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**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

CASE NO: 34727/2022

(1) REPORTABLE: **NO**

(2) OF INTEREST TO OTHER JUDGES: **NO**

(3) REVISED.

(4) Date: 10 February 2026

SIGNATURE

In the matter between:

J[...] J[...] G[...]

Applicant

(Identity Number: 7[...])

And

C[...] G[...]

Respondent

JUDGMENT

NYATHI J

A. Introduction

- [1] This is an opposed Application in terms of Section 33(4) of the Uniform Rules of Court in which the Applicant seeks a separation of issues in a pending divorce action. More particularly, to separate the irretrievable breakdown of the marriage and parental rights and responsibilities in respect of the children born of the marriage from other issues in dispute between the parties to wit spousal maintenance and the calculation of the accrual.
- [2] The parties are *ad idem* that the marriage relationship between them has irretrievably broken down and they both want a divorce.
- [3] The parties are furthermore in agreement that the primary care and residence of their 12-year-old son should be awarded to the Applicant and that the Respondent should have reasonable contact with the minor child. This has been the status quo since separation in March 2022.
- [4] This is also in accordance with the Family Advocate's recommendations contained in a report dated 23 January 2023.

B. Background

[5] A brief background of the matter is that:

- 5.1 The parties were married to each other on 02 February 2002 out of community of property with the accrual system.
- 5.2 Two children were born of the marriage between the parties of which the youngest child is still a minor, namely K. G[...] who was born on 29 April 2013. The 18 year old child is at University and is a dependant.
- 5.3 The Respondent vacated the erstwhile matrimonial home during or about March 2022.
- 5.4 The children have been in the Applicant's primary care since separation.
- 5.5 The Respondent instituted divorce proceedings against the Applicant on 22 June 2022.

C. Respondent's opposition:

[6] The Respondent has set out her opposition to the application in her Opposing Affidavit under the heading "CONCLUSION" in the following terms:

"...54. I submit that the application for separation of issues should not be granted as it would prejudice me financially and enhance parental alienation;

55. The separation of issue does not accord with the clean break principle; and

56. I submit that my opposition to the separation of issues would not prejudice the Applicant/Defendant."

- [7] It is worth noting that the Respondent has filed an application for joinder of 2 Trusts and a Trustee of both Trusts as well as a corporate entity. The Respondent pursues this joinder application for the purpose of ascertaining the true value of the accrual estate. The Applicant opposes the joinder application.
- [8] The divorce could not proceed while the separation and the joinder applications were still pending.¹

D. The legal position on separation applications in divorce proceedings

- [9] A court will allow for the separation of issues in a legal proceeding, as per Rule 33(4) of the Uniform Rules of Court, when it is satisfied that such separation will lead to a more convenient, expeditious, and fair resolution of the case.
- [10] The exercise of the court's discretion under Rule 33(4) hinges on an assessment of 'convenience': *i.e.* whether the issues are sufficiently discrete to permit separate adjudication without overlapping evidence. The court must be satisfied that such a bifurcation will materially expedite the proceedings and will not result in undue prejudice or procedural 'stultification' through fragmented appeals.
- [11] In matters involving minor and/or dependent children, as in this case, the court is bound by the peremptory requirements of the Divorce Act² to safeguard their best interests before granting any relief. Ultimately, the separation must facilitate the efficient administration of justice without undermining the integrity of the adversarial process."

E. Discussion

¹ Para 37 of Respondent's Opposing Affidavit.

² Section 6 of the Divorce Act 70 of 1979.

