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

Case number: 20346/2024

In the matter between:

SUSANNA MARIA JANSEN	Applicant
and	
GARTH JOHN GREEFF	First respondent
SUSANNA MARIA STATIONERS CC	Second respondent
ABSA BANK LTD	Third respondent

Coram:		Van Zyl, J
Heard on:		2 June 2026
Judgment:	:	9 June 2026

Summary: Subpoena *duces tecum* – applicant seeking to interdict witness from complying with subpoena by way of an interim interdict, pending application for setting aside thereof – first respondent arguing that relief sought incompetent – precedent upon which first respondent relies involves the powers of a magistrates' court – such precedent does not render interdictory relief sought by the applicant incompetent

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ORDER

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1. The applicant's non-compliance with the forms, service and time periods prescribed by the Uniform Rules of Court is condoned, and this matter is dealt with as one of urgency under Rule 6(12).

2. Pending the final determination of Part B of this application, the third respondent is interdicted and restrained from producing, disclosing, releasing, or furnishing any documents, banking records, statements, or other financial information, pursuant to the subpoena *duces tecum* directed at the third respondent and issued at the instance of the first respondent under case number 20346/2024.

3. Paragraph 2 above shall operate as an interim interdict pending the final determination of Part B of this application.

4. The applicant is given leave to deliver a supplementary affidavit in relation to Part B within 10 (ten) days of the grant of this order, and the parties shall from the expiry of the 10-day period deliver answering and replying affidavits as stipulated in Rule 6.

5. Part B of this application is postponed to Wednesday, 7 October 2026 for hearing on the semi-urgent roll.

6. The first respondent shall pay the costs of Part A of this application, including counsel's fees taxed on Scale B.

JUDGMENT

VAN ZYL, J:

Introduction

1. This matter concerns a subpoena *duces tecum* that was, on the applicant's case, issued contrary to the terms of an existing court order. The order was granted in settlement of various issues that were, as appears from a bulky court file, part of a heavily-fought membership dispute regarding the second respondent.

2. The subpoena was issued on 29 April 2026 and served on the bank on 11 May 2026. It requires the production of extensive banking records and financial information relating to the second respondent, for a period stretching over 15 years, from January 2005 to January 2020.

3. What was before me on the urgent roll was Part A of a two-part application. In Part A, the applicant seeks an order that, pending the finalisation of Part B of the application, the third respondent (the bank) be interdicted from producing, disclosing, releasing, or furnishing any documents, banking records, statements, or other financial information pursuant to the subpoena, which was directed at the bank and issued at the instance of the first respondent.

4. Part B is an opposed application for the setting aside of the subpoena, with ancillary relief, to be dealt with on the semi-urgent roll in due course.

5. Only the first respondent opposes the urgent relief sought. He does so on a point of law under Rule 6(5)(d)(iii), namely that there is precedent in this Court to the effect that the applicant has sought incompetent relief in the form of an interdict. The applicant was, instead, to have brought an application to stay the subpoena, or to have it set aside on an urgent basis, or a combination of these remedies.

6. The applicant's answer to this is that she is effectively seeking an interim stay of the subpoena, although the stay is sought by way of an interim interdict.[1] More pertinently, even if the relief in Part A is an interim interdict (and not an

[1] See, for example, the interim interdict that was made final in *Muthray & Associates Incorporated and another v ABSA Bank Ltd and others* 2024 JDR 4213 (GP) para 2.

interim stay), the applicant seeks such relief on an urgent basis as interim relief pending a full hearing of Part B of the application in which the applicant explicitly seeks the setting aside of the subpoena.

The first respondent's reliance on *Greeff v Cooper and others*[2]

7. The first respondent contends that the applicant is seeking incompetent relief. The interdict sought amounts, in substance and in effect, to an order interdicting compliance with lawful court process in circumstances where the applicant fails to seek a stay of the lawful court process.

