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**REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG**

Case Number: 2024-088051

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
(3)	REVISED: YES/NO
DATE	SIGNATURE

In the matter between:

S[...], J[...] V[...] K[...] (born A[...])

Applicant/Defendant

and

**S[...], W[...]
(I.D. NO: 7[...])**

Respondent/Plaintiff

JUDGMENT

VAN ASWEGEN AJ

INTRODUCTION:

[1] The Applicant's postponement application in this divorce action in essence deals with trial readiness.

[2] Trial readiness is vital to promote efficient, economical, and just legal processes. It helps cases begin promptly, continue without interruptions, and prevents needless delays or sudden removal from the court schedule. Trial

readiness enables issues to be narrowed down, evidence to be managed, and expert witnesses to be secured - factors that greatly enhance the chance of a positive result and support early settlements.

[3] Some focal elements of trial readiness include:

[3.1] court efficiency - being fully prepared enables the case to start promptly and proceed smoothly without delays.

[3.2] cost management - careful planning helps avoid costly last-minute efforts and unnecessary procedural setbacks, leading to lower legal expenses for everyone involved.

[3.3] case success - comprehensive preparation gives lawyers and advocates the tools to present evidence clearly, anticipate counterarguments, and achieve more favourable results.

[3.4] narrowing of issues - pre-trial meetings are valuable for identifying the primary issues in dispute, allowing participants to avoid unnecessary topics and saving time.

[3.5] logistical preparedness - ensuring that all critical resources, like witnesses, expert testimony, and properly indexed documents, are ready when needed.

[4] The Consolidated Practice Directive 1/2024 in the Gauteng Division requires that the following requirements must be met before a matter will be regarded as ready to be allocated a hearing date on the civil trial:

[4.1] Pleadings must have closed;

[4.2] No amendments to the pleadings may be outstanding or anticipated;

[4.3] No interlocutory applications may be outstanding or anticipated;

[4.4] Discovery must be complete;

- [4.5] The parties must have considered whether a single expert on a given aspect is appropriate in the circumstances, and decided to appoint a single expert, or decided not to appoint a single expert setting out the reasons for this decision;
- [4.6] All experts' witness reports have been filed;
- [4.7] Joint minutes of contending experts have been filed and
- [4.8] A minute of a pre-trial conference, signed by all parties, in relation to a pre-trial meeting which was held not earlier than 90 (ninety) calendar days before the date the hearing date application is made, has been uploaded to the court file and is compliant with the provisions of this directive.
- [5] The aforementioned directive emphasises the importance of trial readiness in promoting efficient and cost-effective litigation in the high court for all parties involved. It streamlines the efficiency of courts and court time.
- [6] In her postponement application, the Applicant/Defendant in the divorce proceedings details her reasons for considering the matter not ready for trial. Before addressing the issue of trial readiness, I will first outline the factual matrix that has led to this action and the relief sought by the parties.
- [7] The Applicant and Respondent married *in community of property* on 27 March 2010 at Elgin. Three children were born from the marriage, who are currently 14, 11, and 9 years old. The parties agree that the marriage has broken down irretrievably.
- [8] The Respondent who instituted divorce proceedings against the Applicant on 8 August 2024, seeks *inter alia*, a decree of divorce, a division of the joint estate, relief in relation to the exercise by the parties of their parental responsibilities and rights in respect of the minor children and costs of suit.
- [9] The Applicant opposed the divorce proceedings and submitted her plea and counterclaim on 22 October 2024. In her counterclaim, she requested, among other relief, a decree of divorce; provisions regarding the allocation and exercise of parental responsibilities and rights concerning the three minor children; maintenance for the children and herself; division of the joint estate;

and costs of suit. The Respondent opposed the relief sought in her counterclaim.

[10] The fundamental issues in dispute may be summarised as follows:

PARENTAL RESPONSIBILITIES AND RIGHTS

[10.1] The Applicant asserts primary residency, whilst the Respondent is seeking shared residency. The implementation of these parental responsibilities and rights is also problematic. (my underlining)

MAINTENANCE

[10.2] The main disagreement between the parties regarding child maintenance concerns the Applicant's request that the Respondent pays for return airfares from South Africa to the United States for each child twice a year, accommodation costs during their stay, and to provide each child with an allowance of *R30 000.00*.

JOINT ESTATE

[10.3] Assessing the value of disputed joint estate assets and establishing both the appropriate assets for inclusion and their respective valuation methodologies;

SPOUSAL MAINTENANCE

[10.4] The Applicant's right and entitlement to lifelong spousal maintenance (until my death or remarriage) and if so, the quantum thereof;

COSTS

[10.5] Costs of the action and upon what scale.

