

IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)

Case No: 79315/23

(1) REPORTABLE: YES/NO

(2) OF INTEREST TO OTHER JUDGES: YES/NO

(3) REVISED.

DATE: 30/5/2025

SIGNATURE

In the matter between:

JOAN CYNTHIA GRIESSEL

First Plaintiff

HEROLD LEE DE KOCK

Second Plaintiff

and

DE VILLEBOIS ETTIENNE DE KOCK N.O.

First Defendant

SHIRLEY ANN VAN WYK N.O.

Second Defendant

CELESTE MARI DOVEY N.O.

Third Defendant

FREDERIK FRANS VAN NIEKERK N.O.

First Defendant

JOHANNES JURGENS POTGIETER N.O.

First Defendant

DE VILLEBOIS ETTIENNE DE KOCK

Sixth Defendant

SHIRLEY ANN VAN WYK

Seventh Defendant

CELESTE MARI DOVEY

Eighth Defendant

MASTER OF THE HIGH COURT, PRETORIA

Ninth Defendant

MANYELETI (PTY) LTD

Tenth Defendant

Delivered: This judgment was handed down electronically by circulation to the parties by e-mail. The date for the handing down of the judgment shall be deemed to be 30 May 2025.

JUDGMENT: APPLICATION TO COMPEL DISCOVERY

GROBLER, AJ:

[1] This judgment relates to an application to compel discovery which was brought by the defendants in terms of Rule 35(7) of the Uniform Rules of Court. The Office of the Deputy Judge President directed on 26 February 2025 that the application be heard on 22 April 2025.

[2] The Uniform Rules of Court only permit discovery of documents that relate to issues in dispute on the pleadings. It is accordingly necessary to firstly refer to the nature of the relief claimed by the plaintiffs in the particulars of claim.

[3] The following relief is claimed by the first and second plaintiffs in the summons issued against the defendants (as per the amended particulars of claim dated 27 December 2023):

“CLAIM 1:

- 1. The first to fifth defendants, alternatively, the tenth defendant as an alter ego of the trust, are ordered to pay maintenance to the first*

plaintiff in the amount of R41 825.08, per month, with annual inflationary increases from date of service of summons;

- 2. The sixth to eighth defendants, alternatively the tenth defendant as an alter ego of the trust, are ordered to pay the plaintiffs' costs of the action on an attorney and own client scale, alternatively the first to fifth defendants are ordered to pay the plaintiffs' costs on an attorney and own client scale.*
- 3. Further and/or alternative relief.*

CLAIM 2:

- 4. The first to fifth defendants, alternatively, the tenth defendant as an alter ego of the trust, are ordered to pay the first plaintiff the amount of R400 000.00;*
- 5. The sixth to eighth defendants, alternatively the tenth defendant as an alter ego of the trust, are ordered to pay the first plaintiff's costs of the action on an attorney and own client scale, alternatively the first to fifth defendants are ordered to pay the first plaintiff's costs on an attorney and own client scale.*
- 6. Further and/or alternative relief.*

CLAIM 3:

- 7. That the sixth, seventh and eighth defendants are removed as trustees of the Arathusa Family Trust;*
- 8. The ninth defendant is ordered to appoint 3 (three) independent trustees for the Arathusa Family Trust;*
- 9. The sixth to eighth defendants are ordered to pay the plaintiffs' costs of the action on an attorney and own client scale, alternatively the first to fifth defendants are ordered to pay the plaintiffs' costs on an attorney and own client scale.*
- 10. Further and/or alternative relief."*

[4] The plaintiffs served a discovery affidavit on the defendants under cover of a filing notice dated 30 April 2024. Schedule A of the discovery affidavit lists the pleadings, notices and all annexures thereto in case numbers 30320/2013, 44989/2014, 50776/2016, 93437/2019 and 26288/2020. It furthermore lists

correspondence for the period between 30 May 2019 and 4 March 2024 (138 items) and documents (54 items).

[5] The second plaintiff filed a supplementary discovery affidavit under cover of a filing notice dated 5 August 2024. Schedule A of the supplementary discovery affidavit lists three further items of correspondence (respectively dated 28 May 2024, 11 June 2024 and 8 July 2024) and two further documents.

[6] It should be noted that the references above are in respect of the discovery affidavits filed by the second plaintiff, but the first plaintiff discovered exactly the same documents in her own discovery affidavits, albeit on different dates.

[7] The defendants served a Rule 35(3) notice dated 20 September 2024 on the second plaintiff, requesting discovery of additional documents listed in the 43 paragraphs of the notice.

[8] The second plaintiff filed an affidavit in response to the defendants' Rule 35(3) notice, which was served on the defendants under cover of a filing notice dated 7 October 2024. The second plaintiff responded to each of the paragraphs of the defendants' Rule 35(3) notice separately and attached certain further documents as annexures to the affidavit.

