1) REPORTABLE: ~~YES~~/NO
2) OF INTEREST TO OTHER JUDGES: ~~YES~~/NO
3) REVISED: YES/NO

[redacted]

27 February 2026

SIGNATURE DATE

**IN THE HIGH COURT OF SOUTH AFRICA**

**GAUTENG DIVISION, PRETORIA**

CASE NUMBER: 105154 / 2024

In the matter between :

**BRENDAN RAYMOND DE BRUYN** First Applicant

**BRENDAN RAYMOND DE BRUYN N.O.**
IN HIS CAPACITY AS TRUSTEE OF THE DU BRYUN INVESTMENT TRUST IT 675 / 00 Second Applicant

And

**LETITIA BETSIE DE BRUYN** First Respondent

**THE MASTER OF THE HIGH COURT, PRETORIA** Second Respondent

This Judgment was handed down electronically by circulation to the parties and or their representatives by email and by being uploaded to CaseLines. The date and time for the hand down is deemed to be **27 February 2026**.

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**JUDGMENT**

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M Snyman, AJ

***Introduction***

[1] In the interlocutory application before me, the first respondent in the main application (herein referred to as *"the respondent"*) is the applicant seeking an order in terms of Rule 30A enforcing compliance with notices filed in terms of Rule 7(1) and Rule 35(12).

[2] It will, in this judgment, be convenient to refer to the parties as described in the main application.

[3] The papers filed in the main application have not been uploaded to CaseLines, and their relevance will become clear below. However, it seems from the papers to which I have access that the applicant seems to seek the respondent's removal as a trustee from the De Bruyn Investment Trust (herein referred to as *"the trust"*) and the appointment of another trustee. The trust deed is similarly not before me.

[4] A trust deed generally prescribes how decisions are made as well as how and who can represent the trust; if not, then it is determined by the common law. That generally entails that the trustees must act jointly when making decisions and must all represent the trust in litigation. Without the trust deed being before court it is not possible to determine if and to what extent the general position has been changed.

[5] It will be appropriate to state the general requirements of the applicable rules before dealing with the disputes before me.

***Factual Matrix (Rule 7)***

[6] The first applicant describes himself as a major male and being a trustee of the trust (the second applicant in the main application and second respondent

in the interlocutory application). Based on that averment, the respondent delivered a notice in terms of Rule 7(1) requesting that the attorney of the applicants prove his authority to act on behalf of the trust.

[7] By not having the main application before court, it is not possible to give the exact description as contained therein.

[8] In the reply to the notice in terms of Rule 7(1), the respondent quotes a part thereof stating that:

> *'The second applicant is cited only insofar as his capacity to act as a trustee of the De Bruyn Investment Trust…'*

[9] In the notice, reference is also made to the provisions of the trust deed, which is not before court. The content is, in my view, however irrelevant, having regard to the conclusion I have come to.

[10] The respondent thereafter filed a notice and an application in terms of Rule 30A, seeking to compel compliance or dismissal of the application for non-compliance.

***Rule 7 and application to facts***

[11] The wording of Rule 7, as it currently stands, reads as follows:

> *'7(1) Subject to the provisions of subrules (2) and (3) a power of attorney to act need not be filed,* ***but the authority of anyone acting on behalf of a party may, within 10 days after it has come to the notice of a party that such person is so acting****, or with the leave of the court on good cause shown at any time before judgment,* ***be disputed, whereafter such person may no longer act unless he satisfied the court that he is authorised so to act, and to enable him to do so the court may postpone the hearing of the action or application.'***
> [emphasis added]

[12] The notice in terms of Rule 7(1) was served on 21 October 2024. Within 10 days thereafter, the first applicant responded thereto.

[13] Rule 7(1) clearly provides for the remedy if a party does not comply with the provisions thereof.[1]

13.1. Firstly, if a party does not answer within the time period provided, the representative of that party may not act until the court is satisfied that he/she is properly authorised.

