REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, JOHANNESBURG

Case Number: 33632/2014

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

15/04/26 _ [redacted]

DATE SIGNATURE

In the matter between:

THE MEMBER OF THE EXECUTIVE COUNCIL

FOR HEALTH FOR THE PROVINCE GAUTENG **Applicant**

and

GERBRECHT ELIZABETH POHLMAN

obo MORNE FRANCOIS LUYT **Respondent**

This Judgment was handed down electronically by circulation to the parties/their legal representatives by email and by uploading to the electronic file on Case Lines. The date for hand-down is deemed to be **15 April 2026**

Summary: Interlocutory application- leave to file further expert addendum report- Whether the application raises new material. Ruling on the issue of the plaintiff's evidence conclusively dealt with by the court- no need to revisit.

In a protracted medical negligence action, the defendant is seeking leave to file a further addendum expert report following the filing of a further addendum report by the plaintiff's substitute expert radiologist. The defendant contended that the application was necessitated by the substitute expert's comments in his addendum regarding the possibility of hypoglycaemic injury appearing on the MRI and alleged hypoxia prior to the collapse of the minor child.

Held: Rule 36(9) requires full and timeous disclosure of expert opinions and does not allow for incremental reconstruction of a party's case by successive addenda.

Held: the issue raised in the defendant's application is not new, having previously been addressed by other experts.

Held: the comments by the substitute expert radiologist were general and did not introduce new factual or medical conclusions warranting a responsive addendum.

Held: that it was impermissible to seek to revisit the process regarding the transfer of the minor child from the neonatal intensive care unit to another ward, as this matter had already been conclusively determined by the court.

Held: granting permission to file the further addendum would breach the principles of procedural fairness and would delay the finality of the proceedings.

JUDGMENT

MOLAHLEHI, J

Introduction

[1]. The applicant (the defendant in the main action) in this interlocutory application seeks leave to serve and file an addendum report by its paediatric expert, Professor K Bolton, dated 12 September 2025. The application, which is opposed by the respondent (the plaintiff in the main action), concerns a claim of medical negligence.

For clarity, the parties in this application are referred to as the plaintiff and the defendant.

[2]. At the start of the hearing, the plaintiff withdrew the challenge to the authenticity of the founding affidavit on the basis that the deponent, Mr Rametse, the plaintiff's attorney, lacked the necessary knowledge to provide the court with the facts under oath. The opposition to the condonation application for the late filing of the replying affidavit was also withdrawn. The court, considering the interests of justice, granted condonation for the late filing of the replying affidavit.

Background facts

[3]. This matter, which has been ongoing since 18 April 2018 through a lengthy case management process, including several interlocutory applications, concerns the action initiated by the plaintiff against the defendant in September 2014. The plaintiff's claim is based on damages arising from the defendant's alleged negligence during the plaintiff's labour and birth of her son, including his stay in hospital in November 2010.

[4]. The case of the plaintiff is that her son, born on 30 November 2010 at the defendant's Tambo Memorial Hospital, suffered a severe brain injury while in the care of the defendant. The complaint regarding the failure to provide proper care for the child includes the period when he was hospitalised for treatment. The cerebral palsy the child developed has left him with a permanent disability to the extent that he will never be able to look after himself.

[5]. The plaintiff's cause of action is generally based on the complaint that Tambo Memorial Hospital, having accepted and admitted the plaintiff and her son as patients, failed to provide them with the necessary medical care for their health and well-being. This includes the allegation that the hospital did not supply adequate care before and after the birth of the minor child. The specifics of the cause of action as detailed by the plaintiff are outlined in her particulars of claim.

[6]. The trial commenced with the testimony of Ms Pohlman, who described her observations when the minor child was transferred from the neonatal intensive care unit (NICU) on 6 December 2010 to ward 4 of the hospital. The core of her testimony is that the child did not receive oxygen in ward 4 before he collapsed.

