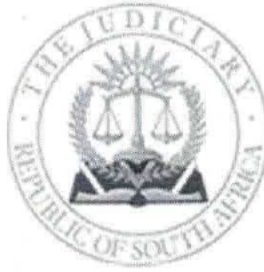
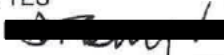


REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

Case Number: 43726/17

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: YES
30 April 2026	
DATE	SIGNATURE

In the matter between:

DANONE SOUTHERN AFRICA (PTY) LIMITED

Applicant

and

JABULILE GWALA

Respondent

JUDGMENT

CRUTCHFIELD J

- [1] The applicant, Danone Southern Africa (Pty) Ltd, brings application proceedings in the special interlocutory court for an order compelling discovery in terms of rule 35(1) read together with rule 35(7) of the uniform rules of court, together with an order for punitive costs against the respondent, Jabulile Precious Gwala.

- [2] The respondent opposes the application.
- [3] The factual matrix to this matter, briefly stated, is the following. The proceedings commenced during 2017. The applicant delivered a notice in terms of rule 35(1) on 9 May 2018 calling for the respondent to furnish discovery in terms of the rule. The respondent undertook during January 2025, amongst other occasions, to make that discovery, but to no effect. Arbitration proceedings transpired in the CCMA. A ruling was made in the CCMA on 1 September 2021 providing for the dismissal of the dispute of the respondent, Ms Jabulile Precious Gwala, in terms of her alleged constructive dismissal.
- [4] By way of notice in terms of rule 28(1) brought during August 2025, the respondent notified her intention to amend her pleadings in terms of rule 28. Notwithstanding the respondent's counsel submitting to me at the hearing that the respondent perfected the amendment by delivering the amended pages, the respondent's counsel was not able to point me to when the amended pages were delivered. The applicant's counsel was adamant that the reason the respondent's counsel was unable to do so was that the amended pages were not ever delivered, and the amendment lapsed as a result.
- [5] The applicant's attorney, pursuant to the notice of intention to amend delivered by the respondent, wrote to the respondent's attorney at the time correcting the respondent's factual misstatement in respect of the outcome of the CCMA proceedings, reiterating that the CCMA proceedings were dismissed, and stating unequivocally that the applicant did not intend to object to the notice of intention to amend. The applicant's attorney called upon the respondent to proceed to finalise the amendment.
- [6] Notwithstanding, the respondent apparently failed to deliver the amended the pages and I must conclude, on the papers before me, that the amendment lapsed at the latest during September 2025.
- [7] Ultimately, the issue of the amendment is irrelevant as the respondent has the remedies available to her in terms of rule 28. The respondent's counsel initially argued however that the amendment took effect as of right in the light of the

applicant declining to object to the amendment, alternatively, that the applicant was deemed to have acquiesced in the amendment.

- [8] Both submissions are without merit as notwithstanding the applicant making clear that it did not intend to object to the proposed amendment, that proposed amendment lapsed in terms of rule 28 in the absence of delivery of the amended pages. The amendment lapsed during or about September 2025 at the latest, and the pleadings closed because the amendment lapsed.
- [9] The applicant delivered its notice calling for discovery in terms of rule 35(1) as long ago as 9 May 2018.
- [10] The respondent's attorneys proffered more than one undertaking to make discovery, all to no effect. The respondent's discovery did not materialise notwithstanding various indulgences granted by the applicant's attorney. The latter, during December 2025, issued the application to compel discovery in terms of rules 35(1) and 35(7). This was pursuant to the closure of the pleadings during September 2025.
- [11] The application in terms of rules 35(1) and 35(7) was set down for hearing on 21 January 2026. The applicant was well within its rights to bring the application. The respondent, at the proverbial eleventh hour, one day prior to the date of the hearing, delivered an answering affidavit to the application. As a result, the application was removed from the unopposed roll of 21 January 2026 and the costs reserved.
- [12] The respondent raised three grounds of opposition in terms of the answering affidavit. I deal with each ground in turn.
- [13] Firstly, the respondent took issue with the authority of the deponent to the applicant's founding affidavit, alleging that the deponent lacked the required authority to so depose.
- [14] Furthermore, the respondent denied, without any substantiation whatsoever, that the deponent to the founding affidavit had personal knowledge of the facts relevant to the application. The deponent to the founding affidavit is the sole director of the applicant, meaning that there is no person better placed to

depose to the founding affidavit than the deponent. Such an allegation as made by the respondent that the deponent did not have the necessary personal knowledge to depose to the founding affidavit in the absence of any substantiation whatsoever, in the light of the deponent's position within the applicant, can only indicate *mala fides* on the part of the respondent.

