

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

Case Number: 2024-092731

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: NO

DATE

SIGNATURE

In the interlocutory application between:

CUSTOM CAPITAL FINANCE (PTY) LTD

Applicant/Plaintiff

and

FORMULATED IT GROUP CC

First Respondent / Defendant

ANTHONY KINNEAR

Second Respondent / Defendant

SHONEEZ SALLIE

Third Respondent / Defendant

SHANEEL RAM

Fourth Respondent / Defendant

ANGELIQUE MARQUES DE SOUSA

Fifth Respondent / Defendant

RIDWAN ADAMS

Sixth Respondent / Defendant

**UBUNTU FAMILY HEALTH CENTRE
GRAYSTON (PTY) LTD (in liquidation)**

Seventh Respondent / Defendant

Delivered: this judgment was prepared and authored by the judge whose name is reflected and is handed down electronically and by circulation to the parties/their legal representatives by email and by uploading it to the electronic file of this matter on Caselines. The date for handing down is deemed to be 26 August 2026

JUDGMENT

CARELSE AJ

Introduction

- [1] The applicant is the plaintiff in an action pending in this Division. The first to fifth respondents are the first to fifth defendants in that action. In what follows, I will refer to the parties as in this application and to the first to fifth respondents collectively as “the respondents”.
- [2] This is an opposed interlocutory application to compel the respondents to reply to the applicant’s notice delivered in the action under Uniform Rule 35(3).
- [3] No relief is sought against the sixth and seventh respondents, and they took no part in these proceedings.

The relief sought and the issue

- [4] The notice of motion seeks an order compelling the respondents to furnish the applicant, within ten days of service of the order, with their “Reply” to the notice in terms of rule 35(3), together with the costs of the application. The draft order uploaded to CaseLines is to the same effect, save that it seeks costs jointly and severally.
- [5] In their joint practice note, the parties describe the application as one to compel further and better discovery under Uniform Rule 35(3) read with rule 35(7). They record that the applicant bears the onus of establishing its entitlement to the relief and that “the determinative issue is that of relevance”. I approach the matter on that footing.

Discovery and the notice

- [6] On 3 April 2025, the respondents delivered five discovery affidavits. Each discloses only two items:

- a) all pleadings and processes filed under the above case number, and
- b) all correspondence between the parties and between their attorneys not marked “without prejudice”.

[7] None of the discovery affidavits identify any financial, accounting, or commercial document that may relate to any matter in question in the action between the parties.

[8] Understandably dissatisfied with the discovery made, the applicant, on 7 April 2025, delivered a notice in terms of rule 35(3) calling for six categories of documents:

- a) the first respondent’s bank statements with all financial institutions for the period 1 August 2023 to 30 July 2024 (“Item 1”);
- b) Red Holidays Pty Ltd’s bank statements for the same period, including for a specified account (“Item 2”);
- c) details of any and all documents relating to the bank accounts of SNW Traders Pty Ltd and “Investment Fuel” (“Item 3”);
- d) all invoices, ledgers, statements and any and/or all documentation evidencing amounts due by Red Holidays to SNW Traders Pty Ltd and/or “Investment Fuel” (“Item 4”);
- e) proof of payment to Red Holidays of R 647 000 for a quotation dated 31 August 2023 for five guests to travel to the United Kingdom in December 2023 (“Item 5”); and
- f) SNW Traders Pty Ltd’s bank statements for the same period (“Item 6”).

[9] Nothing was delivered in response to the rule 35(3) notice. A demand on 5 May 2025 for compliance with the rule 35(3) notice likewise produced no response. This application consequently followed and was initially enrolled for 11 June 2025. On 9 June 2025, however, the respondents delivered a notice of intention to oppose the application and, two minutes later, their answering

affidavit. The application was therefore removed from the roll on 11 June 2025, and Wanless J reserved the wasted costs.

- [10] The answering affidavit is deposed to by an attorney at the firm representing the respondents. It contends only that the documents are irrelevant to the applicant's claim and to the respondents' business dealings. It does not state that the documents are not in the respondents' possession, and none of the respondents delivered a confirmatory affidavit. Although the deponent asserts personal knowledge, no basis for that knowledge is given and it is not said that the documents sought were examined.
- [11] A question arose in argument as to whether the answering affidavit was itself the reply that the notice called for, so that nothing remained to be compelled. The answering affidavit was not a proper response to the rule 35(3) notice. The subrule requires the recipient either to make the documents available for inspection or to state on oath that they are not in its possession and to give their whereabouts. The answering affidavit does neither. It resists the application on the ground that the documents are irrelevant, which is a different thing from a response to the notice.
- [12] The founding affidavit itself says nothing about relevance beyond asserting that a reply to the rule 35(3) notice is vital to the applicant's preparation for trial. The corporate relationships and the flow of funds appear for the first time in the replying affidavit. Nothing, however, turns on that. Relevance in this context falls to be determined against the pleadings, and I have based my reasons in this judgment on the averments in the pleadings and not from the replying affidavit.

