IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, JOHANNESBURG

Case Number: 2023-049065

Delete whichever is not applicable
(1) REPORTABLE: ~~YES~~ / NO
(2) OF INTEREST TO OTHER JUDGES: ~~YES~~/NO
(3) REVISED: ~~YES~~/NO

10 OCTOBER 2025
DATE

SIGNATURE

In the matter between:

M[...] C[...] N[...]	FIRST APPLICANT
N[...] N[...]	SECOND APPLICANT
RATHA KRISHNAN NAYAGER	THIRD APPLICANT

and

D[...]1 N[...]	FIRST RESPONDENT
STANDARD BANK OF SOUTH AFRICA	SECOND RESPONDENT
NEDBANK GROUP LIMITED	THIRD RESPONDENT

JUDGMENT

Mazibuko AJ

INTRODUCTION

[1] This is an application seeking an order, firstly, reviewing and setting aside the subpoenas that were served by the first respondent on the applicants, the second and third respondents, on the basis that the documents sought in the subpoenas are irrelevant and that the subpoenas have been issued for an ulterior

purpose. Secondly, an order directing the first respondent to return, alternatively permanently destroy all records, documents and/or bank statements obtained pursuant to the subpoena directed at Standard Bank, and to file an affidavit confirming compliance therewith within 10 days of the date of the order. Lastly, an order condoning the late filing of the applicants' replying affidavit.

THE PARTIES

[2] The first applicant is M[...] C[...] N[...], hereinafter referred to as "M[...]", a businessman, father of the second applicant, and a father-in-law to the first respondent.

[3] The second applicant is N[...] N[…], a hereinafter referred to as ("N[...]"), a businessman, the youngest son of M[...] and a brother-in-law to the first respondent.

[4] The third applicant is Ratha Krishnan Nayager, hereinafter referred to as ("Ratha,") a chartered accountant, a sole owner of RKN Associates (Pty) Ltd, carrying on business at Northmead, Benoni.

[5] The first respondent is D[...]1 N[...] hereinafter referred to as ("D[...]1"). She is a daughter-in-law law to M[...] as she is married to D[...]2, an elder son of M[...]. She is also a plaintiff in a divorce action against D[...]2.

[6] The second respondent is Standard Bank of South Africa Limited, a company duly registered in terms of the company laws of South Africa registered as a credit provider and trading from Simmonds Street, Johannesburg, hereinafter referred to as ("Standard Bank").

[7] The third respondent is Nedbank of South Africa Limited, a company duly registered in terms of the company laws of South, Africa registered as a credit provider and trading from Sandton, Johannesburg, hereinafter referred to as ("Nedbank").

[8] The papers before the court make reference to the defendant, D[...]2, who is the defendant in the divorce action instituted by D[...]1.

BACKGROUND

[9] It is common cause between the parties that D[...]1 and D[...]2 are married out of community of property with the inclusion of the accrual system. D[...]1 instituted divorce proceedings in May 2023.

[10] At the commencement of his businesses, Shree Luxmi to D[...]2 *Service Station Close Corporation and* Passion Flower Close Corporation, hereinafter referred to as ("the close corporations"), M[...] donated 40% of the members' interest in Shree Luxmi to D[...]2 and 9% to N[...], whilst keeping 51% for himself. In respect of the members' interest in Passion Flower, he donated 25% of the members' interest to D[...]2 and N[...] each and retained 50% for himself.

[11] It was alleged that in September 2023, D[...]2 sold his members' interests in Shree Luxmi and Passion Flower to M[...]. The arrangement between M[...] and D[...]2 was that payment towards the sale was deferred and would be made into D[...]2's attorneys' trust account upon finalisation of the divorce action between D[...]2 and D[...]1.

[12] The pleadings in the divorce action have been closed. There was discovery between the parties in the action. The discovery included D[...]2's financial disclosure form, audited financial statements, and Standard Bank statements.

[13] D[...]1 was not satisfied with the discovery made by D[...]2, as she believed he was withholding relevant financial information from her, which was necessary for calculating D[...]2's accrual in his estate.

