



**IN THE HIGH COURT OF SOUTH AFRICA**

**GAUTENG DIVISION, JOHANNESBURG**

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| (1) | NOT REPORTABLE                  |
| (2) | NOT OF INTEREST TO OTHER JUDGES |

**CASE NO:** 2024-120971

**DATE:** 28 AUGUST 2026

In the matter between:

**GAME BREEDING AFRICA (PTY) LIMITED**

First Plaintiff

**DANIEL CHRISTOFFEL LAURENS PONT**

Second Plaintiff

**JOHANNES JACOBUS PICKARD**

Third Plaintiff

and

**OBARO FINANCIAL SERVICES (PTY) LIMITED**

First Defendant

**LAND & AGRICULTURAL DEVELOPMENT**

**BANK OF SOUTH AFRICA**

Second Defendant

**Neutral Citation:** *Game Breeding Africa and Others v Obaro Financial Services and Another (2024-109949) [2026] ZAGPJHC --- (28 August 2026)*

**Coram:** Adams J

**Heard on:** 6 August 2026 – ‘virtually’ as a videoconference on *Microsoft Teams*

**Delivered on:** 28 August 2026 – This judgment was handed down electronically by circulation to the parties' representatives by email, by being uploaded to *CaseLines* and by release to

*SAFLII*. The date and time for hand-down is deemed to be 10:30 on 28 August 2026.

**Summary:** Civil procedure – Practice and Procedure – application to compel better discovery – rule 35(3) discussed – relevance of documents requested – Discovery and inspection – discovery – production of documents – application to compel second defendant (Land Bank) to comply with rule 35(3) notice seeking discovery of certain documents – interlocutory to action by plaintiffs against first defendant and Land Bank for declaratory relief relating to validity of cession agreement between Land Bank and first defendant – cessionary of debts of first plaintiff, as principal debtor, in favour of first defendant, as creditor – second and third plaintiffs in their capacities as sureties for payment of amounts – indebtedness arising from various credit agreements entered into between first defendant and first plaintiff – Court rejecting plaintiffs’ claim that they require procurement and other financial documentation to establish lack of *locus standi* of Land Bank – such documents held to be irrelevant – plaintiffs not entitled, according to law, to challenge the cession agreement, to which they were not party – only the parties to that agreement entitled to do so – therefore, documents in support of such challenge not relevant to pleaded issues – Land Bank not obliged to furnish such documents – Plaintiffs’ application to compel better discovery refused.

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## ORDER

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- (1) The first, second and third plaintiffs' application in terms of Uniform Rule of Court 35(7) to compel the second defendant to comply with their (plaintiffs') rule 35(3) notice, is dismissed with costs.
- (2) The first, second and third plaintiffs, jointly and severally, the one paying the other to be absolved, shall pay the second defendant's costs of this opposed rule 35(7) application to compel, which costs shall include the costs consequent upon the employment of two Counsel, one being Senior Counsel, on scale 'C' of the tariff referred to in Uniform Rule of Court 67A(3), read with rule 69.

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## JUDGMENT

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### **Adams J:**

[1]. I shall refer to the parties as referred to in the main defended action, in which the first, second and third plaintiffs (plaintiffs) seek declaratory relief against the first and the second defendants. The relief is sought in relation to a Cession ('the Cession') in terms of which the first defendant ('Obaro') ceded to the second defendant ('Land Bank') its right, title and interest in and to Term Loan Agreements concluded during 2018 and 2019 between the first plaintiff ('Game Breeding Africa') and Obaro. In terms of and pursuant to the Term Loan Agreements, Obaro had lent and advanced to Game Breeding Africa the total sum of R3 233 944.06.

[2]. In this interlocutory application, which came before me, *qua* Judicial Case Manager of the main action in terms of the Commercial Court Practice Directive of this Division, the plaintiffs apply in terms of Uniform Rule of Court 35(7) for an

order compelling the second defendant to reply to their (plaintiffs') rule 35(3) notice dated 24 June 2026. The said notice was delivered by the plaintiffs on or about 24 June 2026 and it called upon the second defendant to make available for inspection further documents in its possession, which documents the plaintiffs believed to be in possession of the second defendants and which are relevant to matters in question in the main action.

[3]. It may be apposite, at this juncture, to cite in full the relevant portion of the updated rule 35(3) notice, which, in the relevant part, reads as follows: -

'TAKE NOTICE that the first, second and third plaintiffs believe that the defendants are in possession of the undermentioned documents which have not been discovered by the second defendant and which are relevant to the issues in this matter.