[11] To assess trial readiness, this court must have regard to the events preceding the postponement application.

CHRONOLOGY OF EVENTS AND RELEVANT CORRESPONDENCE:

- [12] The Respondent's attorney applied for a trial date on *16 January 2026*.¹
- [13] The application for a trial date occurred subsequent to an unsuccessful mediation attempt between the parties during *December 2025*.
- [14] When applying for a trial date, no pre-trial conference had occurred, and both parties were considering additional and improved discovery as outlined in rule 35(3).
- [15] On *6 February 2026*, a Notice of Setdown and J118 were delivered to the Applicant's attorneys to formally setdown the divorce action.
- [16] These documents were forwarded accompanied by an e-mail² to the Applicant's attorney stating that:
- [16.1] The Registrar had allocated a trial date of *16 March 2026*;
- [16.2] a pre-trial should be arranged to deal with limited issues;
- [16.3] the Respondent's attorney was preparing the Respondent's supplementary discovery affidavit and would serve same during the latter part of the following week.
- [17] The Applicant's attorneys on *9 February 2026* in an e-mail indicated that the matter was not ready for trial on a mere one (1) month's notice.³ The reasons proffered were the following:
- [17.1] The delivery of the Respondent's Notice in terms of Rule 35(3) on Friday, *6 February 2026*;
- [17.2] The anticipated delivery of the Applicant's substantive Notice in terms of Rule 35(3) during the course of that week;
- [17.3] The need for expert evidence and the absence of expert reports;

¹ Case Lines 23-2

² Case Lines 37-39

³ Case Lines 37-42

[17.4] The number of issues which remained in dispute in relation to the contact and residence arrangements in respect of the children.

[18] Ms Kahn, the Applicant's attorney concluded her e-mail by stating:

"In the circumstances, I cannot agree to the frenetic agenda proposed in your email under reply in an attempt to remedy what cannot be rectified within this limited period."

[19] On 11 February 2026 Ms Shardlow addressed correspondence headed "very urgent" to Ms Kahn indicating that:⁴

[19.1] a pre-trial conference would need to be called;

[19.2] the preparation of bundles would need to be discussed;

[19.3] Ms Shardlow would begin preparing the Respondent's trial bundles "*post haste*";

[19.4] Ms Shardlow would provide Ms Kahn with indexes;

[19.5] a practice note would need to be prepared;

[19.6] The case will be ready for trial and set to proceed on 16 March 2026, despite the recognition that both parties are required to produce updated documentation during discovery.

[19.7] The Applicant would be obliged to comply with the Notice in terms of Rule 35(3) which had been delivered on 6 February 2026 by no later than 20 February 2026;

[19.8] The Respondent's updated documentation would be provided in a supplementary discovery affidavit;

⁴ Case Lines 37-44

- [19.9] There was no need for expert witnesses, and the Applicant had not made mention thereof beforehand;
- [19.10] The tendered maintenance amount of *R25 000.00* per month per child accorded with the amount claimed by the Applicant;
- [19.11] The only disputed issue was spousal maintenance and that the Applicant would have more than sufficient time to prepare before trial.
- [19.12] Any postponement of the divorce action would be opposed, and a punitive cost order would be sought against the Applicant.
- [19.13] In divorce actions parties will always provide updated documents such as bank statements at the 11th hour.
- [19.14] expert evidence would not be required in the determination of the value of the joint estate which could be referred to a receiver should the parties require assistance.
- [19.15] that the applicant had accepted both the forensic appointed Parenting Coordinator, Ms. Tanya Kriel and the forensic clinic psychologist's recommendations.
- [20] A pre-trial was held on *17 February 2026* and the Applicant's attorney raised concerns about what was termed the "*Accenture deal*".
- [21] The Respondent delivered a "*with prejudice*" tender on *18 February 2026*.⁵
- [22] On *19 February 2026*, Ms. Shardlow, the Respondent's attorney, emailed Ms. Kahn, the Applicant's attorney. She proposed that due to concerns about the vesting of Accenture sale shares and disagreement over Advocate Subel SC's opinion, both parties should jointly appoint an expert to resolve this issue.⁶

⁵ Annexure "FA6" Case Lines 37-49

⁶ Annexure "FA7" Case Lines 37-64

[23] In an e-mail dated *20 February 2026*, the Applicant's attorney stated that the case was not ready for hearing on *16 March 2026* due to specific reasons:⁷

[23.1] The dispute concerns the allocation of parental responsibilities and rights between the parties with respect to their three children. The children continue to experience emotional challenges in relation to the gradual introduction of overnight contact. Further involvement of an expert is accordingly necessary.

