



**IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN**

Not reportable

Case no: 2280/2024

In the matter between

IZAK BARTHOLOMEUS FOURIE

FIRST APPLICANT

DEZIREE FOURIE

SECOND APPLICANT

and

LAND AND AGRICULTURAL DEVELOPMENT

FIRST RESPONDENT

BANK OF SOUTH AFRICA

IBF VOEDSEL CC

SECOND RESPONDENT

MASTER OF THE FREE STATE HIGH COURT,

THIRD RESPONDENT

BLOEMFONTEIN

JOHANNES STEPHANUS HUGO N.O.

FOURTH RESPONDENT

ELRICH RUWAYNE SMITH N.O.

FIFTH RESPONDENT

IGSHAAN EBRAHIM N.O.

SIXTH RESPONDENT

Neutral citation: *Fourie and Another v Land and Agricultural Development Bank of*

South Africa and Others (2280/2024) [2026] ZAFSHC 296 (15 May 2026)

Coram: NAIDOO J

Heard: 14 May 2026

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email and released to SAFLII. The date and time for hand-down is deemed to be 11h00 on 15 May 2026.

Summary: Application to compel production of document in terms of rule 35(3) – whether respondent's reply to rule 35(3) notice is sufficient – applicants require documentation to establish lack of *locus standi* and not to challenge procurement procedures where they were not parties – documents relevant to pleaded issues – respondent obliged to furnish such documents.

ORDER

1 The first respondent is ordered to produce for inspection, on or before 19 May 2026, the following documents which were requested by the applicants in terms of rule 35(3), read with rule 35(6), by way of a notice dated 9 March 2026:

1.1 Written proof that the first respondent complied with the procurement process in terms of s 217 of the Constitution of the Republic of South Africa, when the service level agreement and sale of book debts were entered into between the first respondent and Suid-Wes Kooperasie on 26 August 2013;

1.2 Written proof of prior approval by the National Treasury of the service level agreement and sale of book debts entered into between the first respondent and Suid-Wes Kooperasie;

1.3 Written proof of consent by the National Treasury for a deviation, if any, from the procurement process provided for in s 217 of the Constitution, prior to entering into the service level agreement and sale of book debts with Suid-Wes Kooperasie;

1.4 A copy of all statements of account, pertaining to the accounts of the second respondent, issued by the first respondent to the second respondent, for the period August 2013 to 19 September 2019

2 The costs of the application, including the costs of 23 April 2026, stand over for later adjudication.

JUDGMENT

[1] This is an application to compel the first respondent (Land Bank) to produce certain documents as requested in a notice in terms of Uniform rule 35(3), served by the applicants on the Land Bank on 9 March 2026. The applicants are the plaintiffs in the main action and the respondents are the defendants. The applicants indicated that the second to sixth respondents were cited because of any interest they may have in the

relief sought in the main action. They did not participate in these proceedings. The Land Bank opposed this application.

[2] The applicants' notice in terms of rule 35(3) requested Land Bank to make available for inspection, the following documents:

- (a) Written proof that the first defendant complied with the procurement process in terms of s 217 of the Constitution, when the service level agreement and sale of book debts were entered into between the first defendant and Suid-Wes Kooperasie on 26 August 2013;
- (b) Written proof of prior approval by the National Treasury of the service level agreement and sale of book debts entered into between the first defendant and Suid-Wes Kooperasie;
- (c) Written proof from National Treasury for deviation from the procurement process provided for in s 217 of the Constitution prior to entering into the service level agreement and sale of book debts with Suid-Wes Kooperasie;
- (d) A copy of all bank statements of the first defendant pertaining to the accounts of the second defendant (IBF Voedsel CC, the principal debtor) for the period August 2013 to 19 September 2019.

[3] The Land Bank's response to the rule 35(3) notice was in essence that:

- (a) none of the matters or aspects recorded in the documents referred to in paras 2(a), (b), and (c) above are relevant to the issues between the parties, with the result that the plaintiffs (applicants in this application) are not entitled to seek discovery of these documents;
- (b) the request by the plaintiffs for discovery of these documents constitutes an abuse of process, as the plaintiffs do not have legal standing to seek the relief they do in the action, nor to request discovery of the documents, which are irrelevant to the issues in the pleadings;
- (c) the request for discovery is not bona fide and is designed to embarrass the first defendant and create disputes where there are none, regard being had to the issues in the pleadings.
- (d) with regard to the request for 'bank statements', such request is vague and embarrassing, as Land Bank did not provide typical commercial banking facilities, and no bank statements were generated by the first defendant, with the result that the Land Bank refuses the request, as it does not have what is understood by 'bank statements'

