



Husband and wife – Rule 90 application – Application for contribution towards costs – Factors to be taken into account: how much the lawyer has requested, the status of counsel presenting the case and the scale of litigation of the parties.

**Summary:** The parties married each other on 28 March 1981 at Mariental, Republic of Namibia, out of community of property, and that marriage still subsists. On 7 June 2021, the plaintiff instituted divorce action against the defendant, in which action the plaintiff claims that the defendant unlawfully, maliciously and with the fixed intention to terminate the marriage, deserted the plaintiff by deserting the common home of the parties during 2012. In the alternative, the plaintiff states that the applicant indulged in certain conduct, details of which she sets out in the particulars of claim, which makes cohabitation with the defendant intolerable. The defendant entered notice to defend and also filed a counterclaim. The plaintiff launched and filed an interlocutory application in terms of rule 90(2) of the Rules of Court, seeking maintenance, contribution to costs and an interdict whereby the defendant is interdicted from removing, encumbering, concealing or disposing or both concealing and disposing of assets of the universal partnership. The defendant opposes the plaintiff's claim for maintenance and also counterclaims for contribution to legal costs.

*Held* that the court is satisfied that if the allegation made by the plaintiff are proven at the trial, she would succeed to prove that it was indeed the defendant who constructively deserted her. There is no doubt that the plaintiff is in need of maintenance. The plaintiff is therefore, entitled to maintenance *pendente lite*.

*Held* that the court is satisfied that the plaintiff is in need of a contribution to costs, although the amount itself is not properly motivated. Despite the court's finding that the amount is not properly motivated, the court is inclined to assist the plaintiff in this regard, and will grant her leave to, if so advised, supplement the papers to place more detailed information before court so that the amount required may be properly assessed and paid.

*Held further* that the plaintiff has made out a case to interdict the defendant from encumbering assets without the plaintiff's consent or disposing of any assets without the plaintiff's consent.

*Held further* that the defendant has failed to fully and honestly disclose his financial position; that his claim that the universal partnership between him and his wife was dissolved is unfounded and that, at least on paper, he is seeking to evade lawful obligations and maintain his wife. There is no merit in his application for the plaintiff to contribute to his legal costs or for her to be interdicted from alienating, removing and encumbering, concealing or disposing of any registered assets. There is no doubt that the joint estate emanating from the universal partnership of the parties is in the position to maintain the plaintiff. The court will thus, direct that the plaintiff must be maintained from the joint assets of the universal partnership.

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### ORDER

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1. The plaintiff is entitled to be paid maintenance *pendente lite* in the amount of N\$36 800 per month, the first payment must be made on or before 7 July 2023 and thereafter, on or before the 7<sup>th</sup> day of every month. The maintenance must be paid from the proceeds or income of the universal partnership.
2. The plaintiff is granted leave to approach this Court on the same papers, duly amplified where necessary, to claim from the parties' joint estate, a contribution to her legal costs in the pending litigation.
3. The defendant must refrain from removing or encumbering or concealing or disposing off any of the assets of the universal partnership's joint estate without the knowledge and consent of the plaintiff while the main case is pending.
4. The defendant must arrange the reconnection of the NamPower electricity supply to Farm Danielsdam No. 115, District of Mariental, Hardap Region, Republic of Namibia on or before 1 July 2023. The applicant must pay the monthly consumption cost from her interim maintenance *pedente lite* until the finalization of the matrimonial matter.

