

IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)



CASE NUMBER: 2025-060188

DATE: 25 MAY 2026

DELETE WHICHEVER IS NOT APPLICABLE	
(1) REPORTABLE: YES/NO	
(2) OF INTEREST TO OTHERS JUDGES: YES/NO	
(3) REVISED	
25 May 2026
DATE	SIGNATURE

In the matter between:

DISCOVERY LIMITED

Applicant / Defendant

and

MAMPURU BAUBA KOMA

Respondent / Plaintiff

This order is made an Order of Court by the Judge whose name is reflected herein, duly stamped by the Registrar of the Court and is submitted electronically to the Parties/their legal representatives by e-mail. This Order is further uploaded to the electronic file of this matter on Case Lines by the Judge or his/her secretary. The date of this Order is deemed to be 25 May 2026.

JUDGMENT

DU PLESSIS, AJ

JUDGMENT

1.

- 1.1. This is an interlocutory application in terms of Rule 35(7) of the Uniform Rules of Court in which the applicant (“Discovery”) seeks an order compelling the respondent (“Komba”) to produce various documents requested in a Rule 35(3) notice dated 17 September 2025.
- 1.2. The application arises within the context of a pending action instituted by the respondent against Discovery concerning the repudiation and cancellation of an Income Continuation Benefit (“ICB”) policy. The respondent seeks declaratory relief declaring the cancellation unlawful and seeks payment of benefits allegedly due under the policy.
- 1.3. Discovery’s case in the main action is that the respondent materially misrepresented and/or failed to disclose the true extent of injuries and sequelae arising from a motor vehicle accident that occurred during October 2016, prior to the inception of the policy and prior to amendments thereto.
- 1.4. The respondent opposes the application principally on three bases, namely:
 - 1.4.1. that certain requested documents are irrelevant;
 - 1.4.2. that certain documents are not within his possession or control; and
 - 1.4.3. that the application constitutes an impermissible “*fishing expedition*”.
- 1.5. The respondent further contends that Discovery could have subpoenaed third parties, including the RAF or attorneys involved in the RAF litigation, if it wished to obtain such documents.
- 1.6. After the exchange of affidavits, the respondent filed a supplementary affidavit during May 2026. In that affidavit he states that he had since located and furnished most of the requested documentation, including:
 - 1.6.1. hospital records compiled by Dr Mattelaer, Dr H Pieterse, Dr M Zorio and Dr VA Jennings;
 - 1.6.2. ITA34 tax documentation for the period 2019 to 2022; and
 - 1.6.3. medical reports filed in the RAF matter under case

number 83132/2017.

- 1.7. The respondent further alleges that those documents were uploaded to Caselines and that, to that extent, the interlocutory application had become academic.

THE APPLICABLE LEGAL PRINCIPLES

2.

- 2.1. Rule 35(3) entitles a litigant who believes that there are additional documents relevant to any matter in question in the possession or control of another party to require production thereof or, alternatively, a statement on oath that such documents are not in that party's possession and, if known, their whereabouts.
- 2.2. Discovery is intended to ensure that litigation proceeds openly and fairly. The concept of relevance in discovery is broad and extends to documents that may directly or indirectly enable a party to advance its own case or damage the case of its opponent.
- 2.3. At the same time, Rule 35(3) does not grant a licence to conduct a speculative fishing expedition. The requested documents must be identified with sufficient precision and must bear relevance to issues legitimately arising from the pleadings.
- 2.4. A court will ordinarily be reluctant to go behind a discovery affidavit. However, where there are objective grounds for believing that documents exist and are likely to be within the possession or control of the party resisting discovery, the court may compel production.

ANALYSIS

3.

The medical reports and RAF documentation

- 3.1. Discovery seeks production of medical records and reports relating to the respondent's 2016 motor vehicle accident and the RAF claim instituted pursuant thereto.
- 3.2. In my view, those documents are plainly relevant to the issues in the main action.
- 3.3. The respondent himself pleads that he disclosed details of the motor vehicle accident and associated medical information to Discovery when applying for the policy.
- 3.4. Discovery's pleaded defence is that the respondent materially

misrepresented the extent of his injuries and their sequelae when applying for and later amending the policy. The nature, extent and duration of the respondent's injuries therefore lie at the heart of the dispute between the parties.