[14] In January 2025, D[...]1, through her attorneys, served subpoenas on M[...], N[...], and Ratha, together referred to as "applicants," Standard Bank and Nedbank, demanding that they provide with specific documentation, failing which they may become liable to a fine or to imprisonment not exceeding three months. If privilege was claimed in respect of any documentation, they were

required to inform her within five days of receipt of the subpoena of the nature of the privilege claimed. Further, they would be entitled to the return of that documentation after inspection, copying or photographing.

[15] The subpoenas served on M[...] and N[...] are similar in content. D[...]1 demanded them to lodge with the registrar of court or inform the registrar of the whereabouts of the following:

> *"(1) The Sale Agreement entered into by the Defendant on or about 7 September 2023 in respect of the sale of the Defendant's 40% (Forty Percent) members interest in and to Shree Luxmi Service Station with registration number [...]*
>
> *(2) The Sale Agreement entered into by the Defendant on or about 7 September 2023 in respect of the sale of the Defendant's 25% (Twenty Five Percent) members interest in and to Passion Flower Trading CC with registration number [...].*
>
> *(3) Tax returns submitted to SARS in respect of Shree Luxmi Service Station CC (Registration number: […].*
>
> *(4) Tax returns submitted to SARS in respect of Passion Flower Trading CC (Registration number: […] from 1 January 2016 to 1 January 2025.*
>
> *(5) Value Added Tax (VAT) returns submitted to SARS in respect of Shree Luxmi Service Station CC (Registration number: […] from 1 January 2016 to 1 January 2025.*
>
> *(6) Value Added Tax (VAT) returns submitted to SARS in respect of Passion Flower Trading CC (Registration number: […] from 1 January 2016 to 1 January 2025.*
>
> *(7) Breakdown of loan accounts in the books of account of Passion Flower Trading CC (Registration number: …) from 1 January 2016 to 1 January 2025.*
>
> *(8) Breakdown of loan accounts in the books of account of Shree Luxmi Service Station CC (Registration number:) from 1 January 2016 to 1 January 2025.*

(9) Books of account, including journals relating to Passion Flower Trading CC (Registration number: …) from 1 January 2016' to 1 January 2025.

(10) Books of account, including journals relating to Shree Luxmi Service Station CC (Registration number: …) from 1 January 2016 to 1 January 2025.

(11) Proof of Capital Gains Tax paid in respect of Passion Flower Trading CC (Registration number: …) from 1 January 2016 to 1 January 2025.

(12) Proof of Capital Gains Tax paid in respect of Shree Luxmi Service Station CC (Registration number: …) from 1 January 2016 to 1 January 2025.

(13) Personal Tax Returns submitted to SARS in respect of M[...] C[...] N[...] from 1 January 2016 to 1 January 2025.

(14) Any and all bank statements of any accounts held by Shree Luxmi Service Station CC (Registration number: …) with Standard Bank Limited, Nedbank ABSA Bank Limited, First National Bank or any bank that has a presence Africa from 1 January 2016 to 1 January 2025.

(15) Any and all bank statements of any accounts held by Passion Flower Trading (Registration number: …) with Standard Bank Limited, Nedbank Limited, ABSA Bank Limited, First National Bank or any bank that has a presence in South Africa from 1 January 2016 to 1 January 2025.

(16) Any and all personal bank statements of any accounts held by M[...] C[...] N[...] with any South African Bank, or any bank that has a presence in South Africa, from 1 January 2016 to 1 January 2025.

(17) Bank account details relating to offshore bank account(s) held by M[...] C[...] N[...] including but not limited to, any bank account with the Bank of Baroda.

Unless such person claims privilege in respect of any document or thing."

[16] The subpoena served on Ratha was similar in content with the ones served on M[...] and N[...] save for the following additions:

"(a) Any and all returns submitted to SARS for a trust where the Defendant is a trustee, beneficiary or holds any beneficial interest from 1 January 2016 to 1 January 2025.

(b) Books of account, including journals relating to Passion Flower Trading CC (Registration number...) from 1 January 2016 to 1 January 2025.

(c) Books of account, including journals relating to Shree Luxmi Service Station CC (Registration number …) from 1 January 2016 to 1 January 2025.

