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**IN THE HIGH COURT OF SOUTH AFRICA
EASTERN CAPE DIVISION – PORT ELIZABETH**

Case No.: 3145/2015

In the matter between:

J[...] A[...] M[...] (born C[...])

Applicant

and

G[...] S[...] M[...]

First Respondent

and

27 OTHERS

JUDGMENT

REVELAS J:

1. The first respondent and the applicant in these proceedings were married to each other on 9 March 1991 in Port Elizabeth, out of community of property, incorporating the application of the accrual system. Paragraph 5 of their antenuptial contract reads as follows:

“5. The following and future assets and contingent assets of the said G[...] S[...] M[...] and J[...] A[...] C[], together with any debts and obligations attendant upon the said assets or contingent assets, together with any assets acquired by virtue of his or her possession or form possession of the said assets and contingent assets, shall be excluded from the accrual system:

- 5.1 All present and future benefits which may accrue to the said G[...] S[...] M[...] and J[...] A[...] C[] in terms of existing or future Trusts including in the instance of the said G[...] S[...] M[] his interest in the C[...] G[...] TRUST and the G.S M[...] TRUST.
- 5.2 All existing claims of the said J[...] A[...] C[] against her father, C[....] R[...] C[] for the payment of monies loaned and advanced.”

2. Two sons were born from the marriage between the parties, namely C[...] and T[...]. Both are now majors. The first respondent moved out of the common home on 25 May 2015 and the parties have never lived together since. The applicant and the first respondent has subsequently become involved in divorce proceedings in which the scale of litigation has reached extravagant proportions. In her particulars of claim, the applicant pleaded that the first respondent controls the assets acquired by the parties during the marriage in a manner designed to deprive her of the rightful share thereto and that the first respondent has gone out of his way to undermine her financially. The applicant has cited the trustees of 26 trusts who have all defended the action brought by her. (Two offshore trusts were joined recently)
3. In the present instance there are four applications before me. These interlocutory applications are all aimed at establishing the value of the assets of the trusts which assets the applicant contends, ought to be taken into account when the accrual to the first respondent's estate is calculated.
4. The applicant maintains that in terms of the provisions of section 7(2) of the Divorce Act she is entitled to maintenance until her death or remarriage, whichever occurs first, on all the grounds and factors set out in section 7(2).

5. The applicant averred that the first respondent was a co-trustee of eight local trusts, and three trusts that are established off-shore. According to the applicant, the first respondent contributed to the financing and acquisition of trust assets from his personal assets, he also endeavored to increase the value of the trusts, maintained them and assisted with their running costs through his personal estate, treated the trusts assets as if they were his own personal assets and has been in effective control of these trust with the tacit consent of his co-trustees. According to the applicant, the trusts are beneficially controlled and owned by the first respondent. The applicant further alleges that the acquisition of assets in the name of the trusts, the Christim Trust and the Highway Trust hold extensive assets and the acquisition of assets in their name have been simulated transactions which fall to be set aside to reflect that the first respondent is the owner of such assets. These two trusts have recently joined to the proceedings.
6. The applicant pleaded that the net value of the assets held by the trustees of the trusts at the time of dissolution of the marriage, must be added to the net value of the first respondent's personal estate for purposes of calculating the accrual, of the first defendant's estate in terms of section 3 and 4 of the Matrimonial Property Act, 88 of 1984.
7. The applicant also pleaded that during the course of their marriage the first respondent's estate (inclusive of the value of the net assets of the

trusts) has shown greater accrual than the applicant's estate. Accordingly, the applicant will acquire a claim against the first respondent equal to one-half of the difference between the parties' estates.

8. The first respondent was also called upon, in terms of section 7 of the Matrimonial Property Act, to furnish full particulars in respect of his current assets and liabilities, including the assets and liabilities, including the assets and liabilities of the trusts. Only the first respondent has complied with his obligations in this regard, will the applicant be in a position to quantify her claim.

9. In the alternative, the applicant pleaded that:

“ 47.1.1 that at the time of the conclusion of the

antenuptial contract the parties contemplated that during the subsistence of their marriage, there would be an accrual in their respective estates; and

47.1.2 that the parties would respectively be entitled to benefit from such accrual on dissolution of their marriage.