13.2. Secondly, if there is an answer and the notifying party is not satisfied with the answer, it is the court who must be satisfied whether the representative is duly authorised.

[14] If the provided authority is disputed, for whatever reason, can the procedure as set out in Rule 30A be utilised, and if not, what is the procedure to be followed to determine whether the attorney is duly authorised or not?

[15] Rule 30A provides for method to enforce compliance with the rules. It provides as follows:

> ***'30A. Non-compliance with Rules and Court Orders***
>
> *1)* ***Where a party fails to comply with these Rules or with a request made or notice given pursuant thereto****, or with an order or direction made by a court or in a judicial case management process referred to in rule 37A,* ***any other party may notify the defaulting party that he or she intends, after the lapse of 10 days from the date of delivery of such notification, to apply for an order****—*
>
> *(a) that such rule, notice, request, order or direction be complied with; or*

1 *Eriksson v Hollard Insurance Company Limited and Others* (2021/45339) [2023] ZAGPJHC 39 (24 January 2023)

*(b) that the claim or defence be struck out.*

*(2)* ***Where a party fails to comply within the period of 10 days contemplated in subrule (1), application may on notice be made to the court and the court may make such order thereon as it deems fit.'***

[emphasis added]

[16] Firstly, it must be determined if the applicant failed to comply with the rules or a request made in terms thereof.

[17] It is clear that the applicant indeed responded to the notice in terms of Rule 7(1). It is not the case of the respondent that it was not timeously done. There is simply no case to be made that the applicant is to be forced to comply, as it is common cause that applicants indeed replied thereto.

[18] What is the procedure then if the applicant is not satisfied with the answer received?

[19] It has been found that the party not so satisfied must launch an interlocutory application in which the court is called upon to determine not whether there has been compliance with the rule, but whether the court is satisfied that the representative is duly authorised.[2]

[20] The provision of Rule 30A applies if, inter alia, compliance with a rule or notice delivered pursuant thereto is sought when the relevant rule does not have its own inherent procedure with which compliance can be enforced.

[21] The application of Rule 30A is evident from what had been stated in *Absa Bank Ltd v the Farm Klippan*[3] wherein the following was held:

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2 *Eriksson v Hollard Insurance Company Limited and Others* (2021/45339) [2023] ZAGPJHC 39 (24 January 2023) at [21]

3 *Absa Bank Ltd v the Farm Klippan 490 CC* 2000 (2) SA 211 (W) at 214H-215B

> '*Rule 30A has an important place in the Rules, in that, as I have stated, it provides a remedy where none exists elsewhere. However, it could not have been intended by the drafters of Rule 30A to jettison the existing and effective remedies provided in the specific remedy Rules. If it was so intended, it would render such remedies nugatory. The remedies in the specific remedy Rules have always been effective, and there is no reason to denude them of their efficacy. I, therefore, find that an application may be made in terms of those Rules which provide a specific remedy for failure to comply therewith without the applicant first having to give notice in terms of Rule 30A or to follow the provisions thereof.*'

[22] Had the response to the Rule 7(1) notice been out of time, then it should be the end of the matter.

[23] The relief sought in terms of Rule 7(1) in this matter is therefore misplaced and Rule 30A should not be utilised.

[24] However, I do not think that an overly technical approach should stop a party from seeking a court's ruling, whether or not the court is satisfied that the other party and/or its attorney is properly authorised to institute/launch/represent a party. That is logical as the authority dispute must be resolved to have the matter move forward in order to finalise the disputes.[4]

[25] The answer in this matter further lies in the response to the notice in terms of Rule 7(1). The response clearly states that neither the applicant nor his attorney claims to represent the trust. Seemingly, the trust had been joined only as an interested party. The trust however has no legal standing and is represented through its duly appointed trustees, both being before court.