8. The first respondent relies squarely on the judgment of Davis AJ (as she then was) in *Greeff v Cooper and others,*[3] in particular upon the following extract*:*

> *"[35] I consider that the framing of the relief as an interdict was ill-conceived. Firstly, the notion of interdicting compliance with lawful process is counter-intuitive. A subpoena is lawful process which, absent lawful excuse, must be obeyed unless and until set aside by a competent court. If relief is required because the subpoena exceeds the bounds of lawful process, a competent court must decide whether or not the subpoena is an abuse. If it is, it must be declared as such and set aside.*
> *[36] Secondly, asking for an interdict to prevent compliance with a subpoena because it is an abuse of process is rather like trying to sneak in through the back door because you are not allowed to enter through the front door. It seems to me that if a [court] does not have jurisdiction to set aside a subpoena on the grounds of abuse, it cannot have jurisdiction to interdict compliance with a subpoena on the grounds that it is an abuse, which amounts to the same thing…"*[4]

9. The first respondent argues that the ratio of the *Greeff* judgment applies with equal force in the present matter. An interdict directed at preventing compliance with a subpoena on the ground that the subpoena is an abuse of process, or otherwise invalid, is not competent. The proper remedy is to set

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[2] 2019 (3) SA 203 (WCC), a decision on appeal from the magistrates' court.
[3] *Greeff supra* paras 35-36.
[4] My emphasis.

aside the subpoena or at least stay the subpoena pending the setting aside thereof, not to interdict compliance with it pending that determination.

10. The first respondent's counsel refers, in addition, section 36(5)(c) of the Superior Courts Act 10 of 2013, which provides that, "*[w]hen a subpoena is issued to … produce any book, paper or document in any proceedings, and it appears that- … to compel him or her to attend would be an abuse of the process of the court, any judge of the court concerned may, notwithstanding anything contained in this section, after reasonable notice by the Registrar to the party who sued out the subpoena and after hearing that party in chambers if he or she appears, make an order cancelling such subpoena*".

11. The first respondent argues that this section entitles the bank (not the applicant) to seek the cancellation of the subpoena, and that it reinforces his submission that the applicant is not entitled to the relief that she seeks.

12. The applicant submits that the first respondent's reliance on *Greeff v Cooper* is misplaced. The judgment did not establish a general prohibition against interim interdictory relief restraining disclosure under a subpoena. The issue in *Greeff* was materially narrower, namely whether a magistrates' court, which lacks jurisdiction to set aside a subpoena,[5] could nevertheless interdict compliance with that subpoena on the basis that it constituted an abuse of process. The Court held that it could not:[6]

"[27] Unlike the High Court, a Magistrates' Court has no inherent jurisdiction to set aside a subpoena on the grounds that it is vexatious or amounts to an abuse of the process of the court. Therefore where a person wishes to challenge a subpoena issued out of the Magistrates' Court on the grounds that it amounts to an abuse of process, it is incumbent on him or her to apply to the High Court for an order setting aside the subpoena as an abuse.

[28] However Cooper did not do so. Instead he approached the Magistrates' Court for relief which, although couched as an interdict, was predicated on the basis that

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5 See *Greeff supra* para 26.

6 *Greeff supra* paras 27-31. My emphasis.

the subpoena was an abuse. Indeed the notice of motion included an alternative prayer for the setting aside of the subpoena on that basis.

[29] It bears emphasis that Cooper Senior did not base his case on the fact that ABSA was under a misapprehension regarding what was required of it under Rule 26(3) of the rules, and that it was only obliged (and therefore only entitled) to produce the documents to the court on the day of the hearing. He did not seek a temporary interdict restraining ABSA from delivering the documents to the clerk of the court prior to the hearing with a view to his appearing at court and objecting to their production on the day of the hearing.

[30] Such narrow interim relief would have been unexceptionable. By virtue of his contractual relationship with ABSA as its customer, he would have been entitled to prevent ABSA from disclosing his confidential information otherwise than strictly in accordance with the behests of Rule 26(3). Thus he could have interdicted ABSA from delivering his documents to the Clerk of the Court instead of producing them to the court at the hearing, based on the wording of Rule 26(3).

[31] But instead he relied on an alleged abuse of process and breach of his right to privacy, as one would in an application to set aside a subpoena. The case made out in the founding affidavit makes it clear that although the relief was couched as an interdict, the application was, in substance and effect, an application to set aside the subpoena – relief which a Magistrates' Court cannot grant."

13. I agree with the applicant's submissions. Context is everything. In *Greeff*, the question to be decided specifically entailed the "*correct procedure to challenge a subpoena duces tecum issued out of the magistrates' court*", and thus "*whether it is legally competent to interdict compliance with a magistrates' court subpoena duces tecum on the basis that it is an abuse, instead of applying to set aside the subpoena"*.[7]

14. The underlined sentence in paragraph 36 of the judgment, quoted earlier, makes the Court's perspective crystal clear.

