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**IN THE HIGH COURT OF SOUTH AFRICA
WESTERN CAPE HIGH COURT, CAPE TOWN**

Case no: 17786/2024

In the matter between:

DR I[...] J[...] (born S[...])

Applicant / Defendant

and

T[...] I[...] J[...]

Respondent / Plaintiff

Heard on: 5 May 2025

Ordered on: 29 August 2025

Reasons Delivered on: 29 September 2025 (by electronic mail to the parties)

REASONS FOR THE ORDER ISSUED ON 29 AUGUST 2025

KHOZA, AJ

Introduction

[1] On 29 August 2025, I dismissed the defendant's exception, directed her to deliver a plea within 10 days, and ordered that the costs of the exception be costs in the cause. These are the reasons for that order.

Background

[2] This matter concerns an exception raised by the defendant to the plaintiff's particulars of claim in divorce proceedings. The defendant contended that the particulars of claim lack the necessary averments to sustain a cause of action under the Divorce Act 70 of 1979, as amended by the Divorce Amendment Act 1 of 2024 (**"the Amendment Act"**).

[3] The essential facts, as pleaded and accepted for purposes of the exception, are not in dispute. The parties were married in accordance with Islamic rites on 25 January 2009. That marriage was terminated by the plaintiff by pronouncing a *talaq* in accordance with Islamic tenets. He thereafter instituted proceedings under the Divorce Act in August 2024.

[4] The Amendment Act came into operation on 14 May 2024. Section 6 of the Amendment Act provides:

This Act applies to all subsisting Muslim marriages, including a Muslim marriage:

- (a) which was terminated or dissolved in accordance with the tenets of Islam and where legal proceedings for the dissolution of the said Muslim marriage in terms of the Divorce Act 1970 (Act No. 70 of 1979) have been instituted but not yet finalised; and
- (b) Which subsisted as at 15 December 2014.

[5] The defendant contends that, properly construed, section 6 applies only to proceedings that were already instituted before the commencement of the Amendment Act on 14 May 2024. Because the plaintiff issued summons in August 2024, she submits that his claim falls outside the scope of the statute and is bad in law.

Test on exception

[6] The test on exception is exacting. The question is whether, on all possible readings of the facts pleaded, no cause of action can be made out. It is for the excipient to satisfy the court that the legal conclusion for which the plaintiff contends cannot be supported on any reasonable interpretation of the pleaded facts (*Trustees for the Time Being of the Children's Resource Centre Trust and Others v Pioneer Food (Pty) Ltd and Others* [2012] ZASCA 182; 2013 (2) SA 213 (SCA) para 36).

[7] In *Natal Joint Municipal Pension Fund v Endumeni Municipality* 2012 (4) SA 593 (SCA), Wallis JA emphasised that statutory interpretation requires a unitary exercise: text, context and purpose must all be considered. It is not a rigid reliance on textual formalism, but a contextual and purposive search for meaning.

[8] The Constitutional Court in *University of Johannesburg v Auckland Park Theological Seminary* 2021 (6) SA 1 (CC) reaffirmed that courts must adopt an interpretation that is sensible and consistent with constitutional values, rather than one that is unduly technical, unjust or undermines the statute's evidence purpose.

[9] The interpretive question in this matter is whether section 6 of the Amendment Act should be read as incorporating the temporal limitation contained in the Constitutional Court's interim order in *Women's Legal Centre Trust v President of the Republic of South Africa and Others* 2022 (5) SA 323 (CC). The defendant contends that it should, with the result that proceedings brought after the commencement of the Amendment Act on 14 May 2024 fall outside its ambit. The plaintiff disputes that construction.

[10] It follows that, in exception proceedings, the defendant must demonstrate that, on every conceivable interpretation of section 6, the plaintiff's particulars of claim are unsustainable. If there is even one interpretation that coheres with both the text and purpose of the statute, the exception cannot succeed.

Analysis and finding

[11] The plaintiff pleads facts that track the three criteria in section 6: the marriage subsisted on 15 December 2014; it was later dissolved in accordance with Islamic

tenets; and proceedings for its dissolution under the Divorce Act have been instituted and are not yet finalised.

[12] The defendant's interpretation seeks to import a temporal limitation not found in the language of the provision, namely that proceedings had to be pending as at 14 May 2024. I am not persuaded that this construction is correct. Nothing in the text supports such a proposition. On the *Endumeni* approach, words cannot be stretched to bear a meaning they cannot reasonably sustain.

