



**IN THE HIGH COURT OF SOUTH AFRICA
NORTH WEST DIVISION, MAHIKENG**

Not reportable

Case no:3557/2025

In the matter between:

MOPANI CIVILS (PTY) LTD

APPLICANT

and

LEKWA TEEMANE LOCAL MUNICIPALITY FIRST RESPONDENT

RM MASHABA PROJECTS (PTY) LTD SECOND RESPONDENT

Coram: Wessels AJ

Heard: 4 June 2026

Delivered: This judgment was handed down electronically, circulated to the parties' representatives via email, uploaded to CaseLines, and released to SAFLII. The date and time for the handing down of the judgment are deemed to be 16h00 on 4 September 2026.

Summary: Civil Procedure – Review – Rule 53(1)(b) – application to compel production of record – mootness deferred to review court – Rule 30A notice not

required for self-contained rule – original record required, not a copy – application granted, costs Scale B.

JUDGMENT

Wessels AJ

Introduction

[1] The applicant requires the record of a tender decision it seeks to review in terms of Rule 53 of the Uniform Rules of Court. The applicant brought an interlocutory application for the production of the full record that forms the basis of the Rule 53 review. I am enjoined to consider only whether the first respondent must produce that record, and in what form. The review itself, Part B of a separate application, is not before me.

Background

[2] The first respondent awarded a bid for road and stormwater construction in Geluksoord to the second respondent for R21 574 336,77. The applicant's bid, at R20 445 777,50, was lower. The first respondent disqualified the applicant's bid as non-responsive for lacking a rates clearance certificate. The applicant disputes that finding and, in Part B, seeks to review and set aside the award.

[3] The applicant launched this application on 9 December 2025, against the first respondent alone, seeking an order under rule 53(1)(b) compelling despatch of the original record primarily and, in the alternative, compliance with a rule

35(12) notice served on 30 September 2025. On 30 April 2026, this Court case-managed the matter, directing that answering and replying affidavits and heads of argument be filed in stages, culminating in argument of the application on 28 May 2026. Days before that hearing, the first respondent raised two further points: that the second respondent's withdrawal from the awarded contract on 20 May 2026 had rendered the review moot and that the applicant had failed to give notice under rule 30A before bringing this application. The Rule 30A point is taken against both legs of the relief sought, being the Rule 53(1)(b) prayer and the Rule 35(12) alternative. The hearing set down for 28 May 2026 was postponed to 4 June 2026, on which date the matter came before me for argument. I deal first with mootness, then Rule 35(12) and Rule 30A and finally with Rule 53(1)(b).

The application

[4] The applicant seeks, primarily, an order under Rule 53(1)(b) compelling the first respondent to despatch the original record, its own bid document, the second respondent's bid document and the signed minutes of the Bid Evaluation and Bid Adjudication Committees. In the alternative, it seeks compliance with a rule 35(12) notice served on 30 September 2025.

[5] It is important to state that whether the award itself was lawful plays no part in this judgment. What stands to be decided is only what must be produced for Part B to proceed on a proper record.

Mootness

[6] Shortly before the hearing, the first respondent informed the applicant that the second respondent had withdrawn from the contract. It has since placed this

on affidavit and contends that the review, and with it this application, has become moot. In reply, the applicant discloses that the Construction Industry Development Board also deregistered the second respondent for submitting fraudulent grading documents.

[7] I cannot determine the mootness point at this stage. Whether the second respondent's withdrawal leaves any live dispute is a question about the consequences of a decision of the first respondent. Whether the first respondent's impugned decision, once the contract has come to an end, still has effect is a question that cannot be answered on an interlocutory application confined to the production of documents. It is for the court that hears Part B, not for this Court on an application to compel. The facts bearing on mootness are much the same as those before the Supreme Court of Appeal in *HOD: Western Cape Education Department and Others v Equal Education Law Centre and Others*.¹ There, the review had arisen from the plight of unplaced learners. By the time the matter reached the SCA, those learners had already been placed, raising the question whether that development had overtaken the review. The Court declined to answer that question, holding that whether the delay rendered the review moot must be determined by the court seized with the merits of that review and was not a question before it on the interlocutory application concerning the record. The same holds true in this application. Whether the second respondent's withdrawal from the awarded contract has overtaken the review is a matter for the court hearing Part B, not for this Court on an application to compel production of the record. It therefore follows that this point must fail.

¹*HOD: Western Cape Education Department and Others v Equal Education Law Centre and Others* [2025] ZASCA 116 para 26.