The Legal Principles

- [13] Rule 35(3) provides:

"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."

- [14] The subrule puts the recipient of the rule 35(3) notice to an election. It may make the documents available for inspection under rule 35(6), or it must state on oath, within ten days, that the documents are not in its possession and state their whereabouts, if known.¹
- [15] Rule 35(7) permits a party to apply for an order compelling compliance. Where the notice has been given and the time for compliance has passed, it is sufficient for the applicant to show that the documents are in existence and are relevant to a matter in question in the action.²
- [16] A document is relevant to a matter in question if it is reasonable to suppose that it contains information which may, not must, directly or indirectly enable the party requiring it to advance his own case or to damage that of his adversary, or which may fairly lead him to a train of enquiry with either of those consequences.³ What is a matter in question is determined from the pleadings,⁴ and the subrule does not license a fishing expedition.⁵

¹ Uniform Rule 35(6) reads:

"(6) Any party may at any time by notice in accordance with Form 13 of the First Schedule require any party who has made discovery to make available for inspection any documents or tape recordings disclosed in terms of subrules (2) and (3). Such notice shall require the party to whom notice is given to deliver within five days, to the party requesting discovery, a notice in accordance with Form 14 of the First Schedule, stating a time within five days from the delivery of such latter notice when documents or tape recordings may be inspected at the office of such party's attorney or, if such party is not represented by an attorney, at some convenient place mentioned in the notice, or in the case of bankers' books or other books of account or books in constant use for the purposes of any trade, business or undertaking, at their usual place of custody. The party receiving such last-named notice shall be entitled at the time therein stated, and for a period of five days thereafter, during normal business hours and on any one or more of such days, to inspect such documents or tape recordings and to take copies or transcriptions thereof. A party's failure to produce any such document or tape recording for inspection shall preclude such party from using it at the trial, save where the court on good cause shown allows otherwise."

² *Bothma v Protea Furnishers (Pty) Ltd* 1970 (3) SA 180 (O) at 183E–F.

³ *Compagnie Financière et Commerciale du Pacifique v Peruvian Guano Co* (1882) 11 QBD 55, as adopted by the Full Court in *Rellams (Pty) Ltd v James Brown & Hamer Ltd* 1983 (1) SA 556 (N) at 564A–B ("Rellams").

⁴ *Swissbrough Diamond Mines (Pty) Ltd and Others v Government of the Republic of South Africa and Others* 1999 (2) SA 279 (T) at 316J–317A.

⁵ *The MV Urgup: Owners of the MV Urgup v Western Bulk Carriers (Australia) (Pty) Ltd and Others* 1999 (3) SA 500 (C) at 515C–D ("MV Urgup").

- [17] Where relevance is denied on oath, the onus of establishing it lies on the party seeking discovery.⁶ The applicant correctly accepted that onus.
- [18] The facts in *Rellams (Pty) Ltd v James Brown & Hamer Ltd*⁷ are materially the same as those in this matter. There, as here, discovery had been made, an itemised rule 35(3) notice was delivered, nothing was delivered in reply, an application to compel followed, and the only affidavit bearing on the notice was one by the defendant's attorney asserting that the documents were not relevant.
- [19] The Full Court held that the objections to an attorney making discovery under rule 35(1) apply equally to an affidavit under rule 35(3) and that where an attorney does depose, the circumstances qualifying him to do so must be disclosed. None were disclosed in that case beyond "the bald statement that the facts contained therein are within his own knowledge", unlike the attorney in *Richardson's Woolwasheries Ltd v Minister of Agriculture*,⁸ whose affidavit in the discovery proceedings set out that he had perused the files before the discovery affidavit was drawn and, on receipt of the rule 35(3) notice, had again perused every file in his client's possession relating to the matter and satisfied himself that nothing further fell to be disclosed. The court held that a party is at least entitled to be informed in proper form whether the documents called for are in the recipient's possession and whether their relevance is disputed. On that ground alone the appeal succeeded.

