



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

Not reportable

Case no: 5815/2022

In the matter between

AGRAFORUM SOUTH AFRICA (PTY) LTD

APPLICANT

(Registration No: 2004/022326/07)

and

BARTLOMEUS COETZEE

RESPONDENT

IN RE:

BARTLOMEUS COETZEE

APPLICANT

(Registration No: 2004/022326/07)

and

AGRAFORUM SOUTH AFRICA (PTY) LTD

RESPONDENT

Neutral citation: *Argaforum South Africa (Pty) v Bartlomeus Coetzee* (5815/2022)
[2025] ZAFSHC 323 (16 October 2025)

Coram: MHLAMBI J

Heard: 8 May 2025

Delivered: 16 October 2025

Summary: Uniform Rules of Court - rule 35(3) notice - opposition alleging requested documents irrelevant and unavailable - relevance is for the court to decide.

ORDER

1 The Respondent is ordered and directed to produce for inspection under and in accordance with Uniform Rule of Court 35(3), as read with Uniform Rule of Court 35(6), the following documents:

1.1 Copies of Plaintiff's Combine Harvester Charts for sunflowers planted (harvested) by the Plaintiff during the 2015/2016 season concerning all sunflowers planted by the Plaintiff in that growing season;

1.2 Copies of Plaintiff's spray program for all sunflower planted by the Plaintiff in the 2015/2016 sunflower plant season;

1.3 Copies of Plaintiff's fertiliser program for all sunflowers planted by the Plaintiff in the 2015/2016 sunflower planting season;

1.4 Copies of all Plaintiff's weighbridge receipts received regarding sunflower planted (harvested) by the Plaintiff during the 2015/2016 sunflower planting season;

1.5 Copies all of the Plaintiff's delivery receipts for sunflower harvested by the Plaintiff during the 2015/2016 sunflower planting season;

1.6 Copies of Plaintiff's Combine Harvester Charts for sunflower planted (harvested) by the Plaintiff in the 2019/2020 season regarding all sunflower planted by the Plaintiff.

1.7 Copies of the Plaintiff's spray program for all sunflower fields planted by the Plaintiff during the 2019/2020 sunflower growing season.

1.8 Copies of Plaintiff's fertiliser program for all sunflower planted by the Plaintiff in the 2019/2020 sunflower planting season;

1.9 Copies of all Plaintiff's weighbridge receipts received for sunflower planted (harvested) by the Plaintiff in the 2019/2020 sunflower planting season;

1.10 Copies of all the Plaintiff's delivery receipts for sunflower harvested by the Plaintiff during the 2019/2020 sunflower season;

1.11 Copies of Plaintiff's Combine Harvester Charts for sunflower planted (harvested) by the Plaintiff in the 2021/2022 season regarding all sunflower planted by the Plaintiff;

1.12 Copies of Plaintiff's spray program for all sunflower planted by the Plaintiff in the 2021/2022 sunflower planting season;

1.13 Copies of Plaintiff's fertilizer program for all sunflower planted by the Plaintiff in the 2021/2022 sunflower planting season;

1.14 Copies of all the Plaintiff's delivery receipts for sunflower harvested by the Plaintiff during the 2021/2022 sunflower season;

2 The Respondent is ordered to pay the costs of this application, such costs to include the costs of counsel on scale C as provided for in Uniform Rule of Court 67A.

JUDGMENT

MHLAMBI, J

[1] The applicant requests an order to compel the respondent to produce additional documents under Uniform Rule 35(3), specifically those not previously discovered despite a prior rule 35(3) notice. The respondent opposed the application, arguing that the documents were not relevant to the issues in dispute, had already been disclosed, and that no other documents remained for discovery.

[2] Uniform Rule 35(3) states that if any party believes there are additional documents (including copies) or tape recordings relevant to the matter in question that are in the possession of another party, beyond those already disclosed, the former may serve notice requiring the latter to make them available for inspection in accordance with subrule (6), or to swear within 10 days that such documents or tape recordings are not in their possession. In such cases, the party making the disclosure must state their whereabouts, if known.

[3] Copies of the documents requested in the notice of motion include the combine harvester charts, spray program, fertilizer program, weighbridge certificates, and delivery receipts for the sunflower planted by the applicant during the 2015/2016, 2019/2020, and 2021/2022 seasons, as well as the pre-plant agreement signed on 4 November 2020. The respondent argued that the documents for the 2015/2016 and 2019/2020 planting seasons were irrelevant and that the applicant was not entitled to them. The respondent also stated that the only planting seasons mentioned in the

pleadings are the 2019/2020 and 2021/22 seasons, as reflected in their plea in the main case. The respondent refused to provide these documents, claiming that the applicant was fishing.

