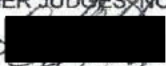


REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

Case Number: 37505/2019

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: YES
1/3/26	
DATE	SIGNATURE

In the matter between:

QABAKA: NOMACI

1st Applicant

NGWABENI: LUCY

2nd Applicant

and

**SOUTH AFRICAN WOMEN IN MINING
ASSOCIATION (REG NO: 2003/022750/08)**

1st Respondent

MZAMBO: NOMAKHWEZI

2nd Respondent

LANGENI: NOLUTHANDO

3rd Respondent

SITHOLE: MASIKINI

4th Respondent

MOTSUMI: DIKELEDI

5th Respondent

MOETLO: MIRRIAM

6th Respondent

NGOMEZULU: SIMANGELE

7th Respondent

NEDBANK GROUP LIMITED

8th Respondent

JUDGMENT

ALLY, AJ

- [1] This is an opposed interlocutory application to compel in terms of Rule 35(12)¹ wherein the applicant seeks the Court to compel certain documentation allegedly mentioned in the answering affidavit of the first respondent.
- [2] The applicants were represented by Adv. S. Vobi with Adv. A. Nase and the first respondent by Adv. H. Smith SC.
- [3] This application is only of relevance to the first respondent as is evident from paragraph 1 above.
- [4] The applicants contend that they are entitled to the documents mentioned in their Rule 35(12) notice². The first respondent in its reply³ to the said notice responded that certain documents were attached and that the applicants require documentation not reflected in the answering affidavit and therefore out of the scope of Rule 35(12). Accordingly, the applicants launched this application.
- [5] Rule 35(12) provides as follows:

“(a) Any party to any proceeding may at any time before the hearing thereof deliver a notice in accordance with Form 15 in the First Schedule to any other party in whose pleadings or affidavits reference is made to any document or tape recording to—

¹ Uniform Rules of Court

² CaseLines: Section: 087-1 – 087-4

³ CaseLines: Section: 089-1 – 089-12

(i) produce such document or tape recording for inspection and to permit the party requesting production to make a copy or transcription thereof; or

(ii) state in writing within 10 days whether the party receiving the notice objects to the production of the document or tape recording and the grounds therefor; or

(iii) state on 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.

(b) Any party failing to comply with the notice referred to in paragraph (a) shall not, save with the leave of the court, use such document or tape recording in such proceeding provided that any other party may use such document or tape recording."

[6] It is appropriate to deal with the applicant's request and contentions individually. The applicant requests correspondence date 2 December 2021 mentioned in paragraph 17.

[7] First respondent's paragraph 17 reads as follows:

"...The First Respondent's attorneys responded to the correspondence on 2 December 2021 advising that the First Respondents board as complied with Malindi J's order and that the Applicants have not submitted consent letters as contemplated by the Companies and Intellectual Property Commission ("CIPC") Practice Notice of 19 July 2021 to enable the registration of the Applicants with CIPC."

[8] It is clear from the papers in this matter that the first respondent provided the applicants with a copy of the correspondence. This issue therefore is settled on the papers themselves and the applicants are not entitled to an order compelling the first respondent to provide the correspondence mentioned in paragraph 17. Furthermore, the first respondent submitted that the applicants are or should be in possession of the said letters.

[9] The applicants then request the first respondent to provide a written statement under oath by the administrator of the WhatsApp group confirming the correctness of the contents of the WhatsApp messages that were used against the applicants in relation to the lawful removal of the applicants mentioned in paragraph 21.

- [10] The first respondent objected to this request on the ground that no mention of the document as sought was mentioned in the answering affidavit of the first respondent as required in terms of Rule 35(12).
- [11] It must be stated that this request, in my view, does not conform to the prescripts of Rule 35(12) and a different interpretation by the applicants is misplaced.
- [12] The next request in terms of Rule 35(12) relates to the minutes of the meetings of 10 and 14 December 2021 and the meeting of 18 February 2022.
- [13] In my view whilst no mention of minutes of the abovementioned meetings is mentioned, the fact of such meetings is mentioned within the principles laid out in the enlightening case of **Caxton**⁴. It cannot be argued that the first respondent is not in possession of the minutes nor can it be argued that the minutes are not relevant in the context of Rule 35(12). The first respondent's response is that the request for documents in terms of paragraphs 3 to 5 is objected to on the ground that no reference is made thereto as contemplated in Rule 35(12).
- [14] In my view, first respondent's response referred to above is a misinterpretation of Rule 35(12) as espoused in the **Caxton**⁵ case.
- [15] Accordingly, the applicants are entitled to such minutes.
- [16] The applicants' request for resolutions relating to the same paragraphs in the answering affidavit of the first respondent is different from the request for minutes. In my view, Rule 35(12) does not cater for this request and has been rightfully objected to by the first respondent.
- [17] The applicants have requested a copy of the Memorandum of Incorporation pertaining to the first respondent during the period 18 October 2021 to date. In my view, no mention is made of the Memorandum of Incorporation in the answering affidavit and it is a misinterpretation of Rule 35(12) to contend that the applicants are entitled to same in terms of this Rule.

⁴ Caxton and CTP Publishers and Printers Limited v Novus Holdings Limited 2022 SCA 24 @ para 15 - 17

⁵ supra

[18] In respect of the costs of this application, it is trite that the Court as a discretion in awarding costs but that such discretion must be exercised judicially. It is further trite that usually costs for the result. In tis matter, both parties have been successful and it is my view that bot parties should pay for their own costs.

[19] Accordingly, the following Order shall issue:

- a). an order in terms of prayers 3,4 and 5 of the notice in terms of Rule 35(12) is granted;
- b). applicants request in terms of prayers 1,2 6 and 7 are dismissed;
- c). each party shall pay their own costs.



ALLY. G
ACTING JUDGE OF THE HIGH COURT
JOHANNESBURG

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 2 March 2026.

Date of hearing: 19 May 2025

Date of judgment: 2 March 2026

For the Applicant:

Adv. S. Vobi with Adv. A. Nase
instructed by

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For the First Respondent:

Adv. H J Smith SC instructed by

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