(d) Proof of Capital Gains Tax paid in respect of Passion Flower Trading CC (Registration number …) from 1 January 2016 to 1 January 2025.

(e) Proof of Capital Gains Tax paid in respect of Shree Luxmi Service Station CC (Registration number …) from 1 January 2016 to 1 January 2025.

(f) Personal Tax Returns submitted to SARS in respect of Ratha Krishnan Nayager from 1 January 2016 to 1 January 2025.

(g) Any and all personal bank statements of any accounts held by the Defendant, D[...]2 N[...] with any South African Bank, or any bank that has a presence in South Africa, from 1 January 2016 to 1 January 2025."

[17] Standard bank and Nedbank were served with subpoenas respectively, similar in content which demanded the following:

"(1) Bank statements for all accounts held with the Standard Bank oof South Africa Limited, belonging to Shree Luxmi Service Station CC (Registration number…) from 1 January 2016 to 1 January 2025.

(2) Bank statements for all accounts held with the Standard Bank of South Africa Limited, belonging to Passion Flower Trading CC (Registration number…) from 1 January 2016 to 1 January 2025.

(3) Bank statements for all accounts held with the Standard Bank of South Africa Limited, belonging to M[...] C[…] N[...] (identification number …) from January 2016 to 1 January 2025.

(4) Bank statements for all accounts held with the Standard Bank of South Africa Limited, belonging to D[...]2 N[...] (Identification number …)

(5) Bank statements in respect of the platinum private banking credit card issued to M[...] C[…] N[...] (Identification number…) or registered to Shree

Luxmi Service Station (Registration number…) with subsequent card issued to D[...]2 N[...] (Identification number…) previous card number […].

(6) Bank statements, concerning bank accounts held with Standard Bank Limited, in respect of any accounts belonging to the N[...] N[...] (Identification number…) from 1 December 2022 to 1 January 2025.

(7) Bank statements in respect of overdraft facilities entered into between Standard Bank Limited and Shree Luxmi Service Station CC (Registration number: 2002/…) from January 2016 to January 2025.

(8) Bank statements in respect of overdraft facilities entered into between Standard Bank' Limited and Passion Flower Trading CC (Registration number: 2006/179752/23) from 1 January 2016 to 1 January 2025.

unless such person claims privilege in respect of any document or thing."

[18] It was alleged that the search at the Master of the High Court to establish whether or not D[...]2 has a trust, or a beneficiary of any trust yielded no positive results.

CONDONATION

Late filing of the applicant's replying affidavit

[19] M[...] filed his replying affidavit 20 days later than its due date, which was 11 April 2025. On 8 April, his attorneys dispatched a letter informing D[...]1's attorneys of the delay they were experiencing in obtaining the information about the status of the bank account in India. They also indicated that they would be filing a condonation application in that regard.

[20] He seeks leave for condonation for the late filing of his replying affidavit. He attributed the lateness to D[...]1's answering affidavit regarding his bank account held together with D[...]2 and N[...] as well as other family members in India and the alleged trust. He averred that he attempted to acquire proof that the account was closed and could not do that remotely.

[21] On 12 May 2025, in a virtual meeting with the India bank manager he was advised that he needed to attend the bank in person to obtain the letter confirming that the bank account has been closed. He further stated that D[...]1

will not suffer any prejudice due to the late filing of his replying affidavit. The condonation application is opposed on the basis that M[...] has not made out a case for the condonation.

[22] "*The grant of condonation involves the exercise of a discretion, with a decision to condone a party's non-compliance with the court or directions constituting an indulgence by the court. Such an application should be granted if, having regard to the particular circumstances of the matter, it is in the interests of justice to do so, and refused if it is not. To reach a decision, regard is to be had to factors including the nature of the relief sought, the extent and cause of the delay, the reasonableness of the explanation for the delay, the importance of the issue to be raised, issues of prejudice and the prospects of success. As a general proposition, the factors to be considered are not individually decisive of an application for condonation but are all considered to determine what is in the interests of justice.*" [1]

[23] The replying affidavit intends to disclose information regarding the status of the bank account alleged to be held in India, of which D[...]2 was a joint holder together with M[...]. D[...]1 asserted that she needed such information, which she believed D[...]2 was intentionally withholding, for the purpose of accurately calculating the accrual applicable in the divorce matter. I accept that the elucidated circumstances contributed to the late filing of the replying affidavit. D[...]1's attorneys were made aware of the delays he was experiencing. I find that D[...]1 would suffer no prejudice when the late filing of M[...]'s replying affidavit is condoned and admitted into evidence. Therefore, in the interest of justice, the application for condonation to file the replying affidavit is granted. The replying affidavit is admitted into evidence.