- [15] As to the respondent's allegation that the deponent lacked the necessary authority to depose to the founding affidavit, the issue has been dealt with and determined definitively by the Supreme Court of Appeal in *Ganes & Another v Telecom Namibia Ltd*¹ as well as *Eskom v Soweto City Council*².
- [16] The respondent's remedy is to bring a notice in terms of rule 7 of the uniform rules of court. The respondent failed to do so. In those circumstances the absence of the rule 7 notice is dispositive of the point raised by the respondent.
- [17] The second ground of opposition raised by the respondent is the attempted amendment. I have dealt with that hereinabove and do not intend to do so again. The amendment lapsed, the pleadings closed and the respondent has remedies in terms of rule 28 should she wish to proceed with a fresh amendment, as she is entitled to do up until judgment.
- [18] The fact that the respondent potentially may seek to amend her pleadings at a point in the future is, however, not a reason in and of itself not to grant the compelling order sought by the applicant in terms of rules 35(1) and 35(7).
- [19] The third ground of the respondent's opposition is that the application was served during *dies non* on 18 December 2025.
- [20] *Dies non* apply to a notice of intention to oppose or delivery of an affidavit in terms of rule 6(5)(aa). *Dies non* do not apply to interlocutory applications such as the one before me in terms of rules 35(1) and 35(7). Thus, the third ground of opposition raised by the respondent is of no merit and must fail.

¹ *Ganes & Another v Telecom Namibia Ltd* 2004 (3) SA 615 (SCA) at 624I – 625A.

² *Eskom v Soweto City Council* 1992 (2) SA 703 (W).

- [21] Given that the respondent's grounds of opposition are without substance, I intend to grant the order in terms of rule 35(1) read together with rule 35(7).
- [22] Turning to the costs of the application, the respondent forced the applicant to bring an application to procure an order in terms of rules 35(1) and 35(7). This was notwithstanding various indulgences granted by the applicant for the respondent to file her discovery and various undertakings given by the respondent to do so.
- [23] The respondent did not allege in the answering affidavit that she did not have any documents relevant to the dispute in her possession. The respondent's opposition was without merit and should never have been brought by the respondent. I have already referred to the *mala fides* evident in the respondent's opposition to the application.
- [24] The applicant ought not to have been forced by the respondent to approach this court to bring the application, in the face of the respondent's undertakings to make discovery, and then to have to deal with the application on an opposed basis. The waste of time and money is wholly without any reason.
- [25] The respondent failed to proffer any proper defence to the applicant's application. The respondent's manner of dealing with the request for discovery and forcing the compelling application, justifiably resulted in the applicant's request for costs on a punitive basis.
- [26] The respondent asked that I reserve the costs of the application for the court dealing with the trial. It is not appropriate for me to acquiesce in that request. I have heard and dealt with the merits of the application in terms of this judgment. Costs orders generally flow from the merits of a matter. It is not appropriate for me to burden another court, which is not tasked with dealing with the merits of this application, with an order for reserved costs and to expect that court in the future to deal with those costs.
- [27] It is for me to deal with the costs of the application as I have done herein and to grant the appropriate order.

[28] In short, the respondent's opposition to the application and the manner in which the respondent persisted in prosecuting that opposition was egregious and amounted to an abuse of the rules, this court's practice and its procedure. The respondent's opposition was deserving of a punitive order in respect of costs, as a measure of the displeasure of this court at the manner in which the respondent prosecuted her opposition to the application.

[29] By reason of the aforementioned, I grant the following order:

1. The respondent is ordered to deliver her discovery affidavit within fifteen (15) days of the delivery of this judgment on 30 April 2026.
2. In the event of the respondent failing to comply with the order in paragraph 1 immediately above, the applicant is granted leave to supplement its papers insofar as is necessary in order to apply for an order that the respondent's defence be struck out and the counterclaim be dismissed.
3. The respondent is ordered to pay the costs of this application on an opposed attorney and client scale.

I hand down the judgment.



CRUTCHFIELD J
JUDGE OF THE HIGH COURT
JOHANNESBURG

For the Applicant:

Adv N Lombard instructed by Garlicke & Bousfield Inc.

For the Respondent:

Adv S Alcock instructed by Phungula Sibusiso Attorneys.

Date of the hearing:

29 April 2026.

Date of the judgment:

30 April 2026.