[4] This application has its genesis in an action instituted by applicants against the Land Bank for rescission of a judgment obtained by the Land Bank on 19 September 2019, against the second respondent (IBF) as principal debtor and against the late Izak Bartholomeus Fourie and the second applicant, Deziree Fourie as sureties (the sureties), for an amount in excess of R8 million. The indebtedness of IBF and the sureties arose from various credit agreements entered into between IBF and Suidwes Landbou (Pty) Ltd (Suidwes). Land Bank claims to have acquired *locus standi* to have obtained judgment against IBF and the sureties by virtue of two written agreements it concluded with Suidwes, on 26 August 2013. The first agreement concerned the sale, cession and delegation by Suidwes of its right, title and interest in and to its existing and future book debt to the Land Bank. The latter alleged that Suidwes was obliged to sell and Land Bank was obliged to purchase the rights in all further/future book debts, which satisfied certain criteria pre-determined by Suidwes for the duration of the sale agreement. The Land Bank alleged further that by virtue of the sale of the book debts, in terms of which the book debts were sold, ceded and delegated by Suidwes to the Land Bank, it became the owner of the rights in and to those book debts.

[5] The second agreement entered in to between the Land Bank and Suidwes was a service level agreement, also on 26 August 2013, in terms of which Suidwes was appointed to manage, service and administer, on behalf of the Land Bank, the book debts sold to it. Consequently, so the Land Bank claimed, it was the holder of all right, title and interest in the claims and related securities against IBF and the sureties. According to the applicants, the sale agreement with Suidwes was concluded four months prior to the three credit agreements that the Land Bank relies on for the indebtedness of IBF to it. The first of those three credit agreements was concluded with IBF on 26 November 2013. I pause to mention that this was, in fact, three months after the sale of book debts agreement was concluded, and I accept that the applicants erroneously stated it to be four months.

[6] The applicants allege that the Land Bank failed to attach to its founding papers in the judgment application, the two written agreements it relies on to support its claim to have *locus standi* in that matter. The applicants challenge the knowledge of the facts of the deponent to Land Bank's founding affidavit as he was not a party to the agreements relied on and assert that his interpretation of the agreements is inadmissible. The applicants' assertion is that Land Bank had not established its *locus standi* and the judgment should not have been granted in its favour. The applicants allege further that

the pre-determined criteria set by Suidwes, which I mentioned earlier, were not disclosed by Land Bank, nor did they allege that the three agreements signed by IBF, and on which Land Bank relies, met such pre-determined criteria. Therefore, the indebtedness of IBV and the sureties arising from the credit agreements on which the Land Bank relies, were not book debts forming the subject matter of the agreement concluded by Land Bank on 26 August 2013, as such debts were not in existence at that time. Similar considerations apply to the service level agreement entered into with Suidwes, as that agreement covered the book debts sold to the Land Bank in terms of the agreement signed on 26 August 2013, and not the credit agreements entered into between IBF and Suidwes. The applicants only became aware of the Land Bank's lack of *locus standi* when they had access to the agreements it relied upon to allege that it has *locus standi*.

[7] The applicants allege that if the court granting judgment had known about this, it would not have granted judgment. On this basis, the applicants contend that in order for them to prepare for trial, they require the documents requested so that they may be able to demonstrate that there were no valid sale, cession and delegation of debts, and hence that Land Bank did not have *locus standi*. The failure by Land Bank to comply with rule 35(3) and furnish the documents requested has the result that the applicants have been deprived of material evidence, which has rendered them unable to prepare properly for trial, and the fairness of the proceedings have been compromised.

[8] The Land Bank requested condonation for the late filing of its response to the applicants' notice in terms of rule 35(3). There was no opposition thereto, and in any event the delay was slight. There was also no prejudice occasioned by the delay in filing the response. To the extent necessary, condonation is granted for the late filing of the reply to the rule 35(3) notice. The Land Bank raised a number of issues in opposition to this application, which were largely the same as those contained in its response to the applicants' rule 35(3) notice. The most important of these issues is that the documents requested are irrelevant to the pleaded issues and that this application is an abuse of the process of court. The Land Bank argues that a party is only entitled to production of documents that are relevant to the issues raised in the pleadings. In view of the pleaded issues, the documents requested by the applicants have no relevance to those issues. With regard to the documents referred to in paras 1-3 of the rule 35(3) notice, which I have set out in para 2 above, the Land Bank argues that the applicants seek the requested documents to enable them to interrogate Land Bank's compliance with its

internal and constitutional processes.