[4] The respondent's reasons for his attitude are that the applicant deliberately misinterpreted his expert's report. The respondent's attorney had asked the expert to specify in his report whether previous planting seasons were relevant to resolving the issues in the case. The expert stated in his letter dated 5 June 2024 that, in agriculture, no production year can be directly compared to another, as crops are usually rotated from year to year.

[5] In respect of the 2021/2022 season, the respondent contended that the documents called for had already been provided, and no further documents were available. He could therefore not be compelled to give what is not available.

[6] The respondent's claim is based on the breach of an oral agreement made between the parties in December 2021 when the applicant's representative told him that the applicant's product, Comcat, was suitable for foliage nutrition on his sunflower crops at Dora Farm. The product, which was properly registered, was supposed to increase the crop yield and have no negative effects on plant growth. However, contrary to that advice, the product mixture applied to the crop on 5 January 2022, damaged the crop, and the sunflower plants appeared unhealthy with stunted growth. The total sunflower area on the farm was 41.86 hectares, of which only 4.79 hectares remained undamaged. This crop was sold at a loss on 4 November 2020.

[7] In its plea, the applicant denied the existence of the agreement and that the representative acted on its behalf. It stated that the representative visited the respondent's farm on 25 November 2021, at the request of an independent distribution agent for Comcat WP, Fred Schabert. During the 2019/2020 planting season, the respondent purchased and successfully used the applicant's product called Comcat without any negative results. The respondent was not only familiar with the effectiveness of the product on crops where it was applied but also aware of the product information, warnings, disclaimers, and instructions for use printed on the packaging or label of Comcat.

[8] The applicants argued that the respondent's damage to his sunflower crop resulted from several factors other than the use of Comcat. These included the respondent's failure to effectively remove and clean the herbicide residue from the spraying equipment used to apply the Comcat; using contaminated equipment when applying or spraying the Comcat on his crop; planting sections of the larger sunflower crop in the 2021/2022 season that suffered poor germination; using a different product besides Comcat during the 2021/2022 season; and spraying the sunflower crop with a contact herbicide like Gramoxone containing the active ingredient paraquat, or applying the herbicide Captora in a manner contrary to the product's directions and mixing instructions.

[9] Consequently, the applicant argued that it was necessary to obtain information about previous planting seasons, along with full disclosure of the spray and fertiliser programs. The respondent did not provide the raw data for the requested combine harvester charts but supplied summaries prepared by a third party, which included data on 37,654 hectares. In contrast, the case involved 41.86 hectares, of which 37.07 hectares were damaged. The applicant contended that approximately 140 hectares of sunflower were treated with Comcat without any adverse effects on the crop during the 2021/2022 season, consistent with previous uses of Comcat in earlier planting seasons.

[9] The respondent failed to provide copies of his program for all the sunflower planted in the 2021-2022 planting season. Instead, he only supplied a list of products sprayed, lacking details about the mixture or ratio, the quantities or volumes sprayed per hectare, or the spraying timeline, which is typical in a spray program. The requested information was argued to address the issues raised in the plea. The respondent provided plant nutrition details for Skaapplaas, not Dora Farm, which pertained to the action, and claimed that the applicant was not entitled to it. Despite his December 2023 Rule 35(3) answer stating he was compiling the receipts for discovery, the respondent argued that he could no longer find the documents and therefore could not provide them.

[10] Uniform Rule 35(3) states that if any party believes there are, beyond the

documents or tape recordings already disclosed as mentioned, additional documents (including copies) or tape recordings relevant to the matter in question and in the possession of any party, the former may notify the latter, demanding such materials be made available for inspection as per subrule (6), or require the party to swear within 10 days that these documents or recordings are not in their possession. In this case, the party making the disclosure must specify their location, if known. A document is properly said to contain information that may enable the party requiring the affidavit to either advance their own case or damage their adversary's case if it fairly leads to a train of inquiry with either of these two consequences.¹

[11] This subrule outlines the process for a party dissatisfied with another party's discovery. Its purpose is to provide a procedure to supplement discovery that has already been completed but is alleged to be insufficient.² The subrule is not intended to allow a litigant to fish in hopes of catching something useful.³ Courts are hesitant to look behind a discovery affidavit, which is viewed as conclusive, unless it can be shown that either (i) from the discovery affidavit itself, (ii) from the documents referenced in the affidavit, (iii) from the pleadings in the case, (iv) from any admission made by the party who submitted the affidavit, or (v) based on the nature of the case or the documents involved, there are reasonable grounds to believe that the party has or previously had other relevant documents or tape recordings in their possession or control, or that they misunderstood the principles on which the affidavit should be made.⁴

