

REPUBLIC OF SOUTH AFRICA



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

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

CASE NUMBER: 2025/067097

7 April 2026

DATE

SIGNATURE

In the matter between:

FIDELITY SECURITY SERVICES (PTY) LTD

APPLICANT

And

TRANSNET SOC LIMITED

FIRST RESPONDENT

NOMGWENYA SECURITY AND TRADING CC

SECOND RESPONDENT

MARUMOFASE SECURITY CC

THIRD RESPONDENT

KYA GUARDS (PTY) LTD

FOURTH RESPONDENT

SILVER SOLUTIONS 1522 CC

FIFTH RESPONDENT

MABOTWANE SECURITY SERVICES CC

SIXTH RESPONDENT

MAXI PHUMELE SECURITY (PTY) LTD

SEVENTH RESPONDENT

IDLANGAMANDLA SECURITY PROTECTION**AND PROJECTS CC****EIGHTH RESPONDENT****BILANE SECURITY CC****NINTH RESPONDENT****Heard:** 26 January 2026**Delivered:** 7 April 2026

Headnote: Civil procedure — Rule 53 — application to compel record — dispute whether impugned decision exists — common cause tender was not awarded to applicant — dispute as to characterisation of decision — Rule 53 enables applicant to obtain record and supplement grounds — technical objections premature — no basis to withhold record — application granted.

JUDGMENT**WINDELL J:****Introduction**

[1] This is an interlocutory application in terms of rule 53(1)(b) of the Uniform Rules of Court. The applicant, Fidelity Security Services (Pty) Ltd, seeks to compel the first respondent, Transnet SOC Limited, to dispatch to the Registrar of this Court and to the applicant the complete record of the proceedings underlying a tender process.

[2] The tender forms the subject of a pending review application brought in terms of the Promotion of Administrative Justice Act 3 of 2000, in which the applicant seeks to

review and set aside the first respondent's decision in relation to tender number TNPA/2024/01/0019/53618/RFP. The record sought includes documents, reports, minutes, recordings, bid submissions and related materials pertaining to the evaluation and adjudication of the tender.

Background facts

[3] The review was instituted on 13 May 2025. In those proceedings, the applicant seeks to review and set aside the first respondent's decision to reject its bid as non-responsive in respect of a tender for the provision of national security services for a period of 60 months.

[4] The applicant contends that, upon service of the review application, the first respondent became obliged, in terms of rule 53(1)(b), to dispatch the record of the proceedings within 15 days. It is common cause that this was not done. Instead, the first respondent raised objections to the adequacy of the founding affidavit and disputed the existence of a reviewable decision.

[5] The applicant contends that these objections do not justify withholding the record. It submits that the obligation to dispatch the record arises upon the institution of review proceedings and that access to the record is essential to enable it to properly formulate and, if necessary, supplement its grounds of review.

[6] The applicant further submits that the refusal to provide the record undermines both its right to just administrative action and its right of access to court, and that it has been prejudiced in prosecuting the review.

The first respondent's case

[7] The first respondent opposes the application on several grounds. Its primary contention is that the review does not trigger rule 53(1)(b) because the decision identified by the applicant in its main review application does not exist. According to the first respondent, the applicant incorrectly characterised the impugned decision as one in which its bid was adjudicated as non-responsive or disqualified. It contends that the applicant's bid was in fact evaluated up to stage four and ranked accordingly, and that no disqualification decision was taken.

[8] On this basis, the first respondent submits that there is no decision capable of review as pleaded, with the result that rule 53 is not engaged and no obligation arises to dispatch the record. It accordingly contends that the review application is defective for non-compliance with rule 53(2) and that the present application constitutes an impermissible attempt to obtain general discovery under the guise of rule 53.

Evaluation

[9] The dispute between the parties concerns whether the decision relied upon by the applicant has been sufficiently identified for the purposes of invoking rule 53, or whether, as the first respondent contends, the application is defective at the threshold.

[10] The purpose of rule 53 has been authoritatively described as ensuring that review proceedings are not conducted 'in the dark', and that both the applicant and the court are placed in possession of the material necessary to assess the lawfulness of the decision-

making process.¹ The requirement to produce the record is thus not merely procedural but substantive in nature. It enables an applicant to interrogate the record, to formulate and, if necessary, reconsider its grounds of review, and to supplement its founding affidavit in terms of rule 53(4).

[11] This is so because an applicant will, at the stage of launching review proceedings, seldom be in possession of the full information underlying the impugned decision. Rule 53(4) recognises that position and expressly permits an applicant to supplement its founding affidavit once the record has been produced. It follows that an applicant is not required to formulate its case with precision or finality at the outset. To permit a respondent to withhold the record on the basis that the applicant has mischaracterised the decision would undermine the purpose of Rule 53 and frustrate the proper ventilation of review proceedings.

