REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, JOHANNESBURG

(1)	**NOT** REPORTABLE
(2)	**NOT** OF INTEREST TO OTHER JUDGES

CASE NO: 2024-120971

DATE: 23 FEBRUARY 2026

In the matter between:

GAME BREEDING AFRICA (PTY) LIMITED	First Plaintiff
DANIEL CHRISTOFFEL LAURENS PONT	Second Plaintiff
JOHANNES JACOBUS PICKARD	Third Plaintiff

and

OBARO FINANCIAL SERVICES (PTY) LIMITED	First Defendant
LAND & AGRICULTURAL DEVELOPMENT BANK OF SOUTH AFRICA	Second Defendant

Coram:	Adams J
Heard on:	20 February 2026 – 'virtually' as a videoconference on *Microsoft Teams*
Delivered on:	23 February 2026 – This judgment was handed down electronically by circulation to the parties' representatives by email, by being uploaded to *CaseLines* and by release to *SAFLII*. The date and time for hand-down is deemed to be 10:30 on 23 February 2026.

Summary: Civil procedure – separation of issues in terms of rule 33(4) – aimed at facilitating the convenient and expeditious disposal of litigation – not to be granted if issues are found to be inextricably linked – separated issues must be discrete in order for separation application to succeed – convenience will be constituted by the possibility of finalising an issue which may be dispositive of a portion of the matter – separation application granted –
Uniform Rules of Court – rule 33(4).

ORDER

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(1) The second defendant's application in terms of Uniform Rule of Court 33(4) for a separation of the issues succeeds and it be and is hereby granted, with costs.

(2) In terms of Uniform Rule of Court 33(4), the adjudication of the following issue ('the separated issue') be and is hereby separated from any and/or all other disputes between the parties:

'(a) Whether, at the relevant time, arising from a suite of agreements concluded between the first defendant and the second defendant during 2013 and 2014, there was in existence and extant a valid and enforceable Cession in terms of which the first defendant had ceded and delegated to the second defendant any and/or all its (first defendant's) right, title and interest in and to the first plaintiff's indebtedness to the first defendant.

(b) And whether the plaintiffs, who were not parties to the agreements concluded between first and the second defendants, can raise as a defence against the claims instituted by the second defendant against the plaintiffs, based upon the agreements, that the second defendant has not acquired the underlying rights of action against the plaintiffs and the related security, if there is no dispute – and in fact consensus between the defendants, who were the only contracting parties to the agreements, that all rights of action to recover the debts, and related security, were successfully and effectively transferred from the first defendant to the second defendant and vest in the second defendant.'

(3) It be and is hereby directed that the separated issue shall separately proceed to trial first and before any and/or all of the remaining disputes between the parties.

(4) The adjudication of the remaining disputes between the parties and the hearing relating thereto are postponed *sine die*.

(5) The first, second and third plaintiffs, jointly and severally, the one paying the other to be absolved, shall pay the second defendant's costs of the

separation application, which costs shall include the costs consequent upon the employment of two Counsel, one being Senior Counsel, on scale 'C' of the tariff applicable in terms of the Uniform Rules of Court.

JUDGMENT

Adams J:

[1]. I shall refer to the parties as referred to in the main defended action, in which the first, second and third plaintiffs seek declaratory relief against the first and the second defendants. The relief is sought in relation to a Cession ('the Cession') in terms of which the first defendant ('Obaro') ceded to the second defendant ('the Land Bank') its right, title and interest in and to Term Loan Agreements concluded during 2018 and 2019 between the first plaintiff ('Game Breeding Africa') and Obaro. In terms of and pursuant to the Term Loan Agreements, Obaro had lent and advanced to Game Breeding Africa the total sum of R3 233 944.06.