47.2 It was accordingly a tacit, alternatively implied term of the antenuptial contract that neither of the parties would frustrate the other's entitlement to benefit from any accrual in their respective

estates by wilfully disposing of assets to the prejudice of the other party.

47.3 First respondent, in material breach of the terms of the antenuptial contract, wilfully disposed of his personal assets, and/or assets in which he had an interest, in the Trusts, the Christim Trust and the Highway Trust and to the prejudice of Applicant.

47.4 In consequence of such breach, Applicant has suffered damages in an amount equal to half of the net value of the assets held in the name of the Trusts, the Christim Trust and the Highway Trust.

47.5 The damages so suffered by Applicant represent the amount by which Applicant's share in the accrual of First Respondent's estate has been reduced, given that the assets now held by the Trusts, the Christim Trust and the Highway Trust would otherwise have been retained as assets personal to him."

10. The first respondent is a wealthy man and the applicant believes that he is the alter ego of the many trusts she has cited as defendants in her action for divorce against the first respondent, including the offshore trusts, the Christim Trust and the Highway Trust, who both have been joined recently as parties to the present litigation.

11. In her quest to establish the financial position of the trusts, the extent of their assets and liabilities and all related information, the applicant has brought several interlocutory applications.

12. Four of these applications are to be decided in this judgment. Firstly the applicant has brought an application in terms of uniform Court Rule 21(4) to compel the trustees of the trusts she has cited to reply to her request for further particulars which was served on the trustees on 15 June 2018, within five days of such order failing which, the applicant would apply on the same papers, as supplemented, to have the first respondent's defence struck out. The relief sought in this regard is only against the trusts.
13. The applicant filed an application for leave to amend her particulars of claim by introducing new paragraphs 44.1 to 44.5 thereto. She has also brought an application in terms of Uniform Court Rule 35(11) for an order directing the first respondent to produce documentation in his power and under control relevant to issues in dispute between the parties in the divorce action, as specified in annexure "Y" to her application. In the fourth application the applicant seeks leave to file a further affidavit in support of the aforesaid application in terms of Rule 35(11).

Application in terms of Uniform Court Rule 21(4)

14. The grounds for the trusts declining to respond to the questions in the applicant's request for further particulars for trial dated 15 June 2016, is that it constitutes an abuse and is frivolous and vexatious. The trusts and the first respondent are of the view that the applicant's request for further particulars in this, or any other request, made by her constitutes

impermissible interrogatories, are a matter for evidence, and are not strictly necessary to enable the applicant to prepare for trial.

15. The trusts contend that the particulars requested cover subject matter which does not arise from the plaintiff's case as pleaded and information as requested is not within the knowledge of the trusts.
16. It is difficult to determine at this stage whether the applicant is entitled to all of the particulars sought by her. However, should the respondents not be able to adhere to the plaintiff's request they should indicate that to her. There is no reason to prevent her from requesting further discovery which as she requires for her preparation for trial. In my view the applicant's request is not vexatious. It has always been anticipated in an action of this kind, that extensive particulars will be sought.

Application to Amend:

17. The trusts vehemently opposed the application to amend the applicant's particulars of claim on the basis that the proposed new paragraphs amount to allegations of fraud involving impropriety and dishonesty. In addition, the second and further respondents objected to the amendment, maintaining that there were lacking in particularity.
18. Significantly, the first respondent, the husband of the applicant, chose not to oppose the application in his personal capacity, only in his capacity as a trustee. The amendments relate to his conduct, the applicant's accrual claim, and the antenuptial contract entered into between the applicant and

the first respondent. The trusts have specifically indicated that if required to plead to the “newly advanced simulation and rectification claims” they would assert that they are the legal and beneficial owners of their respective assets to the exclusion of the first defendant and any accrual regime.

19. The trusts set out the applicant’s proposed changes and additions her existing particulars of claim by underlining the amendments and additions, and placing the deletions or omissions in square brackets in the text below. I have followed the same method in the text below together with the trusts remarks in relation to each paragraph.

“44.1 The assets of the Trusts, the Christim Trust and the Highway Trust are beneficially owned and controlled by first defendant and the [aforesaid] trust assets therefore from part of first defendant’s personal estate;

44.2 Were ostensibly transferred to, acquired by and held in the name of the trusts referred to in paragraph 44.1 at the instigation of the first defendant for the improper purpose of excluding trust assets from his personal estate and thus diminishing the accrual of the plaintiff; (This is a wholly new paragraph)

44.3 Alternatively to the foregoing, and in any event, the transfer* to and acquisition of assets [in the name of] by the Trusts, the Christim Trust and the Highway Trust were simulated transactions which fall to be set aside to reflect that the first defendant is the owner of such assets; (This

replaces the existing paragraph 44.2, which had not been an alternative.