[23.2] The Applicant felt that she had not received all relevant information and documents about the sale of the Respondent's shares in PIP Holdings and PIP Remco Lime to Accenture, including details about how the Respondent would be paid or compensated. In addition, the terms of the Respondent's compensation for his continued employment at Accenture were unclear, as was the structure of bonuses, benefits, performance and leadership rewards, and RSUs he was entitled to receive.

[23.2.1] Ms Kahn, the Applicant's attorney, stated that the Respondent supplied minimal documentation during the without prejudice mediation at the end of *2025*, and these documents were only discovered on *19 February 2026*.

[23.2.2] Ms. Kahn, pointed out it was unreasonable and frankly disingenuous for the Respondent to expect the Applicant to run a trial having regard to the relevance of the documentation concerning the Accenture deal.

[23.2.3] The Respondent's need to seek an opinion from an expert. This necessity further reinforces the Applicant's argument that she is likewise entitled to engage an expert of her choosing, to conduct a thorough investigation into which assets appropriately

⁷ Annexure "FA8" Case Lines 37-66

belong in the joint estate and to determine their accurate valuation.

[23.2.4] The senior counsel's opinion on the Respondent's behalf was not submitted with a notice pursuant to rule 36(9)(a) or (b). It remains unclear how the Respondent intended to present expert evidence without submitting the requisite expert notices stipulated by the Uniform Rules of Court.

[24] On 19 February 2026, the Respondent's attorney suggested appointing a jointly selected expert to address concerns regarding the Accenture shares, following the Applicant's decision not to accept Advocate Subel SC's opinion on the vesting of the shares. The Respondent recommended engaging a senior commercial counsel for this purpose, as he deemed a chartered accountant unsuitable for appointment as an expert.

[25] The Respondent's proposal was deemed unsuitable, as the Applicant asserts that a chartered accountant possesses the relevant expertise required for the task, rather than legal counsel. Furthermore, the documentation provided by the Respondent was insufficient to enable any expert to effectively undertake the responsibilities outlined by the Respondent. Consequently, it was necessary to postpone the matter, allowing both parties adequate time to continue their pre-trial preparations and ensuring that the issues in dispute are thoroughly examined and addressed. The Applicant's attorney communicated this response via email to the Respondent's attorney and advised that, should the Applicant be compelled to file an application for postponement, punitive costs would be sought against the Respondent.⁸

[26] On 20 February 2026, the Applicant's attorney asked for a "*Payment Out Statement*" that would show the dates when the Respondent is eligible to receive shares in Accenture. Ms. Kahn requested that this document be emailed to her promptly.⁹

⁸ Annexure "FA18" Case Lines 37-102

⁹ Annexure "FA9" Case Lines 37-72

- [27] On the same day, Ms. Shardlow replied to Ms. Kahn, confirming receipt of the email and stating she would respond after receiving instructions from her client.¹⁰
- [28] There had been no response after three weeks.
- [29] On *23 February 2026*, Ms Shardlow emailed Ms Khan, accusing the Applicant of deliberately prolonging the divorce despite generous maintenance from the Respondent. She also noted that the Applicant's response to the Respondent's Rule 35(3) notice was due on *20 February 2026*.
- [30] In the abovesaid email reference was also made:¹¹
- [30.1] that a substantial Rule 35(3) affidavit together with a lever arch file containing the documents referred to therein had been delivered to Ms Kahn's offices on Tuesday, *17 February 2026* (comprising on the Respondent's version some 400 pages);
- [30.2] that the Respondent would be amending his pleading to seek the appointment of a receiver and liquidator whose costs would be borne by the joint estate in the sum of *R8 000 000.00 to R14 000 000.00*;
- [30.3] that the Respondent was of the view that the parties had in fact reached an agreement regarding the assets and that it was "*just the issue of the Accenture deal*" which remained in dispute;
- [30.4] that the Respondent would not agree to the appointment of a forensic psychologist for a further forensic investigation;
- [30.5] that any disputes regarding the children should be referred to the Parenting Coordinator Ms. Kriel;
- [30.6] that Ms Kahn's offices had been provided with "*every single document relating to the joint estates*" (sic);