ISSUE

[24] The issue for determination is whether the subpoenas are overbroad, oppressive,

[1] *Ngwenya v Trustees for the time being of Sishen Iron Ore Company Community Development Trust and Another* (2024) 45 ILJ 121 (CC), para 14.

and constitute an abuse of process, and, were issued for an improper purpose and without procedural fairness.

ASSERTIONS

Applicants' case

[25] It was argued on behalf of the applicants that the subpoenas seek disclosure of private records over a nine-year period without specificity or demonstrated necessity. D[...]1 had alternative remedies available, including discovery against D[...]2 in the divorce matter. The subpoenas infringe upon their privacy and dignity rights, as enshrined in the Constitution of the Republic of South Africa Act 108 of 1996 ("the Constitution"), and were issued without engagement, thereby amplifying the abuse of process.

[26] It was submitted on behalf of N[...] that the issuance of the subpoenas by D[...]1 against him was intended to embarrass, harass, and humiliate him and his family. It was a gross invasion of his privacy. It is an attempt to coerce him into convincing his brother, D[...]2, to succumb to D[...]1's financial demands in the divorce proceedings, and a fishing expedition. Furthermore, in an attempt to degrade him, D[...]1 issued a subpoena to Nedbank, requiring his bank statements, despite being aware he was not a party to the divorce action, and that he, together with D[...]2 and the corporations, held no accounts at Nedbank. Such information and documentation are irrelevant to the divorce proceedings between D[...]1 and D[...]2. He was not a party to the sale agreement. The demand for his personal tax returns to D[...]1 constitute an abuse of the court process.

[27] In relation to the bank account details he held at the Bank of Baroda, N[...] argued that they were irrelevant for the divorce action, as it did not involve him, but rather D[...]1 and D[...]2, and therefore could not contribute to the resolution of the divorce action.

[28] On behalf of Ratha, it was submitted that Ratha was not a party to the agreements. He was not involved in drafting or finalising them, not in possession of them nor had knowledge of their whereabouts. Regarding the

tax returns and breakdown of loan accounts he stated that he had access to those of the last 5 years.

[29] It was further submitted that D[...]2 was no longer a member of either entity, as of 7 September 2023. Therefore, the requested information constitutes a direct violation of the existing members' rights for their business information, which are private and confidential. He was not provided with proof of VAT paid by his clients. D[...]2 was not a trustee, beneficiary or holder of any beneficial interest in a trust, to his knowledge. Bank statements were returned to his clients. He has no knowledge of offshore accounts held in India.

[30] Regarding his personal tax returns it was argued on his behalf that it was a direct violation of his constitutional right to privacy and, irrelevant to D[...]1 and D[...]2's divorce, therefore, an abuse of court process.

<u>D[...]1's case</u>

[31] On behalf of D[...]1, it was argued that the documentation sought is relevant to ascertain D[...]2's true financial position in the divorce action. Same will assist her forensic accountant and attorneys in valuing the accrual in the divorce action properly.

[32] The Standard Bank subpoena has already been complied with, therefore, the matter is moot in that regard.

LEGAL PRINCIPLES

[33] In order to determine the accrual of the estate of a spouse, one spouse at the request of the other spouse, shall within a reasonable time, furnish full particulars of the value of his or her estate.[2]

[34] A party to proceedings before any Superior Court in which the attendance of

[2] Section 7 of the Matrimonial Property Act 88 of 1984.

witnesses or the production of any document or thing is required, may procure the attendance of any witness or the production of any document or thing in the manner provided for in the rules of that court'.[3]

[35] Any witness who has been required to produce any deed, document, writing or tape recording at the trial shall hand it over to the registrar as soon as possible, unless the witness claims that the deed, document, writing or tape recording is privileged'.[4]

