



**IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN**

Not reportable

Case no: 2025/2023

In the matter between

RENIER LESTER BATJES

APPLICANT

and

**OPPERMANSGRONDE COMMUNAL PROPERTY
ASSOCIATION**

RESPONDENT

In re:

**OPPERMANSGRONDE COMMUNAL PROPERTY
ASSOCIATION**

PLAINTIFF

And

**RENIER LESTER BATJES
DIRECTO-GENERAL OF THE DEPARTMENT OF
RURAL DEVELOPMENT AND LAND REFORM**

FIRST DEFENDANT

SECOND DEFENDANT

**Neutral citation: Renier Lester Batjes v Oppermangronde Communal Property
Association**

Coram: Gusha, AJ

Heard: 29 August 2024

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email and released to SAFLII. The date for hand-down is deemed to be 19 September 2024

Summary: Rule 35(6) – discovery of documents – application to compel further discovery where relevance is disputed.

ORDER

The application is dismissed with costs including the costs of counsel on scale B.

JUDGMENT

Gusha AJ

[1] This is an opposed interlocutory application in terms of rule 35(3) of the Uniform Rules to compel the respondent to make available for inspection certain specified documents. The parties are embroiled in an eviction action (the main action) and that dispute remains extant. The parties shall be referred to as cited herein.

[2] The applicant is a major male person alleged in the main action to be an erstwhile member of the respondent, his membership in the respondent allegedly terminated on 18 August 2015, allegedly as a result of breach of a lease agreement entered into between the parties and an alleged breach of the respondent's constitution.¹ The respondent, in turn, is Oppermansgronde Communal Property Association, duly registered in terms of the Communal Property Associations Act 28 of 1996 and the registered owner of the remainder of the farm Oppermansgronde situated in Jacobsdal and held under Deed of Transfer T7551/2002 (the property).

[3] The respondent has launched eviction proceedings coupled with a claim for damages against the applicant. The action is premised on a disputed lease agreement entered into between the respondent as lessor and the applicant as lessee of certain agricultural premises situated within the property.

[4] Truncated, the applicant's case in the main action is that he is a beneficiary, alternatively a descendant and heir of a deceased beneficiary in terms of a settlement agreement entered into in terms of s 42D of the Restitution of Land Rights Act 22 of 1994

¹ The status of the applicant and his current possession of portions of the property forms part of the disputed issues in the main action.

and that the respondent is a mere fiduciary land-holding body. He further asserts in the main action that he is still a member of the respondent and has vested rights therein.

[5] It is common cause that the respondent already discovered certain documents as requested by the applicant. In these proceedings he asserts that in order to present his case in the main action it is necessary to lead evidence that he is still a beneficiary of the respondent and that it is one of the respondent's objectives, if not the main objective, to subdivide the property and transfer common law ownership of the subdivided property to its members or beneficiaries.

[6] As such, and to this stated end, he asserts that he still requires further discovery of the following documents:

- (a) All diagrams approved by the Surveyor General relating to the subdivisions of agricultural land on any of the properties registered in the name of the respondent since the date of registration of said properties in the name of the respondent;
- (b) All instructions by the respondent to surveyors in order to subdivide agricultural land;
- (c) All applications made by the respondent to any authority or ministry in terms of the Subdivision of Agricultural Land Act 70 of 1970;
- (d) The agenda and minutes and resolutions of the General Meeting held by the respondent on 25 February 2017;
- (e) The membership list of the respondent as annually updated since its registration;
- (f) All the annexures to the settlement agreement that was reached with the Department of Land Affairs and the Commission on Restitution of Land Rights.

[7] The applicant asserts that the aforementioned documents may prove or disprove its averments in the main action regarding the respondent's constitutional objectives. Further, the documents may prove or disprove the applicant's averments regarding the respondent's conduct in general meetings and its overall attitude towards its members. Lastly, with regards to the request for all the membership lists since registration of the respondent, the applicant asserts that same will assist it to identify who its opponent is. The respondent objects to the further discovery and contends primarily that the documents requested are irrelevant and that there exists no triable issue in respect of same.

[8] Rule 35(3) provides;

'If any party believes that there are, in addition to documents or tape recordings disclosed as aforesaid, other documents (including copies thereof) or tape recordings 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 in accordance with subrule (6), or to state on oath within ten days that such documents are not in his possession, in which event he shall state their whereabouts, if known to him.'