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4 *Eriksson v Hollard Insurance Company Limited and Others* (2021/45339) [2023] ZAGPJHC 39 (24 January 2023)

[26] The first applicant's answer is that he does not claim to be representing the trust, and any reference to him as trustee simply bolsters his *locus standi*.

[27] The first applicant contends that all that is required to satisfy the requirements of Rule 7(1) is the production of a power of attorney. A court, so it is contended, cannot go behind the power of attorney to enquire whether the person who instructed the attorney had the power or authority to do so.

[28] In the matter of *Kurt Robert Knoop and Others v Tegeta Exploration and Resources (Pty) Ltd and Others*[5] the SCA dealt with the very same argument and rejected the argument as follows:

> *'[11] However, Rule 7 specifically states that **the person claiming the right to act on behalf of the companies** (VDM in this case)[*the attorney], **must satisfy the court that he is authorised so to act.** To be so satisfied, **the power of attorney must issue from a person vested with the authority to give the power of attorney. If the person lacks the authority to do so, the power of attorney does not evidence that its bearer is authorised to act**.[*][6] The respondents' submission cannot be accepted.'*

[29] Despite this argument not being correct, I am satisfied that the applicant's attorney does not purport to represent the trust and represents Mr Du Bruyn only. It is clear that the trust is not before court and cannot be. Both trustees are before court, the first respondent however not in her capacity as trustee or the trust.

[30] There is therefore no merit in the application in terms of Rule 7(1) seeking compliance with the notices in terms of Rule 7(1) as read with the notice in terms of Rule 30A.

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5 [2025] 4 All SA 48 (SCA); 2025 (6) SA 424 (SCA) at [11]
6 *Unlawful Occupiers of the School Site v City of Johannesburg* 2005 (4) SA 199 (SCA) at [16]

[31] The application to compel compliance with the notice in terms of Rule 7(1) can therefore not succeed.

***Application to compel compliance with a Rule 35(12) notice***

[32] Before dealing with the remaining facts and merits of this part of the application, I find it appropriate to briefly deal with the procedure to obtain copies of documents referred to in applications.

***Rule 35(12)***

[33] Rule 35(12) provides:

> *"(a) Any party to any proceeding may at any time before the hearing thereof deliver a notice [as near as may be] 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*** *–*
>
> *(i) produce such document or tape recording for inspection and to permit the party requesting production to make a copy or transcription thereof . . . .*
>
> ……
>
> *(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."*

[34] In *Moulded Components and Rotomoulding South Africa (Pty) Ltd v Coucourakis,*[7] the court found that Rule 35(12) has a self-contained sanction. That sanction is in the form of a '*negative nature, being to the effect that a party*

[7] 1979 (2) SA 457 (W) at 459G

*failing to comply with the notice shall not, save with the leave of the court, use the document in question, provided that any other party may use such document'*.

[35] At face value, this sanction may, in application procedure, be of little assistance to a party not having the document in its possession as it may have an impact on admissibility of such evidence, but this issue need not be determined herein.

[36] The SCA in *Centre for Child Law v The Governing Body of Hoërskool Fochville and Another*[8] found that the sanction in sub-rule (b) is one that comes into effect automatically upon non-compliance with the provisions of the rule, i.e. after non-compliance with the notice in terms of the rule and the passing of the time afforded to comply. However, it was found that:

> *".... a party who gives notice under rule 35(12) may not be content with just the negative sanction provided by the rule.* ***In that event, it is to rule 30A that such party must turn****."*

[37] It needs to be emphasised, as the court rightly observed in *Hoërskool Fochville*[9], that a court considering an application under Rule 30A to compel production of documents sought pursuant to Rule 35(12) enjoys a general discretion *'in terms of which it is required to try to strike a balance between the conflicting interests of the parties to the case'*.[10] It continued that the court *'should not fetter its own discretion in any manner and particularly not by adopting a predisposition either in favour of or against granting production'*.[11]

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8 *Centre for Child Law v The Governing Body of Hoërskool Fochville and Another* 2016 (2) SA 121 (SCA) at [15]