[36] A party seeking to compel production of documentation from a third party has to prove not on balance of probabilities but must demonstrate with certainty that the sought documentation would be necessary, relevant, and not speculative or based on mere hope of evidentiary value. See Deltamune (Pty) Ltd and Others v Tiger Brands Ltd and Others.[5]

[37] When a subpoena is issued to procure the attendance of any person as a witness or to produce any book, paper or document in any proceedings, and it appears that such book, paper or document could properly be produced by some other person, the court concerned may, notwithstanding anything contained in this section, after reasonable notice by the Registrar to the party who sued out the subpoena and after hearing that party in chambers if he or she appears, make an order cancelling such subpoena.[6]

[38] 'What does constitute an abuse of the process of the court is a matter which needs to be determined by the circumstances of each case. There can be no all-encompassing definition of the concept of "abuse of process". It can be said in general terms, however, that an abuse of process takes place where the procedures permitted by the Rules of the Court to facilitate the pursuit of the truth are used for a purpose extraneous to that object.

[3] Section 35 of the Superior Courts Act, 10 of 2013.
[4] Rule 38(1)(b).
[5] *Deltamune (Pty) Ltd and Others v Tiger Brands Ltd and Others* (Case No. 847/2020) [2022] ZASCA 15 (4 February 2022) para 42.
[6] Section 36(5)(b) of the Superior Courts Act 10 of 2013.

The court retains the discretion to set aside subpoenas that are issued on speculative grounds or for an ulterior purpose, particularly where they targeted third parties.[7]

DISCUSSION

[39] Where parties are married out of community of property, each party keeps their own estate separate from the other. The other party will have little to no knowledge about the growth or decline of the other's estate. It is therefore important that full disclosure is made for the determination of the accrual of the estate of the other spouse.

[40] A subpoena is a mechanism that enables litigants to secure evidence or witness's attendance during ongoing litigation to help them present their case or defend it. The spouse who is not satisfied about the discovery made by the other, may subpoena third parties to produce the required information and documentation required for the accrual calculation. The onus of proof is on the spouse seeking that the third parties produce documents. That spouse must prove that it is absolutely necessary, relevant and there is some certainty that such documents are relevant to the issues in the underlying action.

[41] In the main proceedings of the divorce action between D[...]1 and D[...]2, D[...]1 sought accrual and other ancillary relief. D[...]1 argued that D[...]2 failed to furnish adequate particulars of his estate in order to investigate his true financial position and to determine the estate value for purposes of accrual calculation. He did not furnish his proof of income and IRP5. He indicated he could not estimate his own income and would await his accountant, Ratha to furnish him with same.

[42] D[...]2's Financial Disclosure Form (FDF) was furnished, However the mentioned perks to meet his expenses for the matrimonial home from his employment at the corporations were not quantified, though alleged to be

[7] *Beinash v Wixley* 1997 (3) SA 721 (SCA) at 734 – 735 A.

drawn from the corporations. The request in September 2024, by D[...]1 for further particulars bore no positive results.

[43] It is worth noting that after invoking rule 35(3) of the rules and compelling D[...]2, D[...]1 was still not furnished with adequate financial documentation. D[...]2 had not furnished her with his Tax assessments, including, personal, provisional and capital gains tax, IRP 5 filings, payslips, Standard Bank and Nedbank statements, Old Mutual and Liberty life policies. Although the Audited financial statements in respect of the corporations were provided, D[...]2 stated that as he was no longer a member of the corporations, having sold his interest to M[...], he was not granted access to the corporations' bank statements.

[44] In October 2024, though D[...]2 indicated that he was not making withdrawals from the corporations. His income was reflected to be R80 000 per month, which was different from the R15 000 per month as previously stated in his supplementary affidavit. It makes no sense why D[...]2's income would suddenly increase from R15 000 to R80 000 after the sale of his members' interest. A sale to which D[...]1 had no access and details as D[...]2 pleaded confidentiality when he was asked to disclose same.