[13] The defendant further contends that section 6 must be read as incorporating the temporal limitation contained in the Constitutional Court's interim order in *Women's Legal Centre Trust*. That order afforded interim relief pending legislation and confined its scope to Muslim marriages that subsisted or had been terminated as at 15 December 2014 and in respect of which legal proceedings had already been instituted and not finally determined. The defendant suggests that Parliament intended section 6 to replicate that cut-off.

[14] This implied contention is misplaced. The interim order was temporary, designed only to bridge the gap until Parliament acted. Section 6 is the legislative response. In enacting it, Parliament deliberately omitted the "already instituted" requirement, thereby extending the protection more broadly. Its scope now covers all Muslim marriages that subsisted on 15 December 2014 and were subsequently terminated in accordance with Islamic tenets, provided proceedings under the Divorce Act have been instituted and remain pending. The omission of the temporal limitation is both significant and deliberate.

[15] Nor is the defendant's construction sustainable when viewed purposively. The Amendment Act was enacted to cure the unfair discrimination identified in *Women's Legal Centre Trust*, namely the non-recognition of Muslim marriages and its impact on Muslim women and children. Its remedial aim is to extend protection to precisely those spouses who had previously been excluded.

[16] To read into section 6, a requirement that proceedings must already have been instituted before 14 May 2024 would be to exclude the very class of persons

whom the legislature sought to protect: Muslim spouses whose marriages subsisted at the constitutional cut-off date but who had not yet instituted proceedings. Such an interpretation is, in the language of *Auckland Park*, “untenable” because it undermines both the text and the remedial purpose of the statute.

[17] This distinction is decisive. The defendant’s interpretation effectively collapses the two regimes into one, treating the interim order and the subsequent legislation as if they imposed the same procedural restriction. That approach cannot be correct. The Constitutional Court’s interim relief was temporary and necessarily limited. Parliament, in crafting section 6, adopted a broader and more durable framework.

[18] In the absence of express wording to the contrary, this Court cannot import into section 6 the “already instituted” requirement that characterised the interim order. To do so would conflate two distinct legal instruments and disregard the legislature’s deliberate choice to broaden the scope of protection.

[19] It is well established that remedial legislation must be interpreted generously and purposively. As the Constitutional Court reminded us in *Auckland Park*, a construction that undermines a statute’s purpose or yields unjust or insensible results cannot be sustained. To hold that a spouse whose marriage satisfied all of the textual requirements of section 6, but who instituted proceedings after 14 May 2024, is excluded from its scope would produce precisely such an insensible result.

[20] On the plaintiff’s pleaded facts, his marriage subsisted at the constitutional cut-off date of 15 December 2014, it was subsequently terminated in accordance with Islamic tenets, and he has instituted divorce proceedings which are not yet finalised. On any reasonable interpretation of section 6, those averments disclose a cause of action.

[21] It follows that the defendant has not shown that, on every conceivable interpretation of the statute, the plaintiff’s claim is unsustainable. To the contrary, his interpretation is both textually supportable and consonant with the evident remedial purpose of the Amendment Act. The exception must therefore fail.

Conclusion

[22] The defendant's exception rests on importing into section 6 of the Divorce Amendment Act a temporal limitation not found in its text. That construction is inconsistent with the statute's remedial purpose and with the interpretive principles articulated in *Endumeni* and *Auckland Park*.

[23] The plaintiff's pleaded facts, if proved, track the statutory requirements: his marriage subsisted on 15 December 2014, it was later terminated in accordance with Islamic tenets, and proceedings under the Divorce Act have since been instituted and are not yet finalised. On those averments, a cause of action is disclosed.

[24] The defendant has therefore failed to demonstrate that, on every conceivable interpretation of section 6, the particulars of claim are bad in law. To the contrary, the plaintiff's construction is both plausible and consonant with the statute's text and purpose.

[25] For these reasons, and as already ordered on 29 August 2025, the exception is dismissed, and the defendant is directed to file her plea. The costs of the exception were made costs in the cause.

GSS KHOZA
ACTING JUDGE OF THE HIGH COURT

APPEARANCES:

For the Applicant/Defendant:

Adv A E Heese

Instructed by

Riley Incorporated

For the Respondent/Plaintiff

Self represented
