

LOM Business Solutions t/a Set LK Transcribers/

IN THE HIGH COURT OF SOUTH AFRICA

(WITWATERSRAND LOCAL DIVISION)

JOHANNESBURG

CASE NO: 10441/05

DATE: 2007/05/09

In the matter between

JEAN HEADLAND

and

GLOBAL EAST RESORTS (PTY) LTD AND OTHERS

Respondents

DELETE WHENEVER IS NOT APPLICABLE	
(1) REPORTABLE	YES/NO
(2) OF INTEREST TO OTHER JUDGES	YES/NO
(3) REVISED	
DATE <u>8/10/2007</u>	SIGNATURE <u>[Signature]</u> Plaintiff

J U D G M E N T

WILLIS, J: The plaintiff has brought an application for a separation of trial in terms of Rule 10(5). It is important to note that by a previous order of this court the second and the third respondents were joined as parties. The submission of counsel for the respondents is that the separation in terms of Rule 10(5) can only take place where there has been a joinder in terms of Rule 10(1) or (2) - in other words, where there has been a joinder without the intervention of the court by, for example, a plaintiff in his summons initially joining a number of different defendants.

This would indeed seem to be the position from a reading of the provisions of Rule 10, and I am fortified in this view by reason of the judgment of *De Polo and Another v Dreyer and others* 1990 (2) SA 290(W). Accordingly the application for the separation in terms of Rule 10(5) must be dismissed.

The third respondent has brought a counter application to remove the matter from the trial role on 23 May 2007, alternatively postponing such trial date *sine die*.

The applicant in the application for separation says that it needs to have an opportunity to file an answering affidavit to this counter application. The third respondent has protested vigorously on the basis that already a replying affidavit has been filed and accordingly the counter application should succeed.

The point is that the replying affidavit does not pertinently deal with the counter application, and if the plaintiff wishes to have an opportunity to respond thereto, the plaintiff should have such an opportunity. I may add however that if the plaintiff is to file an answering affidavit to the counter application, and the third respondent in the main application is to file a reply, it is obvious that this will be so close to the trial date that it is most unlikely, without in any way anticipating the decision of any of my brothers or sisters in this division, that the trial will be able to proceed on 23 May 2007. But that is a matter which I shall leave to be decided by one of my brothers or sisters in the light of developments after today.

The following order is made.

1. The applicant's application in terms of Rule 10(5) for a separation of trial actions is dismissed with costs.
2. The counter application for a postponement of the trial set down on 23 May 2007 is postponed *sine die*, and the costs of that application are reserved for determination either by the court hearing that application or the court in the ultimate trial action.