9 *Centre for Child Law v The Governing Body of Hoërskool Fochville* 2016 (2) SA 121 (A)

10 at [18]

11 at [18]

[38] The court further added that *'a court will not make an order against a party to produce a document that cannot be produced or is privileged or irrelevant'*.[12]

[39] In the matter of *Democratic Alliance and Others v Mkwebane and Another*[13] the SCA summarised the legal position as follows:

> *"[41] To sum up: It appears to me to be clear that* ***documents in respect of which there is a direct or indirect reference in an affidavit or its annexures that are relevant, and which are not privileged, and are in the possession of that party, must be produced. Relevance is assessed in relation to rule 35(12)****, not on the basis of issues that have crystallised, as they would have, had pleadings closed or all the affidavits been filed, but rather* ***on the basis of aspects or issues that might arise in relation to what has thus far been stated in the pleadings or affidavits and possible grounds of opposition or defences that might be raised and, on the basis that they will better enable the party seeking production to assess his or her position and that they might assist in asserting such a defence or defences****. In the present case, we are dealing with defamatory statements and defences such as truth and public interest or fair comment that might be raised.* ***The question to be addressed is whether the documents sought might have evidentiary value and might assist the appellants in their defence to the relief claimed in the main case. Supposition or speculation about the existence of documents or tape recordings to compel production will not suffice.*** *In exercising its discretion, the court will approach the matter on the basis set out in the preceding paragraph. The wording of rule 35(12) is clear in relation to its application.* ***Where there has been reference to a document within the meaning of that expression in an affidavit, and it is relevant, it must be produced.*** *There is thus no need to consider the submission on behalf of the respondents in relation to discovery generally, namely, that a court will only order discovery in application proceedings in exceptional circumstances."*
>
> [Emphasis added]

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12 at [18]

13 *Democratic Alliance and Others v Mkwebane and Another* 2021 (3) SA 403 (SCA) at [41]

[40] A party therefore has the right to seek production of the document referred to as contemplated in Rule 35(12) despite the evidence that is sought to be supported by reference to a document being inadmissible as evidence by that party as the general rules of admissibility, authentication, and the like still applies. It may, however, be advisable to apply for the striking out of such evidence on the grounds of being inadmissible hearsay, not complying with the best evidence rule or any other such ground found to be applicable.

[41] The approach of the SCA in *Hoërskool Fochville*[14] where it states that the rules exist to regulate the practice and procedure of the courts with the object to secure the *'inexpensive and expeditious completion of litigation before the courts'* is clearly still applicable and correct.

[42] The history, legal requirements and application of Rule 35(12) have been fully canvassed and summarised in a matter of *Caxton and CTP Publishers and Printers Limited v Novus Holdings Limited*[15] and I am not to repeat all, but to merely summarise the general rule with some exceptions:

a) If reference is made to a document in an affidavit or annexures attached by the other party, that party is obliged to produce the document sought by the other;

b) There is generally no obligation to produce documents sought if such documents are:

i) irrelevant.

ii) not material; or

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14 *Centre for Child Law v The Governing Body of Hoërskool Fochville* 2016 (2) SA 121 (A) at [17]; *Hudson v Hudson* 1927 AD 259 at 267; *Federated Trust Ltd v Botha* 1978 (3) SA 645 (A) at 654C-D

15 [2022] 2 All SA 299 (SCA)

iii) protected by privilege; or

iv) no longer in the possession of the party required to produce the documents concerned.

