

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

CASE NUMBER: 2019-35722

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

_____ **26 November 2025**

In the matter between:

B[...], S[...] L[...] (FORMERLY J[...])

Applicant / Defendant

and

B[...], R[...] L[...]

Respondent / Plaintiff

JUDGMENT

Mdalana-Mayisela J

Introduction

[1] This matter concerns an application under Rule 35(3) of the Uniform Rules of Court, in which the applicant seeks an order compelling the respondent to provide a proper and compliant response to her notice for further discovery. The application is opposed. Also before me is the respondent's application for condonation for the late filing of his answering affidavit.

Background

[2] The parties have been engaged in protracted divorce proceedings since 2019. They were married in community of property on 18 March 1995. The applicant has filed a counterclaim seeking, *inter alia*, maintenance of R6,000 per month. The respondent opposes this claim, pleading that he is "*a retired person with limited means*" who lacks the financial ability to pay maintenance.

[3] The discovery process has been lengthy. On 18 November 2024, the applicant served a comprehensive notice under Rule 35(3), seeking numerous categories of financial documents to determine the true extent of the joint estate and the respondent's financial position. The respondent delivered a responding affidavit on 29 November 2024, which the applicant found deficient. After a detailed letter of complaint dated 5 December 2024 went unanswered, the present application was launched.

The Condonation Application

[4] The respondent's answering affidavit was filed approximately two weeks late. The explanation provided involves an administrative oversight within the respondent's attorneys' firm, where a dictated affidavit was overlooked by a candidate attorney.

[5] While the explanation is not particularly compelling, I am mindful that courts generally prefer to decide matters on their merits. The delay was not excessive, and the applicant, while not consenting, will abide by the court's

decision. In the interests of justice, the late filing of the respondent's answering affidavit is granted.

The issue for determination on the merits

[6] The central issue for determination is whether the respondent's affidavit of 29 November 2024 constitutes adequate compliance with Rule 35(3), particularly in light of his financial disclosure form filed on 15 October 2024.

The Legal Framework

[7] Rule 35(3) provides that if a party states under oath that requested documents are not in their possession, they "*shall state their whereabouts, if known.*" This wording is peremptory.

[8] The legal principles are well-established. In *Swissborough Diamond Mines v Government of the Republic of South Africa*,¹ the court emphasized the importance of proper discovery. More directly, in *African Contractors Finance Corporation (Pty) Ltd v LW Home Builders and Another*,² the court held unequivocally that it is insufficient for a party to merely state that documents are not in their possession. The Rule obliges them to state the whereabouts of the documents if known, or to affirm that they are unaware of their whereabouts.

Analysis of the Respondent's Compliance

[9] The respondent's initial Rule 35(3) response was fundamentally deficient. For numerous categories of documents, including those relating to business interests, loans, and financial transactions, the respondent provided uniform,

¹ 1999 (2) SA 279 (T) at 321.

² 2005] ZAGPHC 113 para 4.

unparticularised denials: "*I am not in possession nor have ever had the documentation...*"

[10] This response failed to comply with the peremptory requirement of Rule 35(3) to state the whereabouts of documents not in his possession. This failure alone would justify granting the application.

[11] However, the respondent's financial disclosure of 15 October 2024 reveals that the deficiencies in his Rule 35(3) response were not merely procedural but substantive. The disclosure contains material discrepancies and evidence of transactions that directly contradict his blanket denials, as shown below:

[11.1] Material Misstatement of Assets

The Respondent declared his bank account value totalling R4,672.00, while his attached bank statement shows a balance of R61,317.25, a discrepancy of approximately R56,645.25 that remains completely unexplained.

[11.2] Unexplained Substantial Transactions

The bank statements reveal multiple substantial transactions that directly contradict the respondent's denials in his Rule 35(3) response:

- A transfer of R40,000 to "*M Tennant*"
- A payment of R17,500 marked "*Loan Repay*"
- Multiple "*Send Money*" transactions to various recipients
- Continued payments to "*Zebrand Couriers*" and "*CC*"

[12] These transactions provide compelling evidence that documents relating to loans, business interests, and financial relationships likely exist, contrary to the respondent's denials. His failure to explain these transactions in his answering affidavit further undermines his credibility.

[13] The respondent's argument that the Rule 35(3) notice is "*overly broad, burdensome, and largely seeks documentation not relevant*" is unsustainable in the context of a divorce in a community of property where his financial disclosures have proven unreliable, and his pleaded poverty is directly contested.

Conclusion

[14] The applicant has established not only procedural non-compliance with Rule 35(3), but has also demonstrated, through the respondent's own documents, that comprehensive discovery is essential to ascertain the true extent of the joint estate and properly adjudicate the maintenance claim.

[15] The respondent's conduct, providing a sketchy Rule 35(3) response and a financial disclosure containing material discrepancies, demonstrates a pattern of obfuscation that prejudices the applicant's ability to properly present her case.

ORDER

[16] In the result, the following order is made:

1. The respondent's application for condonation for the late filing of his answering affidavit is granted.
2. The respondent is ordered to serve on the applicant a proper and compliant response to the applicant's Notice in terms of Rule 35(3), dated 18 November 2024, within ten (10) days of the date of service of this order.
3. In his said response, the respondent shall, for any document which he avers is not in his possession, state under oath the whereabouts of such document, if known, or state that he is unaware of its whereabouts, as required by Rule 35(3).
4. The respondent is ordered to make the documents referred to in his proper and compliant response to the applicant's Rule 35(3) notice available for

inspection within ten (10) days of the date of service of this order on his attorneys of record.

5. The respondent is to pay the costs of this application on the scale B.

**MMP Mdalana-Mayisela
Judge of the High Court
Gauteng Division,
Johannesburg**

Digitally delivered by uploading to Caselines and emailing to the parties.

Date of Hearing: 12 August 2025

Date of delivery: 26 November 2025

Appearances

For the Applicant:	Adv. B Delport
Instructed by:	Geniv Wulz Attorneys Inc.
For the Respondent:	Adv. CJ Smith
Instructed by:	Simpson Incorporated