[7]. The second witness to give evidence after the plaintiff was Professor Davies. During his cross-examination, on 7 January 2025, the defendant's counsel attempted to put forward a version to him that had never been presented to the plaintiff during her cross-examination. The version that the defendant sought to introduce through cross-examination was that the child did receive oxygen in ward 4 before collapsing. The plaintiff's counsel objected, prompting the defendant to submit an interlocutory application for the plaintiff to be recalled for further cross-examination. The court dismissed the application.

The application to file the addendum

[8]. This application is based on a request by the defendant to serve and file Dr Bolton's expert report. He prepared the report and the addendum after the plaintiff appointed Dr Alheit as her radiology expert witness, following Prof Lortz's withdrawal. Prof Lortz withdrew because he closed his practice after sustaining injuries in a fall. In other words, the plaintiff appointed Dr Alheit as a substitute for Prof Lortz.

[9]. The plaintiff served and filed Dr. Alheit's report on 10 September 2025 and the addendum on 12 September 2025. The addendum addressed the Bitmap (BMP) format MRI images. Subsequently, on 18 September 2025, a radiology joint minute was prepared by Dr Weinstein and Dr Alheit.

[10]. In response, Prof Bolton prepared an addendum report addressing the issue of hypoxia after reviewing the MRI scan performed on the minor child. The MRI scan, dated 14 March 2018, was conducted when the minor child was 5 years and 10 months old. The defendant's case in this regard is that it qualifies for leave to file the addendum report by Dr Bolton, based on the comment made by Dr Alheit in his addendum report, wherein he observed:

"The dominant MRI features are consistent with Periventricular leukomalacia of prematurity (PVL) now visualised in the chronic stage of evolution on the MR scan performed at the age of 5 years and months . . . .

Another aspect to consider is the possibility of episodes of hypoglycaemia. The imaging features of neonatal hypoglycaemia are injury of the pulvinars and more prominent injury of the occipital lobes, as described above. This aspect, however, must be assessed in light of the clinical records."

[11]. Dr Alheit further observes:

"Possible hypoxia occurring during the period that the baby was in an Incubator in Ward 4 at the time of his collapse. Ms Pohlman, in her evidence given in Court, is of the opinion that Morne was being nursed without supplemental oxygen when he turned blue and collapsed in Ward 4 on the afternoon of 6th December, 2010. This is possible but improbable. She bases her opinion on her recollection that he had no oxygen cylinder visible next to the incubator and that he had no pipes positioned in his nose. She recalls that he was being nursed in a closed incubator and that he had an intravenous infusion (a "drip") running However, to speculate, whether or not, supplemental oxygen was being administered requires a brief explanation of the modes used for supplementing oxygen to newborn babies. Too much oxygen is as dangerous for a premature baby as is too little oxygen. The decision of whether to supplement oxygen and the percentage required is made utilizing clinical and oxygen is utilizing clinical and oxygen saturation monitoring. Depending on the required concentration of oxygen needed, the following methods of supplementation are utilised."

[12]. In his motivation for the acceptance of his "Further Addendum to Medical Opinion", Prof Bolton states the following:

"This Further Addendum to my original report has become necessary to respond to two issues that have recently come to my notice, namely:

- The suggestion by the expert radiologist for the plaintiff (Dr Alheit) that there are features suggestive of hypoglycaemic damage on MRI.
- The suggestion by the plaintiff, Ms Pohlman, in her evidence, that Morné, was nursed without supplementary oxygen in Ward 4 at Tambo Memorial Hospital."