5. If the defendant fails or neglects to arrange for the reconnection of the NamPower electricity supply to Farm Danielsdam No. 115, then and in that event, the Deputy Sherriff for the District of Mariental is hereby authorised to arrange with the responsible authority the reconnection of the NamPower electricity to Farm Danielsdam No. 115.
6. The defendant must not commit and is interdicted from committing any act of domestic violence against the plaintiff and the defendant must not, except with the prior arranged permission of the plaintiff, enter Farm Danielsdam No. 115, District of Mariental, Hardap Region, Republic of Namibia until the finalization of the matrimonial matter.
7. For purposes of paragraph 2 of this order:
  - 7.1 the defendant must disclose and discover all the bank accounts and the balances in those bank accounts and investment accounts in his name to the plaintiff's legal practitioners by no later than 7 July 2023;
  - 7.2 the defendant must disclose and discover to the plaintiff's legal practitioners by no later than 7 July 2023, the identity of the legal practitioners, or institution into which the proceeds of the sale of the immovable property, the proceeds of the sale of the livestock and the proceeds of any asset he disposed off, rented out or encumbered;
  - 7.3 the legal practitioners for the plaintiff and the defendant must, if the amounts in the bank accounts or held by any investment company or legal practitioner in the name of the defendant, are insufficient to meet the plaintiff's needs of maintenance, identify assets that can be liquidated in the best interest of the joint estate so as to maintain the plaintiff.
8. The defendant must, subject to rule 32(11), pay the plaintiff's cost of the rule 90 application.
9. The defendant's counter application is dismissed.

10. The defendant must, if so advised, file his consequentially amended plea to the plaintiff's second amended particulars of claim and counterclaim by no later than 18 July 2023.
11. The plaintiff must, if so advised, replicate to the defendant's plea and plead to the defendant's counterclaim by no later than 28 July 2023.
12. The plaintiff must, if so advised, file supplementary affidavit in terms of rule 89 and supplementary discovery affidavit and bundles of discovered documents by no later than 4 August 2023.
13. The defendant must, if so advised, file supplementary affidavit in terms of rule 89 and supplementary discovery affidavit and bundles of discovered documents by not later than 9 August 2023.
14. The parties must file a joint case management conference report by not later than 9 August 2023.
15. The matter is postponed to 15 August 2023 for a Case Management Conference hearing.

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## JUDGMENT

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UEITELE J:

### Introduction and Background

[1] The applicant, who is the plaintiff in the main divorce action, is a pensioner female person. She states that she has no fixed employment and income, except for a government pension in the amount of N\$1 300 per month. She furthermore states that she resides at Farm Danielsdam No. 115, Mariental District, Hardap Region,

Republic of Namibia. I will, for ease of reference, refer to the applicant as the plaintiff in this ruling.

[2] The respondent, who is the defendant in the main divorce action, is also a pensioner male person, residing at Erf 1442, c/o Kuiseb and Omatako Streets, Henties Bay, Erongo Region, Namibia. I will, for ease of reference, refer to the respondent as the defendant in this ruling.

[3] The parties married each other on 28 March 1981 at Mariental, Republic of Namibia, out of community of property, and that marriage still subsists. Two children were born between the plaintiff and the defendant, however, the children are now majors and self-supporting.

[4] On 7 June 2021, the plaintiff instituted divorce action against the defendant, in which action the plaintiff claims that the defendant unlawfully, maliciously and with the fixed intention to terminate the marriage, deserted the plaintiff by deserting the common home of the parties during 2012. In the alternative, the plaintiff states that the applicant indulged in certain conduct, details of which she sets out in the particulars of claim, which makes cohabitation with the defendant intolerable.

[5] The defendant entered notice to defend and also filed a counterclaim. Upon the defendant entering his notice of intention to defend, the matter was, in terms of Practice Direction 19<sup>1</sup>, referred to court-connected mediation. Mediation took place on 8 October 2021 and on that day, the mediator reported that the parties failed to settle the disputes between them.

[6] The parties exchanged pleadings and after the plaintiff filed her second amended particulars of claim, she launched and filed an interlocutory application in terms of rule 90(2) of the Rules of Court, seeking the following relief:

'1. Directing the respondent to pay interim maintenance *pedente lite* in the amount of N\$ 43,700.00 per month to the applicant, which is payable on or before the 1st of each and every consecutive month;

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<sup>1</sup> High Court Practice Directions published under Government Notice No. 67 of 9 May 2014 (As amended).