[9] Apart from such documents being irrelevant, the applicants, as debtors have no legal standing to challenge the validity of the underlying commercial transaction between Suidwes and the Land Bank. The *locus standi* of the latter has been established by the cession and delegation agreements concluded with Suidwes. Whether the Land Bank complied with its internal procedures, policies or s 217 of the Constitution, is a matter between the parties to the agreement, and not an issue in these proceedings. The applicants' request amounts to nothing more than a fishing expedition and is not a *bona fide* attempt to obtain evidence for trial. It is an attempt to unduly broaden issues and create disputes where none exist, which amounts to an abuse of the court's process.

[10] With regard to the request for bank statements, the Land Bank repeated what was said in its rule 35(3) response, namely, that it does not generate such documents as it does not provide commercial banking facilities. It cannot, therefore, be compelled to furnish what it does not have or what does not exist. It has already furnished, by way of discovery, the relevant documents pertaining to the financial dealings between it and IBF. The applicants are already in possession of these financial records and their request for 'bank statements' is vague and superfluous.

[11] The applicability of the provisions of rule 35(3) to this matter are not in dispute and for the sake of completeness, I cite the provisions of that rule here:

'If any party believes that there are, in addition to documents or tape recordings disclosed as aforesaid, other documents (including copies thereof) or tape recordings which may be relevant to any matter in question in the possession of any party thereto, the former may give notice to the latter requiring such party to make the same available for inspection in accordance with subrule (6), or to state on oath within 10 days that such documents or tape recordings are not in such party's possession, in which event the party making the disclosure shall state their whereabouts, if known'.

The applicants argued that the Land Bank failed to comply with the provisions of rule 35(3), as their response to the notice in terms of that Rule was not made under oath, as stipulated in the rule. The Land Bank countered that its case is not that they do not have the documents, in which instance, the rule stipulates that the statement would have to be under oath. Their case is that such documents are irrelevant to the pleaded issues, thus placing no duty on them to furnish such documents or to make the statement under oath.

[12] The learned author Erasmus¹ captures succinctly the purpose of the subrule by reference to the practice and principles as they have crystallised through our case law: 'This subrule provides the procedure for a party dissatisfied with the discovery of another party. The intention of the subrule is to provide for a procedure to supplement discovery which has already taken place but which is alleged to be inadequate. The subrule is not intended to 'afford a litigant a licence to fish in the hope of catching something useful'. It requires the former party to give notice to the latter party to make the documents or tape recordings available for inspection in accordance with subrule (6)'.

[13] The issues for this court to determine are whether:

- (a) the documents requested by the applicants are relevant to the pleaded issues;
- (b) there are reasonable grounds to believe that such documents exist or have existed;
- (c) the applicants are entitled to the discovery they seek.

[14] A perusal of the pleadings indicate that the applicants have placed in issue the validity of the cession by which the Land Bank claims to have been vested with *locus standi*. Put differently, the applicants deny that the Land Bank had *locus standi* to bring legal proceedings against IBF and the sureties, as it failed to attach the agreements to its founding affidavit in the judgment application. It also failed to disclose the pre-determined criteria for future debts to be included in the sale agreement and cession of rights from Senwes. Furthermore, the credit agreements from which IBF's indebtedness to Senwes arose were concluded after the sale agreement and cession of book debts were concluded with the Land Bank, and therefore, did not form part of the sale of the book debts. Although the applicants opposed the judgment application brought by the Land Bank in 2013, they were at that stage unaware of Land Bank's lack of *locus standi*, only becoming aware thereof in 2024, when they obtained access to the sale agreement in respect of the book debts of Senwes. It is indeed so that they did not assail, in the pleadings, the procurement process relating to the sale of the book debts of Senwes to the Land Bank. It was also correctly contended by the Land Bank that they would not have had the legal standing to do so, as they were not a party to that agreement, nor were their beneficial rights affected by the conclusion of the agreement between Senwes and the land Bank.