[2]. The Land Bank applies in terms of Uniform Rule of Court 33(4) for an order for the separation from any and/or all other disputes between the parties of a clearly defined issue relating to its *locus standi in iudicio* to claim from the plaintiffs, on the basis of the Cession, the outstanding balance payable by the plaintiffs in terms of the Term Loan Agreements and the sureties signed by the second and the third plaintiffs in favour of Obaro. The Land Bank also seeks an order for the postponement of the hearing in regard to the remaining issues, including the prayers as prayed for in the particulars of claim, until judgment is granted on the separated issue.

[3]. In its notice of motion, the Land Bank has formulated the 'separated issue' as follows: -

'Whether the plaintiffs, who were not parties to the agreements concluded between first and the second defendants, can raise as a defence against the claims instituted by the second defendant against the plaintiffs, based upon the agreements, that the second defendant has not acquired the underlying rights of action against the plaintiffs and the related security, if there is no dispute – and in fact consensus between the defendants, who were the only contracting parties to the agreements, that all rights of action to recover the debts, and related security, were successfully and effectively transferred from the first defendant to the second defendant and vest in the second defendant.'

[4]. In my view, the separated issue corresponds largely with the disputed allegations made by the plaintiffs in paragraphs 21, 22, 23, 24, 25, 26, 27, 28 and 29 of the plaintiff's particulars of claim. In essence, what the Land Bank wishes to have adjudicated separately is the dispute relating to the Cession of Obaro's right, title and interest in and to the Term Loan Agreements. In that regard, the case on behalf of the plaintiffs is a denial that there was a valid cession of the right, title and interest in and to the debts pursuant to the credit agreements concluded between Game Breeding Africa and Obaro. The plaintiffs allege, *nay* submit that the suit of agreements relied upon by the first and the second defendants do not contain a cession of rights.

[5]. The plaintiffs contend that the debts in favour of Obaro did not exist on date of the alleged cession during December 2013 or during April 2014, when the alleged cession and delegation took place. The indebtedness arose only afterwards, so the contention continues, and could not have been ceded at the time of the alleged cession. The plaintiffs accordingly deny that any transfer of rights in and to the debts allegedly owing by the plaintiffs to Obaro was in fact ceded to the Land Bank.

[6]. The plaintiffs, however, accept that a cession to the Land Bank was effected of the securities in the form of covering mortgage bonds in favour of Obaro over the immovable property of Game Breeding Africa. The plaintiffs contend that, without a cession of the underlying debt having been effected, the

mortgage bonds are of no force and effect, grants no security without an ancillary indebtedness to the cessionary (the Land Bank) and stands to be set aside.

[7]. From the foregoing it is clear that the validity of the Cession is an issue central to the disputes between the parties. Importantly, it is an issue which is separate and distinct from all of the other disputes between the parties.

[8]. The application is opposed by the plaintiffs, who allege that the application for the separation of issues is 'ill-conceived'. A separation of the issues will not, so the contention goes, expedite the finalisation of the matter, but will cause an unnecessary delay, as well as wasted costs, since the point lo be determined as to whether the Land Bank is a creditor of the plaintiffs, will require the leading of oral evidence. Save for the rather bald aforegoing contention, the plaintiffs offer very little resistance to the separation application.

[9]. The plaintiffs also allege in their answering affidavit in the interlocutory application that the Land Bank is required to establish its *locus standi*, which it must prove by providing the Court with admissible primary facts. This argument does not, in my view, assist in deciding the separation issue. It goes to the merits of the separated issue. If anything, it lends further support for the separation application in that it demonstrates the complexity, from a legal point of view of the separated issue, making it convenient to separate the issue.

[10]. The question which needs to be decided in this application is simply whether it is convenient to separate the issues as applied for by the Land Bank. In deciding that question, cognizance should be taken of the issues on the pleadings and whether those issues are inextricably linked. Put another way, the enquiry relates to whether the issues which the defendant requires to be separated out are discrete and separate from all other issues.

[11]. Rule 33(4) 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 questions cannot conveniently be decided separately.'

[12]. The process of dealing with a matter under rule 33(4) was clarified in *Denel (Edms) Bpk v Vorster* 2004 (4) SA 481 (SCA) as follows:

'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.'