*It also now adds “transfer”)

44.4 In the premises the antenuptial contract concluded between the parties and in particular clause 5 read with clause 5.1 thereof, does not preclude the plaintiff from sharing in the assets of the trusts therein contemplated which are personally owned by the first defendant; (This paragraph was objected to in Annexure “JAW1”. However, there followed an amended notice of amendment in response to the notice of objection being “JAW3”. That included a prayer for rectification which opens the door for direct evidence of intention. The Trusts stated that they accept that issues concerning the interpretation of the antenuptial contract must therefore go to trial.)

44.5 In any event, at the time of conclusion of the antenuptial contract first defendant assured plaintiff and the parties thus orally agreed, that the exclusion of assets more fully described in paragraph 5 of the antenuptial contract did not represent their true intention and was not intended to be given effect to nor represent their true intention and was not intended to be given effect to nor intended to undermine her accrual claim, but was contained in the antenuptial contract merely to appease first defendant’s father and to that extent was simulated. (the comments re paragraph 44.4 apply)

44.6 In seeking to contend that the trust assets are separate from his personal assets and in seeking further to rely upon the provisions of

- clause 5 of the antenuptial contract, the first defendant has breached that agreement. 44.6 In the alternative to paragraph 44.4, 44.5 and 44.6 the plaintiff [pleads rectification]. For the purposes of this application, this proposed paragraph is uncontentious. The plaintiff has now met the objection which had been raised in paragraphs 6 and 7 of the Trusts' Notice of Objection. The Trusts stated that fully reserve their right to plead to this paragraph in due course and make no admissions.
20. Since no mention is made of any prejudice that would be suffered by the respondents if the amendment were allowed, which is the main consideration in determining whether or not to grant an amendment, and no inability to plead to the proposed amendments has been specifically averred, there seems to be no reason not to grant the application to amend. The allegation of *mala fides* on the part of the applicant can be dealt with during cross-examination at the trial as it will be a matter of evidence.

Application in terms of Rule 35(11):

21. The documentation initially sought by the applicant was listed in annexure "X" to the notice of motion. Subsequent to the launching of the affidavit, and prior to the filing of the replying affidavit, documentation was exchanged between the parties, resulting in a new annexure, being annexure "Y" in which the documentation presently sought is detailed.

22. In this application the application seeks no relief against the second and further respondents, only against the first respondent.
23. The applicant contends that the documents listed in annexure “Y” which is under in the power or control of the first respondent which are relevant to the issues in dispute and without which she will be materially prejudiced in the prosecution of her claims. According to the applicant the Highway Trust owns significant assets that have been externalised by the first respondent and in which the applicant assents she has an interest. According to the applicant, the first respondent and his brothers have been externalising funds generated in South Africa through a company called Anesbury Limited.
24. I have already referred to other interlocutory applications which all relate to financial discovery. Extensive financial discovery has already been made in this case. Thus far there are more than 80 files with discovered documents. However, the applicant contends that the first respondent has not disclosed the true nature of his involvement in the several local trusts and the offshore trusts.
25. In her founding affidavit the applicant has carefully set out how the various trust are associated with the first respondent and his two brothers. What has emerged is a highly complex structure, managed and controlled by the first respondent using his local and offshore advisors. For instance, Rosebank Ltd and Rosemont Ltd are the advisors to the McWilliams

- brothers offshore. Rosebank Ltd is the trustee of the Highway Trust, the Motorway Trust and the Colbruce Trust are referred to as the three “Monaco Trusts”. In its capacity as trustee of the three Monaco trusts, Rosebank Ltd is the shareholder of three issued shares of Anesbury Investments Ltd, a company registered in the British Virgin Isles. The applicant rejects the first respondent’s advice that the three Monaco trusts are so-called “blind trusts” or that the Red Cross is their true beneficiary.
26. The applicant infers from documentation that has been provided by the respondents or subpoenaed, that through a structure conceived twenty years ago, the first respondent and his brothers have been externalising funds generated in South Africa through Anesbury and the three Monaco Trusts. An entity called Uniondalle is also involved and is the owner of a flat in which the applicant’s sister lives and which the applicant uses when in London.
27. The applicant has also attached an interim report by Allan Greyling of Accountants at Law, who carried out a forensic audit in B[...] M[...] Industries in respect of the value of the BMI Trust Shareholdings, the trust related to the first respondent and the latter’s income. It is apparent from this interim report that the first respondent’s role and interest in the various trusts and companies referred to is rather underplayed.
28. According to the interim report, Anesbury owns significant shares in local entities that are managed and controlled by the first respondent. The