¹ HJ Erasmus and DE Van Loggerenberg *Superior Court Practice* (Return Service 26, 2025) at D1 Rule 35-20.

[15] In my view, the challenge of the applicants relates not to the validity of the procurement process, *inter partes*, namely between Senwes and the Land Bank, but the enforceability of the agreement and cession by Land Bank against third parties, such as the applicants. In this context, enforceability would equate to *locus standi* of the Land Bank to enforce the cession of rights against the applicants. In order to determine that issue and for the applicants to prepare their case for trial, they would have to have access to and sight of the documentation regarding compliance with procurement processes in order to establish if the cession was validly made and if the Land Bank was indeed clothed with *locus standi* to have obtained the judgment it did against IBF and the sureties. In addition, the applicants may not have specifically requested that the Land Bank make available the so-called pre-determined criteria, but that was raised as one of the grounds to challenge Land Bank's *locus standi*. If the pre-determined criteria excluded the credit agreements concluded between IBF and Senwes, then Land Bank's *locus standi* would accordingly become non-existent with regard to IBF.

[16] I am, therefore of the view that the documents requested by the applicants are relevant to the pleaded issues in the action, and that the applicants are entitled to discovery thereof. With regard to the existence of the documents, the Land Bank's case, according to them, is not that they do not have possession of them, but that such documents were not relevant to this matter. By parity of reasoning, the documents do exist and can be produced, albeit with some difficulty, as intimated by the Land Bank, because of the lapse of time. The point is they do exist somewhere. In the light of what I have said, the Land Bank would be obliged to make the requested documents available for inspection by the applicants and for copies to be furnished to them. On the point of the 'bank statements' requested by the applicant, I remarked that the relief prayed for was somewhat inelegantly worded, and sought clarity from Mr Van Rensburg, who appeared for the applicants, about what exactly was meant by 'bank statements'. He responded that the applicants had no knowledge of the manner in which financial records were kept or disseminated by the Land Bank, and what they required was the correspondence between IBF and Land Bank in the form of statements of account issued to IBF.

[17] The applicants have requested in the notice of motion that the production of the documents for inspection be done within five days of the granting of the order, I am cognisant of the fact that the trial of this matter is scheduled to commence on 19 May 2026, being two court days away. It is expected that all documents relevant to the trial

will be readily available on 19 May 2026, including the documents requested by the applicants. I see no reason why such documents cannot be produced to the applicants on or before the morning of 19 May 2026.

[18] With regard to costs, I have indicated that the trial is scheduled for hearing two court days away from today. While each party requested that costs be awarded in their favour, my view is that the trial court will be better placed to hear argument on costs, and make a more informed decision with regard to the exercise of its discretion in respect of costs, especially as the Land Bank have prayed for costs to include the costs of two counsel.

[18] In the circumstances, the following order is made:

1 The first respondent is ordered to produce for inspection, on or before 19 May 2026, the following documents which were requested by the applicants in terms of rule 35(3), read with rule 35(6), by way of a notice dated 9 March 2026:

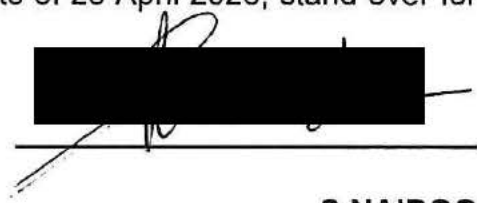
1.1 Written proof that the first respondent complied with the procurement process in terms of s 217 of the Constitution of the Republic of South Africa, when the service level agreement and sale of book debts were entered into between the first respondent and Suid-Wes Kooperasie on 26 August 2013;

1.2 Written proof of prior approval by the National Treasury of the service level agreement and sale of book debts entered into between the first respondent and Suid-Wes Kooperasie;

1.3 Written proof of consent by the National Treasury for a deviation, if any, from the procurement process provided for in s 217 of the Constitution, prior to entering into the service level agreement and sale of book debts with Suid-Wes Kooperasie;

1.4 A copy of all statements of account, pertaining to the accounts of the second respondent, issued by the first respondent to the second respondent, for the period August 2013 to 19 September 2019

2 The costs of the application, including the costs of 23 April 2026, stand over for later adjudication.

A handwritten signature in black ink, appearing to be 'S. Naidoo', is written over a solid black rectangular redaction box. The signature is fluid and cursive.

S NAIDOO

JUDGE OF THE HIGH COURT

Appearances

For the Applicant:

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