[13]. In order to decide whether it is convenient to separate the issues *in casu* it is necessary to assess what the issues are between the parties. I have already alluded to those issues *supra*. It is unnecessary to rehash those issues.

[14]. It bears emphasising though that pursuant to Term Loan Agreements concluded between Game Breeding Africa and Obaro during 2018 and 2019, Obaro lent and advanced to Game Breeding Africa the total sum of R3 233 944.06. The second and the third plaintiffs have bound themselves as sureties and co-principal debtors unto and in favour of Obaro in respect of Game Breeding Africa's indebtedness to it. The said indebtedness was also secured by continuous covering mortgage bonds in favour of Obaro over the immovable property of Game Breeding Africa, which securities were ceded to the Land Bank.

[15]. The Land Bank alleges that Obaro has ceded and delegated to it (the Land Bank) its right, title and interest to Game Breeding Africa's indebtedness to Obaro. The plaintiffs contend that the alleged Cession, insofar as the Land Bank would be able to prove same, is invalid and unenforceable. The plaintiffs therefore pray for an order making a declaration to that effect. Additionally, an order is sought to the effect that the indebtedness to Obaro, which, according to the plaintiffs had not been transferred to the Land Bank, has become transferred.

[16]. Game Breeding Africa has not, from 8 September 2021 to date, made any payments to Obaro or to the Land Bank in respect of any of the debts referred to *supra*. According to the Land Bank, the balance outstanding and payable by Game Breeding Africa, presently amounts to approximately R7 million.

[17]. From the pleadings, it is clear that the issues in dispute between the parties are: - (a) Importantly and crucially, the existence, the validity and the enforceability of the Cession; (b) Whether Game Breeding Africa's indebtedness to either the Land Bank or Obaro has become prescribed; and (c) The amount of the indebtedness.

[18]. During the hearing of the separation application before me on 20 February 2026, Mr Janse Van Rensburg, who appeared on behalf of the plaintiffs, urged me to find that second defendant's case on the separated issue has very little prospect of success. The suit of agreements relied upon by the Land Bank to prove its *locus standi in iudicio*, so the argument went, is wholly insufficient to establish its *locus standi*. In that regard, I was referred to a number of cases in support of this contention by the plaintiffs, such as *Waldeck NO and Others v Land and Agricultural Development Bank of South Africa*[1] and *Trakman NO v The Master of the High Court of South Africa, Johannesburg*[2],

[1] *Waldeck NO and Others v Land and Agricultural Development Bank of South Africa* (4013/18) [2019] ZAMPMHC 4 (14 October 2019).

[2] *Trakman NO v The Master of the High Court of South Africa, Johannesburg* 2021 JDR 1983 (GJ).

[19]. The plaintiffs contend that the agreement relied upon by the Land Bank does not contain a cession of rights and therefore does not support the Land Bank's contention that it is vested with the right of action to institute proceedings against the plaintiffs. In the circumstances, so the contention continues, a separation of the issues as prayed for by the Land Bank will only result in wasted costs and an unnecessary delay of the main action. This, in turn, so the argument is concluded, means that it is not convenient to separate the issues.

[20]. For their part, Mr Van der Merwe SC, who appeared for the second defendant with Ms Van der Merwe, with reference to cases such as *Hillock and Another v Hilsage Investments (Pty) Ltd*[3], *First National Bank of SA Ltd v Lynn NO and Others*[4], *The Land and Agricultural Development Bank of South Africa v Du Plessis NO*[5] and *Vantage Goldfields SA (Pty) Ltd & Another v Arqomanzi (Pty) Ltd and Others*[6], endeavoured to persuade me to the contrary.