***Factual matrix (Rule 35(12))***

[43] The first respondent served a notice headed *"Notice in terms of Rule 35(12)(a)"* on 21 October 2024. The notice further reads as follows:

> *"**BE PLEASED TO TAKE NOTICE** the first respondent requires the applicants for their inspection the undermentioned documents referred to in the founding affidavit, which documents are required by first respondent for purposed of preparing an answering affidavit in these proceedings being:*
>
> 1. *The du Bruyn Investment Trust beneficial ownership register referenced in paragraph 37 of the founding affidavit.*
> 2. *The Minute book of the du Bruyn Investment trust.*
> 3. *An extract of the first applicants and first respondents' loan accounts referenced in paragraph 49 of the founding affidavit.*
> 4. *The "working papers" of Adolphus Mapuranga referenced in paragraph 50.2 of the founding affidavit.*
> 5. *The email form Mr Gianoglio referenced in paragraph 61of the founding affidavit.*
> 6. *The documentation referenced in paragraph 66 of the founding affidavit which the first respondent allegedly failed to sign."*

[44] The first applicant replied to this notice from applicant on 6 November 2024.

[45] In reply to the requests in paragraphs 1, 2, and 3 of the notice as referred to above, the respondent is reminded of the fact that documents not referred to directly or indirectly cannot be requested.

[46] Thereafter, the response, in summary, indicates that no mention is made to any document as claimed in paragraph 37 to *"the beneficial ownership register"*, or the requested *"minute book of the Trust"*, and the *"loan account"*.

[47] The first respondent is further referred to the unsigned Annual Financial Statements attached as annexure "FA13" to the founding affidavit.

[48] The requested working papers were provided together with the e-mail of Mr Gianoglio as requested.

[49] The documents referred to in paragraph 66, is identified as the documents handed to the first respondent at the Trustees meeting held at Eagle Canyon Clubhouse during September 2023 and as such documents are in the first respondent's possession it need not be provided.

[50] The first respondent responded to this response of the first applicant in a notice in terms of Rule 35(12) read together with Rule 30A on 14 November 2024.

[51] In this notice, the first respondent replies that the reply of the first applicant in terms of Rule 35(12) is inadequate, stating that:

> *"The first and second applicants refer in paragraph 49.3 of the founding affidavit to "my loan account" (line 1) and "loan account" (line 2) which is a document properly identified and referred to in the applicants' founding affidavit.*
>
> *…….*
>
> *6.1 The first respondent correctly identified the documentation referred to in paragraph 66 of the founding affidavit.*
>
> *6.2 The first and second applicants are obliged to furnish the "requested documentation" referenced in paragraph 66 of the founding affidavit."*

[52] The issues have clearly been reduced and only the reference to "*a loan account"* is claimed to be a reference to a document, and the documents handed to the applicant at a trustees meeting remain in issue.

[53] It needs be mentioned that no reference is made in this notice in terms of Rule 30A to the notice in terms of Rule 7(1).

[54] In the founding affidavit, the first respondent claims that the first applicant has not complied with the rules and is being obstructive in not furnishing her with the documents as requested to enable her to timeously respond and properly prepare an opposing affidavit.

[55] Firstly, the applicants did comply with the request in terms of Rule 35(12). The first respondent, however, was not satisfied with the response.

[56] Further, the first respondent seems to labour under the misconception that she is excused from filing an answering affidavit when she has not received the documents requested, claiming prejudice without any further factual basis advanced for the statement.

[57] The first respondent then claims that she is being frustrated in her capacity as trustee in not having access to the documents she must have access to as trustee.

[58] The first respondent in her application did not rely on her being a trustee to be granted access to the records of the trust. Instead, she pursued the process of Rule 35(12), which is clearly much more limited, as can be seen from the above.

[59] The first respondent does not claim to have ever made any request that applicants grant her access to the documents of the trust or that she had been denied such access. As such, the statements are clearly misplaced and cannot be relied upon.

[60] Importantly, the first respondent does not claim that she is no longer in possession of the documents referred to in paragraph 66 or that it was not handed to her, an aspect that should have been addressed in the founding affidavit.

***Application of the principles to the facts***

[61] As to the reference to a *"loan account"* it clearly does not refer directly or indirectly to any document.