TAKE NOTICE FURTHER that in terms of rule 35(6) the plaintiffs require the defendants to make available for inspection within five (5) days after delivery of the discovery affidavit aforesaid all documents which are referred to therein and which are not privileged.

- (1) Proof that the Land Bank complied with the procurement requirements in the form of a competitive bidding process to enter into a Service Level Agreement ("SLA") with the said Obaro, to render the services as set out in the SLA;
- (2) If no competitive bidding process was followed, proof of the prior written approval of the Deviation by the Department of Treasury;
- (3) Prior written approval of the Land Bank's Board for the Deviation from the competitive bidding process to appoint the Third party in terms of the SLA.
- (4) All statements of account pertaining to the accounts of the first plaintiff held at the first and second defendant from the date of inception of the account until the date hereof.
- (5) Documentary proof that first and second defendants complied with all the conditions precedent contained In the sale of book debts agreement and Service level agreement.'

[4]. On 22 July 2026, the second defendant responded to the plaintiffs' rule 35(3) notice by serving its affidavit in terms of rule 35(3). The general tenet of the second defendant's rule 35(3) reply is that the documents requested in the plaintiffs' rule 35(3) notice, to the extent that they exist, are completely irrelevant to the issues that are to be ventilated during the upcoming trial. The trial, which

is set down for hearing during September 2026, so the second defendant contends, is not a general trial on all issues raised in the pleadings. It has a narrow compass, being confined only to the separated issue identified in the application for separation, which was successfully brought by the second defendant. And, so the contention by the second defendant goes, none of the documents sought in plaintiff's rule 35(3) notice are relevant to this limited and separated issue upon which the Court is required to make a decision. In any event, so the argument is concluded on behalf of the second defendant, the documents requested by the plaintiffs are irrelevant in the broader context of the issues determined by the pleadings themselves.

[5]. This is the same approach adopted by the second defendant in its opposition to the plaintiffs' application to compel further and better discovery in terms of rule 35(7).

[6]. Rule 35(3) provides as follows:

'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 him to make the same available for inspection in accordance with subrule (6), or to state under oath within ten days that such documents are not in his possession, in which event he shall state their whereabouts, if known to him.'

[7]. Most of the documents which the plaintiffs require of the second defendant are documents concerning the second defendant's compliance, as an Organ of State, with constitutional procurement provisions.

[8]. The documents requested in paragraph 4 of the rule 35(3), so the second defendant submits, can and should be requested from the first defendant. The second defendant confirms that it is not in possession of any of those documents because the debt was incurred while the first defendant (Obaro) was administering the debtors' book under the service level agreement with it.

Accounts were distributed to the first plaintiff by the first defendant during that period. Accordingly, no such accounts would be in the possession of the second defendant. That, in my view, having regard to the trite principles set out hereinafter, is the end of the request as per paragraph 4.

[9]. That brings me back to the second defendant's main ground of opposition to the plaintiffs' application to compel further and better discovery that being that the documents requested are not relevant to issues to be decided by this Court during the trial of the matter.

[10]. The main action concerns a debt recovery claim. The Land Bank pleads that it is the lawful creditor of the plaintiffs by virtue of a cession of rights from Obaro. The plaintiffs dispute the Land Bank's *locus standi* and, consequently, their indebtedness to the Land Bank.

[11]. On 23 February 2026, this Court ordered a separation of the following crisp issue from any and/or all other disputes between the parties: -

- '(a) Whether, at the relevant time, arising from a suite of agreements concluded between the first defendant and the second defendant during 2013 and 2014, there was in existence and extant a valid and enforceable Cession in terms of which the first defendant had ceded and delegated to the second defendant any and/or all its (first defendant's) right, title and interest in and to the first plaintiff's indebtedness to the first defendant.
- (b) And whether the plaintiffs, who were not parties to the agreements concluded between first and the second defendants, can raise as a defence against the claims instituted by the second defendant against the plaintiffs, based upon the agreements, that the second defendant has not acquired the underlying rights of action against the plaintiffs and the related security, if there is no dispute – and in fact consensus between the defendants, who were the only contracting parties to the agreements, that all rights of action to recover the debts, and related security, were successfully and effectively transferred from the first defendant to the second defendant and vest in the second defendant.'

[12]. The Court also directed that the separated issue is to proceed separately to trial first and before any and/or all of the remaining disputes between the parties.