[21]. These arguments, whilst they do not take the issue of the separation application any further, certainly demonstrate the complexity – from a legal point of view – of the separated issue. Moreover, if nothing else, the opposing contentions support a conclusion that the separated issue can and should be decided separately from other disputes between the parties. It clearly would be convenient to do so. The convenience lies therein that, if the plaintiffs are found to be correct on this aspect of the matter, that would certainly be the end of the second defendant's case in this application and in any intended proceedings to claim the outstanding balance of the loan agreements from the plaintiff. In that scenario, a part of the matter would have been disposed off expeditiously and without the need to canvass the other issues in dispute between the parties.

[3] *Hillock and Another v Hilsage Investments (Pty) Ltd* 1975 (1) SA 508 (A).

[4] *First National Bank of SA Ltd v Lynn NO and Others* 1996 (2) SA 339 (A).

[5] *The Land and Agricultural Development Bank of South Africa v Du Plessis NO* 2020 JDR 1670 (FB).

[6] *Vantage Goldfields SA (Pty) Ltd & Another v Arqomanzi (Pty) Ltd and Others* (733/2022) [2023] ZASCA 106; [2023] 3 All SA 667 (SCA) (27 June 2023)

[22]. I therefore conclude that it would be convenient to separate the issues as prayed for by the second respondent. The second defendant's application for a separation of the issues should therefore be granted.

Costs

[23]. The general rule in matters of costs is that the successful party should be given his costs, and this rule should not be departed from except where there are good grounds for doing so, such as misconduct on the part of the successful party or other exceptional circumstances. See: *Myers v Abramson*, 1951(3) SA 438 (C) at 455.

[24]. I can think of no reason why I should deviate from this general rule. What is more, is that, in my view, the plaintiffs did not demonstrate any grounds, let alone any valid grounds, for opposing the separation application.

[25]. I am therefore of the view that the plaintiffs should pay the second respondent's costs of the application.

Order

Accordingly, I make the following order: -

(1) The second defendant's application in terms of Uniform Rule of Court 33(4) for a separation of the issues succeeds and it be and is hereby granted, with costs.

(2) In terms of Uniform Rule of Court 33(4), the adjudication of the following issue ('the separated issue') be and is hereby separated from any and/or all other disputes between the parties:

'(a) Whether, at the relevant time, arising from a suite of agreements concluded between the first defendant and the second defendant during 2013 and 2014, there was in existence and extant a valid and enforceable Cession in terms of which the first defendant had ceded and delegated to the second defendant any and/or all its (first defendant's) right, title and interest in and to the first plaintiffs' indebtedness to the first defendant.

(b) And whether the plaintiffs, who were not parties to the agreements concluded between first and the second defendants, can raise as a defence against the claims instituted by the second defendant against the plaintiffs, based upon the agreements, that the second defendant has not acquired the underlying rights of action against the plaintiffs and the related security, if there is no dispute – and in fact consensus between the defendants, who were the only contracting parties to the agreements, that all rights of action to recover the debts, and related security, were successfully and effectively transferred from the first defendant to the second defendant and vest in the second defendant.'

(3) It be and is hereby directed that the separated issue shall separately proceed to trial first and before any and/or all of the remaining disputes between the parties.

(4) The adjudication of the remaining disputes between the parties and the hearing relating thereto are postponed *sine die*.

(5) The first, second and third plaintiffs, jointly and severally, the one paying the other to be absolved, shall pay the second defendant's costs of the separation application, which costs shall include the costs consequent upon the employment of two Counsel, one being Senior Counsel, on scale 'C' of the tariff applicable in terms of the Uniform Rules of Court.

[redacted]

L R ADAMS
Judge of the High Court
Gauteng Local Division, Johannesburg

HEARD ON:	20 February 2026 – 'Virtually'
JUDGMENT DATE:	23 February 2026 – handed down electronically.
FOR THE PLAINTIFFS / RESPONDENTS:	F G Janse Van Rensburg
INSTRUCTED BY:	Eugene Geyser Attorneys, Viljoenskroon
FOR THE SECOND DEFENDANT / APPLICANT:	M P Van der Merwe SC, together with (Ms) A Van der Merwe
INSTRUCTED BY:	Leahy Attorneys Incorporated, Sandton