REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)

Case Number: **2025-122017**

In the matter between:

SUMMERCOURT ESTATES (PTY) LTD	Applicant
and	
SANDIE BURGMAN	First Respondent
JACOBUS HERCULE DELAREY BURGMAN	Second Respondent
(ALL OTHER PERSONS RESIDING WITH OR	
UNDER THE FIRST AND SECOND RESPONDENTS	
AT THE HOUSE ON SUMMERCOURT FARM SITUATED	
ON PORTION 6 OF ZORGVLIET WEST FARM NO. 137	
IN THE REGISTRATION DIVISION OF STELLENBOSCH)	Third Respondent
SUNE BURGMAN N.O.	
(As trustee for the time being of The Tau O Tona Trust)	Fourth Respondent
JACOBUS HERCULE DELAREY BURGMAN N.O.	
(As Trustee for the time being of The Tau O Tona Trust)	Fifth Respondent
POTESTAS INTERNATIONAL CC	Sixth Respondent
THE KING GEORGE HOTEL PROPERTIES (PTY) LTD	Seventh Respondent

(ALL OTHER PERSONS RESIDING WITH OR UNDER THE RIGHTS

OF THE FOURTH TO SIXTH RESPONDENTS

AT THE HOUSE ON SUMMERCOURT FARM,

SITUATED ON PORTION 6 OF ZORGVLIET WEST FARM

NO. 137 IN THE REGISTRATION DIVISION OF STELLENBOSCH

STELLENBOSCH MUNICIPALITY) Eighth Respondent

STELLENBOSCH MUNICIPALITY Ninth Respondent

Summary:	Discovery - Application Proceedings - Rule 35 (12) and Rule 35 (14) - Court's Authority Required in terms of Rule 35 (13) - Combined Notice - Application Dismissed.
Coram:	Wille, J
Heard:	20 April 2026
Delivered:	29 April 2026

JUDGMENT

WILLE, J:

INTRODUCTION

[1] This is an application about the discovery of information and documents. The parties will be referred to as they have been cited in the initial main application. The application is at the instance of the first to sixth respondents. For convenience, they will be referred to as the respondents. The applicant raises several preliminary issues for determination.[1]

[1] The applicant avers that the entire procedure adopted by the respondents, was and is, defective.

[2] The applicant avers that it is the registered owner of the subject farm and that the respondents are in occupation of a portion of the farm (the 'property') and of a residential house on that farm (the 'premises'). The issue in dispute between the parties is the lawfulness of the respondents' occupation of the property and the premises on the applicant's farm.[2]

[3] The seventh and ninth respondents, as I understand the papers, take no part in this interlocutory skirmish about discovery. The respondents seek an order in the following terms:

(a) Directing that the applicant, within ten days, make discovery in accordance with the terms of the respondents' Rule 35(12) Notice dated 15 August 2025.

(b) Directing that Rule 35(14) shall apply to the main application.

(c) Directing that the period for the filing of the respondents' answering affidavit be extended.[3]

<u>THE DISCOVERY NOTICES</u>

[4] About nine months ago, the respondents filed a combined notice in terms of Rule 35(12) and Rule 35(14), requesting that the applicant provide certain information and documentation in order (so they say) for them to file answering affidavits to the applicant's application for their eviction.[4]

[5] This combined notice forms the subject of the dispute between the parties. This is so because different procedures must be followed in respect of Rule 35(12) and Rule 35(14) in application proceedings. The argument is that, by way of general application, Rule 35(14) only applies in application proceedings if the court orders Rule 35(14) to be of application by way of an order in terms of Rule 35(13). The applicant contends that the combined notice is defective to the extent that it seeks to impermissibly 'combine' discovery both in terms of Rule 35(14) and Rule 35(12) of the Uniform Rules. The applicant avers that the combined notice is defective and should have been withdrawn by the respondents prior to the launching of this application.[5]

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[2] Portion 6 of Farm 137, Zorgvliet, West Road, Helshoogte Pass, Stellenbosch, Western Cape Province.
[3] The respondents say they require these discovered documents to file their opposing affidavits.
[4] The "Combined Notice".
[5] This after an order was sought and granted in terms of Rule 35(13) of the Uniform Rules of Court.

[6] Put another way, instead of withdrawing the combined notice, the respondents launched this application, seeking to compel compliance with the combined notice insofar as it refers to Rule 35(12) and asking the court to order that Rule 35(14), under order of Rule 35 (13), be made applicable in respect of the main application.[6]

RELEVANT BACKGROUND

[7] The first and second respondents reside on the property's premises. There are three houses on the farm. The applicant is the registered owner of the farm. A family dispute has reared its ugly head and cannot be resolved, hence the eviction application.[7]

[8] The first to third respondents took possession and took occupation of the premises and the property more than a decade ago. During this time, the farm was owned by a family trust.[8]

[9] A few years after the initial occupation of the premises by the first to third respondents, some negotiations took place, culminating in the conclusion of certain lease agreements relating to the property and the premises.[9]