[62] Reliance on any inferred reasoning when seeking to claim that such a document does exist or is referred to, for instance, the financial statements, cannot be relied upon. It is clear from the decision of *Democratic Alliance and Others v Mkwebane and Another*[16] that inferred reasoning to establish whether reference was in fact made to a document, cannot be relied upon.

[63] The first ground that the reference to a *"loan account"* refers to a *"document"*, cannot be sustained.

[64] The second ground is the document referred to in paragraph 66. It is claimed that the documents were provided and seems not to be disputed in the Rule 30A notice.

[65] As indicated above, the first respondent did not deny being in a position of or having received the documents referred to in paragraph 66 of the founding affidavit.

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16 *Democratic Alliance and Others v Mkwebane and Another* 2021 (3) SA 403 (SCA) at [41]

[66] When an allegation is made in a response to a notice in terms of Rule 35(12) that the requesting party is in possession of the documents, specifically identifying the documents it would be expected that in the founding affidavit in support of the application there be a some explanation in this regard, for instance that the party is no longer in possession thereof or would seek to compare the documents.

[67] At the outset, it does not seem as if the applicants rely on the content of the documents referred to in paragraph 66, but the mere existence thereof. This, however, may only be relevant to the adjudication of the main application. It needs also be pointed out that I have not been provided with any affidavits filed in the main application, even as annexures to the affidavits in the Rule 30A application. I am thus not in a position to properly adjudicate whether it can be said that the documents are referred to by inference.

[68] If referral is to be *"implied"*, it is clearly logical, and in my view an indispensable requirement, that the court presiding over the application to compel compliance with Rule 35(12) be provided with the affidavit/s to be able to study the wording used and why reference is claimed to be implied. The court cannot rely on a few words in a notice to conclude whether reference by implication had indeed taken place. The mere say-so of a party is simply not good enough.

[69] Further it needs be pointed out I do not hereby mean that it is to be done in all matters. In some matters only the relevant page would suffice, however in others the whole context of the affidavit would be indispensable to determine whether reference to a document is to be implied.

[70] That being said, it brings me to the issue of reference to the documents in paragraph 66.

[71] As the law stands the applicant have referred thereto and must produce the documents. The documents is clearly stated to be in possession of the first respondent who does not deny same.

[72] The applicants claim not to be in possession of the documents referred to in paragraph 66. Not being placed in possession of the affidavit, it is impossible to decide on this claim without the exact wording of the affidavit.

[73] The main application was however uploaded to the CaseLines platform after having heard argument. This was too late as the court was not addressed on the issues with reference thereto, nor could any of the parties respond to questions in that regard. I have therefore not relied on the content thereof in coming to the conclusions herein.

[74] In the light of this averment, and the fact that the first respondent did not deny having been placed in possession of or having been provided with the documents claimed to have been handed to her, the inevitable conclusion is that no case has been made out for the relief.

***Costs***

[75] The applicants in the answering affidavit sought costs on a scale as between attorney and client as it is of the view that the application is an abuse of the process.

[76] Despite the fact that it should have been clear if the relevant caselaw had been studied, that there was no merit in the application, that is, in itself, not a ground for granting a punitive costs order.

[77] I have also considered the heads of argument of applicants with regards to the issue of a punitive costs order. I am, however, of the view that the mere fact that a party is wrong on the law, or as in this case, was able to file an answering affidavit without the documents, is abusing the court process.

[78] A punitive costs order is, in my view, not warranted.

***Conclusion***

[79] As a result, the following order is granted:

The application is dismissed with costs on a party and party scale, such costs to include the costs of counsel on scale B.

BY ORDER

[redacted]

M SNYMAN, AJ

| | |
|---|---|
| Counsel for Applicant : | Adv L De Wet |
| Applicant's Attorneys: | Kampel Kaufmann Attorneys |
| Counsel for Respondent: | Adv JHF Le Roux |
| Respondent's Attorneys: | B Deneys Attorneys |