



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

JUDGMENT

Case no: 2026-024496

In the matter between:

D[...] J[...] K[...] (born M[...])

APPLICANT

and

T[...] M[...] F[...] K[...]

RESPONDENT

Neutral citation: *K[...]* v *K[...]* (Case no 2026-024496) [2026] ZAWCHC (13
May 2026)

Coram: MAYOSI AJ

Heard: 5 May 2026

Delivered: 13 May 2026

Summary: Relief sought for a declarator that a maintenance order granted, *pendente lite*, by the Strand Regional Court includes the respondent's obligation to pay the tertiary education fees of the parties' children.

ORDER

- 1 The parties' late filing of their respective heads of argument is condoned.
- 2 It is declared that the respondent's obligation under paragraph 2.4 of the court order granted by the Strand Regional Court under case number RCC STD 162/2022 on 15 August 2025 includes payment of the tertiary education costs of the parties' children.
- 3 The costs of this application, including the costs of counsel, shall be borne by the respondent on scale B.

JUDGMENT

Mayosi AJ:

Introduction and brief background

[1] In this application the applicant, who is the mother of the subject children, seeks declaratory relief in relation to an aspect of a maintenance order granted by the Strand Regional Court, *pendente lite*, on 15 August 2025 (**the Order**). The respondent is the children's father.

[2] The parties married on 22 January 2005 and their marriage still subsists. There are four children born of the marriage. The eldest of them is S[...] who is

presently in her third year of studies towards an LLB degree at the University of Cape Town (UCT).

[3] On 4 August 2022, the respondent instituted a divorce action against the applicant in the Strand Regional Court, which proceedings are defended by the applicant.

[4] On 15 August 2025, after an opposed application in terms of Rule 58 of the Rules of the Magistrates Court, the magistrate granted relief at the instance of the applicant in terms of which the respondent was ordered, *inter alia*, to pay maintenance for the parties' four children and the applicant, *pendente lite*.

[5] Paragraph 2.4 of the Order states as follows:

‘The Respondent shall pay all the children’s educational costs, which shall include but is not limited to all school fees, additional tuition fees, [hostel] fees, and after [care] fees and cost of all extracurricular school, extramural, cultural and sporting activities in which the children may participate, including but not limited to the following:

2.4.1 The costs of schoolbooks and uniforms.

2.4.2 The cost of all sporting uniforms relating to extramural activities.

2.4.3 The cost of fees relating to the children’s sporting and extramural activities.

2.4.4 The cost of exchange programs including travel and accommodation expenses related thereto.’

[6] It is the interpretation of this paragraph 2.4 that forms the subject matter of these proceedings.

[7] The respondent interprets paragraph 2.4 to be limited to school fees only – in other words, his assertion is that paragraph 2.4 excludes tertiary education fees. Such an exclusion would implicate S[...] at present.

[8] On 1 September 2025, the respondent sent a WhatsApp message to the parties' children, and a synonymous email to the applicant, stating, *inter alia*, that the applicant was now responsible for S[...]’s university fees.

[9] On 13 October 2025, after S[...] had emailed her university fee statement to the respondent for payment, his response to her was that she should refer same to her mother as the person now responsible for this budget item.

[10] The respondent had always paid the university fees for S [...], who was in her second year of studies when the Order was made. After the Order was granted, he refused to pay S[...]’s fees due for the remainder of the 2025 year resulting in an outstanding balance of over R7 000. UCT has a strict policy that a student with outstanding fees will not receive their academic results for the preceding year and will not be permitted to register for the following academic year. Furthermore, an initial registration payment for the 2026 academic year was due for payment on 6 February 2026 to secure S[...]’s place for the academic year. The respondent refused to make these payments.

[11] On 20 January 2026, the applicant launched an urgent contempt of court application in this Court, which was heard on 23 January 2026. This Court, per O’Brien AJ, ordered that the issue of the interpretation of educational expenses as set out in paragraph 2.4 of the Order be referred back to the Regional Court, Strand, for determination on an urgent basis.

[12] The applicant launched an urgent application in the Regional Court seeking, *inter alia*, the relief that she seeks in these proceedings; ie, a declaratory order that paragraph 2.4 includes tertiary educational costs. The application was opposed by the respondent. He raised six points in *limine*, primarily contending that the Magistrate's Court as a creature of statute lacks the jurisdiction to grant declaratory relief.

[13] On 4 February 2026 the Regional Court delivered its judgment upholding the respondent's points in *limine* and finding that it lacked the necessary jurisdiction to make a declaratory order, and that it was *functus officio* in respect of ordering compliance. This judgment then compelled the applicant to bring this application in the face of the respondent's continued refusal to pay S[...]’s university fees.

[14] This application was brought on an urgent basis on 5 February 2026, with the deadline for the payment of S[...]’s registration fees being the next day. The matter was postponed for hearing on 5 May 2026, with Jonker AJ ordering the respondent to pay S[...]’s outstanding 2025 fees and the registration fees due pending the final determination of this matter.