[13]. The plaintiff objects to the submission of Prof Bolton's addendum report on the following grounds:

> "3.1.31 Professor Bolton has been a designated expert in this case for the Defendant for many years.
>
> 3.1.32 It is inconceivable to think that the Defendant would not have discussed the Plaintiff's evidence with its experts during her testimony and/or before her cross-examination.
>
> 3.1.33 As is dealt with in more detail below, Professor Davies (on behalf of the Plaintiff) raised the issue of hypoglycaemia and Professor Cooper (on behalf of the Defendant) dealt therewith. Both these doctors prepared reports on, inter alia, this issue, and also a joint minute on it. During this debate, Professor Bolton was silent. This silence, once again, is deafening.
>
> 3.1.34 Whether "features suggestive of hypoglycaemic damage on MRI" are visible on MRI, is for the radiologists to say.
>
> 3.1.35 Professors Davies and Cooper had regard to the clinical records when they prepared their respective reports and joint minute."
> The plaintiff's representatives further argue in the heads of argument that the addendum, which the defendant seeks to introduce, does not constitute a genuine expert opinion within the narrow scope of "new issue," but that the report attempts to construct a factual narrative regarding the transport incubator, oxygen supply, and the transfer process."

The legal principles

[14]. Expert notices and summaries are governed by Rule 36(9) of the Uniform Rules of the Court, which states that a party may not call an expert to testify without timely delivery of a notice and a summary. It also specifies that if an expert materially changes an opinion, that change must be communicated immediately to the other party.

[15]. Regarding the matter of substituting an already appointed expert witness and the issue of introducing a different expert witness, Erasmus- Superior Court Practice states:

> "Once an expert has been identified, that witness becomes part of the procedural matrix of the trial. A party who wishes to introduce a different expert must do so only with the consent of the opposing party or leave of the court, failing which the evidence is inadmissible."

[16]. In other words, a substitute expert must be properly appointed, and his or her addendum must be correctly filed with the court. If the substitute expert introduces new material in the addendum, procedural fairness requires that the opposing party be given an opportunity to respond to any new points raised. The court has discretion under rule 36(9) and its inherent jurisdiction to ensure fairness by granting permission for the other party to respond to the substitute expert's addendum when it presents genuine new material. Typically, the court will grant permission for the responsive addendum unless there are strong reasons to believe that allowing it would be unfair or cause significant disruption.

[17]. The fundamental principle under rule 36(9) of the Rules is that the parties must disclose expert medical opinions fully, clearly, and promptly. It is not intended to serve as a means for creating delaying tactics or stratagems aimed at frustrating the finalisation of proceedings through successive addenda or undermining rulings that may have been made regarding the matter.

[18]. In the present matter, there is no dispute as to whether the substitute expert, Dr Alheit, and his addendum report are properly before the court. The issue to consider is whether Dr Alheit's report raised new material justifying granting leave for the defendant to file an addendum in response to Dr Alheit's addendum.

Discussion

[19]. It is well established that expert evidence should be limited to matters requiring specialised skill and must be disclosed promptly to clearly define the issues for adjudication and prevent the incremental rebuilding of a party's case.

[20]. In the present case, the defendant's reliance on hypoglycaemia does not raise a new issue arising after the delivery of the original expert reports, particularly that of Prof Bolton; it was already raised by the neonatologists from both parties, Prof Davies and Prof Cooper. This issue should have been fully discussed at that stage or shortly thereafter, rather than after such a prolonged period. The original addendum by Prof Bolton was made on 3 January 2017, followed by another on 3 May 2022.

[21]. The defendant's argument that Prof Bolton's addendum is justified by a comment in Dr Alheit's expert addendum is unfounded. Dr Alheit simply stated that hypoglycaemia was an issue for clinicians to consider, which does not amount to a definitive expert opinion or introduce new factual or medical conclusions. Such a general remark cannot properly be regarded as genuine new material warranting a responsive addendum.

[22]. It is also important to note that the clinical records were available for some time, particularly when Prof Bolton prepared his original report. The same applies to the parties' neonatologists, Prof Cooper and Pro Davies, who have already considered and debated the minor child's glucose levels and monitoring, including the presence or absence of hypoglycaemic episodes.