15. As is apparent from the quoted extract, Davis AJ held that "*unlike the High Court, a Magistrates' Court has no inherent jurisdiction to set aside a subpoena on the grounds that it is vexatious or amounts to an abuse of the*

[7] *Greeff supra* para 1.

process of the court". Where a person wishes to challenge a magistrates' court *subpoena* on the basis that it constitutes an abuse of process, "*it is incumbent on him or her to apply to the High Court for an order setting aside the subpoena as an abuse*".[8]

16. The present application does precisely what *Greeff* says must be done when a subpoena is challenged as an abuse of process. The Court in *Greeff* expressly distinguished between the defective relief sought and the narrow interim relief that had in fact been required, which was the prevention of premature disclosure of confidential banking information. It held that Mr Cooper could have sought "… *a temporary interdict restraining ABSA from delivering the documents to the clerk of the court prior to the hearing*", and that "*[s]uch narrow interim relief would have been unexceptionable*".[9]

17. The applicant does not seek to obtain final relief in the form of the setting aside of the subpoena under the guise of an interdict in a court that lacks jurisdiction to do so. She seeks relief in this Court, which does have the necessary jurisdiction to grant the relief sought. Such relief is, moreover, sought pending a full hearing as to whether the subpoena should be set aside. That distinction is decisive. In *Greeff*, Mr Cooper "*did not do so*". Instead, he approached the magistrates' court for relief "*couched as an interdict*" but "*predicated on the basis that the subpoena was an abuse*", with an alternative prayer setting aside the subpoena. The defect was therefore not the seeking of interim relief *per se,* but rather that the relief was sought in the wrong forum and was, in substance, a setting aside application which the magistrates' court could not grant.

18. The interim relief sought by the applicant does not finally determine the validity of the subpoena, but prevents disclosure pending a full hearing and determination as to whether it should be set aside. It is not disputed that, once the banking information is disclosed under the subpoena, as the bank

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8 At para 27.
9 At para 30.

would have to do under Rule 38,[10] confidentiality is permanently lost, and the final relief would be rendered moot.

19. The first respondent's reliance on the passages from *Greeff* stating that "*the notion of interdicting compliance with lawful process is counter-intuitive*", and that the proper remedy is to set aside the subpoena is therefore misplaced. Those passages were directed at a litigant who sought to interdict compliance with a magistrates' court *subpoena* in the magistrates' court, on the basis of abuse of process despite such court having no jurisdiction to determine the abuse complaint and grant the relief sought. Davis AJ's reasoning, that a subpoena "*must be obeyed unless and until set aside by a competent court*", and that if the subpoena exceeds lawful process "*a competent court must decide whether or not the subpoena is an abuse*", must be understood within this context.

<u>The order granted by agreement on 10 February 2025</u>

20. There is, in any event, a twist in the tale. A further distinction between the present case and that of *Greeff* is that the applicant's case in Part B for the setting aside of the subpoena does not rest solely upon an alleged abuse of process. The applicant relies, additionally, upon the express terms of an order that was taken by agreement between the applicant and the first respondent on 10 February 2025.

21. Paragraph 13 of the order reads as follows: "*From the date that the First Respondent is released from any liability in terms of any suretyship that he signed, he would have no right to any financial information and/or documentation relating to the Second Respondent's business*".

22. It is not disputed that the first respondent has been released from all liability as surety for the second respondent's debts. The applicant thus contends

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[10] See *Greeff supra* para 18, and Uniform Rule 38(1)(b)(iv): "*Within five days of lodgement with the registrar, the party causing the subpoena to be issued for the production of the document shall inform all other parties that the said document is available for inspection and copying and of any conditions set by the registrar for inspection and copying.*"

that the order prohibits the disclosure of the financial information sought by the first respondent by way of the subpoena.

23. The order further makes provision for the valuation of the members' interest in the second respondent. In paragraph 3 of the order the appointment of a chartered accountant is envisaged to undertake the valuation. Paragraph 5 of the order directs the parties to provide the chartered accountant with the information required for purposes of the valuation, "*failing which the person referred to in prayer 3 above [that is, the accountant] is authorised to make application to this Honourable Court for such further direction and relief as might be appropriate"*.