[10] The applicant has since obtained a legal opinion to the effect that these lease agreements may be invalid due to certain provisions governing the subdivision of agricultural land.[10]

[11] About a year later, the applicant's shareholding that vested in the MVDMT was transferred to MVDM to be held by him in his personal capacity to settle the MVDMT's negative loan account, as the MVDMT was allegedly indebted to MVDM.[11]

[12] After this share sale, the first respondent informed MVDM of the termination of the leases concluded and the respondents' intention to vacate the premises and the property. Acceptance of these termination notices resulted in the purported termination of the lease agreements at the instance of the respondents.[12]

[6] The respondents now seek to "separate out" the provisions of the combined notice.
[7] The first and second respondents allege a form of "entitlement" to reside in the premises (in the form of a precarium).
[8] The Mac van der Merwe "Familie" Trust (MVDMT) ostensibly controlled by Mac van der Merwe (MVDM).
[9] During May 2017.
[10] The Subdivision of Agricultural Land Act, 70 of 1970.
[11] The loan account was thus allegedly extinguished by this share transfer.
[12] The agreed date in terms of these termination notices to vacate the property was the end of January 2020.

[13] Thereafter, MVDM allegedly agreed (presumably because of the familial relationship) to the respondents' continued occupation of the premises and the property. MVDM then disposed of his entire shareholding to the applicant.[13]

[14] This share sale and transfer of the shares to MVSW and JVSW, together with the appointment of JVSW and MVSW as two of the applicant's directors, was challenged by the respondents. The applicant responded by providing the respondents with the documentary proof underlying and supporting the share sale transaction.[14]

[15] The initial disposition of the shares from MVDMT to MVDM was subsequently ratified by all trustees (including an independent trustee) following the respondents' complaints that the transaction was allegedly invalid. JVSW and MVSW currently serve as the only two directors and shareholders of the applicant. Thus, they executed a resolution granting legal authority to institute eviction proceedings against the respondents.[15]

CONSIDERATION

[16] The respondents, in their combined notice, seek no less than thirty-two documents to enable them to file their answering affidavits. So, they say. The respondents concede that Rule 35(14) does not apply without a prior court order under Rule 35(13). The respondents aver that the court may grant authority *ex post facto* even after the combined notice has been delivered. I disagree. I hold the view that the combined notice (at best) should be interpreted as a notice possibly only in terms of Rule 35(12).[16]

[17] The documents and information sought concern historical transactions between parties (who are not parties to this application) and, on the face of it, seem to bear scant relevance to the lawfulness of the respondents' occupation of the premises and property. The respondents say these documents may call into question the validity of the transactions resulting in the disposal of the shares from MVDMT to MVDM, and then from MVDM to JVSW and MVSW.[17]

[18] In summary, the anticipated attack seems to be on the authority of MVSW to institute

[13] To Johan van Schalkwyk and Melanie van Schalkwyk for the sum of R10 million. (JVSW and MVSW).
[14] These documents were given to the respondents by the applicant.
[15] The legal validity of this authority seems to be the subject of main challenge by the respondents.
[16] No authority from the court was requested in terms of Rule 35(13).
[17] This is a legal issue which can be raised and pleaded by the respondents.

the eviction proceedings on behalf of the applicant against the respondents. There appears to be a direct challenge to MVSW's status as a duly appointed director of the applicant.[18]

[19] In response to this core challenge, the applicant has provided copies of the applicant's resolutions of its shareholders granting MVSW the required authority to launch the eviction application. Further, a factually recorded report in evidence of this directorship and shareholding has been submitted by the applicant.[19]

[20] This seems to me to be much ado about nothing. I say so because if the respondents' case is that the authority on the applicant's side is wanting, invalid, or fraudulent, nothing prevents them from saying so under oath in the opposing papers. Thus, I agree with the applicant that this amounts to a premature fishing expedition based on speculation, suspicion and conjecture about historical transactions going back more than a decade.[20]

[21] The applicant says that the documentation and information sought in terms of the combined notice filed by the respondents are part and parcel of an orchestrated campaign designed to find, and hopefully discover, a shield to raise a dispute concerning the validity of the share transfers, which is not an issue currently before the court for determination. With this, I agree. Most (if not all) of the documentation and information sought in terms of the combined notice is historical. MVDM is not a party to the eviction application proceedings. The respondents say that he may be joined as a party in due course. What I do have is an affidavit by MVDM confirming that the historical background set out by the deponent in its founding affidavit is true and correct insofar as it relates to him. The applicant's case is that these historical transactions are irrelevant to the applicant's ownership of the premises and the property, and thus to the authority to institute eviction proceedings on the applicant's behalf, and to the ultimate issue of whether the respondents are unlawfully occupying the property and the premises. Again, I agree with this.[21]

[22] The applicant's core argument is that the combined notice makes no distinction between what is sought under Rule 35(12) and under Rule 35(14). The combined notice

18 The respondents clearly know what their cases is and can file answering affidavits dealing with these issues.
19 A document from CIPC demonstrating the shareholding and the current designated directors,
20 The respondents can file their answering affidavits.
21 The respondents can challenge this if they so desire without further documentation.

