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

**CASE NO: 045858/2024**

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED: YES

Date: 21 January 2026

In the matter between:

**TSHEPO MATJEE**

**1<sup>st</sup> APPLICANT**

**BATSILE BOTLHE PROJECCT DEVELOPMENT  
(PTY) LTD**

**2<sup>nd</sup> APPLICANT**

**BAKGATLA AND SONS HOLDINGS (PTY) LTD**

**3<sup>rd</sup> APPLICANT**

and

**M[...] O[...] K[...] M[...]**

**1<sup>st</sup> RESPONDENT**

**FIRST NATIONAL BANK**

**2<sup>nd</sup> RESPONDENT**

**M[...] L[...] M[...]**

**3<sup>rd</sup> RESPONDENT**

**PETER**

**MATJEE TSHEPO JOHANNES**

**4<sup>th</sup> RESPONDENT**

**MASONGANYE SELIAAN SARAH**

**5<sup>th</sup> RESPONDENT**

**BOKANG MORENA TRADING AND PROJECTS  
(PTY) LTD**

**6<sup>th</sup> RESPONDENT**

**MALEBANA KGABO LEBESIA N.O.**

**7<sup>th</sup> RESPONDENT**

## **JUDGMENT**

**ALLY AJ**

[1] This is an opposed application for the setting aside of a subpoena *duces tecum*.

[2] The Applicants were represented by Adv. P. Mafu and the First Respondent by Mr. S. Twala who has right of appearance in the High Court.

[3] The brief background to the application is that the First Respondent and the Third Respondent are entangled in divorce proceedings. The Applicants are the second to fourth defendants in the divorce proceedings instituted by the First Respondent against Third Respondent.

[4] The First Respondent caused a subpoena *duces tecum* to be issued out of this Court calling on the second respondent to produce documents listed in Annexure A to the subpoena.

[5] It must be stated that the said subpoena was not filed on caselines but after discussions between the representatives of the applicants and the first respondent, the subpoena was emailed to the judge's secretary.

[6] It should be stated further that the second respondent has chosen not to participate in these proceedings.

[7] The applicants contend broadly, that the subpoena mentioned above against the second respondent, infringes on his privacy and is thus further an infringement of the Protection of Personal Information Act.<sup>1</sup> Furthermore, the applicants contend that the information to be produced compromises his business dealings, business partners and is information requested by a private citizen with whom they have no relationship. It should be stated that the reference by the applicants to the Protection of Information Act, is misplaced, without merit and can be rejected out of hand.

[8] The First respondent contends that this application is dead in the water because the applicants have not made use of the Superior Courts Act<sup>2</sup>, hereinafter referred to as 'the Act', in attempting to set aside the abovementioned subpoena. The first respondent contends on this ground alone that the application should be dismissed.

[9] Section 35 and 36 of 'the Act' as contended by the first respondent deals with the procuring of a witness to attend court and the consequences of not attending.

[10] The first respondent, however, fails to include Rule 38 of the Uniform Rules of Court as part of the scheme that is used to procure the attendance of witnesses to Court. Be that as it may, Rule 38 specifically mentions the rights a witness subpoenaed to attend court has which includes the setting aside of such subpoena.

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<sup>1</sup> Act 4 of 2013

<sup>2</sup> Act 10 of 2013

[11] As mentioned above, the second respondent, First National Bank, has chosen not to participate in these proceedings and therefore, the applicants are not the witness required to attend court. In fact, First National Bank is cited as a respondent in these proceedings and not as an applicant.

[12] It must be stated further that the applicants do not make an allegation in the founding papers that the issuing of the abovementioned subpoena is an abuse of court process and on that ground should be set aside. This Court accordingly does not deem it necessary to deal with this aspect as it is not before court. Suffice to state that this Court would have had to interrogate such an allegation as precedent provides that a subpoena may be set aside where it constitutes an abuse of court process<sup>3</sup>.

[13] I agree with the principles set out by my brother Francis J wherein he stated firstly, the applicants were not the recipients of the subpoena nor was there any agency alleged or proven on behalf the third party recipients. Furthermore, in dealing with the abuse of court process, Francis J, correctly in my view, rejected the abuse of court process argument for the reason that this issue could and would probably be dealt with at trial.

[14] Similarly, in this matter, the applicants *in casu* are not the recipients of the abovementioned subpoena nor have they alleged or proven any agency on behalf of the second respondent. Similarly, further the parties to the proceedings at trial may mention the issue of abuse of court process thus gainsaying any prejudice if any.

[15] In conclusion therefore, the applicants, for the reasons set out above, have not made out a case for the setting aside of the subpoena *duces tecum* issued against the second the respondent.

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<sup>3</sup> Porter & Ano v Esportif International (SA) PTY Limited 2023 GPJHC [unreported judgment]

[16] In respect of costs, it is trite that the Court is vested with a discretion which must be exercised judiciously. The norm is that costs follow the result and, in my view, there is no reason why the norm should not apply.

[17] In respect of the scale of the costs, both representatives urged the court to apply party and party costs and the scale to be set at Scale B. I have considered these submissions and agree with the scale proposed.

[18] Accordingly, the following Order shall issue:

- a). the application is dismissed with costs;
- b). the applicants are to pay the party and party costs of the first respondent, the one paying the other to be absolved and the Scale in terms of Rule 67A is set a Scale B.

**ACTING JUDGE OF THE HIGH COURT  
GAUTENG DIVISION OF THE HIGH COURT, PRETORIA**

*Electronically submitted therefore unsigned*

Delivered: This judgement was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the Parties/their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date for hand-down is deemed to be 21 January 2026

Date of hearing: 1 September 2025

Date of judgment: 21 January 2026

**Appearances:**

Attorneys for the Applicants:

**MASIPA ATTORNEYS**

[masipaattorneys@gmail.com](mailto:masipaattorneys@gmail.com)

Counsel for the Applicants:

**Adv. P. Mafu**

Attorneys for the 1<sup>st</sup> Respondent:

**S. TWALA ATTORNEYS INC**

[sifiso@stwala.co.za](mailto:sifiso@stwala.co.za)

Counsel for the 1<sup>st</sup> Respondent:

**Mr S. Twala [with right of appearance]**