¹⁰ Annexure "FA10" Case Lines 37-74

¹¹ Annexure "FA11" Case Lines 37-76

- [30.7] threatening that the Applicant must take whatever course of action she deemed necessary and that any postponement application would be opposed and a punitive costs order, to be deducted from the Applicant's portion of the joint estate, would be sought.
- [31] On Monday, *23 February 2026*, the Respondent launched an application to compel the Applicant to provide her reply to his Notice in accordance with Rule 35(3) and (6), which was due on Friday, *20 February 2026*.
- [32] According to the Respondent's Notice of Motion, the matter was scheduled for hearing unilaterally on Tuesday, *3 March 2026*, which is six court days from the date of notice.
- [33] On *24 February 2026*, the Respondent's attorney, Karabo Hahatse, emailed the Deputy Judge President with a letter requesting a hearing date for the interlocutory application on *2 March 2026* so the Respondent could prepare for the trial set for *16 March 2026*. The Respondent noted that the Registrar advised contacting the DJP since the court rolls for *2 March 2026* were already full.¹²
- [34] On *26 February 2026*, Ms. Kahn submitted a letter to the DJP referencing the letter by the Respondent's attorney mentioned before. In her correspondence, Ms. Kahn indicated that the Respondent initiated the application to compel on the day following the expiration of the period granted for my response to Rule 35(3). However, she noted that the Applicant had already complied with the Notice pursuant to Rule 35(3), rendering the scheduling of a hearing to compel unnecessary.¹³
- [35] On *27 February 2026*, a letter was received from the office of the DJP addressed to the respective attorneys. In such letter, the ADJP acknowledged the correspondence remitted by the attorneys to him ("*FA12*" and "*FA13*") in which the respective attorneys were unequivocally instructed that they "*are to remove the matter from the trial roll of 16 March 2026 ... Once the trial is ready, the parties may approach the Civil Trial Registrar for a new hearing*

¹² Annexure "FA12" Case Lines 37-85

¹³ Annexure "FA13" Case Lines 37-89

*date. The congested rolls do not permit an enrolment of an application before the trial date."*¹⁴

[36] On the same day Ms Shardlow remitted:

[36.1] a covering letter to Ms Kahn enclosing a Notice of Withdrawal of the interlocutory application. In such letter, the Respondent indicated that he would not be removing the matter from the trial roll;¹⁵

[36.2] a letter to the ADJP attaching the Respondent's withdrawal of the interlocutory application;¹⁶

[36.3] a further letter to the ADJP suggesting that no date for the interlocutory was required as the Applicant had complied with the Respondent's Rule 35(3) Notice.¹⁷

FIRST AMENDMENT IN TERMS OF RULE 28

[37] On 27 February 2026, Ms Shardlow delivered a Notice to Amend in terms at Rule 28 in terms of which the Respondent sought to:¹⁸

[37.1] correct the Applicant's name and

[37.2] to insert two new prayers:

[37.2.1] for the appointment of Mr. Charles Stride CA (SA) as a Receiver and Liquidator with a list of powers and duties and

[37.2.2] to replace the existing costs order with a costs order against me on an attorney client scale in accordance with Scale C.

¹⁴ Annexure "FA14" Case Lines 37-91

¹⁵ Annexure "FA15" Case Lines 37-93

¹⁶ Annexure "FA16" Case Lines 37-96

¹⁷ Annexure "FA17" Case Lines 37-99

¹⁸ Annexure "FA19" Case Lines 37-106

- [38] The Applicant had no difficulty with the amendment referenced in [37.1] and [37.2.2] above, however, the amendment sought in relation to the receiver and liquidator was fundamentally problematic.
- [39] The Applicant contends that for the receiver to value the assets and liabilities of the parties' joint estate there must be a determination of the identity of the assets which comprise the estate. The valuation of the benefits which the Respondent has derived and or to which he will become entitled because of the Accenture deal cannot be undertaken by the receiver in circumstances where there is live dispute on this issue and only a court can make such determination. The Applicant had indicated her wish to obtain an expert opinion and to lead expert evidence for the court to make a finding. Only once this has been done, will a receiver be able to proceed with his/her duties.
- [40] The *dies* for the Applicant's objection to the proposed amendment expired on Friday *13 March 2026*, the court day prior to the commencement of the trial action. On Saturday, *14 March 2026*, the Respondent delivered his amended pages which amendment was effected on Monday, *16 March 2026* in terms of rule 28(7). The amendment was duly effected, granting the Applicant the right to make any consequential adjustments to her pleadings that result from the amendment. The *dies* for her consequential plea (15 days) only elapse on Monday *6 April 2026* (more than 2 weeks after the allocated hearing date)
- [41] On *10 March 2026*, the Respondent made another "*with prejudice*" tender. This offer was not acceptable. The Applicant perceived this offer as a last-attempt effort to secure a divorce, while being unwilling to fully disclose all relevant information and documentation related to the Accenture deal. This led to concerns that assets might be excluded from the joint estate for the Respondent's benefit and to the detriment of the Applicant.
- [42] The Applicant's postponement application was served on the Respondent's attorneys on *11 March 2026*.¹⁹