- primary holding is the BMI Trust. With Anesbury the latter trust is co-shareholder of a number of entities, the value of which, according to Greyling, exceeds R1,28 billion as at February 2016. According to a financial statement, Anesbury owns at least a third of these assets, which amounts to more than R400 million and the first respondent is a director of all of the local entities in which Anesbury has an interest.
29. The applicant has made several attempts to secure the documentation she requires to prosecute her action against the first respondents and the trusts. She maintains that in her pursuits, she has encountered a high level of obstruction from the first respondent and the trusts.
30. She listed the following examples. Letters requesting documentation were not responded to and no documentation was provided in certain instances where the significance of the documents were made plain by the applicant; only after an application to compel compliance, was the notice in terms of section 7 of the Act provided; no documentation relating to the offshore trusts and offshore structures, was included in any discovery, several letters were sent to the respondent's attorneys, expressing the applicant's disputes factors with the discovery requested in vain.
31. Discovery is intended to assist in discovering the truth to enable the just determination of the case. The object of the rules of discovery is to ensure the fair trial of the action in accordance with the due process of the court.

32. In terms of Rule 35(1) of the Uniform Rules of Court, a party called upon to make discovery is required to state on oath all documentation relating to any matter in question in the action which is or has at any time been in the possession or control of such other party.
33. In terms of Rule 35(3) of the Uniform Rules of Court, if a party believes that there are, in addition to documents disclosed as aforesaid, other documentation which may be relevant to any matter in question in the possession of any party thereto, the former may give notice to the latter requiring him to make the same available for inspection or to state on oath that such documents are not in his possession in which event he shall state their whereabouts, if known to him.
34. Rule 35(11) of the Uniform Rules of Court, provides that the court may, during the course of any proceedings, order the production by any party thereto under oath of such documents in his power or control, relating to any matter in question in such proceeding as the court may think meet.
35. Applicant delivered a notice in terms of Rule 35(1) on 9 December 2015. Pursuant thereto, first respondent, on behalf of all of the defendants, delivered a discovery affidavit on 21 April 2016. In the ultimate paragraph of the discovery affidavit, which was dated 20 April 2016, first respondent states on oath as follows:

“To the best of my knowledge and belief, I have not now and never have had in my possession, custody or power of my attorneys or agents, or any

other person on my behalf, any document or copy of or extract from any document relating to any matter in question in this cause other than the documents set forth in First and Second Schedules hereto.” (sic) [our emphasis]

36. At the time of attesting to the affidavit, the respondents were well aware of the issues in dispute between the parties and of the documentation that applicant sought and deemed relevant to the issues in dispute, as it was detailed in correspondence between the parties’ attorneys, including annexures JM24, JM25 and JM26.
37. Consequent upon the discovery in the respondents’ first discovery affidavit, and which the applicant deems inadequate, the applicant delivered a series of notices in terms of Rule 35(3). These notices were served and responded to as follows:
 - (a) 30 June 2016, responded to on 13 October 2016;
 - (b) 22 December 2017, responded to by first respondent On 30 January 2018 and by the Trusts on 28 February 2018;
 - (c) 28 June 2018, responded to by first respondent on 27 July 2018 and the Trust on 27 August 2018 following an application to compel them to do so.
38. A further six discovery affidavits were delivered by first respondent. The trusts have not delivered any further discovery affidavits. The documents that have been provided are attached to their Rule 35(3) replies.