[12] For that reason, the scope of the Rule 53 record is not confined to material strictly relevant to the case as initially pleaded. In *Mamadi and Another v Premier of Limpopo Province and Others*,² with reference to *Helen Suzman Foundation v Judicial Service Commission*,³ the Constitutional Court has emphasised that the rule 53 process differs fundamentally from ordinary discovery. The Court held:

¹ *Jockey Club of South Africa v Forbes* 1993 (1) SA 649 (A) at 660D–E; *Helen Suzman Foundation v Judicial Service Commission* 2018 (4) SA 1 (CC) at 9F.

² 2024 (1) SA 1 (CC).

³ *Helen Suzman Foundation v Judicial Service Commission* 2018 (4) SA 1 (CC).

[35] . . . the process under rule 53 is different from that under rule 35. Rule 53 provides access to a far greater ambit of documents than normal discovery under rule 35. As this Court explained in *Helen Suzman Foundation*:

“[T]he rule 53 process differs from normal discovery under rule 35 of the Uniform Rules of Court. Under rule 35 documents are discoverable if relevant, and relevance is determined with reference to the pleadings. So, under the rule 35 discovery process, asking for information not relevant to the pleaded case would be a fishing expedition. Rule 53 reviews are different. The rule envisages the grounds of review changing later. So, relevance is assessed as it relates to the decision sought to be reviewed, not the case pleaded in the founding affidavit.”

[36] The rule 53 record contains “all information relevant to the impugned decision or proceedings” which includes “every scrap of paper throwing light, however indirectly, on what the proceedings were” and the record of the deliberations of the relevant decision maker. The fundamental importance of the rule 53 record was explained by this Court in *Turnbull-Jackson*:

“Undeniably, a rule 53 record is an invaluable tool in the review process. It may help: shed light on what happened and why; give the lie to unfounded ex post facto (after the fact) justification of the decision under review; in the substantiation of as yet not fully substantiated grounds of review; in giving support to the decision maker’s stance; and in the performance of the reviewing court’s function.”

[13] The record accordingly includes all material that may shed light on the decision-making process.

[14] A similar approach was adopted in *Cloete Murray NO v Ntombela; In re: Ntombela v Cloete Murray NO*.⁴ In that matter, the applicants instituted review proceedings in terms

⁴ [2022] 3 All SA 689 (FB) confirmed on appeal by the Supreme Court of Appeal in *Murray and Others NNO v Ntombela* 2024 (4) SA 95 (SCA).

of rule 53. Before any record had been filed, the liquidators delivered a notice in terms of rule 6(5)(d)(iii), challenging the legal competence of the review application. The applicants then brought an interlocutory application to set aside that notice and to compel compliance with rule 53(1)(b).

[15] The court held that it was not open to the liquidators to raise such a challenge at that stage, as the applicants had not yet been afforded the opportunity to complete the rule 53 process. It further held that the question whether the review was the correct and appropriate mechanism to challenge the impugned decision could only properly be determined in the main application once the record had been produced. The notice in terms of rule 6(5)(d)(iii) was accordingly held to be premature.

[16] It is common cause that the applicant's bid was evaluated and that the tender was not awarded to it. That necessarily entails administrative decision-making within the tender process. The dispute between the parties concerns the proper characterisation of that decision, rather than its existence.

[17] The applicant has identified, on its version, conduct and a decision within the tender process which it seeks to impugn. Whether that decision is correctly characterised as one of disqualification or as an evaluation outcome is a matter that can only properly be assessed once the record has been made available.

[18] To uphold the first respondent's contention would permit a decision-maker to avoid its obligation to produce the record by asserting that the applicant has mischaracterised the decision or that no reviewable decision exists. That would undermine the purpose of

rule 53 and risk placing the decision-maker in the position of determining, unilaterally, whether its conduct is susceptible to review.

Conclusion

[19] For these reasons, the first respondent's refusal to dispatch the rule 53 record cannot be sustained. The technical objections raised by the first respondent are premature and do not justify non-compliance with rule 53(1)(b).

[20] In the result the following order is made:

1. The first respondent is directed, in terms of rule 53(1)(b) of the Uniform Rules of Court, to dispatch to the Registrar of this Court and to the applicant the record of the proceedings sought to be reviewed and set aside in the main application, within 10 days of this order.
2. The record shall include all documents and materials relevant to the decision-making process relating to tender number TNPA/2024/01/0019/53618/RFP.
3. The costs of this application are to be paid by the first respondent, including the costs of senior counsel, where so employed, on Scale B.



L. WINDELL

JUDGE OF THE HIGH COURT

GAUTENG LOCAL DIVISION, JOHANNESBURG

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 7 April 2026.

APPEARANCES

For the applicant:	S Grober SC
Instructed by:	Dirk Kotze Attorneys
For the respondent:	M J Ramaepadi SC
	K. Kgatla
Instructed by:	Mkhabela Huntley Attorneys INC.
Date of hearing:	26 January 2026
Date of judgment:	7 April 2026