¹⁹ Case Lines 37-112

- [43] The Respondent replied to the said application and served his answering affidavit and a counter application in terms of rule 33(4) on Friday *13 March 2026*.²⁰
- [44] The Applicant served a replying affidavit on Monday *16 March 2026* at 09:31 as well as a Rule 30 notice.²¹

EVENTS PRIOR TO THE HEARING OF POSTPONEMENT APPLICATION:

- [45] Before the hearing, outside the courtroom, I had informed both counsel that, due to the rule 28 amendment and the delivery of the amended pages, which effected the amendment on *16 March 2026*, the Applicant was entitled to make any consequential changes to her pleadings within 15 days as stipulated by rule 28(8). *The amendment* had reopened the pleadings. My *prima facie* view was that the 15-day period would only expire after the hearing date of *16 March 2026*, making the case not trial ready. In support, I referred them to *Wendy Mechanik Property Holdings CC v Guiltwood Properties CC*.²² I had invited counsel to address me on this aspect at the commencement of the hearing of the postponement application.
- [46] The Respondent's counsel had sought an opportunity to peruse the Applicant's replying affidavit served just prior to the hearing of the matter on *16 March 2026* which was allowed.

HEARING OF POSTPONEMENT APPLICATION:

- [47] At the start of the proceedings, the Applicant's counsel informed the court that moments earlier she had received a Notice of Withdrawal of the Notice of Amendment and the amended pages from the Respondent's counsel.

²⁰ Case Lines 37-223

²¹ Case Lines 37-276

²² 2007(5) SA 90 (W)

[48] I questioned Respondent's counsel on whether a litigant is allowed to withdraw both the Notice of Amendment and the amended pages, and if rule 28 should not instead be used.

[49] The postponement application was argued and the court then asked both counsel to submit heads of argument on this aspect.

[50] In her heads of argument the Respondent's counsel has, rightly so, conceded that a litigant must utilize rule 28 and that the withdrawal was not competent.

[51] By effecting the amended pages the Particulars of Claim had been revised and the amended pages operated as the new pleaded version.

[52] In *Cordier v Cordier*²³ the Court held:

'It is a general rule that a pleading into which words have been incorporated by amendment must be read as if the incorporated words had been there in the first place, ie when the pleading was filed in the first instance (Dinath v Breedts 1966 (3) SA 712 (T) at 717).'"

[53] The original Particulars of Claim are therefore superseded by the amended version, in accordance with the terms of the revision.

[54] Once the amendment had been implemented, the notice that was issued prior to the delivery of the amended pages is, for all practical purposes, extinguished. This principle was affirmed in *Sasol South Africa Ltd t/a Sasol Chemicals v Penkin* 2024 (1) SA 272 (GJ):

"45. On this basis, and on 23 November 2021 when the applicant delivered a notice in terms of rule 30(1), there was no extant 'notice of intention to amend' as contemplated in rule 28(1), it having lapsed for want of either

²³ 1984 (4) SA 524 (C) at 533B as quoted in *Barrie Marais & Seuns v Eli Lilly (SA) (Pty) Ltd* 1995 (1) SA 469 (WLD) at p.472G-H

the delivery of amended pages, or for want of an application for leave to amend, assuming the rule 30(2)(b) notice had the same effect as a rule 28(2) notice.”

- [55] In these circumstances, the notice of intention to amend ceased to exist once the amendment was affected. Therefore, it is both factually impossible and legally inadmissible for the Plaintiff to attempt to withdraw something that no longer exists.
- [56] The amended pages accordingly form part of the pleadings. Any party desiring to amend a pleading shall notify all other parties of his intention to amend and shall furnish particulars of the amendment in terms of rule 28(1).
- [57] A pleading may not be amended without due process. All modifications to pleadings must comply with the requirements set forth in rule 28. Should the Respondent wish to rely on Particulars other than those contained in the revised Particulars of Claim, he is required to request an amendment and adhere to the procedural steps outlined in rule 28.
- [58] The aforesaid is conceded by counsel for both sides.

SECOND AMENDMENT DATED 17 MARCH 2026:

- [59] In her written submissions, Respondent’s counsel informed the court that a Notice of Intention to Amend, dated *17 March 2026*, will be served on the Applicant’s attorneys. The purpose of this amendment is to restore both parties to their positions before the changes were made to the pleading. The Respondent intends to remove the amendments made to his prayers. According to the Respondent’s counsel, this action would not cause any prejudice to the Applicant.
- [60] The Respondent accordingly elected to make use of the machinery of rule 28 to amend the pleadings.