24. The applicant accordingly contends that the first respondent, by way of the subpoena, seeks to interfere in the valuation process agreed to in the order. His actions are in conflict with the terms of the order, to which he is bound. This is another reason why the bank's compliance with the subpoena should effectively be stayed via the interdict sought.

25. The first respondent, having relied only upon a point of law, does not dispute the facts set out in the applicant's founding affidavit.

26. When initially considering the papers it struck me that the subpoena had been issued in a vacuum, given the settlement between the parties embodied in the agreed order. In other words, the underlying reason for the issue of the subpoena was not clear, as there was, as far as I could see, no underlying *lis* between the parties that could give rise to the subpoena.

27. In answer to a question in this regard, counsel for the first respondent relied upon a paragraph in the applicant's founding affidavit which refers to a pending application for contempt of court, brought by the first respondent against the applicant on an urgent basis in December 2025. The applicant states that the application has seemingly been abandoned, as it has not been set down for hearing. Full sets of affidavits, as well as two supplementary affidavits by the first respondent, have in any event been delivered.

28. In correspondence prior to the institution of the application, the first respondent indicated that the financial information was sought because, as a member of the second respondent, he still owed fiduciary duties to it and thus required insight into such information.

29. Neither the desolate contempt application nor the invocation of fiduciary duties assists the first respondent. The first respondent's rights and duties in relation to the second respondent are regulated *inter alia* by the court order. Even if the first respondent genuinely believes that he continues to owe fiduciary obligations to the second respondent by virtue of his residual membership status, the mere issue of a subpoena is not a competent mechanism through which a member of a close corporation may obtain general access to corporate financial information, monitor corporation affairs, or exercise oversight functions. The subpoena was not therefore issued within the context of active proceedings or disputes requiring judicial determination. To use the applicant's words, it "*lacks the necessary forensic nexus to pending litigation ordinarily required for the legitimate invocation of subpoena procedures"*.

30. This notwithstanding, I accept that the subpoena may be valid from a purely procedural or technical perspective, meaning that it has been lawfully issued and is a binding court process which must be complied with until stayed or set aside.[11] This does not, however, assist the first respondent's case. The applicant's complaint is not directed at the form of the subpoena, but at its effect and the circumstances in which it was issued. It seeks to achieve that which the agreed court order expressly prohibits. As the applicant puts it, the first respondent cannot circumvent a binding court order by invoking procedural mechanisms. Until such time as the order is varied, rescinded or set aside (none of which is on the cards), compliance therewith remains obligatory.

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[11] *Department of Transport and other v Tasima (Pty) Ltd* 2017 (2) SA 622 (CC) para 181: *"The general rule is that orders that do not concern constitutional invalidity do have force from the moment they are issued. And in light of section 165(5) of the Constitution, the order is binding, irrespective of whether or not it is valid, until set aside.*"

The requirements for the grant of an interim interdict

31. It is trite law that the requirements for the grant of an interim interdict are:[12]

31.1 a *prima facie* right – this need not be shown on a balance of probabilities, but is sufficiently proved if *prima facie* established though open to some doubt. The stronger the right is, the less need there is for the balance of convenience to be considered;

31.2 a well-grounded apprehension of irreparable harm if the interim relief is not granted and the ultimate relief is eventually granted – this is a harm that a reasonable person might entertain on being faced with certain facts, and is an objective test;

31.3 a balance of convenience favouring the grant of the interim relief – the Court must weigh the prejudice the applicant will suffer if the interim interdict is not granted against the prejudice to the first respondent if it is; and

31.4 the absence of any other satisfactory remedy in the circumstances.

32. The proper approach in determining whether to grant an interim interdict is to take the facts set out by the applicant, together with any facts set out by the first respondent which the applicant cannot dispute, and to consider whether, having regard to the inherent probabilities, the applicant could on those facts obtain final relief at the trial (or, in the present matter, at Part B of the application).

A prima facie right

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[12] See Prest *Interlocutory Interdicts* (1993) at 54-86.

33. Counsel for the first respondent argues that, at the outset, no *prima facie* right exists, because the subpoena has been lawfully issued and the bank is obliged to obey it. He refers to section 35(4) of the Superior Courts Act, which provides that a person "*subpoenaed to attend any proceedings as a witness or to produce any document or thing who fails without reasonable excuse to obey such subpoena, is guilty of an offence and liable upon conviction to a fine or to imprisonment for a period not exceeding three months*".[13]

34. The answer to this is that a court order would amount to a reasonable excuse as far as the bank is concerned. Failure to comply with the subpoena because of an existing interdict would therefore not make the bank guilty of an offence.