The pleadings

- [20] In the action, the applicant claims damages against the first to seventh respondents jointly and severally, arising from what it pleads were fraudulent misrepresentations.
- [21] The applicant pleads that it purchased equipment from the first respondent for R 1 931 636.20 and R 1 861 711.30 under two tax invoices, issued in August 2023 and September 2023, respectively. It further pleads that it rented that

⁶ *Continental Ore Construction v Highveld Steel & Vanadium Corporation Ltd* 1971 (4)SA 589 (W) at 597G–H.

⁷ 1983 (1) SA 556 (N).

⁸ *Richardson's Woolwasheries Ltd v Minister of Agriculture* 1971 (4) SA 62 (E) at 67A–B ("*Richardson's Woolwasheries*").

equipment to the seventh respondent (Ubuntu) under two written rental finance agreements signed on Ubuntu's behalf by the sixth respondent (Adams), its sole director. Ubuntu was placed in business rescue two months later, in November 2023, and in liquidation in May 2024, having paid the applicant a total amount of R 348 268.20.

[22] The applicant then pleads what became of the money. It pleads that the second to fifth respondents are members of the first respondent. That the third respondent (Sallie) is also a shareholder in and a director of a company called Red Holidays (Pty) Ltd, which conducts business as a travel agency. Between 29 August 2023 and 20 September 2023, the first respondent paid a total of R 1 300 000 to Red Holidays in three payments and R 50 000 directly to Sallie. Red Holidays, in turn, between 29 and 31 August 2023, paid a total of R 778 000 to SNW Traders (Pty) Ltd in three payments and R 272 000 to an entity described as "Investment Fuel". On 20 September 2023, the first respondent paid a further R 647 000 into SNW Traders' account. Adams was the sole director and shareholder of SNW Traders and had a controlling interest in "Investment Fuel". The effect, it is pleaded, was that R 1 697 000 was paid back to Adams through entities which he controlled.

[23] The applicant pleads that the first respondent, the fifth respondent (De Sousa), Adams and Ubuntu made certain representations to it that were false and which misrepresentations induced it to enter into the aforesaid rental finance agreements with Ubuntu. The said agreements are pleaded not to have been legitimate rental finance transactions but rather money-raising transactions, concluded with the intention to raise funds that were to be paid back to Adams, alternatively, juristic entities in which he had a substantial/controlling interest. The second to fifth respondents are sought to be held personally liable under s 64 of the Close Corporations Act.⁹

[24] Having considered the respondents' plea, it is common cause on the pleadings that the two transactions were concluded as pleaded, that the first respondent

⁹ 69 of 1984.

received the two sums totalling R 3 793 347.50, and that Sallie is a shareholder in and a director of Red Holidays.

- [25] The respondents, however, deny the flow of the funds as pleaded in the particulars of claim and amplify the denial as follows:

“11. In amplification to the aforementioned denial, but without derogating from the aforesaid denial, the defendants represented in this plea, plead that the payments made to these respective organisations had nothing to do with the plaintiff nor the alleged business transaction between the plaintiff and the first and seventh defendants.

12. The payments made as referred herein related to business transaction for the companies mentioned herein and are not related to the plaintiff’s claim and/or the alleged transaction with the plaintiff. The plaintiff is therefore put to the proof thereof to prove these payments and further prove relevance of these transactions.”

- [26] The plea elsewhere asserts that the applicant never considered installation costs, hardware costs, cable costs, or billable working hours; that the applicant verified the equipment and checked the serial numbers before paying the invoiced amount; that the amounts invoiced were fair and reasonable for the equipment delivered and installed; and that the respondents never misrepresented to anyone when invoicing the applicant.

Analysis

- [27] On the reasoning in *Rellams*, the application could be disposed of on a single ground: the respondents have never informed the applicant, in proper form, whether the documents called for are in their possession and whether their relevance is disputed. Because relevance was fully argued, and because the parties identified it as determinative, I will, however, deal with it.

- [28] The applicant pleads a scheme. Its case is not that the first respondent breached a contract or that it was unjustly enriched. It is that money paid by the applicant for equipment was routed within days, in identified amounts, through a travel agency of which Sallie is a director, to two entities controlled by Adams.

