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

CASE NO: 2024/074608

(1) REPORTABLE: YES / NO

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

(3) REVISED. YES

DATE 23 May 2025

SIGNATURE

In the application between:

M[...] G[...] K[...]

APPLICANT

and

M[...] J[...] K[...]

RESPONDENT

JUDGMENT

Introduction:

1. During March 2024, the applicant instituted action against the respondent, and which action the applicant seeks, *inter alia*, a decree of divorce as well as ancillary relief.
2. The respondent is opposing the divorce action and in this regard, he has

also filed a plea and conditional counterclaim.

3. The pleadings have closed.
4. On 18 September 2024, the applicant served the respondent with a notice in terms of Uniform Rule 35(1), (6), (8) and (10), requesting the respondent to, *inter alia*, file his discovery affidavit.
5. In the discovery notices aforesaid, the applicant alleges that “*the pleadings in the above action having been duly closed*”.¹
6. Several months earlier and on 31 May 2024, the applicant delivered a notice, purportedly in terms of Uniform Rule 35(14), in which notice the applicant:

“Requests that within 5 (five) days of receipt herein to make available for inspection the following:

 1. *Proof and breakdown of how an amount totalling R961,792.34 being the sale proceeds of the parties’ Erf 3[...] Ext 17, Orchards, Pretoria under the following terms:*
 - 1.1.1 *Proof of household expenses, upkeep of joint estate’s assets as well as support of the home from sell proceeds amount of Erf 3[...] Ext 17, Orchards, Pretoria;*
 - 1.1.2 *Proof of purchase of Blades apartment also repairs done therein also from sale proceeds amount of Erf 3[...] Ext 17, Orchards, Pretoria;*
 2. *Proof of payment and expenditure of the R250 000.00 (Two hundred and fifty thousand rand) commission amount from the sale proceeds of Moreleta Property, property that the parties stayed in for 6 months after selling off the Orchards property.”*
7. The applicant subsequently instituted an application to compel the delivery of the “*documents*” set out in the Uniform Rule 35(14) notice.

¹ Page 012 – 14.

8. It is this application to compel that currently serves before me.
9. The respondent opposes the application on the following bases:
 - 9.1. The respondent contends that the application amounts to an abuse of process, considering that all of the documents that the applicant seeks can be obtained in terms of the process of discovery and more specifically Uniform Rule 35(1).²
 - 9.2. Such documents could be obtained without the need for a court application and without the need for incurring any costs.
 - 9.3. Considering that the pleadings have closed, the applicant did not require these documents for purposes of pleading and therefore the application constitutes an abuse of process.³
 - 9.4. The respondent further contends that the application amounts to a fishing expedition and that the applicant, as a co-owner of the assets in the joint estate, could obtain the relevant documents from the registrar of deeds as well as from the financial institutions.
10. The applicant in her replying affidavit contends that she needs the respondent to discover these documents now because she needs to ascertain before trial, whether assets of the joint estate have been squandered to her prejudice.⁴

Uniform Rule 35(14) – relevant legal principles:

11. Uniform Rule 35(14) provides as follows:

“After appearance to defend has been entered, any party to any action may, for purposes of pleading, require any other party to:

- (a) Make available for inspection within 5 days a clear and specified document or tape recording in such party’s possession which is relevant to a reasonably anticipated issue in the action and to allow a copy or transcription to be made*

² Page 011 – 4, para 1.7.

³ Page 014, para 1.7.

⁴ Page 012 – 7, para 3.3.

thereof; or

- (b) *State in writing within 10 days whether the party receiving the notice objects to the production of the document or tape recording of the grounds therefore; or*
- (c) *State under oath, within 10 days, that such document or tape recording is not in such party's possession and in such event to state its whereabouts, if known."*

12. It is trite that the test is whether the document in question is essential, not merely useful, in order to enable a party to plead.⁵
13. In an application by the defendant in convention for an order compelling discovery of documents to place it in a position to decide whether it wished to institute a claim in reconvention, the court held⁶ that the legislature could never have envisaged that, once an appearance to defend have been entered to a claim in convention, it would give a plaintiff in reconvention "*carte blanche*" to ask for the production of documents to establish whether he has a legal or factual foundation to formulate a claim in reconvention.
14. The same principle applies with equal force to the facts of this matter. The applicant seeks certain documents in order to establish whether she ought to amend her particulars of claim. This is not permissible in terms of Uniform Rule 35(14).
15. The application to compel is predicated on the applicant's notice in terms of Uniform Rule 35(14).
16. As set out above, the applicant needs to establish that the documents sought are *essential* for purposes of pleading.

⁵ *Cullinan Holdings Ltd v Mamelodi Stadsraad* 1992 (1) SA 645 (T) at 647F; *MV Urgup: Owners of the MV Urgup v Western Bulk Carriers (Australia) (Pty) Ltd* 1999 (3) SA 500 (C) at 515C – I.

⁶ *Quayside Fish Supplies CC v Irvin and Johnson Ltd* 2000 (2) SA 529 (C) at 534G – H; *Standard Bank of South Africa Limited v Pretorius* (unreported FB case number 5268/2019 dated 23 February 2023) at para 10.

17. The applicant in her founding affidavit has not made out a case that the documents are, in fact, essential. Significantly, this allegation is not even made.
18. That is not the end of the difficulty for the applicant. At best, for the applicant, she requires the documents in order to consider her position. Why the applicant has elected to institute an application to compel based on a notice in terms of Uniform Rule 35(14) is not clear. Both parties still need to discover and during the process of discovery, both parties would have to discover any and all documents that may be relevant to any reasonably anticipated issue. The net pertaining to discovery is cast fairly wide.
19. Nothing prevents the applicant from following the ordinary discovery process and if certain documents are not discovered by the respondent, it is incumbent on the applicant to deliver a notice in terms of Uniform Rule 35(3).
20. The applicant has not followed this process and instead issued a notice in terms of Uniform Rule 35(14). Uniform Rule 35(14) was not designed for this purpose, and the applicant's attempted reliance on this rule is misplaced.
21. As Uniform Rule 35(14) does not find application, the application to compel is similarly defective.
22. In the premises, the following order is made:
 - 22.1. The applicant's application to compel is dismissed with costs, such costs to include the cost of the respondent's counsel on Scale A.

SG MARITZ AJ
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

Applicant's Counsel:	Adv L Mello
Respondent's Counsel:	Adv MB Lekoloana

Date of Hearing: 19 May 2025

Date of Judgment: 23 May 2025