[13]. The second defendant contends that the documents sought, concerning procurement compliance, National Treasury approval or deviations for the 2013/2014 transactions between the Land Bank and Obaro, do not pertain to any issue raised on the pleadings, and critically, have no bearing on the separated issue to be determined at trial. Moreover, so the contention continues, the plaintiffs, as debtors, are strangers to the agreements and the relationship between Obaro and the Land Bank. It is not for them to question the validity of an agreement to which it is neither privy nor party.

[14]. I find myself in agreement with these contentions on behalf of the second defendant. The simple point is that the plaintiffs, being foreign to the suite of agreements between the first defendant and the second defendant, lack the right to challenge the cession contracts. The authority for this proposition is *Hillock and Another v Hilsage Investments (Pty) Ltd*<sup>1</sup>, which held as follows: -

‘What is clear, however, is that those provisions, and indeed also the provisions of clause 31, were intended to operate only as between the parties to the agreement, namely, the lessor and lessee. A third party, such as the National Exposition in the present case, cannot seek to rely on the provisions in question, unless it has become a party to the agreement, for example by assignment, and it is the validity of the alleged agreement of assignment that the applicant seek to attack.’

[15]. Moreover, as was held in *The Land and Agricultural Development Bank of South Africa v Du Plessis N O*<sup>2</sup>, a matter which involved a cession similar to the one *in casu*, it is not for a third party to the cession to raise an issue thereon. The Court (per Daffue J) held as follows: -

‘However, more important than the lack of evidence, is the legal principle that it doesn't lie in the mouths of the respondents to endeavour showing that the agreements are

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<sup>1</sup> *Hillock and Another v Hilsage Investments (Pty) Ltd* 1975 (1) SA 508 (A) at 515A – E.

<sup>2</sup> *The Land and Agricultural Development Bank of South Africa v Du Plessis N O* 2020 JDR 1670 (FB).

invalid and/or unenforceable. As indicated earlier, Mr Nagel, a senior employee of Suidwes, deposed to the founding and replying affidavits on behalf of applicant. His version is not contested on any acceptable and reliable basis. I have no doubt that Suidwes would not allow applicant to, for its own account, claim monies due and payable to Suidwes. I repeat that no positive facts have been presented to the court to controvert or refute the applicant's allegations.'

[16]. On the basis of the foregoing authorities, I conclude that the plaintiffs, being foreigners to the suite of agreements between the first and the second defendants, lack the right to challenge the cession contracts. Their only obligation is to pay the debt to the party legally entitled to receive it. This, in turn, means that an enquiry into the Land Bank's internal procurement compliance is entirely irrelevant to the pleaded dispute. And this translates into a conclusion that documents relating to procurement are irrelevant to the disputes between the parties.

[17]. The important point is this. The issue of procurement has not been raised in the pleadings filed in the main action. The intention of the plaintiffs is clearly to attempt to argue that the Land Bank did not follow due procurement processes when Obaro was appointed in terms of the Service Level Agreement with Land Bank. Thereby presumably contravening the provisions of the Public Finance Management Act 1 of 1999 (PFMA) and the Treasury Regulations. The point, however, remains that this issue and the documents relating thereto are irrelevant and not an aspect that can validly and lawfully be raised by the plaintiffs, as third parties.

[18]. As regards the bank statements requested in para 4 of the plaintiffs' rule 35(3) notice, I have already dealt with same *supra*. The Land Bank states that it is not in possession of any of those documents and this Court cannot and should not, without more, go behind the affidavit of the deponent. The opposition to the relief sought in relation to these documents is to excuse the non-production thereof on the grounds that they are not in the second defendant's possession.

[19]. In *Dube v Member of Executive Council*<sup>3</sup>, this Court (per Sutherland J) held as follows: -

'[3] The reason why the documentation had not been discovered is that the staff of the hospital, so it is alleged, cannot find the material. There is a tender to discover whatever is found, when it is found. The argument on behalf of the applicant is that this excuse is unacceptable, emphasis being placed on the obligation in terms of law to keep records and the prima facie breach of that duty is alleged.

[4] In my view the de facto position is deplorable and the idea of a breach of statutory obligations is on the probabilities in my view a plain fact. Notwithstanding these considerations, the ambit of rule 35 of the uniform rules is limited to imposing a duty on a litigant to discover what it has got.