2. Directing the respondent to make an advance payment in the amount of N\$ 250,000.00 to Janita von Wielligh Law Chambers' Trust Account as a contribution towards the applicant's legal costs in respect of the pending matrimonial action between the parties, payment to be made within 30 days from the date of the Court order;
3. Directing the respondent to refrain from removing and/or encumbering and/or concealing and/or disposing of any of the assets of the universal partnership's joint estate without the knowledge and consent of the applicant while the main case is pending;
4. Directing the respondent to arrange the reconnection of the NamPower electricity supply to Farm Danielsdam No. 115, District of Mariental, Hardap region, Republic of Namibia on or before the 1st of June 2023. The applicant to pay the monthly consumption cost from her interim maintenance pendente lite until the finalization of the matrimonial matter;
5. Directing the respondent to not commit any act of domestic violence against the applicant;
6. Directing the respondent to stay away from Farm Danielsdam No. 115, District of Mariental, Hardap region, Republic of Namibia until the finalization of the matrimonial matter;
7. Cost of suit only if the application is opposed (including the costs of one instructing and one instructed counsel); and
8. Further and/or alternative relief.'

[7] In a sworn statement filed in support of the application, the plaintiff, amongst other allegations, alleges that during the period of their marriage, she was subjected to verbal, mental, economical and physical abuse by the defendant but found solace in the fact that he was more absent from home than present while she was raising their two children.

[8] She further deposed that during 2010, the defendant moved to Henties Bay on the basis that he secured a transport contract for salt to be transported from Henties Bay to inland and the transportation of water to Namibia Wildlife Resorts along the coast. She further alleges that during 2012 the defendant informed her that he will

stay permanently in Henties Bay from where he will continue to operate the transport business and asked that she must send his personal belongings to Henties Bay. She states that he further indicated that he did not have any intention to return to the farm and agreed that the plaintiff could continue to stay on the farm and continue with the farming operations indefinitely.

[9] She furthermore deposed that during May 2021, the defendant terminated her medical aid membership with Nammed, by removing her as a member of his medical aid, terminated the electricity supply from NamPower to the farm as well as disconnected the telephone landline (but was later restored), terminated all the short-term insurances in respect of the motor vehicles which were in the plaintiff's possession at the time, as well as those on the farm and the insurance on the contents of the house on the farm. He thereafter, informed her that he was selling the livestock on the farm and that she must vacate the farm by the end of June 2021.

The plaintiff's grounds on which she claims maintenance and contribution to costs

[10] The plaintiff in her sworn statement deposed that she married the defendant on 28 March 1981 and that immediately after the marriage she moved to Farm Danielsdam and has since then been farming on the farm. She stated that she did not receive any maintenance from the defendant during the subsistence of the marriage from 1981 to 2010. She states that it is only during 2010 when she started her small business, Jumbo Salt that the defendant agreed that she could keep the proceeds from that business for her maintenance.

[11] The plaintiff further states that all the years prior to the establishment of Jumbo Salt, she deposited her income from stints of her employment into the respondent's bank accounts, the farming operations, and the defendant's transport business (Dikwils Transport). She furthermore deposed that she invested almost the entire inheritance that she received from her late mother into the farming operations and Dikwils Transport to ensure the continuation and sustainability thereof. She deposed that currently she has no pension fund, no medical aid and following the institution of the divorce proceedings in June 2021, the respondent refused to transport any salt



from Henties Bay to Mariental for her to conduct Jumbo Sout business, by selling salt in Mariental and make a profit from which she could support herself.

### The defendant's grounds on which he opposes the maintenance claim and files counterclaims

[12] As I indicated earlier, the defendant not only opposes the plaintiff's claim for maintenance but also counterclaims for contribution to legal costs. The essence of the defendant's opposition is the defendant's allegation that he and the plaintiff were in a universal partnership and every partner was drawing from the universal partnership and that universal partnership is now dissolved. He further deposed that he is 65 years old and is unemployed. He deposed that his income is only N\$6 000 and his expenditures are N\$5800 per month.

[13] The defendant also denies that he has subjected the plaintiff to verbal, mental, economical, and physical abuse. He alleges that she in fact emotionally and financially abused him. He alleges that the plaintiff prevented him from returning to the farm, which she did by locking the gates to the farm and she also procured aggressive dogs to disable him from attending to the homestead.