[45] It remains unknown whether the increase was part of the agreement, and what effect, if any, would that have in the increase or decrease of D[...]2's estate, especially when such sale was concluded after the institution of divorce. Under the circumstances I do not find that the subpoena requesting for the production of financial books, information and documentation and other related, relating to D[...]1's members' interest in the corporations at the time of sale can be said to unreasonable and unnecessary.

[46] Considering the facts of this case, I do not find it improper for this court to further the inquiry and consider the role each of the third parties had played with regard
to D[...]2's assets and financial information and documentation.

[47] With respect to M[...], D[...]2 and N[...], they are family and members of the corporations with respective members' interest in the corporations. They run these family businesses.

[48] In his founding affidavit, M[...] averred that since the institution of divorce between D[...]1 and D[...]2 in May 2023, there has been tension and instability in the family and the corporations. In the midst, the value of the corporations and D[...]2's income became an issue. He played a vital role in ensuring the safety and security of the corporations. Such protection related to the financial interest D[...]2 had at the time the sale agreement was concluded. D[...]2 remained employed at the businesses after the sale of his members' interest to M[...].

[49] In September 2023, he purchased D[...]2's members' interest in the two corporations, with the purchase consideration to be paid into D[...]2's attorneys' trust account upon finalization of the divorce, so that it is available as part of the accrual payable to D[...]1. However, no information is availed as to the price and other necessary and relevant information regarding the sale. It is unclear why the sale agreement between M[...] and D[...]2 for the sale of members' interest in the corporations is said to be confidential, thereby not disclosed to D[...]1.

[50] Though, M[...] substantiated his view of an attempt to coerce with an incident where D[...]1's sister called him to yield to D[...]1's financial demands. I do not accept that the subpoenas' purpose was to coerce D[...]2 or M[...] or N[...] to yield to D[...]1's financial demands, or to embarrass her father-in-law and brother-in-law or D[...]2's family.

[51] It is unclear why D[...]2 could not continue his maintenance responsibility towards his daughter after the sale of his members' interest. It appears to me that the applicants have access to D[...]2's financial information and documentation more than what D[...]2 elected to disclose. They have access to the sale agreement between D[...]2 and M[...]. It is not far-fetched a thought that when the change of members' interest change, N[...] and Ratha would be

aware. N[...] is blood related to the parties to the said sale agreement and has members' interest in the corporations. Ratha is a charted accountant for the purposes of bookkeeping, accounting and auditing of the books of the corporations and compliance purposes with SARS, among others in respect of tax compliance.

[52] It does not appear to me how it is unnecessary and irrelevant for the corporations' bank statements, all tax documentation and financials to be furnished to D[...]1. Particularly when assets are, after the institution of divorce, moved from one family member to another without full disclosure of the value of D[...]2's interest. Obviously, a subpoena demanding disclosure of that information and documentation is necessary and relevant to determine D[...]2's assets' value. I do not see how such will be invading privacy.

[53] Concerning the accounts with the bank of Baroda in India, where it is not denied that D[...]2 is a joint accountholder, it was alleged that the accounts were closed. No information was given as to what happened to the funds when the accounts were closed, and no proof is furnished to the fact that the account was closed. M[...] stated that his attempts to remotely secure proof thereof were not successful as he needed to travel to India for the bank to furnish him with such proof.

[54] Coming to the role played by N[...], he has not been actively involved in his brother D[...]2's financial affairs except that he is the remaining member with members' interest in the corporations together with his father, subsequent to M[...] purchasing D[...]2's members' interest. He has access to the corporations' bank statements, audit and tax information and documentation. He holds no account with Standard Bank; therefore, Standard bank could not provide any bank statements. The corporations have no accounts at Nedbank, therefore the subpoena will serve no purpose.

[55] With regard to the corporations, it was common cause between the parties that

Ratha is responsible for the audit and filing of different types of tax returns. In terms of the Vat returns and the breakdown of the loan accounts of the corporations, he stated that he cannot provide returns for periods exceeding five years as he is no more in possession of them as he had destroyed them. Ratha is also an accountant for D[...]2, as D[...]2 could not determine his own salary and stated that Ratha would be in a position to do so.

[56] In so far as the breakdown of the loan accounts he indicated that they were not necessary once D[...]1 has been furnished with the audited financial statements of the corporations. In respect of Capital Gains Tax, none had been paid for the corporations, as according to the sale agreement between M[...] and D[...]2, same will be payable once the purchase price is paid into the attorneys' trust account upon finalization of the divorce.