[12] Mr. Geoffreys made the following submissions on behalf of the Respondent: He referred to the matter of M.V v E.V (20263/23) [2023] ZAWCHC 330 in which the plaintiff applied for a separate decree of divorce, independent of other pending matrimonial issues. The applicant, facing serious health challenges, sought to expedite the divorce process, arguing that ongoing proceedings exacerbated his condition. The respondent, however, opposed this on grounds of abuse of process and lack of urgency, amongst others. The court was unpersuaded and dismissed the application on the basis that the separation as sought was not “convenient” to all parties (including the Court) – this is the test for a separation of issues in terms of Rule 33(4) of the High Court Rules.³

[13] Mr. Geoffreys further referred the court to the matter of A.K v R.N (D6036/2023) [2025] ZAKZDHC 15 (30 April 2025), wherein the husband (applicant) sought to separate the decree of divorce from the proprietary consequences of the marriage under Uniform Rule 33(4). The applicant expressed a desire to “*get on with his life*” as he had commenced a new relationship, while the parties’ divorce action remained pending. The respondent (wife) opposed this application on several grounds, including her primary contention that the marriage had not irretrievably broken down and could potentially be saved “*by way of counselling or negotiations.*”⁴ The court in this instance too, was unmoved and dismissed the separation application.

[14] It was submitted that the Applicant has as of February 2025, ceased to pay spousal maintenance including the Respondent’s cellphone account etc. This

³ “Wait for your turn! – Separation of Issues in Divorce Matters | Rule 33(4) is not a tool for queue-jumping.” – Article by **Vermeulen Attorneys** referred to by the writer with approval.

⁴ See discussion article: “Shackled or Separated? High Court Dismisses Rule 33(4) Application in A.K v R.N (D6036/2023) [2025] ZAKZDHC 15 (30 April 2025)” – by Bertus Preller.

gave rise to a dispute with regards to the maintenance for the children as well as their transportation costs to and from the Plaintiff/Respondent.⁵

[15] In further amplification thereto, there is a dispute with regards to rehabilitative maintenance and the calculation of the accrual, which matter has not been determined to be separated.⁶

F. Conclusion

[16] Separation is contingent on proving that the issues are not inextricably linked and that a separate hearing is 'convenient' for both the court and the parties. This has not been shown by the Applicant.

[17] The key considerations weighing on the court in considering a separation application pending a divorce are:

⁵ Para 31 Respondent's Opposing Affidavit.

⁶ Para 32 of Respondent's Opposing Affidavit quoted verbatim.

- 17.1 Efficiency: Will a separation materially shorten the trial duration? The answer here is obviously no. the contrary may likely unfold.
- 17.2 Prejudice: Does it unfairly disadvantage a party or risk conflicting factual findings? With the present dispute pertaining to maintenance, a separation order will lead to an early divorce, with the Respondent now losing the option of a Rule 43 interim relief.
- 17.3 Children's Welfare: Does the separation satisfy the court's duty to protect minor children? It seems not.
- 17.4 Finality: What is the risk of an interlocutory appeal prolonging the litigation?" A separation order would not guarantee finality.

[18] The Applicant has not discharged the convenience test which is the primary test for separation under Rule 33(4). The order may well be to Applicant's convenience, but not that of the Respondent and the Court.

[19] As far as costs are concerned, the standard rule obtains, the successful litigant is entitled to be recompensed for legal costs incurred.

[20] Accordingly, the following order is made:

The application is dismissed, The Applicant is ordered to pay the Respondent's party-and-party costs at Scale C in accordance with Uniform Rule 67A.

J.S. NYATHI
Judge of the High Court
Gauteng Division, Pretoria

Date of hearing: 09 June 2025

Date of Judgment: 10 February 2026

On behalf of the Applicant: Mr. M. Haskins SC

Applicant's attorneys: DDKK Attorneys Inc. C/O Van Der Merwe Du Toit Inc., Pretoria

On behalf of the Respondent: Mr. T.C. Geoffreys (Attorney with right of appearance).

Respondent's attorneys: Colin Geoffreys Inc.

Delivery: This judgment was handed down electronically by circulation to the parties' legal representatives by email and uploaded on the CaseLines electronic platform. The date for hand-down is deemed to be 10 February 2026.