### Legal principles

[14] I do not find it necessary to deal in much detail with the law applicable to applications for maintenance *pendente lite*, for the reason that the position of the law in this regard is well settled. To the extent necessary, applications for maintenance *pendente lite* are provided for in rule 90. The purpose of rule 90 proceedings was captured in the words of Theron J in *Colman v Colman*<sup>2</sup> in which the learned judge said:

'The whole spirit of Rule 43 [the equivalent of our Rule 90] seems to me to demand that there should be only a very brief statement by the applicant of the reasons why he or she is asking for the relief claimed and an equally succinct reply by the respondent and that the court is then to do its best to arrive expeditiously at a decision as to what order should be made *pendent lite*.'

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<sup>2</sup> *Colman v Colman* 1967 (1) SA 291 (C).

[15] In *Stoman v Stoman*,<sup>3</sup> Hoff J, after surveying the authorities, noted that it appears that the test is twofold and he remarked that:

‘An applicant must in the first instance make out a *prima facie* case in the main action. Should such an applicant fail to do so that is the end of the application. However, should an applicant discharge this *onus*, the court would then consider the relief sought in the application e.g. maintenance *pendente lite* and/or a contribution towards costs.’

[16] The learned judge further opined that from the authorities that he had regard to, it is apparent that the allegations of facts made by an applicant are not considered in isolation, but a court must also consider the allegations of fact, if any, presented by the respondent and where a court finds, as was stated in *Hamman v Hamman*<sup>4</sup>, ‘*equally convincing evidence*’ showing that there is no foundation at all for the allegations of fact by the applicant, the test ‘would not be applicable’.

[17] In *Taute v Taute*<sup>5</sup>, the court stated that there are certain basic principles which govern an application of this type (that is applications for maintenance *pendente lite*). One such basic principle is that maintenance *pendente lite* is intended to be interim and temporary and cannot be determined with that degree of precision and closer exactitude which is afforded by detailed evidence. The court went on and said:

‘The applicant spouse (who is normally the wife) is entitled to reasonable maintenance *pendente lite* dependent upon the marital standard of living of the parties, her actual and reasonable requirements and the capacity of her husband to meet such requirements which are normally met from income although in some circumstances inroads on capital may be justified.’

[18] In summary, an applicant in the shoes of the plaintiff, that is, a person applying for maintenance pending litigation and contribution to legal costs, must make out a *prima facie* case that he or she will succeed in the main case, that he or she is in need of maintenance and that his or her spouse has the capacity to maintain him or her.

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<sup>3</sup> *Stoman v Stoman* I 12409/2013 [2014] NAHCMD 116 (Delivered on 27 March 2014) paras 26 – 27.

<sup>4</sup> *Hamman v Hamman* 1949 (1) SA 1191 (W).

<sup>5</sup> *Taute v Taute* 1974 (2) SA 675 ECD at 676F.

Has the plaintiff discharged the onus resting on her?

[19] The first hurdle that the plaintiff has to overcome in this matter is to establish that the facts she laid before court are facts whereupon she, if those facts are proved, would succeed in the main action. Both the plaintiff and the defendant admit that their marriage is irretrievably broken down. She lays the blame for the brake down of the marriage on the defendant. The defendant in his opposing statement denied that he is the cause of the breakdown of the marriage.

[20] Does the denial by the defendant amount to overwhelming proof showing that there is no foundation at all for the allegations made by the plaintiff in her sworn statement? I do not think so, for the reason that the defendant simply proffers a bare denial and does not controvert or contradict the plaintiff's statement that he left the common home in 2012 with the intention never to return. He further does not deny that he summarily terminated the plaintiff's membership on his medical scheme, terminated all the short term insurances and ordered NamPower to disconnect the electricity supply to Farm Danielsdam.