seeks thirty-two documents in terms of Rule 35(12), read with Rule 35(14), and a further ten documents in terms of Rule 35(14).[22]

[23] Concerning the relief sought to compel compliance with Rule 35(12), the respondents were procedurally required to comply with Rule 30A before bringing their application to compel. Even if I were to consider the merits of the application, the documents sought by the respondents are not specifically referenced in the applicant's founding affidavit, and they are also not germane to the issues for determination in the eviction application.[23]

[24] I say this because the combined notice requests documents not directly or indirectly referenced in the founding affidavit (or the existence of which could be inferred from the content of the founding affidavit), and thus the combined notice is 'possibly' procedurally a notice in terms of Rule 35(14).[24]

[25] Rule 30A provides that where a party fails to comply with a notice given pursuant to the rules, the aggrieved party:

'…*may notify the defaulting party that he or she intends, after the lapse of 10 days, to apply for an order that such rule, notice or request be complied with*…'[25]

[26] The respondents have not followed the correct prescribed procedure. This they conceded. As a result, the applicant has been prejudiced. I say this because the applicant was denied the opportunity to raise the irregularity, to comply with what was properly sought, or to provide reasons why certain documents could or should not be discovered.[26]

[27] This is also significant because of the stage of the litigation between the parties. I say this because the legal issues in the main eviction application have not yet been defined.[27]

[28] By way of illustration, the documents requested in terms of Rule 35(14) are these:

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22 There are documents sought in terms of Rule 35(12) that are documents falling under the umbrella of Rue 35(14).
23 Without the court's authority in terms of Rule 35 (13).
24 Kew v Kew and Another (EL1363/2025) [2025] ZAECELLC 29 (30 October 2025 at para [9].
25 This has not been done by the respondents.
26 Centre for Child Law v The Governing Body of Hoërskool Fochville and Another 2016 (2) SA 121 (SCA) para [15].
27 The attack seems to be against the authority of the applicant to launch the eviction proceedings.

(a) The complete minute book of the applicant covering the period from 6 July 2004 to the present.

(b) Proof of payment regarding the initial funding used to purchase the shares.

(c) The 'Securities Transfer Forms' that reflect the transfer of shares from the MVDMT to MVDM personally and thereafter from MVDM to MVSW and JVSW.

(d) All contemporaneous emails, contracts, and correspondence between MVDM and MVSW (and JVSW) concerning the capital investments mentioned in the founding papers.

(e) All correspondence, including all the WhatsApp messages, exchanged between MVSW and MVDM, and the trustee/auditor regarding the resolution to be adopted, as mentioned in the applicant's founding papers.[28]

[29] It is precisely this type of premature 'interrogation' that is impermissible in motion proceedings. I say this because the respondents are attempting to attack the applicant's current shareholding by citing historical transactions they suspect may be tainted.[29]

[30] Interestingly, the respondents contend that without these documents, they will be filing answering papers blindfolded. I disagree. In this case, the respondents (according to their own version, as set out in their detailed application to compel) possess more than sufficient information to address the eviction allegations in the founding affidavit. Put another way, the respondents can respond to the eviction application without having sight of the documentation related to prior transactions. The respondents do not say that they are the owners of the property. All they do is allege a 'negative' to the effect that the applicant is not the lawful owner of the property. [30]

CONCLUSION

[31] The respondents' combined notice is procedurally defective, and the applicant cannot

[28] Mr. Greef is the identified trustee and auditor. He is not a party to the eviction proceedings.
[29] This despite the historical transactions confirmed by MVDM under oath.
[30] Thus, they can state why they say they are in 'lawful' occupation of the property,

be expected to have responded to it. Moreover, the respondents failed to comply with the mandatory procedure prescribed prior to the launch of this application, which is fatal to the relief sought.[31]

[32] The issue in the main eviction application is the lawfulness (or otherwise) of the respondents' continued occupation of the premises and the property. It is self-evident that the respondents can file a comprehensive answer to the eviction application without the documents they seek through their impermissible combined discovery notice. Moreover, the rules governing discovery apply only to the parties to the application. MVDM (and the auditor) are not parties to the application. Thus, the respondents have no proprietary interest in the information and documentation they seek from these non-joined parties.[32]

COSTS

[33] For these reasons, the application must fail. There is no reason why a costs order against the respondents should not follow, bearing in mind that this application has caused a delay of many months at the respondents' instance.[33]

ORDER

[34] The following order is granted:

1. The application to compel by the respondents is dismissed.

2. The first and second respondents (jointly and severally, the one paying the other to be absolved) shall be liable for the costs of and incidental to this application on the scale as between party and party (as taxed or agreed), together with the costs of counsel on Scale B.

E D WILLE
(Cape Town)

[31] The procedure in terms of rule 30A of the Uniform Rules.
[32] Walsh v Botha 1960 (2) SA 323 (O) at 325 F-G.
[33] The filing of the opposing affidavits has been unnecessarily delayed for many months.