[9] In order to properly adjudicate the present issue, I must have regard to the long-established principles as laid out in *Swissborough Diamond Mines (Pty) Ltd and Others v Government of the Republic of South Africa and Others*:²

'The requirement of relevance, embodied in both Rule 35(1) and 35(3), has been considered by the Courts on various occasions. The test for relevance, as laid down by Brett LJ in *Compagnie Financière et Commerciale du E Pacifique v Peruvian Guano Co* (1882) 11 QBD 55, has often been accepted and applied. See, for example, the Full Bench judgment in *Rellams (Pty) Ltd v James Brown & Hamer Ltd* 1983 (1) SA 556 (N) at 564A, where it was held that: "After remarking that it was desirable to give a wide interpretation to the words "a document relating to any matter in question in the action", Brett LJ stated the principle as follows: "It seems to me that every document relates to the matter in question in the action which, it is reasonable to suppose, contains information which may - not which must - either directly or indirectly enable the party requiring the affidavit either to advance his own case or to damage the case of his adversary. I have put in the words "either directly or indirectly" because, as it seems to me, a document can properly be said to contain information which may enable the party requiring the affidavit either to advance his own case or to damage the case of his adversary, if it is a document which may fairly lead him to a train of enquiry which may have either of these two consequences." . . . The broad meaning ascribed to relevance is circumscribed by the requirement in both subrules (1) and (3) of Rule 35 that the document or tape recording relates to (35(1)) or may be relevant to (35(3)) "any matter in question". The "matter in question" is determined from the pleadings. See in this regard *SA Neon Advertising (Pty) Ltd v Claude Neon Lights (SA) Ltd* 1968 (3) SA 381 (W) at 385A-C; *Schlesinger v Donaldson and Another* 1929 WLD 54 at 57, where Greenberg J held "In order to decide the question of relevancy, the issues raised by the pleadings must be considered . . .", and *Federal Wine and Brandy Co Ltd v Kantor* 1958 (4) SA 735 (E) at 753D-G.'

[10] It is trite that the intention of the rule 35(3) provides for the production of further documentation which has not been discovered, but which a party believes is relevant and in the other party's possession. It does not entitle that party to engage in a fishing expedition.³ It is further established that where a party denies the relevance of documents

² *Swissborough Diamond Mines (Pty) Ltd and Others v Government of the Republic of South Africa and Others* 1999 (2) SA 279 (T) at 316E-317B.

³ *The MV Urgup: Owners of the MV Urgup v Western Bulk Carriers (Australia) (Pty) Ltd* 1999 (3) SA 500 (C) at 515D, *Antonsson and others v Jackson and others* 2020 (3) SA 113 (WCC).

on oath, the onus of proving such documents are in fact relevant rests upon the party claiming discovery or inspection thereof.⁴

[11] I now turn to the requested documents. In my view it is fatal to the applicant's case that they sought to couch their request in such wide and all-encompassing terms. With regards to the documents as listed in para 6 (a-c and f *supra*), I cannot see how all the documents since the registration of the respondent could be relevant. The dispute in the main action relates to an alleged breach of a lease agreement and an addendum thereto, which the applicant in terms of his amended plea is in possession of and admits to signing but only disputes the validity and enforceability thereof. The dispute also relates to the alleged termination of the applicant's membership in the respondent which according to the pleadings allegedly occurred 18 August 2015. Furthermore, the relevance of the agenda and minutes of the meeting held on 25 February 2017 when the applicant's membership was allegedly terminated by then escapes me. In my view the applicant is either already in possession of the documents he requires for trial purposes in the main trial or same has already been discovered by the respondent. Relevance is linked to the pleadings and must not be determined outside of the four corners of the pleadings.

[12] In conclusion, discovery is not a tool designed to put a party in a position to draw battle lines and establish the legal issues. Rather, it is a tool used to identify factual issues once legal issues are established, it is not designed to assist a party to hunt for facts to support its defence. It seems to me that the applicant decided to cast his proverbial net so wide and without any specificity and accuracy in the hope of catching something useful

[13] In my view what the applicant has already been furnished with is adequate to enable it to prepare for trial in the main action.

[14] In the result I issue the following order;

The application is dismissed with costs including the costs of counsel on scale B.


NG GUSHA, AJ

⁴ *Continental Ore Construction v Highveld Steel and Vanadium Corporation Ltd* 1971 (4) SA 589 (W).

Appearances

For the Applicant Mr JHD Bloem

Instructed by: Spangeberg Zietsman & Bloem
Bloemfontein

For the Respondents: Adv WJ Groenewald

Instructed by: Bezuidenhouts Inc
Bloemfontein