[23]. Furthermore, the matter of transferring the minor child from Ward 4 has already been definitively decided by this Court, which dismissed the application to recall the plaintiff for further cross-examination. To the extent that the defendant's addendum seeks to revisit or indirectly challenge that ruling, it contravenes the principles of finality and proper litigation grounded in the rules.

[24]. It is clear from a proper reading of the defendant's papers that the leave to file the addendum is sought simply because Dr Alheit mentioned the issue of hypoglycaemia in his addendum. This issue had received attention long before he was appointed as an expert witness in this case.

[25]. Allowing the defendant to submit the addendum at this stage and under these circumstances would be procedurally unfair and would go against the rules and

purpose of admitting an expert's supplementary reports, as well as fair trial principles in general. It would clearly undermine this court's decision regarding the status of the plaintiff's evidence.

[26]. In the circumstances, I find that the defendant (applicant) has failed to establish a proper case for the relief sought, and therefore, the application must fail.

Costs

[27]. The application having failed, the only issue for determination is the costs, which must be decided in accordance with the provisions of rule 67A of the Rules. This rule deals with awards of costs as between party and party costs. It provides the court with the discretion to determine the maximum fees that legal representatives can recover under such awards. In determining the party and party costs order under Rule 67A (3), the court shall "indicate the scale in terms of Rule 69, under which costs have been granted. The scales are "A", "B", and "C".

[28]. In *Mashavha v Enaex Africa (Pty) Ltd*[1], the court held that:

> "The court sets a maximum recoverable rate for that work having regard to the importance, value and complexity of the matter (Rule 67A (3) (b)). The court may also take into account any failure to observe the provisions of rules 30A, 37, 37A and 41A; any over-long written argument, oral argument, examination or cross-examination of witnesses; or any other misconduct that might justify a personal costs order (a costs order made against a person other than one of the litigants – usually a legal representative, or someone else acting in an official capacity, who has seriously misconducted themselves). It may also be relevant that the case fell within the jurisdiction of the Magistrate's Court, and might have been better determined there. Rule 67A (2) identifies these considerations, and emphasises their relevance to the making of a costs order under the rule."

[1] 2025 (1) SA 466 (GJ) at para 6

[29]. As shown above, the defendant persisted with an application to admit an addendum expert report without proper justification, and on matters that were neither new nor first raised by the plaintiff's substitute expert witness. The attempt to introduce the addendum is unfounded, as it was made solely because Dr Alheit raised the issue of hypoglycaemia in his addendum. There is also no merit in the claim that the issue came to Prof Bolton's attention for the first time after the plaintiff's substitute expert witness submitted the addendum. The issue had already been discussed by the parties' neonatal experts.

[30]. [30]. The other matter concerning the transfer of the minor child from the NICU to ward 4 was definitively addressed by this court in the interlocutory, in which the defendant sought to recall the plaintiff's first witness for further cross-examination. Essentially, the application was unnecessary, delayed the finalisation of the case, and was procedurally unfair. Furthermore, the application resulted in additional expenses for the plaintiff in an already protracted litigation involving serious and complex issues of medical negligence, which demanded a comprehensive response.

[31]. In light of this analysis, I am satisfied that employing two counsel was reasonable, justified, and the costs should be based on the highest party and party scale.

Order

[32]. In the premises, the following order is made:

1. The late filing of the replying affidavit is condoned.

2. The defendant's point in limine regarding the alleged lack of knowledge on the part of the deponent to the founding affidavit is dismissed.

3. The application for leave to admit the defendant's addendum expert report is refused with costs, including costs of two counsel, on the party-and-party Scale C.

[redacted]

E MOLAHLEHI
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, JOHANNESBURG

Counsel for the Plaintiff:	Adv MJ Fourie with Adv JA du Plessis
Instructed by:	Shane White Attorneys
Counsel for the Defendant:	Adv URD Mansingh
Instructed by:	State Attorney Johannesburg
Heard:	20 January 2026
Delivered:	15 April 2026