

REPUBLIC OF SOUTH AFRICA

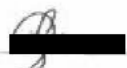


**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG**

CASE NO: 057418/2024

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: NO

DATE: 14/03/2025


SIGNATURE

In the matter between:

CROWN BISHOP BODY CORPORATE

Applicant

And

ASTRODON (PTY) LTD

Respondent

JUDGMENT

NDLOKOVANE AJ

Introduction

[1] This matter was allocated to me for adjudication as Matter No. 36 on the Special Interlocutory Court (SIC) roll for 16 October 2024. Due to the workload of the roll, I reserved judgment after hearing the arguments presented by both parties' legal

representatives.

[2] The matter came before me as an application by the applicant for an order compelling the respondent to comply with a discovery request made under Rule 35(12) of the Uniform Rules of Court. Following the hearing, I reserved judgment and directed the parties to file written submissions on 17 and 18 October 2024.

[3] I must mention that I did not receive any correspondence regarding the matter or whether the written submissions were filed until February 2025, when I received an email from the registrar of the court. The email contained an inquiry from the applicant's legal representative regarding the judgment. Upon careful review of my records, I promptly contacted the judge's secretary assigned to me for that week. After following up twice, it was confirmed on 6 March 2025 that the judgment had indeed been reserved, and that the transcripts had been requested, which became available on 10 March 2025.

[4] Upon receiving the transcripts, I immediately began drafting the judgment. I sincerely apologize to the parties for the delay and any inconvenience this has caused.

Factual Background

[5] The applicant, **Crown Bishop Body Corporate Sectional Title** Scheme No: SS 212/2007, a sectional title body corporate governed by the Sectional Title Act 95 of 1986 (as amended), instituted motion proceedings against the respondent, Astrodon Pty Ltd, a managing agent appointed by the applicant.

[6] On 24 May 2024, the applicant sought an order that the general meeting convened

by its members on 17 September 2023 was validly convened. The applicant further sought the termination of the respondent's appointment as the executive managing agent and the repayment of managing agent fees and other related fees.

[7] On 1 July 2024, the respondent electronically served its notice of intention to oppose the application. On 22 July 2024, the respondent filed an answering affidavit, referencing certain documents, which are the subject of this application.

[8] On 23 July 2024, the applicant served a Rule 35(12) notice, requesting the respondent to produce specific documents within 10 days, including the Managing Agent Agreement, the resolution of the board of trustees authorizing Debbie Guest to sign the Executive Management Agreement, and the attendance register, voting cards, and signed proxy forms referenced in the respondent's answering affidavit.

[9] On 12 August 2024, almost three weeks later, the respondent had still not responded to the notice. The applicant then requested the respondent to provide the necessary documents, failing which it would proceed with the application to compel compliance.

[10] On 20 August 2024, the respondent's attorney emailed the attendance register of the meeting, claiming that the management agreement was attached to the answering affidavit. This was denied by the applicant. On the same date, the applicant again wrote to the respondent, informing them of their failure to comply and requesting full discovery.

[11] On 26 August 2024, the applicant served the interlocutory application electronically. On 2 September 2024, the respondent filed a notice of intention to oppose the interlocutory application. The answering affidavit was uploaded on Caselines on 14 October 2024. The notice of set-down was served on the respondent on 8 October 2024.

[12] Despite repeated requests, the respondent failed to comply with the discovery request. The applicant argues that this non-compliance prejudices its case and requests that the court compel the respondent to comply and pay the applicant's costs on an attorney-and-client scale.

[13] In response, the respondent contends that the application is vexatious and unnecessary, as the documents requested by the applicant either already exist or are in the applicant's possession. The respondent also raised several ***points in limine***, which are discussed below.

Points in Limine

[14] The respondent's claim of lack of jurisdiction is based on the existence of an arbitration clause in the agreement between the parties. The respondent argues that any disputes must first go through the prescribed negotiation and arbitration processes before being referred to court.