39. Most of the documentation that remains outstanding relates to the affairs of the offshore Trusts and the entities in which they have an interest. The applicant contends that to the extent that such documentation is not in the possession of the respondents or of the subpoenaed witnesses, the documentation is in the power and/or control of first respondent. The applicant contends that she is unable to subpoena the documentation because the relevant intermediaries, who, according to the applicant, have the documentation in their possession, are outside of the jurisdiction of the South African courts.
40. The applicant asserts that first respondent has the power and control over the relevant documentation that is in the possession of the offshore intermediaries who are the named trustees of the offshore Trusts, who are in turn, albeit in different guises, are the named shareholders and directors of the offshore entities, including Anesbury and Uniondale.
41. It can hardly be disputed that the applicant would be prejudiced in her preparation for trial and in presenting the evidence allowing the just determination of the issues in dispute, if she is denied the documentation that she seeks in annexure "Y," which she submits is in first respondent's power and/or control.
42. There is no justiciable prejudice that can be occasioned to first respondent should he be directed to comply with his obligations flowing from the Rules of Court and in any event, the first respondent does not allege any

prejudice should he be directed to comply with the order sought by Applicant in this application. It is clear that first respondent's stance in not providing documentation under his power or control to the applicant necessitated this application.

43. The respondents contend that the applicant has cast her net impossibly wide and the precise details are requested in respect of the C[...] G[...] Trust, G[...] M[...] Trust, the G[...] M[...] Family Trust, the 23 Hallack Road Trust, Garry's Investment Trust, the MID Trust, The McSher Trust, the BMI Trust, the Christim Trust and the Highway Trust. The applicant also seeks particulars since the creation of these trusts.
44. It may very well be that the applicant has indeed cast the net very wide but that is a natural consequence of the nature of her claim against the first respondent. It has always been foreseen that the applicant's case would involve a quest for financial details, information and documents pertaining to the various trusts linked to the first respondent. If the particulars sought is not at hand or non-existent the respondents may indicate their inability to respond and the reasons therefore.
45. With regard to costs, the applicant submitted that *inter alia*, that the first respondent's conduct including the manner in which he has opposed this application, his failure to provide reasons for not providing the documentation sought, and his general obfuscation in providing documentation reasonably sought by applicant would justify costs on the

scale as between attorney and client, and the costs of two senior counsel.

I do not agree.

46. It is correct that discovery sought in terms of Uniform Court Rule 35(11) is to occur during trial proceedings. I do not understand the rule to be limited only to trial proceedings. In a case where the quest for discovery is so prolific as has been in the present matter, it would be more efficacious to have the discovery made prior to the trial than during the trial. On the other hand, the plaintiff might not prove her case as she has set it out in its amended form, in which case much of the discovery may turn out to have been a waste of time. Given the extent to which the applicant seeks discovery, it would be unfair to burden the first respondent with a costs order at this stage in respect of this application.

The Application for Leave to File a Further Affidavit

47. The plaintiff brought this application after judgment had been reserved in respect of the three other interlocutory applications. The application was brought on an urgent basis and was opposed. The parties were in agreement that I consider this applications together with the three applications in question and determine the outcome in the present judgment.
48. The applicant's application was brought due to the fact that in December 2018 and February 2019 she received further documentation the contents of which the applicant regards as material to her care. The first document

referred to is a letter dated 29 August 2018 addressed to the first respondent and marked for the attention of the first respondent's chartered accountant, Mr D Honeyball and Mr K Simon.

49. The letter indicates that the first respondent obtained relief in terms of Regulation 24 of the Exchange Control Regulations and makes provision for the repatriation of USD 678 486.00 in the respondent's name and that the total value for which the relief is sought, amounts to USD 10 498 770.90. The applicant points out that this document was never discovered despite it being in the possession of the first respondent and his accountants.
50. On 5 December 2018 the applicant received further documentation from the first respondent's financial consultant, Mr J Troskie. The first respondent had given Mr Troskie a power of attorney signed by himself. This document was attached to the founding affidavit as well as Mr Troskie's reply to a subpoena, e-mail correspondence between the first respondent and Mr Troskie in August 2017 and an opinion written by Mr Troskie at the behest of the first respondent as to whether the offshore structure involving the Highway Trust and the entities it holds was lawful.
51. The applicant has attached these documents to the affidavit with the purpose of demonstrating the first respondent's control over the trusts and appears to be the ultimate owner of the assets in the Highway Trust.

52. The applicant relies on paragraph 6.2.1 of the opinion referred to which reads:

“Although the offshore trusts were created by an offshore company, there is very little doubt that the *de facto* control of the offshore trusts are by the M[...] brothers. Without such conclusion there may be argument that the structure does not make commercial sense.”