- [29] The respondents do more than deny that route. They in fact plead positively that the payments are “related to business transaction for the companies mentioned herein”, and they put the applicant to the proof of the payments.
- [30] Two things are accordingly in issue: (i) whether the payments were made, which the applicant is required to prove; and (ii) whether, if made, they were legitimate commercial transactions, which is the affirmative case pleaded by the respondents.
- [31] Bank statements of the paying and the receiving accounts are the ordinary means by which a series of electronic transfers is proved. A litigant who requires his opponent to prove a series of payments cannot therefore maintain that the banking records of those payments may not be relevant. Items 1, 2 and 6 of the rule 35(3) notice are directed at those records, and their existence has not been called into question.
- [32] The respondents complain that the notice calls for entire bank statements over a twelve-month period across multiple institutions. The pleaded transfers occurred between 29 August 2023 and 20 September 2023, and to that extent the complaint has force. But the respondents' own answer to those transfers is that they "related to business transactions for the companies mentioned herein". Whether a genuine trading relationship existed between these entities or whether the transfers were isolated movements cannot be tested on a single month's statements. The period is, in any event, bounded, closing on 30 July 2024, and the quotation to which item 5 relates concerns travel in December 2023. Above all, the notice of motion does not seek to compel the production of twelve months of statements but rather to compel a reply to the rule 35(3) notice. A respondent who therefore does not hold the statements for the whole period or any part of it must say so on oath.
- [33] Item 4 of the rule 35(3) notice goes directly to the affirmative defence. If genuine indebtedness underlay Red Holidays' onward payments, invoices, ledgers and statements would tend to establish it. If it did not, their content or their absence would tend to damage the defence. Item 4 carries no date limitation, but it is confined by its subject matter to documents evidencing amounts due by Red

Holidays to SNW Traders and "Investment Fuel", which is the very matter the respondents have put in issue.

[34] Item 5 of the notice requires separate mention. It seeks proof of a payment to Red Holidays of R 647 000 for a travel quotation. Paragraph 26 of the particulars of claim pleads that the R 647 000 was paid into SNW Traders' account, and no travel quotation is pleaded anywhere. To that extent, item 5 does not mirror the pleaded case, but it should, in my view, nevertheless survive because the payment is pleaded. Whether the payment was applied to fund travel booked through a travel agency of which a respondent is a director bears on the pleaded question whether the payments were legitimate.

[35] Item 3 of the notice stands differently, and I return to it below.

The grounds of opposition in the respondents' heads of argument

[36] During argument, the respondents' legal representative stated that the respondents stand by the arguments advanced in their heads of argument. It is therefore prudent to deal with the five grounds advanced therein in opposition to the application.

[37] First, it is said that the documents are irrelevant to the issues in the main action, which the heads of argument identify as "whether the Respondents breached the agreement or were unjustly enriched". The particulars of claim plead neither. It pleads fraudulent misrepresentation and liability under s 64 of the Close Corporations Act. The submission thus rests on a misidentification of the pleaded issues and cannot succeed.

[38] Secondly, it is said that Red Holidays, SNW Traders and "Investment Fuel" are separate juristic persons and that the applicant may not pierce the corporate veil, where no fraud, sham or an abuse of the corporate form has been alleged. Fraud is, however, alleged throughout the particulars of claim, which pleads that the transactions were "not legitimate rental financing transactions but were in fact money raising transactions" concluded to route funds to Adams or to entities in which he held a controlling interest. It is further pleaded that the first respondent, De Sousa, Adams and Ubuntu knowingly made false

representations to the applicant to induce it to enter into the pleaded transactions and to make the payments it did.

- [39] Discovery from a person who is not a party to the action may be obtained only in the limited instances for which rule 35(5) provides, which do not apply here, and otherwise by subpoena *duces tecum*.¹⁰ To that extent the respondents are correct. However, the applicant also does not seek to pierce the corporate veil of companies that are not parties to the action. The applicant does not seek discovery against Red Holidays, SNW Traders or “Investment Fuel”. What the applicant seeks is for the respondents, who are parties to the action, to make certain documents available for inspection or to state under oath that such documents are not in their possession and state their whereabouts, if known. The authorities relied upon by the respondents in this regard relate to when the corporate veil may be pierced and not when discovery may be refused.¹¹
- [40] Rule 35(3) is concerned with the possession of documents, not with their ownership. A litigant must disclose relevant documents in his possession or control whether they belong to him, to a company of which he is a director, or to a stranger. No corporate veil is pierced.
- [41] If the respondents do not have the documents, subrule 35(3) tells them what to do: they must say so on oath and give the whereabouts if known. An order compelling compliance cannot require them to produce what they do not have. It requires them to answer, which is the one thing they have never properly done.
- [42] I should add that *Durbach*,¹² the authority cited for the proposition that discovery cannot be compelled in respect of documents belonging to non-parties, decides the opposite. It holds that the obligation to discover is in very wide terms, that a party must discover every document relevant to any aspect of the case and that he must do so even where he may lawfully object to producing it.