[5] In circumstances where it ought to have a document but cannot access it and may even confess to not knowing whether or not it still exists, and is still in its possession, the duty imposed by rule 35 requires a party merely to frankly declare what the true state of affairs is at the time that discovery is demanded. Ostensibly that is what the respondent has done. Assuming that the defendant / respondent is rightly to be rebuked for its poor record keeping it has not violated rule 35 by stating that it cannot lay its hands on the relevant documentation.

[6] In the absence of facts from which I can on these papers infer the affidavit of the defendant is untruthful, the plaintiff in such circumstances must unhappily accept the position as described, however disgraceful the conduct of the respondent, objectively, may be. Rule 35 itself plays no role in the disciplining of state officials to perform their statutory duties. There may indeed be other remedies in order to compel compliance with those statutory duties but they do not fall within the ambit of rule 35.

[7] In the circumstances I have taken the view that there is no useful purpose in granting the relief which is sought, which would achieve no more than to provoke a contempt application which would be readily answered by the same explanation which is proffered now. In the circumstances, therefore, the application must be dismissed.'

[20]. On the basis of this authority, the second defendant cannot be compelled to furnish the documents sought in para 4 of the plaintiff's rule 35(3) notice. A probability has not been shown to exist that the deponent to the second defendant's affidavits is either mistaken or false in his assertions that the required

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<sup>3</sup> *Dube v Member of Executive Council* 2018 JDR 1218 (GJ).

documents are not in the possession of the second defendant. See also: *Richardson's Woolwasheries v Minister of Agriculture*<sup>4</sup>. To hold otherwise would amount to a *brutum fulmen*.

[21]. In any event, as contended by the second defendant, these documents have no relevance to the separated issue, which is another reason why the plaintiffs are not entitled to an order compelling the second defendant to produce same. Bank statements would pertain to the quantum of the indebtedness. The quantification of the claim has never been in dispute in the pleadings and forms no part of the separated issue.

[22]. There is one last issue which requires my attention and that relates to a recent judgment by the Free State Division of the High Court, on which much reliance was placed by the plaintiffs in their revival of the rule 35(3) processes *in casu*. That case is *Fourie and Another v Land and Agricultural Development Bank of South Africa and Others*<sup>5</sup>, in which Naidoo J, in an action for rescission of a default judgment, held that the plaintiffs in that rescission action are entitled to procurement documents and financial records because those documents would prove or disprove the *locus standi* of the Land Bank, which makes the documents relevant to the pleaded issues.

[23]. Mr Van der Merwe SC, who appeared with Ms Van der Merwe on behalf of the second defendant *in casu*, submits that the judgment in *Fourie* was wrongly decided and that this Court should not follow it for the simple reason that the learned Judge in that matter erred in her assessment of the relevance of the requested documents in the context of the pleaded issues.

[24]. The central flaw in the said judgment, so the contention on behalf of the second defendant goes, is that it conflated the plaintiffs' desire in that case to challenge the Land Bank's *locus standi* with their legal entitlement to do so. The

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<sup>4</sup> *Richardson's Woolwasheries v Minister of Agriculture* 1971 (4) SA 62 (ECD) at 67 D – F.

<sup>5</sup> *Fourie and Another v Land and Agricultural Development Bank of South Africa and Others* 2026 JDR 2684 (FB).

plaintiffs' challenge in *Fourie*, and the plaintiffs' challenge in this matter, are premised on the allegation that the Land Bank failed to comply with internal and constitutional processes when it acquired the book debts from the original creditor. That challenge, so the second defendant contends, is without merit.

[25]. I find myself in agreement with these contentions by Mr Van der Merwe SC. The simple point is that it is a fundamental principle of our law that a third-party debtor cannot challenge the validity of the underlying cession agreement between the cedent and the cessionary. The debtor is not a party to that agreement and has no legal interest in its terms or the manner of its conclusion. The debtor's only legally recognised interest is to ensure that payment is made to the correct creditor. The documents pertaining to the Land Bank's internal procurement processes, compliance with Section 217 of the Constitution or National Treasury approvals, are exclusively matters between the Land Bank and its counterparty (Obaro) and relevant oversight bodies.

[26]. As contended on behalf of the second defendant, the documents requested have no bearing whatsoever on the issue which is required to be decided by this Court. The plaintiffs were not competing applicants in a tender process and did not compete with Obaro in procuring the service level agreement or the sale agreement. The time within which the procurement process could have been challenged has expired a very long time ago

[27]. That, in my view, is the end of the case on behalf of the plaintiffs in this interlocutory application.