- 3.5. The RAF litigation is directly connected to those issues. Indeed, the respondent successfully prosecuted a substantial RAF claim arising from the same accident and obtained an award including compensation for past and future loss of earnings and/or earning capacity.
- 3.6. It is difficult to conceive how medical reports utilised in that litigation could be regarded as irrelevant in the present proceedings.
- 3.7. Equally untenable is the respondent's contention that Discovery should merely subpoena third parties. Rule 35 entitles a litigant to obtain relevant documents from an opposing party where such documents are within that party's possession or control. Documents held by a litigant's attorneys are generally regarded as being under that litigant's control.
- 3.8. On the papers before me, there are ample objective grounds for concluding that at least some of the RAF-related documentation existed and was under the respondent's control.
- 3.9. Importantly, the respondent's supplementary affidavit materially undermines his earlier assertions that the documents could not be located. He now confirms that most of those documents were indeed located and produced.
- 3.10. The supplementary affidavit therefore substantially vindicates Discovery's contention that the requested documents existed and were discoverable.

Financial and income-related documents

- 3.11. Discovery also seeks financial documentation relating to the respondent's income, employment and business activities.
- 3.12. Those documents are similarly relevant.
- 3.13. The ICB policy expressly concerns the respondent's inability to work and loss of income. Discovery relies on policy provisions defining "*income*" and contends that the requested documentation is necessary to determine the respondent's entitlement, if any, under the policy.
- 3.14. The respondent's income and occupational status formed part of the

underwriting process and further bear directly upon the quantification and validity of any ICB claim.

- 3.15. The respondent's contention that the only issue is whether there was non-disclosure of medical conditions is too narrow and inconsistent with the pleadings and policy provisions relied upon by the parties.
- 3.16. Discovery is entitled to obtain documentation bearing upon both the medical underpin and income underpin of the ICB claim.

Whether the application became academic

- 3.17. The respondent argues that the application became academic once further documents were produced during March 2026 and referenced in the supplementary affidavit.
- 3.18. There is force in the submission that the subsequent production of documents narrowed the dispute considerably.
- 3.19. However, the fact that documents were eventually produced does not render the application entirely academic. The supplementary affidavit does not establish that all requested documents were furnished. Nor is there agreement between the parties regarding the completeness of discovery.
- 3.20. The application therefore remains live to the extent that discoverable documents may still remain outstanding.

COSTS

4.

- 4.1. The respondent repeatedly accused Discovery of abuse of process, unlawful surveillance and improper conduct.
- 4.2. Those allegations were unsupported on the papers and were unnecessarily inflammatory.
- 4.3. At the same time, the respondent ultimately did produce substantial further documentation after the institution of the application. That development materially narrowed the dispute and demonstrates that the application was not entirely without foundation.
- 4.4. In my view, the appropriate order is one compelling the respondent to furnish any remaining discoverable documents still under his possession or control, alternatively to depose to a proper affidavit explaining their absence and whereabouts if known.
- 4.5. As to costs, the respondent's late production of substantial

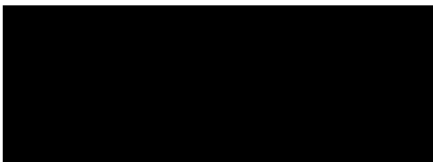
documentation materially contributed to the need for the present proceedings. In the exercise of my discretion, the respondent should bear the costs of the application.

ORDER

5.

In the result, the following order is made:

- 5.1. The respondent is directed, within 10 days of this order, to make available for inspection and copying all outstanding documents requested in paragraphs 1, 4 to 7 and 9 to 11 of the applicant's Rule 35(3) notice dated 17 September 2025, insofar as such documents remain in his possession or under his control.
- 5.2. In respect of any requested document not in the respondent's possession or under his control, the respondent shall within the same period deliver a supplementary affidavit:
 - 5.2.1. identifying such document with reasonable particularity;
 - 5.2.2. stating that the document is not in his possession or under his control; and
 - 5.2.3. stating, if known, the whereabouts of the document.
- 5.3. The respondent shall pay the costs of the application.



DU PLESSIS AJ

APPLICANT'S COUNSEL
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RESPONDENTS' COUNSEL
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Judgement delivered on 25 May 2026