¹⁰ *Richardson's Woolwasheries supra* at 66H.

¹¹ *Cape Pacific Ltd v Lubner Controlling Investments (Pty) Ltd and Others* 1995 (4) SA 790 (A) holds that the veil may be pierced where there has been fraud, dishonesty or improper conduct.

¹² *Durbach v Fairway Hotel Ltd* 1949 (3) SA 1081 (SR) at 1083.

- [43] Thirdly, privacy and commercial confidentiality. The point is raised for the first time in the heads of argument and there is no evidence to support it in the answering affidavit. No respondent has deposed to what the statements or documents would reveal or to any confidence owed to anyone. In any event, confidentiality is not an answer: in *Rellams* an objection that documents were confidential was held to have no substance.¹³
- [44] Fourthly, proportionality. The respondents submit that the burden of obtaining, redacting and disclosing extensive banking data of multiple entities is disproportionate, and that the applicant already possesses the records it needs and can prove its case without the discovery it seeks. There is no evidence to support either proposition. The second is also difficult to reconcile with the respondents' own plea, which denies the payments and puts the applicant to the proof of them. The respondents cannot at once require the applicant to prove the payments and contend that it has no need of the documents by which payments are proved. The answer is, in any event, that given in *Rellams* to an objection in identical terms, being that too many documents over too long a period were called for and that this would entail practical difficulties. The Full Court found no substance in the objection and held that if the documents are in the possession of the party from whom they are sought and are relevant, they ought to be made available for inspection.¹⁴
- [45] Fifthly, a fishing expedition. Rule 35(3) does not permit a litigant to trawl for a case it has not pleaded. But items 1, 2, 4, 5 and 6 of the notice are each linked to a pleaded allegation. The applicant is not searching for a cause of action because it has already pleaded one in detail and seeks the documents by which it will stand or fall.
- [46] Item 3 of the notice is different, and here the argument has force. It calls for "details of any and all documents relating to the bank accounts in the name of SNW Traders Pty Ltd and Investment Fuel". Unlike the other items, it identifies neither a class of document nor a transaction. In *The MV Urgup*, relief was refused in part because the documents sought were described only in wide,

¹³ *Rellams supra* at 564D.

¹⁴ *Rellams supra* at 564C–D.

generic terms.¹⁵ Read literally, item 3 attracts the same objection. However, it need not be read literally, as it appears in the rule 35(3) notice, which is otherwise closely tied to the pleaded payments and plainly has those payments as its object. I shall confine it accordingly to such payments.

[47] Finally, the respondents ask in the alternative that discovery be limited to the pleaded transactions between the applicant, the first respondent, and Ubuntu, excluding the banking records of third-party entities. That would exclude the very documents which the pleadings put in issue. The pleaded case is about what became of the money once it reached the first respondent. An order stopping at the first respondent's door would leave the central allegation untested. I therefore decline to make it.

The form of the order

[48] There remains the form of the order. The applicant submits that the respondents have never said the documents are not in their possession, that the ten days allowed for such an oath have long passed, and that the second limb of the subrule is accordingly spent. The only reply now open to them, it argues, is production of the documents sought.

[49] The submission has some force. Nowhere in the respondents' heads of argument is it suggested that the documents are beyond their reach. They assert the opposite in three places in their heads of argument: (i) that disclosure would intrude upon "the Respondents' and third parties' privacy and commercial confidentiality"; (ii) that it would "expose business information, client details, and unrelated transactions"; and (iii) that "the burden on the Respondents to obtain, redact, and disclose extensive banking data of multiple entities is wholly disproportionate". Each of those propositions presupposes that there is something that the respondents are able to obtain and to disclose.

[50] I nevertheless decline to make the order in that form because the premise for such an order is not established on the papers. The founding affidavit does not allege that the documents are in the respondents' possession. The nearest it

¹⁵ *The MV Urgup supra* at 515H–516B.

comes is the assertion that they are "withholding information and documents", which was denied by the respondents. The applicant cannot rely on a failure to deny an averment it did not make, and to infer possession from silence would reverse the onus it accepted. *Rellams* points the same way: there too possession was not put in issue, yet the Full Court, having decided relevance, framed its order in the alternative. Rule 35(7) empowers a court to order compliance with the rule, and compliance is the election which the subrule creates. A court should not order a party to produce what it may not have.