[61] The Notice of Amendment dated 17 March 2026 ²⁴ reads as follows:

“ BE PLEASED TO TAKE NOTICE THAT the Plaintiff herein hereby intends amending his Amended Particulars of Claim dated 13 March 2026 and served on 14 March 2026 in the following manner:

1. *By the deletion of Prayers 3 to 3.8 and 4 thereof in toto.*
2. *By the renumbering of Prayers 5 to 12.8 accordingly.*
3. *By the deletion of the current Prayers 12.1 to 12.4 in their entirety to be replaced with the following new Prayers:*

"9.1. Payment to the defendant of the sum of R25 000.00 (twenty-five thousand rand) per child per month in respect of their reasonable daily living expenses when they are in the defendant's care payable until the children may reasonably be expected to be self-supporting;

9.2 The maintenance referred to in paragraph 12.1 above shall increase commensurate with the Consumer Price Index (urban areas as published by the Department of Statistics on the first anniversary of the granting of the decree of divorce and annually thereafter;

9.3 Payment of all reasonable educational expenses including but not limited to private school fees, levies, extra tuition fees direct to the service providers, school uniforms, schoolbooks and stationery, extramural activities, attire and equipment required for such activities, agreed school tours and exchange programs (locally and abroad);

²⁴ Case Lines 38-18

9.4 *Payment of the monthly premiums to retain each of the children on a comprehensive medical aid scheme and all escalations to the monthly premiums and payment of all reasonable excess medical and dental costs, including orthodontic expenses and the cost of spectacles or contact lenses, not covered by the benefits of such scheme within 7 (seven) calendar days of presentation of an invoice, as required;*

9.5 *Payment of each of the children's reasonable tertiary education, including university and residence fees and/or fees due to an institution of higher learning attended by him/her, including the cost of books, stationery and equipment, computers, and their reasonable and agreed upon transport and travelling costs."*

4. *By the deletion of the current prayer 13 to be replaced with the following:*

"10. Costs of suit."

BE PLEASED TO TAKE NOTICE FURTHER THAT the Plaintiff tenders the wasted costs occasioned by the amendment.

BE PLEASED TO TAKE NOTICE FURTHER THAT unless written objection to the proposed amendment is received within 10 (TEN) days from date hereof, the amendment will be deemed to have been effected and the Plaintiff shall be entitled to deliver his amended pages."

[62] It is evident from the Notice of Amendment that in terms of Rule 28(2) a period of ten (10) days from delivery of the Notice will be allowed for any objection. Only thereafter will the amendment be effected by delivery of the relevant pages in their amended form in terms of Rule 28(7). Until such time the Particulars of

Claim stands as effected on *16 March 2026*. It is important to note that the pleadings are open.

- [63] The effect of this new amendment is that, once the amended pages are delivered, the Particulars of Claim will resemble the pleadings as they were at the close of pleadings. However, the court currently has before it the revised Particulars of Claim of *16 March 2026*, which remain valid until *ten (10) days* lapse and the amended pages have been delivered to implement the amendment.
- [64] The Respondent elected not to proceed with the revised Particulars of Claim of *16 March 2026* by filing a new amendment dated *17 March 2026*. The machinery of rule 28 has become operative and the litigants have to comply with the time periods allowed.
- [65] The pleadings are open and based on the Respondent's Notice of Amendment the Applicant has *ten (10) days* to object. Although it may be argued that the Applicant will not object, as the amendment resembles the initial Particulars of Claim, the court can simply not work on assumptions and time periods have to be adhered to.
- [66] The Respondent, as Plaintiff in the divorce case, is *dominis litis* and decides how to present his case to court.
- [67] The revised Particulars of Claim effected on *16 March 2026* has not been pleaded to and is now in the process of being amended.
- [68] It is abundantly clear that the current revised Particulars of Claim effected on *16 March 2026* before court, is not the Particulars on which the Respondent elects to proceed. The amendment of *17 March 2026* will only be effected after a lapse of *ten (10) days*.
- [69] This divorce action is without any doubt not trial ready. At trial stage, pleadings move beyond being simple procedural filings that start a lawsuit; they serve as the essential, definitive record establishing the legal and factual limits of the

case, thereby restricting what evidence and issues may be considered. In this case, the pleadings remain open, undefined, and are not fixed in their final form.

RESPONDENT'S COUNTERCLAIM:

[70] In response to the Applicant's postponement application, the Respondent filed a counter application.