[57] In my view, D[...]1 was justified to view the conduct and conclude that M[...] was assisting D[...]2 to conceal assets relevant for the determination of the accrual of D[...]2's estate. On those basis it does not seem it is available to the applicants to plead that they have nothing to do with the divorce action. They possess the information and documentation that will assist the divorce proceedings in calculating D[...]2's accrual in his estate. D[...]1 has demonstrated that the subpoenas were absolutely necessary, relevant, specific and there exists some degree of certainty that such documents are relevant to the issues in the divorce action.

[58] The documents requested in the subpoena are to enable D[...]1, and her attorneys and accountants to investigate the accrual on D[...]2's estate, following D[...]2's continuous inconsistences with regard to his income and assets, as well as his unwillingness to make full disclosure of his financial information and documentation. He failed to furnish the sale agreement between himself and his father, pleading confidentiality.

[59] Concerning the overbroad and overbearing of the subpoenas, I agree that the wording of the subpoenas may be open to some level of criticism as far as the time period in the subpoenas dating back to about 9 years ago is concerned.

However, in *casu* that does not carry a fatal effect on the relevance and necessity of the documents referred to in the subpoenas served on the applicants. The court may determine what period for the documents is reasonable and fair. In my view, the period of 9 years is unfair and unreasonable, whilst in my view, production of documents for the past 5 years is reasonable and fair.

[60] It does not appear to me how the rights of the corporations may in any manner be affected or violated, should the subpoenas relating to D[...]2 and the corporations be complied with by the applicants. The plaintiff has in any event proffered the necessary safeguards in that the applicants would be entitled to the return of that documentation after inspection, copying or photographing.

[61] Failure to comply with a subpoena has serious consequences. However, recipients of subpoenas have remedies available to them to resist compliance on reasonable grounds. I agree with the applicant that the subpoenas are overbroad and overbearing, as far as they concern financial and tax information and documentation of personal nature. What D[...]1 is not entitled to is personal bank statements, including credit cards, tax related information and documentation of a personal nature relating to the applicants.

[62] I agree with counsel on behalf of the applicants that the applicants' documentation of personal nature requested in the subpoenas, including, M[...]'s American Express credit card, tax's status and any other financial information and documentation are of no relevance for the purposes of accrual calculation relating to the divorce action between D[...]1 and D[...]2. I find that they are private, privileged, unnecessary, irrelevant and confidential. They are of no assistance to the divorce action between D[...]1 and D[...]2. Therefore, the subpoenas in this regard ought to be reviewed and be set aside.

[63] With regard to Standard bank, the applicants argued that the subpoenas are unlawful and must be set aside, and, although, Standard bank had complied with the subpoenas, the matter was not moot. There was nothing untoward that Standard Bank did in handling the subpoenas. They simply complied with

them. However, in their compliance, part of the disclosure made was for personal documents relating to M[...], N[...] and Ratha. That disclosure of documents of personal nature was unlawful.

[64] It was argued that the application has been rendered moot by Standard Bank's disclosure. In my view a declaration of unlawfulness is still warranted as the first respondent is in unlawful possession of those documents. Consequently, the subpoenas as far as it concerns the disclosure of applicants' financial information and documentation of personal nature are reviewed and set aside. They must be returned, alternatively, be permanently destroyed.

COSTS

[65] Both parties argued for costs in the event they were successful. Notwithstanding the fact that all subpoenas relating to the request of financial information and documentation, of personal nature are reviewed and set aside, which means that the first respondent has partially succeeded. I am inclined to award her full costs of the application when regard is had to the facts of this matter.

[66] For the reasons mentioned, I make the following order.

Order:

[66.1] The condonation application for the late filing of the replying affidavit is granted.

[66.2] M[...] and N[...] are to comply with the subpoenas served on them and furnish and lodge with the registrar of the court or inform the registrar of the whereabouts of the following:

(a) The Sale Agreement entered into by the Defendant on or about 7 September 2023 in respect of the sale of the Defendant's 40% (Forty Percent) members interest in and to Shree Luxmi Service Station with registration number [...].