53. The applicant points out that despite a specific request, for the correspondence relating to the SVDP application in one of the annexures to the first respondent’s application to file a supplementary affidavit, the document was not discovered. The first respondent stated it was not in his possession. However, it is clear that it was under his control, at least.

54. It was further stressed that in his affidavit in the aforementioned application, the first respondent alleged that there was no factual or legal basis for the applicant’s assertion that the assets of the Highway Trust are beneficially owned by him and should form part of his personal estate for purposes of calculating the applicant’s accrual claim.

55. The applicant maintains that the aforesaid documents also contradict the first respondent’s statements to the effect that he had no vested right in the Highway Trust’s assets and is unable to produce the documentation relevant to the financial affairs and conduct of the Highway Trust. In my view, it would be in the interest of justice to allow the further affidavit. The

same considerations apply to the costs of this application as in the main application in terms of Rule 35(11),

Costs

56. The applicant should succeed in her applications for leave to amend her particulars of claim and her application in terms of Uniform Rule 21(4). There is no reason why costs should not follow the result.

57. With regard to the application in terms of Rule 35(11), I intend to reserve those costs. There have been several interlocutory applications thus far and the applicant is clearly out to obtain as much documentation and information regarding the first respondent's role and interest in the various trusts. However, as indicated above, it is possible that the applicant might not be able to prove her case as amended, and a court may find that the relevant part of the antenuptial contract concluded between the applicant and the first respondent means what it says, in which case she would not be able to prove her claim to the extent she has set out to do. Much of the discovery made thus far and further discovered still to be made under Rule 35(11) would then may have been made in vain. It seems somewhat unfair that the first respondent should bear those costs at this point. The same considerations should not apply to the applicant's application in terms of Rule 21(4), in which she sought particulars required to prepare for trial and with which there has only been partial compliance and thus necessitated her to bring the present application.

58. In the circumstances I made the order attached hereto.

E REVELAS

Judge of the High Court

Appearances:

For the Applicant: Adv M.J Fitzgerald SC and T.A Dicker SC, instructed by Catto Neethling Wiid Inc., Cape Town, c/o Greyventeins Inc., Port Elizabeth

For the First Respondent: Adv B Gassner SC and Adv S Miller, instructed by Miller Du Toit Cloet Inc., Cape Town, c/o Kaplan Blumberg Attorneys, Port Elizabeth

For the Trusts: Adv L Kuschke SC and Adv J Bernstein, instructed by Bowman Gilfillan, Cape Town, c/o Pagdens Attorneys, Port Elizabeth

Dates heard: 19 September 2018 and 14 March 2019

Date delivered: 26 March 2019

**IN THE HIGH COURT OF SOUTH AFRICA
EASTERN CAPE DIVISION – PORT ELIZABETH**

In the matter between:

J[...] A[...] M[...] (born C[...]) Applicant

and

G[...] S[...] M[...] First Respondent

and

27 OTHERS

ORDER:

Having considered the submissions made by counsel for the various parties herein, and having read the papers filed of record, the following orders are made.

1. The applicant is granted leave to file a further affidavit in support of her application in terms of Uniform Rule 35(11).

2. The first respondent is directed to produce or indicate the whereabouts of the documentation specified in Annexure “Y”, (substituted for annexure “X” to the applicant’s notice of motion) in terms of Uniform Court Rule 35(11) within 14 (fourteen) days of this order.
3. The applicant is granted leave to amend her particulars of claim as proposed to be set out in paragraphs 44.1 to 44.5 thereof.
4. The second to sixteenth respondents are directed in terms of Uniform Court Rule 21(4) to reply to paragraphs 1 to 14 and 16 to 18 of the applicant’s request for trial particulars dated 15 June 2018, within 14 (fourteen) days of this order, failing which their defences will be struck out.
5. The second to sixteenth respondents are liable, jointly and severally, for the applicant’s costs, including the costs of two counsel, in the applicant’s application for leave to amend her particulars of claim and her application in terms of Uniform Court Rule 21(4), on the scale as between party and party.
6. The costs of the application in terms of Uniform Court Rule 35(11) and the applicant’s application to file one further affidavit in support of the aforesaid application are reserved for determination by the trial court.

BY ORDER OF THE COURT

E REVELAS

JUDGE OF THE HIGH COURT