[28]. Moreover, the plaintiffs seek documents which do not relate to and which cannot substantiate a pleaded defence. In that regard, the essence of the case pleaded by the plaintiffs in the main action are encapsulated in the following paragraphs of the particulars of plaintiffs' claim: -

'(24) The plaintiffs deny that there was a valid cession of the right, title and interest in and to the debts pursuant to the credit agreements referred to *supra*, from the

first to second defendants in that the suit of agreements relied upon by the first and second defendants do not contain a cession of rights.

- (24). The plaintiffs contend that the debts in favour of first defendant did not exist on date of the alleged cession, during December 2013 or April 2014, when the alleged cession and delegation took place, in that the indebtedness arose only afterwards, and could not have been ceded at the time of the alleged cession.
- (25). The true facts as to the Land Bank's lack of *locus standi* only came to the knowledge of the Plaintiffs during or about June 2024 and as a result, it is denied that any transfer of rights in and to the debts allegedly owing by the plaintiffs to the first defendant was in fact ceded to the second defendant as alleged or at all.
- (26). The cession of the securities of the first and second covering mortgage bonds from the first defendant to second defendant without ceding the underlying debt has the effect that the bonds are of no force and effect, grants no security without an ancillary indebtedness to the cessionary (the second defendant) and stands to be set aside.
- (27). Due to the cession of the securities of the first and second covering mortgage bonds on the said dates, the underlying debts allegedly owed to the first defendant were not secured by a mortgage bond and accordingly the claim in respect of those debts prescribed within three years from the date when the last payment was made, in terms of section 11(d) of the Prescription Act, Act 68 of 1969, which was 8 September 2024.'

[29]. From the foregoing it is clear that the case pleaded by the plaintiffs is to the effect that the suit of agreements does not contain a valid cession of the right, title and interest in and to the debts. The plaintiffs go on to plead in particular that the debts in favour of first defendant did not exist on date of the alleged cession, during December 2013 or April 2014, when the alleged cession and delegation took place, and therefore it could not have been ceded at the time of the alleged cession. Liability is therefore disputed on the basis that the agreements do not transfer and cede rights to the debts – nowhere do the plaintiffs plead that the agreements are not valid. This reinforces the point that the documents requested are not relevant to the pleaded case.

[30]. I therefore conclude that the plaintiffs' application to compel further and better discovery in terms of rule 35(3) falls to be dismissed.

### **Costs**

[31]. The general rule in matters of costs is that the successful party should be given his costs, and this rule should not be departed from except where there are good grounds for doing so, such as misconduct on the part of the successful party or other exceptional circumstances. See: *Myers v Abramson*, 1951(3) SA 438 (C) at 455.

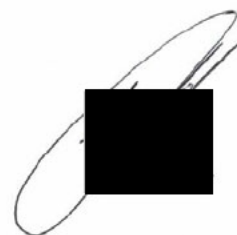
[32]. I can think of no reason why I should deviate from this general rule.

[33]. I am therefore of the view that the plaintiffs should pay the second respondent's costs of the application.

### **Order**

Accordingly, I make the following order: -

- (1) The first, second and third plaintiffs' application in terms of Uniform Rule of Court 35(7) to compel the second defendant to comply with their (plaintiffs') rule 35(3) notice, is dismissed with costs.
- (2) The first, second and third plaintiffs, jointly and severally, the one paying the other to be absolved, shall pay the second defendant's costs of this opposed rule 35(7) application to compel, which costs shall include the costs consequent upon the employment of two Counsel, one being Senior Counsel, on scale 'C' of the tariff referred to in Uniform Rule of Court 67A(3), read with rule 69.

A handwritten signature in black ink, which appears to be 'L R ADAMS', is written over a solid black rectangular redaction box.

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**L R ADAMS**  
*Judge of the High Court*  
*Gauteng Local Division, Johannesburg*

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|-------------------------------------------|-------------------------------------------------------------|
| HEARD ON:                                 | 6 August 2026 – ‘Virtually’                                 |
| JUDGMENT DATE:                            | 28 August 2026 – handed down electronically.                |
| FOR THE PLAINTIFFS / APPLICANTS:          | F G Janse Van Rensburg                                      |
| INSTRUCTED BY:                            | Eugene Geyser Attorneys,<br>Viljoenskroon                   |
| FOR THE SECOND DEFENDANT /<br>RESPONDENT: | M P Van der Merwe SC, together with<br>(Ms) A Van der Merwe |
| INSTRUCTED BY:                            | Leahy Attorneys Incorporated,<br>Sandton                    |