(b) The Sale Agreement entered into by the Defendant on or about 7 September 2023 in respect of the sale of the Defendant's 25%

(Twenty Five Percent) members interest in and to Passion Flower Trading CC with registration number [...].

(c) Tax returns submitted to SARS in respect of Shree Luxmi Service Station CC (Registration number: […].

(d) Tax returns submitted to SARS in respect of Passion Flower Trading CC (Registration number: […] from 1 January 2020 to 1 January 2025.

(e) Value Added Tax (VAT) returns submitted to SARS in respect of Shree Luxmi Service Station CC (Registration number: […] from 1 January 2020 to 1 January 2025.

(f) Value Added Tax (VAT) returns submitted to SARS in respect of Passion Flower Trading CC (Registration number: […] from 1 January 2020 to 1 January 2025.

(g) Breakdown of loan accounts in the books of account of Passion Flower Trading CC (Registration number …) from 1 January 2020 to 1 January 2025.

(h) Breakdown of loan accounts in the books of account of Shree Luxmi Service Station CC (Registration number:) from 1 January 2020 to 1 January 2025.

(i) Books of account, including journals relating to Passion Flower Trading CC (Registration number: …) from 1 January 2020 to 1 January 2025.

(j) Books of account, including journals relating to Shree Luxmi Service Station CC (Registration number: …) from 1 January 2020 to 1 January 2025.

(k) Proof of Capital Gains Tax paid in respect of Passion Flower Trading CC (Registration number …) from 1 January 2016 to 1 January 2025.

(l) Proof of Capital Gains Tax paid in respect of Shree Luxmi Service Station CC (Registration number: …) from 1 January 2020 to 1 January 2025.

(m) Any and all bank statements of any accounts held by Shree Luxmi Service Station CC (Registration number: …) with Standard Bank Limited, Nedbank ABSA Bank Limited, First National Bank or any bank that has a presence Africa from 1 January 2020 to 1 January 2025.

(n) Any and all bank statements of any accounts held by Passion Flower Trading (Registration number: …) with Standard Bank Limited, Nedbank Limited, ABSA Bank Limited, First National Bank or any bank that has a presence in South Africa from 1 January 2016 to 1 January 2025.

(o) Bank account details relating to offshore bank account(s) held by M[...] C[...] N[...] including but not limited to, any bank account with the Bank of Baroda.

[66.3] Ratha is to comply with the subpoenas served on him and lodge with the registrar of the court or inform the registrar of the whereabouts of the following:

(a) Any and all returns submitted to SARS for a trust where D[...]2 is a trustee, beneficiary or holds any beneficial interest from 1 January 2020 to 1 January 2025.

(b) Books of account, including journals relating to Passion Flower Trading CC (Registration number...) from 1 January 2020 to 1 January 2025.

(c) Books of account, including journals relating to Shree Luxmi Service Station CC (Registration number …) from 1 January 2020 to 1 January 2025.

(d) Proof of Capital Gains Tax paid in respect of Passion Flower Trading CC (Registration number …) from 1 January 2020 to 1 January 2025.

(e) Proof of Capital Gains Tax paid in respect of Shree Luxmi Service Station CC (Registration number …) from 1 January 2020 to 1 January 2025.

(f) Any and all personal bank statements of any accounts held by the D[...]2 N[...] with any South African Bank, or any bank that has a presence in South Africa, from 1 January 2020 to 1 January 2025.

[66.4] All the subpoenas relating to the request of applicants' personal financial information and documentation of applicants, including bank statements, tax related, credit card is hereby reviewed and set aside.

[66.5] The subpoenas served on Nedbank are set aside.

[66.6] The applicants jointly and severally are to pay the costs of the application, one paying, and the other to be absolved.

N MAZIBUKO

ACTING JUDGE OF THE GAUTENG DIVISION

JOHANNESBURG

Heard on:	20 August 2025
Judgment delivered on:	10 October 2025
For the applicant:	Advocate I. Arzamastsev
Instructed by:	Stanford Attorneys
For the First Respondent:	Advocate D. Block
Instructed by:	Phillip Silver Mathura Attorneys