Applicable principles of interpretation

[15] The legal principle that an order of court falls to be construed according to the ordinary rules and principles pertaining to the construction of documents generally is not disputed by the parties. It is furthermore not disputed that the leading authority on the modern approach to the interpretation of documents is

Endumeni,¹ the application of which requires the interpretation of a court order to be undertaken objectively, having regard to the language used, the context in which the order was granted, and the purpose for which the order was made.²

[16] The respondent nevertheless advances the *ejusdem generis* principle as a basis on which paragraph 2.4 of the Order should be read to exclude tertiary education expenses. The principle was described in **Ex parte Van Oudtshoorn**³ as one which is usually applied to the construction of clauses where words of limited meaning are followed by others of general application.⁴ The respondent's case in this regard is premised on the wording of paragraphs 2.4.1 to 2.4.4 of the Order, and it is argued that the items listed there share a common denominator of being school-related educational expenses and this should have the effect of interpreting the entire paragraph 2.4 as being about school fees and related expenses only, exclusive of tertiary education costs. However, on the face of paragraph 2.4 itself, this premise cannot be correct.

[17] The Order refers to “*all the children's educational costs*”, and lists, by way of non-exhaustive examples additional tuition fees, hostel fees, the costs of extramural and sporting activities and the costs of exchange programmes including travel and accommodation. None of those items, in their ordinary meaning, are confined to school-level education. They apply equally to school and to tertiary level education. The asserted “common denominator” of school-only expenses is therefore not supported by the wording of paragraph 2.4.

¹ Natal Joint Municipal Pension Fund v Endumeni Municipality 2012 (4) SA 593 (SCA)

² At paragraph 18

³ 1952 (2) SA 310 (T)

⁴ At 313B-G

[18] The structure of paragraph 2.4, in any event, precludes the application of the *ejusdem generis* principle. The phrase “*shall include but is not limited to*” is, on its plain meaning, an instruction not to confine the general words to the specific items that follow in the paragraph. *Ejusdem generis* operates where general words follow a closed list of specifics so as to take their colour from the class identified. Paragraph 2.4 has the opposite structure, namely general words first, followed by examples expressly identified as non-exhaustive. To apply the *ejusdem generis* principle in those circumstances is to read the phrase “*include but is not limited to*” as if it stated “*include only*”, which is the inverse of what the words say.

[19] The respondent relied on **Shakawa**⁵ for his proposition that the principle of *ejusdem generis* remains a recognised interpretive aid in modern law and applies where general words follow specific words. However, this case does not assist the respondent. The Supreme Court of Appeal upheld an appeal and set aside an order from the court below which had been founded on an application of the *ejusdem generis* principle. At paragraph 15 of the judgment the SCA held that the court below had committed a fundamental error in its approach to interpretation and confirmed that the proper approach was the approach set out in **Endumeni** and proceeded to apply the latter’s interpretive principles.

[20] **Shakawa** is, accordingly, not authority for the proposition that *ejusdem generis* is to be applied by a court in interpreting written instruments. It is authority for the converse, namely, that the modern approach to interpretation is that set out in **Endumeni**, which directs a unitary exercise in which language, context and purpose are considered together from the outset.

⁵ *Shakawa Hunting & Game Lodge (Pty) Ltd v Askari Adventures CC* (44/2014) [2015] ZASCA 62.

[21] I turn now to conduct that exercise with reference to the facts of this case.

Analysis

The text of paragraph 2.4

[22] The inevitable point of departure is the language of paragraph 2.4 of the Order. In my view, that begins with and must be read against the backdrop provided by the text in the preamble, which states that paragraph 2.4, *inter alia*, shall be applicable to all of the children born of the marriage between the parties pending the final determination of the divorce. S[...] is self-evidently one of these children to whom paragraph 2.4 applies. The text of the Order says so.

[23] Turning to paragraph 2.4 itself, it obliges the respondent to pay “*all the children’s educational costs, which shall include but is not limited to....*”.

[24] On its ordinary grammatical meaning, the words “*educational costs*” were intended to include both school and tertiary education costs for the following reasons, namely that:

[a] The use of the word “*all*” indicates that the respondent’s obligation was intended to cover the educational expenses of all the children, and not only those who are in primary or secondary school.

[b] S[...] was then already generating educational costs of a tertiary nature, including tuition fees and other related costs that formed part of the inclusive text of paragraph 2.4.

[c] The phrase “*educational costs*” is framed broadly, and it does not state that the respondent’s obligation ends once the children complete matric.

[d] The paragraph goes on to state that those costs “*include but are not limited to*” school fees, tuition fees and so forth. This is a list of examples and is not an exhaustive or a closed list.

[25] The respondent’s interpretation that S[...]’s educational expenses are excluded from the ambit of the paragraph cannot be reconciled with the express wording of “*all the children’s educational costs*”. On the respondent’s construction, paragraph 2.4 would apply to three of the four children but exclude S[...] entirely, despite the express use of the word “*all*”.