35. On the facts set out earlier in this judgment, I am of the view that the applicant has established a *prima facie* right arising from the existing court order, and from her entitlement to protection against the abuse of this Court's processes.

A reasonable apprehension of irreparable harm

36. The subpoena seeks 15 years' confidential financial information. I accept that disclosure thereof could result in irreversible prejudice to the operational integrity and commercial interests of the second respondent, especially in the circumstances set out in the founding affidavit. There is much animosity between the applicant and the first respondent, and it appears that court processes as well as verbal threats and accusations are being used to intimidate the applicant and the second respondent's employees. There is no need to traverse all of the allegations in the founding affidavit, which are not denied by the first respondent in an answering affidavit.

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[13] In *Minister of Police and others v Premier of the Western Cape and others* 2014 (1) SA 1 (CC) para 1 fn 1 a subpoena is described as *"a court order commanding the presence of a witness under a penalty or fine for failure*".

37. The use to which the first respondent seeks the put the information gained via the subpoena may therefore legitimately be questioned. The bank has indicated in correspondence that it intends complying with the subpoena unless it is withdrawn or set aside. The first respondent's attorneys have confirmed that the first respondent has no intention of withdrawing the subpoena.

Balance of convenience

38. The balance of convenience favours the applicant and, though her, the second respondent. The first respondent has not placed anything before this Court to indicate that non-compliance with the subpoena (that is, preserving the status *quo*) prior to the determination of Part B of the application would cause him any harm.

No alternative remedy

39. The first respondent argues that the applicant has an alternative remedy, namely to apply to have the subpoena set aside, which she should have done in the first place. I do not think that the fact that the applicant has at her disposal, and is facing, an opposed application to set aside the subpoena is an adequate alternative remedy.

40. The applicant faces the imminent enforcement of a subpoena that is, on her version (the first respondent not having put up any facts in opposition), inconsistent with a court order agreed upon between the parties. In those circumstances, the applicant has no suitable alternative remedy other than to seek an urgent and interim stay of the subpoena (or an interim interdict that will has such effect).

Conclusion and costs

41. The matter was sufficiently urgent to warrant a hearing on the urgent roll. The subpoena, although issued on 29 April 2026, was only served on the

bank on 14 May 2026. The bank advised the applicant of the subpoena on 18 May 2026 (the first respondent did not alert the applicant). Correspondence was exchanged between the parties' attorneys over the period 20 May 2026 to 26 May 2026, when the bank indicated that it intended to comply with the terms of the subpoena. The application was issued on 28 May 2026 for hearing on 2 June 2026. The timeline was tight, but it was not unreasonable in the circumstances.

42. In the specific circumstances of this matter, I think that the applicant has made out a case for the relief sought.

43. In accordance with the general rule, the first respondent - the only party to oppose the urgent application - will bear the costs thereof, including the costs of counsel taxed on Scale B of the applicable tariff.

Order

44. In the premises, it is ordered as follows:

1. **The applicant's non-compliance with the forms, service and time periods prescribed by the Uniform Rules of Court is condoned, and this matter is dealt with as one of urgency under Rule 6(12).**

2. **Pending the final determination of Part B of this application, the third respondent is interdicted and restrained from producing, disclosing, releasing, or furnishing any documents, banking records, statements, or other financial information, pursuant to the subpoena *duces tecum* directed at the third respondent and issued at the instance of the first respondent under case number 20346/2024.**

3. **Paragraph 2 above shall operate as an interim interdict pending the final determination of Part B of this application.**

4. **The applicant is given leave to deliver a supplementary affidavit in**

relation to Part B within 10 (ten) days of the grant of this order, and the parties shall from the expiry of the 10-day period deliver answering and replying affidavits as stipulated in Rule 6.

5. **Part B of this application is postponed to Wednesday, 7 October 2026 for hearing on the semi-urgent roll.**

6. **The first respondent shall pay the costs of Part A of this application, including counsel's fees taxed on Scale B.**

P. S. VAN ZYL
Judge of the High Court

Appearances:

For the applicant: Mr K. Felix
Instructed by: JS Attorneys

For the first respondent: Mr G. Potgieter
Instructed by: Hill Erasmus Attorneys

No appearance for the second and third respondents