[51] The order must also accommodate a respondent who holds a relevant document but objects to producing it. Rule 35(2)(b) recognises documents in respect of which a party has a valid objection to produce. Such a respondent can neither produce the document nor swear that it is not in its possession. The order therefore provides a third course: to identify the document and state the ground of objection on oath. The objection remains the respondents to take, but the facts founding it may be deposed to by anyone with personal knowledge of them, including an attorney who sets out the basis of that knowledge.

[52] The applicant's underlying concern is nevertheless legitimate. It is that the respondents may now say for the first time, and without particularity, that they do not have the documents, leaving the applicant where it began. Three features of the intended order meet that concern. First, each of the first to fifth respondents must depose separately, not through their attorney and not through one another. Secondly, each affidavit must deal with each of the six items in turn, so that a general disclaimer will not answer. Thirdly, it must address not only possession but control. Rule 35(3) falls to be read with rule 35(1), which reaches all documents which are or have at any time been in the possession or control of a party. That matters here, because Sallie is an admitted director and shareholder of Red Holidays and the other respondents are not.

Conclusion

[53] The applicant has discharged the onus. The first to fifth respondents have not responded to the notice in either of the ways the subrule permits, and the only

ground on which they resisted the application on the papers cannot be sustained. Thus, the application succeeds.

- [54] I frame the order as the Full Court framed it in *Rellams*. Relevance having been determined, a reply asserting that the documents are irrelevant will not constitute compliance; and the affidavit contemplated by the subrule must be made by each of the respondents separately and not by their attorney. I make no finding on the merits of the action, on whether any of the documents exists, on whether any of them are in the possession of the first to fifth respondents, or on any privilege which may properly be claimed.

Costs

- [55] Costs must follow the result as the general rule dictates and should include the wasted costs reserved on 11 June 2025. The removal of the application from the court roll on that day was occasioned by the belated opposition entered into by the respondents.
- [56] The applicant seeks costs on the attorney and client scale. I decline. This relief was sought for the first time in the replying affidavit. The applicant's notice of motion and own draft court order ask for no more than the costs of the application. The conduct of the first to fifth respondents is open to criticism, but it does not cross the threshold at which a court marks its displeasure by a punitive award.
- [57] Rule 67A(3) obliges the court to indicate a scale for the costs awarded. This was an interlocutory application that the parties estimated would occupy between one and two hours of argument, the principles in relation to Rule 35(3) are settled, and the argument that had to be advanced was short. The higher scales are reserved for matters which are truly important, complex or valuable. Scale A is therefore appropriate.¹⁶

¹⁶ *Mashavha v Enaex Africa (Pty) Ltd and Others* 2025 (1) SA 466 (GJ), at [11], [16] & [26].

Order

[58] The following order is made:

1. The first to fifth respondents are directed to comply, within 10 (ten) days of service of this order, with the applicant's notice in terms of Uniform Rule 35(3) dated 7 April 2025. For that purpose, each of the first to fifth respondents shall, separately and in relation to each of items 1 to 6 of that notice, account for every document falling under that item by:
 - 1.1 making the documents available for inspection in accordance with Uniform Rule 35(6);
 - 1.2 stating on oath that the documents are not in the possession or under the control of that respondent, and stating their whereabouts in so far as those are known to that respondent; and
 - 1.3 in the case of any document production of which is objected to on a ground recognised in law, identifying that document or class of documents and stating on oath the ground of the objection and the facts relied on in support of it.
2. For the purposes of paragraph 1 above, item 3 of the notice is confined to documents relating to the bank accounts of SNW Traders (Pty) Ltd and "Investment Fuel" into which the payments pleaded in paragraphs 24 and 26 of the amended particulars of claim were made.
3. The affidavits contemplated in paragraph 1.2 and 1.3 above shall be made by each of the first to fifth respondents personally and not by their attorney; and, in the case of the first respondent, by a member duly authorised thereto.
4. The first to fifth respondents shall pay the costs of this application, jointly and severally, the one paying the other to be absolved, such costs to include the wasted costs reserved on 11 June 2025, on the party-and-party scale, including the costs of counsel, where so employed, to be taxed on scale A.

CARELSE AJ
ACTING JUDGE OF THE HIGH COURT
JOHANNESBURG

Heard on: 28 May 2026

Decided on: 26 August 2026

APPEARANCES

For the applicant: N Lombard (Ms)

Instructed by: Romer Attorneys, c/o KWA Attorneys

For the first to fifth respondents: Mr F Mashele (attorney)
of Frans Mashele Incorporated

