorce action against the respondent. The applicant would not be

able to present her case fairly unless she was empowered to investigate the respondent's financial affairs through a forensic accountant appointed by her.'

[26] The issues relating to the validity of the civil marriage and antenuptial contract on the one hand and the applicant's financial affairs on the other may well be inextricably linked, even though, at first sight they appeared to be discrete. Even if the trial court in due course may find that the civil marriage and antenuptial contract concluded between the parties are valid and enforceable, it may also find, as argued by professors Heaton and Kruger persuasively and logically, that all assets acquired before the date of the civil marriage are governed by the rules regarding community of property, while all assets acquired as from the date of the civil marriage are the spouses' separate assets.

[27] After careful thought has been given to the anticipated course of the litigation between the parties as a whole, I am not satisfied that the separation of issues which the applicant seeks will facilitate the proper, convenient and expeditious disposal of the litigation between them and that it will be appropriate and fair to both of them. The expeditious disposal of the litigation between them will, in my view, rather be best served by ventilating all the issues at one hearing. The respondent may well not be able to present her case fairly unless she is empowered to investigate the applicant's financial affairs through a forensic accountant appointed by her. Whether the respondent is entitled to a contribution from the applicant towards the costs of such intended forensic investigation, and the amount of any such contribution, are matters not for decision now.

[28] In the result the following order is made:

The application is dismissed with costs, including those of two counsel.

P.A. MEYER
JUDGE OF THE HIGH COURT

Judgment:	18 February 2021
Heard:	27 October 2020
Applicant's Counsel:	Adv PA van Niekerk SC
Instructed by:	KS Dinaka Attorneys, Arcadia, Pretoria C/o Hinda Mendelow Attorney Inc., Orchards
Respondent's Counsel:	Adv TJ Machaba SC (assisted by Adv T Eichner-Visser)
Instructed by:	Jerry Nkeli Associates Inc., Rosebank