[70.1] Uniform Rule 6(7), which deals with counter-applications, reads as follows:

(a) *Any party to any application proceedings may bring a counter-application or may join any party to the same extent as would be competent if the party wishing to bring such counter- application or join such party were a defendant in an action and the other parties to the application were parties to such action. In the latter event the provisions of rule 10 will apply.*

(b) *The periods prescribed with regard to applications apply to counter-applications: Provided that the court may on good cause shown postpone the hearing of the application.* (my underlining added)

[71] The Respondent's counterclaim to the postponement application seeks a decree of divorce, division of the joint estate by way of the appointment of Mr. Charles Stride, CA (SA) to facilitate the division of the estate, that the parties remain co-holders of parental responsibilities and rights in respect of their children, that the court order of 11 August 2025 remain in place, maintenance in respect of the minors and a separation of issues in terms of rule 33(4). The issues to be separated are costs of return tickets from RSA to the United States of America twice annually for the children together with accommodation costs and an allowance of R30 000.00 per child, spousal maintenance, the applicant's claim that the Respondent's PER Transaction Bonuses, Retention Bonuses and New

Hire Equity Grants which have yet to vest, are to be included in the division of the joint estate and the applicant's claim for costs.²⁵

[72] The Applicant delivered her replying affidavit together with a Notice in terms of rule 30(2)(b) to remove a cause of complaint.²⁶ She assert that the Respondent's Notice of Motion, in respect of his counter application, does not comply with the requirements of rule 6 in that:

[72.1] It fails to indicate that the Applicant is entitled to oppose the counter application;

[72.2] It fails to stipulate the day, time and manner in which the notice of intention to oppose is to be delivered;

[72.3] It fails to indicate the date upon which the matter will be enrolled for hearing;

[72.4] It fails to indicate the court roll upon which the application will be enrolled.

[73] The aforesaid defects therefore, according to the Applicant, render the notice non-compliant with Rule 6 and procedurally defective.

[74] It is accepted that a counter application need not be brought on notice of motion.

[74.1] *"It is trite that counter-applications are subject to the general principles applicable to applications, although a counter- application does not have to be served in accordance with the provisions of rule 4. The notice of counter-application does not have to be in the form of a notice of motion, but the respondent must set out the relief claimed in the counter-application. Usually, the evidence pleaded in the answering affidavit also serves to support the relief claimed in the counterapplication."* ²⁷

²⁵ Case Lines 37-113

²⁶ Case Lines 37-277

²⁷ Smith NO v Malan NO 2024 (4) SA 624 (FB) at paragraph 26

- [75] It follows that if this court is not in a position to grant a decree of divorce and ancillary relief due to open pleadings that the separation of issues can similarly also not be granted.
- [76] The pleadings are open which effects both the action and the counterapplication. The parties have not joined issues, the time allowed for filing further pleadings (amended particulars and amended plea) has not elapsed, and no written agreement on closure exists.
- [77] This court cannot grant a decree of divorce due to a pending amendment.
- [78] This court was referred to case-law²⁸ which allows for an order separating the issue of divorce from all other issues between the parties in a divorce action. However, these matters are distinguishable in that the pleadings were not open as is the matter before court.
- [79] Separation cannot be considered if pleadings are not clearly defined with precision.
- [80] In *Denel (Edms) Bpk v Vorster* 2004 (4) SA 481 (SCA) para 3, the Court said in respect of rule 33(4):
- “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.*

²⁸ TD v LD and Others (32195/2017) [2024] ZAGPJHC 751 (12 August 2024); AMG and Another v TSG (2025/057077) [2026] ZAWCHC 6 (19 January 2026)

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.” (my underlining)

[81] The Appellate division held that piecemeal litigation which defeats the object of rule 33(4) is to be eschewed. In *Molotlegi v Mokwalase* (222/09) [2010] ZASCA 59 (1 April 2010), the Court said:

“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) para 3.” (my underlining)

CONCLUSION:

- [82] This matter is a classic example of one which is not trial ready. Evidence of this was apparent as early as January 2026. After an unsuccessful mediation in *December 2025*, the matter was enrolled on *16 January 2026* without compliance with Consolidated Practice Manual 1/2024. Discovery had not been completed, as can be seen from subsequent rule 35(3) applications, and a pre-trial meeting was not held 90 calendar days before applying for the court date.
- [83] The correspondence exchanged between the parties' attorneys since *January 2026* reflects an expedited effort to comply with procedural requirements and court rules, with the aim of efficiently preparing the divorce action for trial within a short timeframe (*6 February 2026 to 16 March 2026*). This divorce action should have been trial ready at the stage of application for a trial date on *16 January 2026*.
- [84] An expert opinion was furthermore provided by Adv Subel SC however, it is evident that there was a lack of adherence with Rule 36(9)(a) and 36(9)(b). The parties were cognizant of the ongoing dispute regarding the Accenture Deal, its impact on the joint estate and its subsequent division. Expert evidence in this matter constituted a credible and substantive possibility that could not be disregarded. This is corroborated by the Respondent's agreement to appoint a joint expert.
- [85] An application was filed against the Applicant to enforce compliance with rule 35(3), and the Deputy Judge President's office was consulted to secure an earlier hearing date, as the trial had been scheduled for *16 March 2026*. On *24 February 2026*, the Respondent's attorney, Karabo Hahatse, emailed the Acting Deputy Judge President with a letter requesting a hearing date for the interlocutory application on *2 March 2026* so the Respondent could prepare for the trial set for *16 March 2026*.