[12] The respondent's main objection to additional discovery is that the requested documents are irrelevant and inadmissible. In *ST v CT*,⁵ it was stated that a litigant

¹ *Rellams (Pty) Ltd v James Brown & Hamer Limited* 1983 (1) SA 556 (N) at 564A-B as quoted in *Swissborough Diamond Mines (Pty) Ltd and Others v Government of the Republic of South Africa* 1999 (2) SA 279 (T) (*Swissborough*) at 316F-H.

² *Swissborough* at 320I–321F; See also *Louw v Grobler and Another* (3074/2016) [2021] ZAFSHC 223 (28 September 2021) (*Louw*) para 17.

³ *MV Urgup: Owners of the MV Urgup v Western Bulk Carriers (Australia) (Pty) Ltd and Others* 1999 (3) SA 500 (C) at 515D; See also *Investec Bank Ltd v O'Shea NO* (10038/2014) [2020] ZAWCHC 158 (16 November 2020) (*Investec*) para 16.

⁴ *Makate v Vodacom (Pty) Ltd* 2014 (1) SA 191 (GSJ) at 197C–G; See also: *Investec* para 18; *Erasmus NO v The MEC for Health, NC Province* (1342/2014) [2021] ZANCHC 1 (8 January 2021) para 46; *Louw* paras 13–15; *Isaacs v Mangera Attorneys* (2021/51099) [2023] ZAGPJHC 785 para 22; *Africa Wide Investment Holdings (Pty) Limited v Miganu Investment Holdings (Pty) Limited* (8279/2019) [2024] ZAGPJHC 518 (30 May 2024) para 34.

⁵ *ST v CT* [2018] ZASCA 73; [2018] 3 All SA 408 (SCA); 2018 (5) SA 479 (SCA) para 19.

should not impose his view of relevance in the discovery process, as this is a matter for the courts based on the pleadings. Relevance is for the court to decide, considering the issues between the parties, as noted in *Louw v Grobler and Another*.⁶

[13] The respondent, in a previous rule 35(3) affidavit in 2023, undertook to make full discovery of certain documents that he was busy compiling. These documents were apparently made available to his expert. In a subsequent affidavit in 2024, he stated that he had since conducted a thorough research of his records and was unable to find the documents sought. Such documents were no longer in his possession and did not know their whereabouts. Save for the documents discovered, he had no further documents in his possession relevant to the issue in dispute.

[14] Having considered the above, I conclude that the respondent is not forthright and willing to make proper discovery of the documents required. Consequently, the applicant must succeed in the relief sought.

[15] I, therefore, make the following order:

1 The Respondent is ordered and directed to produce for inspection under and in accordance with Uniform Rule of Court 35(3), as read with Uniform Rule of Court 35(6), the following documents:

1.1 Copies of Plaintiff's Combine Harvester Charts for sunflowers planted (harvested) by the Plaintiff during the 2015/2016 season concerning all sunflowers planted by the Plaintiff in that growing season;

1.2 Copies of Plaintiff's spray program for all sunflower planted by the Plaintiff in the 2015/2016 sunflower plant season;

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⁶ *Louw* para 12.

1.6 Copies of Plaintiff's Combine Harvester Charts for sunflower planted (harvested) by the Plaintiff in the 2019/2020 season regarding all sunflower planted by the Plaintiff.

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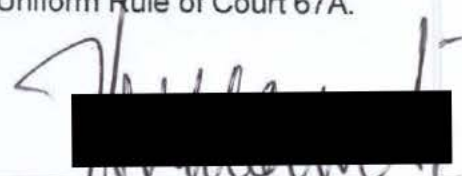
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1.14 Copies of all the Plaintiff's delivery receipts for sunflower harvested by the Plaintiff during the 2021/2022 sunflower season;

2 The Respondent is ordered to pay the costs of this application, such costs to include the costs of counsel on scale C as provided for in Uniform Rule of Court 67A.


[REDACTED]
J J MHLAMBI
JUDGE OF THE HIGH COURT

Appearances

For the appellant: C Snyman
Instructed by: Phatshoane Henney Attorneys

For the respondent: JW Steyn
Instructed by: Honey Attorneys