[21] I am therefore, satisfied that if the allegations made by the plaintiff are proven at the trial, she would succeed to prove that it was indeed the defendant who constructively deserted her. Secondly, I have no doubt that the plaintiff is in need of maintenance. The plaintiff is therefore, entitled to maintenance *pendente lite*.

[22] I echo the sentiments of Hart AJ<sup>6</sup> when he argued that a claim supported by reasonable and moderate details carries more weight than one which includes extravagant or extortionate demands – similarly more weight will be attached to the affidavit of a respondent who evinces a willingness to implement his lawful obligations than to one who is obviously, albeit on paper, seeking to evade them.

[23] With these guidelines, I now turn to consider the information relating to the financial issues which are before me. The plaintiff has, with the aid of her bank statement, indicated that her only income is an amount of N\$1 300. The defendant on the other hand simply states that he earns an amount of N\$6 000, but has not

<sup>6</sup> In *Taute v Taute* matter *ibid*.

disclosed his financial position. The plaintiff furthermore states that the universal partnership between her and her husband is worth approximately N\$17 631 000. The defendant contends that the universal partnership was dissolved.

[24] The defendant's failure to fully and honestly disclose his financial position and his unfounded claim that the universal partnership between him and his wife was dissolved, is an indication, at least on paper, that he is seeking to evade to implement his lawful obligations and maintain his wife.

[25] The plaintiff gives the following particulars of her monthly requirements:

<b>Monthly Expenses</b>		
1	Wages (farm)	N\$4000
2	NamPower (farm)	N\$7000
3	Fuel	N\$5000
4	Maintenance and repairs	N\$1000
5	Telephone & Wi-Fi	N\$1500
6	Mobile Phone	N\$700
7	Food	N\$4000
8	Medical aid	N\$6400
9	Clothing, cosmetics and sundries	N\$2000
10	Wages (Jumbo Sout)	N\$8200
11	Water, Electricity & Taxes (Jumbo Salt)	N\$4700
12	Telephone & Wi-Fi (Jumbo Salt)	N\$500
	<b>TOTAL</b>	<b>N\$45 000</b>

[26] Can it be said that the plaintiff's claim include extravagant or extortionate demands? In my view not, the demands by the plaintiff are reasonable and supported by moderate details. The only items with which the defendant took issue with is the farm wages in the amount of N\$4 000 and the wages for Jumbo Sout in the amount of N\$8 200.

[27] The defendant is, in light of the fact that rule 90 makes provision for the maintenance of a person, justified to take issue with the plaintiff's claim for the payment of Jumbo Sout wages. I therefore discount the amount of N\$8 200. The

plaintiff in her sworn statement states that she has managed the farming activities and to do that she needs assistance from farm labourers. I thus, find that the plaintiff's request for the payment of the farm wages as part of her monthly maintenance is not extravagant or extortionate and is thus fair and the amount is reasonable.

[28] I will now deal with the application for contribution towards costs in the sum of N\$250 000. I am cognisant of the test laid down in *Dreyer v Dreyer*<sup>7</sup> where Mainga J, as he then was, stated that:

'... In my view, the applicant should have averred that the N\$50 000 she is seeking are for the expenses she will incur in presenting her case. This involves, inter alia, how much the lawyer has requested, the status of counsel presenting the case, and the scale of litigation of the parties. To base the estimation on what she has spent so far in costs is insufficient.'

[29] In light of the plaintiff's financial situation, I am satisfied that she is in need of a contribution to costs, but the amount itself is not properly motivated. Despite my finding that the amount is not properly motivated, I am inclined to assist the plaintiff in this regard, and will grant her leave to, if so advised, supplement the papers to place more detailed information before court so that the amount required may be properly assessed and paid.

The removal, encumbering, concealing or disposing or both concealing and disposing of assets by the defendant

[30] The plaintiff deposed that as from about 2015, the defendant's transport business, Dikwils Transport started to decline because of the defendant's mismanagement of that business. She continued and stated that following Dikwils Transport's financial problems, the defendant during 2021, held livestock auctions at the farm, at which he basically sold all the livestock to the value of approximately N\$500 000, which was far below the market value. These funds were paid into the defendant's FNB bank account.