- [86] Although ADJP Mudau on *27 February 2026* requested that the matter be removed from the trial roll of *16 March 2026* until it was ready for trial, there was insistence on retaining it on the trial roll.
- [87] The amendment, effected on *16 March 2026*, to assist in the hearing of the divorce action on *16 March 2026*, reopened the pleadings and granted the Applicant the right to make further amendments to her pleadings until *6 April 2026*. The latter date falls after the scheduled trial date.
- [88] Subsequently, an additional amendment dated *17 March 2026* was delivered, which permits a period of ten (*10 days*) for objections and allows the Applicant to make further consequential adjustments. An additional approximately *25 days* (comprising *10 days* to object and *15 days* for the adjustment of pleadings) must be calculated commencing from *17 March 2026*.
- [89] The pleadings are accordingly not closed, and the matter is not trial ready. The Respondent asserts that there can be no prejudice because the pleadings will reflect the initial Particulars of Claim. However, as at this point in time the effected pleading of *16 March 2026* is before court. This is a pleading not answered to and which the Respondent elected not to proceed with. The new amendment dated *17 March 2026* allows for (ten) *10 days* of objection which lapses in the future. Uncertainty arises from the back-and-forth nature of litigation, which fosters prejudice.
- [90] The application for postponement is justified. Although the Respondent's counsel contended that the application was submitted late and lacked sufficient grounds. The introduction of an amendment opening the pleadings and effected on *16 March 2026* along with discovery under rule 35(3) and the presentation of substantial documentation (400 pages) clearly suggests the appropriateness of a postponement.
- [91] It is abundantly clear that:
- [91.1] The matter is not trial ready and has not been since application for a trial date;

[91.2] The pleadings are open;

[91.3] Upon writing this judgment a new amendment had been delivered allowing for ten (*10*) *days* to object, the delivery of the amended pages and consequential adjustment to the pleadings *within 15 days*;

[92] The Applicant's attorney notified the Respondent's attorney in e-mails dated *19 and 20 February 2026* that the trial was not ready to proceed and that it would not be possible to complete preparations for trial within a one-month period. Nevertheless, the Respondent's attorney insisted that the matter should be heard as scheduled.

[93] The matter was simply not even ready for trial when a trial date was requested on *16 January 2026*, as there was non-compliance with Practice Directive 1/2024.

[94] Trial readiness marks a formal point in legal proceedings when all pre-trial obligations have been fulfilled, and the case is completely prepared for trial. This stage serves as a final verification that evidence has been shared, witnesses are ready, and key issues have been clarified - helping to avoid delays or unexpected developments during the trial.

[95] The principal objective of trial readiness is to reduce congested trial rolls by ensuring that cases utilize court time only when they are fully prepared to proceed.

[96] All evidentiary and procedural hurdles need to be cleared before a matter can proceed to trial. If not, a fair trial is not guaranteed.

[97] Cost orders if a matter is not trial-ready are designed to compensate the innocent party for wasted time and expenses, and to punish the party responsible for the delay.

[98] The matter before court is one where the Respondent and his legal team persisted to flog a dead horse. There was, as stated previously, non-compliance with the court's practice directive and a late amendment effected on *16 March 2026* which led to the re-opening of the case. An amendment was also subsequently delivered on *17 March 2026* after arguing the postponement application. It allows for a ten (10) day objection period and disallows the hearing of the divorce action.

[99] The court finds it necessary to express its dissatisfaction with the Respondent's insistence that the divorce proceed, despite glaring red indicators depicting and suggesting otherwise. The Respondent's amendments allow for time periods in terms of rule 28 to lapse. The pleadings are accordingly not defined and certain until the close of pleadings. A punitive costs order is accordingly warranted.

Order

[100] I accordingly make the following order:

[100.1] The divorce action is postponed *sine die*;

[100.2] The counter application is dismissed;

[100.3] The Respondent is to pay the costs of both the postponement application and the counterclaim on an attorney and client scale from his half portion of the joint estate.

**S VAN ASWEGEN
ACTING JUDGE OF THE HIGH COURT
JOHANNESBURG**

Heard: 16 March 2026

Judgment delivered: 19 March 2026

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