Rule 35(12)

[8] The applicant's alternative relief rests on a Rule 35(12) notice served on the first respondent on 30 September 2025, calling for production of documents referred to in its answering affidavit. The first respondent opposes this relief on a single ground, being that Rule 35(12) does not apply of its own accord in application proceedings. Rule 35(13) extends the discovery provisions of Rule 35, including subrule (12), to application proceedings, but only if a court so directs. It reads as follows:

'The provisions of this rule relating to discovery shall mutatis mutandis apply, in so far **as the court may direct**, to applications.' (emphasis added)

[9] In *Rustenburg Local Municipality v Are Direng Transport and Labour Hire and Another*², Petersen J from this Division, relying on *Loretz v MacKenzie*³ and *Afrisun Mpumalanga v Kunene NO*,⁴ held that a Rule 35(12) notice served in application proceedings without a prior direction in terms of Rule 35(13) simply does not apply.

[10] The applicant never sought and never obtained a direction in terms of Rule 35(13). Without that direction, Rule 35(12) does not apply, as was held in *Are Direng Transport*.⁵ The alternative relief sought under the applicant's Rule 35(12) notice is accordingly not before me, to which end the first respondent's point on this issue succeeds. As the Rule 35(12) notice is not before me, the first respondent's Rule 30A objection to this leg of the relief need not be decided.

²*Rustenburg Local Municipality v Are Direng Transport and Labour Hire and Another* [2021] ZANWHC 61 paras 10 - 11.

³*Loretz v MacKenzie* 1999 (2) SA 72 (T).

⁴*Afrisun Mpumalanga (Pty) Ltd v Kunene NO* 1999 (2) SA 599 (T).

⁵ *Idem Are Direng*, fn 2.

Rule 53(1)(b)

[11] The first respondent's second point in limine is the absence of a Rule 30A notice. It contends that the applicant was required to give ten days' notice in terms of Rule 30A(1), allowing the first respondent to remove the cause of complaint before it could apply to compel production of the record under Rule 53(1)(b). Furthermore, having given no such notice, this application is procedurally incompetent from the outset.

[12] Rule 30A applies where compliance with a rule is sought and the relevant rule has no procedure of its own with which compliance can be enforced. That principle was established in *Absa Bank Ltd v the Farm Klippan*⁶ as follows:

'Rule 30A has an important place in the Rules, in that, as I have stated, it provides a remedy where none exists elsewhere. However, it could not have been intended by the drafters of Rule 30A to jettison the existing and effective remedies provided in the specific remedy Rules. If it was so intended, it would render such remedies nugatory. The remedies in the specific remedy Rules have always been effective and there is no reason to denude them of their efficacy.

I, therefore, find that an application may be made in terms of those Rules which provide a specific remedy for failure to comply therewith without the applicant first having to give notice in terms of Rule 30A or to follow the provisions thereof.'

[13] Rule 30A exists to give a defaulting party a chance to cure a complaint before litigation becomes necessary. On that premise, Rule 30A assumes there is something left to clarify, specify or supply a request whose scope needs defining before the defaulting party can be expected to act. Rule 53(1)(b) does not contain such uncertainty. It informs the decision-maker exactly what must be done

⁶ *Absa Bank Ltd v the Farm Klippan* 490 CC 2000 (2) SA 211 (W) at 214H-215B.

(despatch the record to the registrar within fifteen days of the notice of motion). This obligation does not depend on any request from the applicant and there is nothing left for a further notice to specify. The first respondent had complete and proper notice of everything required of it the moment it was served with the review application. A Rule 30A notice, repeating that same instruction back to the respondent, ten days before the applicant could act on its non-compliance, would have added nothing the first respondent did not already know. That is consistent with how this obligation has been approached in *Murray and Others NNO v Ntombela and Others*⁷ which quoted the following with approval:

‘...the obligation to produce the record automatically follows upon the launch of the application, however ill-founded that application may later turn out to be.’

The obligation that Rule 53(1)(b) imposes is automatic in the sense that it does not wait on the applicant’s request, which is why the notice-and-cure function of Rule 30A finds no application here. An obligation that requires nothing further from the party seeking to enforce it is not the kind of default Rule 30A was intended to cure. As a result, the Rule 30A point fails.

Rule 53(1)(b): format of record

[14] What remains is whether the first respondent has complied with Rule 53(1)(b). Rule 53(1)(b) and (3) were substituted by GN R6975 of 24 December 2025, with effect from 30 January 2026. The most notable amendment to Rule 53 for purposes of this judgment concerns the amendment of subrule (3), which now reads as follows:

⁷ *Murray and Others NNO v Ntombela and Others* [2024] ZASCA 24 para 20.