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<sup>7</sup> *Dreyer v Dreyer* 2007 (2) NR 553 (HC).

[31] She continued and stated that during August or September 2022, the defendant sold a house in Mariental that was registered in his name, for an undisclosed amount, she however, estimated the value of the sales transaction to be approximately N\$1 200 000. The proceeds of the sale were also paid directly into the respondent's bank account. She further states that the defendant has been stating that he will liquidate the assets so that the plaintiff must not get anything once the divorce proceedings have been finalized.

[32] She proceeds and deposed that the defendant has made it clear that he intends to sell all the trucks, which are registered in his name, collectively for N\$400 000, which is far below market value. She therefore, concludes that the defendant is trying to dispose of as many of the assets as possible, by liquidating them. She furthermore deposed that the defendant recently tried to remove a cool truck from the farm which he apparently sold or tried to sell at a price of N\$100 000 which is far below its market value.

[33] The plaintiff furthermore stated that at the rate at which the defendant is disposing of the assets, the defendant intends to give effect to his widely spread announcements to acquaintances that he will sell all the assets at low prices to ensure that the plaintiff gets nothing from the divorce. She states that as it currently stands, to the best of her knowledge, the estimated net surplus value of their joint estate that was established and accumulated as a result of their universal partnership (the farming operations partnership and the transport business partnership), is approximately N\$17 631 000asw. She listed the assets and the liabilities.

[34] The defendant did not, in any meaningful manner, contradict these allegations by the plaintiff nor did he deny the allegations. In his answering statement the defendant simply states that from the outset he must record that he and the plaintiff are married out of community of property and that a debatement of the partnership accounts will resolve the dispute relating to the joint assets which he allegedly sold. On this basis, he denies that the plaintiff is entitled to an interdict.

[35] The defendant, in his own statement admitted the existence of a universal partnership which was built over a period of more than 40 years by both his and his

wife's sweat and labour. He can therefore, not simply pour cold water in the manner he attempted to, on the plaintiff's allegations. I therefore, find that the plaintiff has satisfied this court that the defendant is removing or attempting to remove assets from the farm, concealing or hiding or attempting to conceal or hide assets that are supposed to be part of their joint estate. I therefore, find that the plaintiff has made out a case to interdict the defendant from encumbering assets without the plaintiff's consent or disposing of any assets without the plaintiff's consent.

#### The defendant's counter application

[36] I indicated earlier that the defendant did not only oppose the plaintiff's application but also counter applied seeking the following relief:

- (a) contribution towards his legal costs in the amount of N\$50 000; and
- (b) an order interdicting the plaintiff from alienating, removing and encumbering, concealing or disposing of any registered assets.

[37] I earlier found that the defendant has failed to fully and honestly disclose his financial position; that his claim that the universal partnership between him and his wife was dissolved is unfounded and that, at least on paper, he is seeking to evade lawful obligations and maintain his wife. I therefore, find no merit in his application for the plaintiff to contribute to his legal costs or for her to be interdicted from alienating, removing and encumbering, concealing or disposing of any registered assets. Despite these findings, I express my doubts whether the defendant is in the position to maintain the plaintiff, but what I have no doubt about is that the joint estate emanating from the universal partnership of the parties is in the position to maintain the plaintiff. I will thus, direct that the plaintiff must be maintained from the joint assets of the universal partnership.

[38] Ms Delport, who appeared for the defendant, implored me to order that the defendant also be maintained from the joint estate. In open court I expressed the view that, that is an order I am inclined to make. But upon proper reflection and consideration of legal authorities<sup>8</sup> it is apparent that a court has no jurisdiction to

<sup>8</sup> *Kauesa v Minister of Home Affairs and Others* 1995 NR 175 (SC).

express itself on matters that it is not seized with. Since I have no application before me by the defendant for his maintenance, I could not legally make an order in that regard. If the view that I expressed in open court is regarded or interpreted as an order, then and in that event, that order is patently wrong because, as I said, I was not seized with the defendant's maintenance application and I, in terms of rule 103(1) (c) of the rules of court, rescind the order ordering the joint estate to maintain the defendant.