[15] However, the court retains jurisdiction over matters relating to procedural

compliance, such as discovery disputes, particularly when a party seeks a court order compelling compliance with a specific rule. In this case, the applicant's request concerns the respondent's failure to comply with discovery obligations under Rule 35(12), which is a procedural matter within the court's jurisdiction. Moreover, the respondent has not shown that any attempt was made to resolve the matter through negotiation or arbitration as required by the agreement. Therefore, the court is satisfied that it has jurisdiction to hear this application.

[16] The respondent contends in its heads of argument and oral submission that the applicant should have brought an application in terms of Rule 35(13) before pursuing this matter. This contention is not reflected in the respondent's answering affidavit. I hasten to mention that this attack is misplaced as it shall become clearer below.

[17] According to the respondent, Rule 35(13) allows a party to apply to the court for an order authorizing the discovery of documents in the main application. The respondent argues that instead of directly bringing the present application to compel compliance with the discovery notice, the applicant should have first sought the court's permission under Rule 35(13), which would have allowed discovery to apply to the main application.

[18] Rule 35(13) of the Uniform Rules of Court provides that a party seeking discovery of documents in the main application may apply to the court for an order compelling the discovery of such documents. However, the applicant's present application pertains specifically to the respondent's failure to comply with the discovery notice issued under Rule 35(12). Rule 35(12) enables a party to request discovery of

documents without the need for a prior application to the court for permission, subject to the documents being relevant to the case and reasonably requested.

[19] The applicant's request for discovery is entirely within the framework of Rule 35(12), which allows for the production of documents in the course of the proceedings. There is no requirement under Rule 35(12) to apply for permission under Rule 35(13) before seeking compliance.

The respondent's argument in this regard appears to misinterpret the procedural rules. The applicant is not seeking to introduce new documents into the proceedings but is instead requesting the court to compel the respondent to produce documents that are already identified in the discovery notice.

[20] Therefore, I am not persuaded by the respondent's submission that an application under Rule 35(13) was required. The applicant was entitled to bring the present application for the court to compel compliance with the discovery notice issued under Rule 35(12), as this pertains to the respondent's failure to produce the documents previously requested.

[21] The primary issue for determination is whether the respondent's failure to comply with the discovery request should result in an order compelling compliance and awarding costs on an attorney-and-client scale.

[22] Rule 35(12) of the Uniform Rules of Court requires a party to comply with a discovery notice within a specified period. The applicant served such a notice on the respondent on 23 July 2024, but the respondent has failed to fully comply despite

repeated requests. The applicant contends that this non-compliance has caused prejudice and will continue to do so if not remedied.

[23] The respondent's failure to provide the requested documents is significant. These documents are crucial to the applicant's case, and the applicant has made efforts to resolve the issue informally before seeking court intervention. The respondent's defence is largely based on documents that it has failed to produce, and the court cannot ignore the prejudice caused by such failure.

[24] Given the respondent's continued non-compliance, the court finds that the applicant is entitled to an order compelling the respondent to fully comply with the discovery request. Additionally, the respondent should be liable for the costs of this application, as their failure to comply with the discovery rules has unnecessarily delayed the resolution of this matter.

Order

[25] Consequently, I make the following order:

1. The respondent is ordered to fully comply with the applicant's Rule 35(12) discovery request and produce the documents specified in the notice within ten (10) days of the date of this order.
2. Should the respondent fail to comply, the applicant is granted leave to apply for an order that the respondent's defence be struck out.
3. The respondent is ordered to pay the applicant's costs of this application on a party and party scale.



N NDLOKOVANE AJ
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, JOHANNESBURG

Delivered: this judgment was prepared and authored by the judge whose name is reflected and is handed down electronically and by circulation to the parties/their legal representatives by email and by uploading it to the electronic file of his matter on Case lines. The date for handing down is deemed to be **14 MARCH, 2025**.

APPEARANCES

FOR THE APPLICANT:	Adv JRS Karuane
APPLICANT'S ATTORNEY:	SKM Attorneys Inc.
FOR THE RESPONDENT:	Adv V Vergano
RESPONDENT'S ATTORNEY.	Kanavos Attorneys and Notaries
HEARD ON:	16 October, 2024
DATE OF JUDGMENT:	14 March, 2025