[9] Dissatisfied with the second plaintiff's response, the defendants launched the application in terms of Rule 35(7) currently under consideration per notice of motion dated 28 October 2024. The defendants applied for the second plaintiff to be compelled to discover documents listed in 21 paragraphs contained in the notice of motion.

[10] The second plaintiff filed an answering affidavit contending that the defendants are on a fishing expedition and attempting to obtain documents which are irrelevant to the matter before Court. Furthermore, the second plaintiff contended that the current application is a delaying tactic employed by the defendants to prolong the matter as far as possible. The second plaintiff answered each of the twenty-one paragraphs of the notice of motion and concluded that the

defendants are not entitled to the further documents requested in the application to compel further and better discovery.

[11] The defendants filed a replying affidavit, concluding that further discovery by the second plaintiff as requested in the notice of motion is essential to the defendants' trial preparation and that the defendants will be irreparably prejudiced should they not have insight into all the documents which may be relevant.

[12] At the commencement of the hearing of this application, Mr Potgieter SC on behalf of the defendants stated that he had not been involved in the application until shortly before the date of hearing. Mr Potgieter SC indicated that the defendants are not persisting with the following prayers in the notice of motion: prayers 1.1 to 1.6 and prayers 1.8 to 1.18. This meant that the defendants persisted with the application to compel discovery only in respect of the documents listed in prayers 1.7 and 1.19 to 1.21 of the notice of motion. I am appreciative of and commend the ethical, professional and forthright manner in which Mr Potgieter SC dealt with the matter.

[13] The relief persisted with was the following:

"That the Respondent (the 2nd Plaintiff in the principal action) be compelled to discover the following documents:

...

1.7 *Full and complete details of the account from which the Respondent has made payments to the 1st Plaintiff from October 2022 to date.*

...

1.19 *Any and all communication, albeit text messages, whatsapp communications or e-mail between the Respondent and Xolile Mhlakoana (with identity Number: 8[...]) from June 2022 to date.*

1.20 *Any and all communication, albeit text messages, whatsapp communications or e-mail between the Respondent and Maanda Alidzulwi (with identity Number: 7[...]) from June 2022 to date.*

1.21 *Any and all communication, albeit text messages, whatsapp communications or e-mail between the Respondent and Kgomotso Shakwane (with identity Number: 8[...]) from June 2022 to date."*

[14] The defendants contend that they are entitled to discovery of the documents referred to in paragraph 1.7 of the notice of motion because the requested documents will enable them to verify, on their own, the validity of the plaintiff's claim of R400,000.00 as set out in Claim 2 of the particulars of claim. The second defendant contends that he has provided the defendant with proof of the payments made, extracts of his annual financial statements for the years 2023 & 2024, and IRP5 tax documents for the years 2023 and 2024. Furthermore, it was submitted on behalf of the second plaintiff that the "full and complete details of the account" from which the payments were made, as referred to in paragraph 1.7 of the notice of motion, is not a document and cannot be provided.

[15] The second plaintiff has stated under oath that he has provided all the necessary documents in his possession, including proof of payments, to prove that he made the relevant payments to the first plaintiff. The plaintiffs will have to stand and fall by their discovery affidavits and the evidence that they will in due course be allowed to adduce at the hearing of the main action. I am not persuaded that the defendants are entitled to further discovery of the documents referred to in paragraph 1.7 of the notice of motion.

[16] The defendants contend that they are entitled to discovery of the documents referred to in paragraph 1.19 to 1.21 of the notice of motion because the second plaintiff's response to the request was a qualified response which is improper. The second plaintiff contends that these documents are irrelevant.

[17] The second plaintiff stated under oath that the individuals referred to in paragraph 1.19 to 1.21 were guests of the first plaintiff and that he does not know who Xolile Mhalkoana and Kgomotso Shakwane are. The second plaintiff furthermore stated that he simply cannot provide documents that do not exist or that are not in his possession. I am not persuaded that the defendants are entitled to further discovery of the documents referred to in paragraph 1.19 to 1.21 of the notice of motion.

[18] It was submitted on behalf of the second plaintiff that the defendants' application for further and better discovery was nothing more than a fishing expedition engineered to cause a delay in the matter. It was submitted that the application is clearly a gross and utter abuse of process that warrants the making of a punitive costs order on an attorney and client scale.

[19] Having regard to *inter alia* the second plaintiff's discovery and supplementary discovery affidavits, the further documents requested in the defendants' Rule 35(3) notice preceding the application, the second plaintiff's response thereto, the relief claimed in the application and the result, I am inclined to agree that the application should be dismissed on the scale as between attorney and client.

[20] Accordingly the following order is issued:

- a) The application is dismissed with costs on attorney and client scale, including the costs of 2 counsel.

JF GROBLER

ACTING JUDGE OF THE HIGH COURT

PRETORIA

Dates of hearing: 23 April 2025

Date of judgment: 30 May 2025

For the Second Plaintiff: SG Maritz SC

R De Leeuw

Instructed by: JJR Incorporated

For the Defendant: T Potgieter SC

JC Van Eeden

Instructed by: Gildenhuys Malatji