### Costs

[39] I do not see any reason why the ordinary general rule as regards costs must not apply. The plaintiff is substantially successful in her application and the defendant must, subject to rule 32(11), pay the plaintiff's cost of the rule 90 application.

### Order

[40] Having considered the arguments presented and the papers before me, as well as the applicable law, I make the following order:

1. The plaintiff is entitled to be paid maintenance *pendente lite* in the amount of N\$36 800 per month, the first payment must be made on or before 7 July 2023 and thereafter, on or before the 7<sup>th</sup> day of every month. The maintenance must be paid from the proceeds or income of the universal partnership.
2. The plaintiff is granted leave to approach this Court on the same papers, duly amplified where necessary, to claim from the parties' joint estate a contribution to her legal costs in the pending litigation.
3. The defendant must refrain from removing or encumbering or concealing or disposing off any of the assets of the universal partnership's joint estate without the knowledge and consent of the plaintiff while the main case is pending.
4. The defendant must arrange the reconnection of the NamPower electricity supply to Farm Danielsdam No. 115, District of Mariental, Hardap Region,



Republic of Namibia on or before 1 July 2023. The applicant must pay the monthly consumption cost from her interim maintenance *pedente lite* until the finalization of the matrimonial matter.

5. If the defendant fails or neglects to arrange for the reconnection of the NamPower electricity supply to Farm Danielsdam No. 115, then and in that event, the Deputy Sherriff for the District of Mariental is hereby authorised to arrange with the responsible authority the reconnection of the NamPower electricity to Farm Danielsdam No. 115.
6. The defendant must not commit and is interdicted from committing any act of domestic violence against the plaintiff and the defendant must not, except with the prior arranged permission of the plaintiff, enter Farm Danielsdam No. 115, District of Mariental, Hardap Region, Republic of Namibia until the finalization of the matrimonial matter.
7. For purposes of paragraph 2 of this order:
  - 7.1 the defendant must disclose and discover all the bank accounts and the balances in those bank accounts and investment accounts in his name to the plaintiff's legal practitioners by no later than 7 July 2023;
  - 7.2 the defendant must disclose and discover to the plaintiff's legal practitioners by no later than 7 July 2023, the identity of the legal practitioners, or institution into which the proceeds of the sale of the immovable property, the proceeds of the sale of the livestock and the proceeds of any asset he disposed off, rented out or encumbered;
  - 7.3 the legal practitioners for the plaintiff and the defendant must, if the amounts in the bank accounts or held by any investment company or legal practitioner in the name of the defendant, are insufficient to meet the plaintiff's needs of maintenance, identify assets that can be liquidated in the best interest of the joint estate so as to maintain the plaintiff.

8. The defendant must, subject to rule 32(11), pay the plaintiff's cost of the rule 90 application.
9. The defendant's counter application is dismissed.
10. The defendant must, if so advised, file his consequentially amended plea to the plaintiff's second amended particulars of claim and counterclaim by no later than 18 July 2023.
11. The plaintiff must, if so advised, replicate to the defendant's plea and plead to the defendant's counterclaim by no later than 28 July 2023.
12. The plaintiff must, if so advised, file supplementary affidavit in terms of rule 89 and supplementary discovery affidavit and bundles of discovered documents by no later than 4 August 2023.
13. The defendant must, if so advised, file supplementary affidavit in terms of rule 89 and supplementary discovery affidavit and bundles of discovered documents by not later than 9 August 2023.
14. The parties must file a joint case management conference report by not later than 9 August 2023.
15. The matter is postponed to 15 August 2023 for a Case Management Conference hearing.

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Ueitele SFI  
Judge

## APPEARANCES

APPLICANT/PLAINTIFF:

J VON WIELLIGH

Of Janita Von Wielligh Law Chambers,  
Windhoek

RESPONDENT/DEFENDANT:

A DELPORT

Of Delport Legal Practitioners,  
Windhoek