[26] The respondent’s distinction between “*school*” and “*tertiary*” education is unsupported by the wording of the Order and is inconsistent with its structure. The phrase “*educational costs*” is not qualified and should be understood in its ordinary sense to include the education of all four children, including tertiary education, which was clearly contemplated when the Order was made. A construction that excludes tertiary education would result in an insensible outcome, contrary to the interpretive approach endorsed in **Endumeni**.

The context

[27] Paragraph 2.4 must be interpreted in the context of the Order as a whole, which regulates the respondent’s maintenance obligations towards the applicant and their four children, *pendente lite*.

[28] The structure of the Order draws a clear distinction between:

[a] Cash maintenance payable to the applicant for general living expenses; and

[b] Direct payment obligations by the respondent in respect of specific categories of expenditure, including educational costs.

[29] The applicant is unemployed and has not worked for over 20 years. She is prohibited from working by virtue of her relative's visa. If, as contended for by the respondent in this context, the applicant is required to fund tertiary educational expenses from the cash maintenance component, this would necessarily result in a shortfall in respect of the applicant's and children's basic living needs, as the cash maintenance was calculated with reference to those needs alone. Such an interpretation not only disregards the distinction drawn by the Order between general maintenance and education costs but would also render the cash maintenance portion inadequate by requiring money intended for the applicant's and the children's day-to-day needs to be used for expenses that are separately covered under paragraph 2.4.

[30] The respondent contends that tertiary education costs were not pleaded by the applicant in her Rule 58 application before the Regional Court. He further contends that they were not quantified and not adjudicated upon in those proceedings and therefore cannot be read into paragraph 2.4. This submission cannot be sustained for the following reasons.

[31] The Order was granted in the following context:

[a] S[...] was then in her second year of studies at UCT and the respondent was paying for S[...]’s education fees. The Order did not excise

this obligation from the respondent going forward. Given the significance of this consequence, the magistrate would have expressly said so had she intended for the respondent to no longer be responsible for the children's university fees. Given that the application of the Order is *pendente lite*, such an exclusion would make no sense apart from it being clearly prejudicial to the children's interests on facts and circumstances of this matter.

[b] The applicant expressly excluded educational costs from her maintenance budget on the basis that such costs were borne by the respondent. In this regard, the applicant provided a detailed breakdown of her and the four children's cash maintenance needs which totalled R101 270 per month and which specifically excluded medical and educational expenses.

[32] Educational costs were always treated as a separate expense and were never incorporated into the cash maintenance claimed by the applicant, hence their separate treatment in the award made.

[33] The respondent's contention that the absence of a quantification of tertiary expenses renders them beyond the scope of paragraph 2.4 is similarly unsustainable, given that paragraph 2.4 does not quantify school fees, additional tuition fees, hostel fees, aftercare fees or the costs of extracurricular activities either, which fees and costs the respondent accepts and has always paid in respect of the children. The absence of a stated rand amount is therefore a feature of the clause as a whole and cannot operate to exclude tertiary education whilst leaving school intact.

The purpose of the Order

[34] The purpose of the Order in relation to educational expenses was to ensure that all of the children born of the parties' marriage received the education that they require. Properly construed paragraph 2.4 was intended to ensure the *pendente lite* continuity of educational provision to the parties' four children, rather than to draw a contrived distinction between stages of education.

[35] In **Firestone SA (Pty) Ltd v Genticuro AG**,⁶ Trollip JA held that “*the judgment or order and the court’s reasons for giving it must be read as a whole in order to ascertain its intention.*”⁷ In this matter, what the magistrate meant by her order in paragraph 2.4 is instructive. In her judgment dismissing the applicant’s urgent application for declaratory relief, she stated that the phrase “*all the children’s educational costs*” meant all the costs to be paid for the education of all of the respondent’s children. Given that one of the respondent’s children was at the time incurring tertiary education costs, the respondent’s obligation self-evidently included these costs.

[36] The Order, read together with the magistrate’s subsequent reasons in her judgment, makes it clear that paragraph 2.4 was intended to encompass the educational costs of all four children, and not only those still in school.

[37] When interpreting the paragraph in accordance with the **Endumeni** principles, the applicant’s interpretation is the only construction that gives sensible effect to the Order as a whole.

⁶ 1977 (4) SA 298 (A)

⁷ At 304D-H

Conclusion

[38] In the circumstances, the following order is made:

1. The parties' late filing of their respective heads of argument is condoned.
2. It is declared that the respondent's obligation under paragraph 2.4 of the court order granted by the Strand Regional Court under case number RCC STD 162/2022 on 15 August 2025 includes payment of the tertiary education costs of the parties' children.
3. The costs of this application, including the costs of counsel, shall be borne by the respondent on scale B.

N MAYOSI

Acting Judge of the High Court

Appearances

For applicant: Advocate S. Sundelson

Instructed by: Lee Attorneys

For respondent: Adv Johan Bester

Instructed by: Miller Bosman Le Roux Attorneys