‘(3)(a) The registrar shall make available to the applicant a copy of the record sent to him or her referred to in subrule (1)(b), in the following

manner —

(i) through the e-justice system where operational, if the applicant or his or her legal representative has access to the e-justice system;

(ii) to the applicant’s or his or her legal representative’s electronic mail address, if the applicant or his or her legal representative does not have access to the e-justice system but has chosen an electronic mail address for service; or

(iii) a hard copy, upon payment of the prescribed copy charge.

(b) The applicant shall thereupon furnish the registrar with a copy of such portions of the record as may be necessary for the purposes of the review, through the e-justice system where operational, by electronic mail or by lodging a hard copy with the registrar.

(c) The costs of transcription, if any, shall be borne by the applicant and shall be costs in the cause.’

[15] The obligation to despatch the record in this matter arose, and this application was brought, before that date, under the rule as it then read. I decide this application on the rule as it stood when the obligation arose and when the application was launched.

[16] The first respondent states that it has complied to the extent that it filed a physical copy with the Registrar and uploaded the record to CaseLines. The first respondent points out that Rule 53(1)(b) does not use the word ‘original’ and argues that nothing more than completeness of the record is required. Rule 53(1)(b) and (3), as they read when the obligation arose, provided:

(b) ‘calling upon the magistrate, presiding officer, chairperson or officer, as the case may be, to despatch, within 15 days after receipt of the notice of motion, to the registrar **the record of such proceedings** sought to be corrected or set aside, together with such reasons as the magistrate, presiding officer, chairperson or officer, as the case may be is by law required or desires to give or make, and to notify the applicant that such magistrate, presiding officer, chairperson or officer, as the case may be has done so.’

(2) ...

(3) The registrar shall make available to the applicant **the record** despatched as aforesaid upon such terms as the registrar thinks appropriate to ensure its safety, and the applicant shall thereupon cause copies of such portions of the record as may be necessary for the purposes of the review to be made and shall furnish the registrar with two copies and each of the other parties with one copy thereof, in each case certified by the applicant as true copies. The costs of transcription, if any, shall be borne by the applicant and shall be costs in the cause. (emphasis added)

[17] On the plain reading of Rule 53(1)(b), it obliges the decision maker to despatch the record, not a copy of it. Rule 53(3) then requires the registrar to hold what was despatched upon such terms as the registrar thinks appropriate to ensure its safety. It directs the applicant to make copies of the necessary portions and furnish them certified as true copies. Rule 53(3) would only be sensible if what reaches the registrar in terms of Rule 53(1)(b) is the original. Safekeeping is not a concern for something that can be reprinted. A copy, moreover, can only be certified as a true copy against an authentic source. If Rule 53(1)(b) only required a copy, subrule (3) would have the applicant certifying a copy of a copy, which would lead to an absurd result. Had the Rules Board meant that a copy of the record would suffice at the outset, it would have said so explicitly.

[18] I found no authority directly on this point and none was placed before me. The conclusion I reached follows from the ordinary meaning of the text of Rules

53(1)(b) and (3), read as a whole rule rather than in isolation. The first respondent has not despatched the original record. Photocopies and an electronic upload do not satisfy the prescripts of Rule 53(1)(b). The first respondent's contention that a copy suffices under Rule 53(1)(b) accordingly fails.

Costs

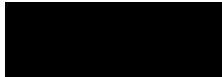
[19] Costs ordinarily follow the result, but since the applicant did not succeed on every point, the issue calls for brief comment. The first respondent's objection to Rule 35(12) succeeded and that alternative relief falls away, but Rule 35(12) was pleaded only in the alternative. The applicant's primary relief was always based on Rule 53(1)(b) and it succeeded in that respect, while the first respondent's mootness and Rule 30A objections both failed. The applicant is the substantially successful party and there is nothing before me to justify departing from the ordinary rule, or from the scale the applicant itself sought in its notice of motion. The first respondent must pay the costs of this application, including the costs reserved on 30 April 2026 and the costs of 28 May 2026, on the party-and-party Scale B.

Order

[20] In the result, the application to compel succeeds and the following order is granted:

1. The application to compel is granted.
2. The first respondent is directed, within ten days of this order, to despatch to the registrar of this court the original record of the proceedings sought to be reviewed in Part B, comprising:

- 2.1 the applicant's originally submitted bid document for bid LTLM2025-007A;
 - 2.2 the second respondent's originally submitted bid document for bid LTLM2025-007A;
 - 2.3 the originally signed minutes of the Bid Evaluation Committee meeting of 23 July 2025; and
 - 2.4 the originally signed minutes of the Bid Adjudication Committee meeting of 28 July 2025.
3. The first respondent shall notify the applicant in writing, within five days, of compliance with paragraph 2.
 4. The first respondent shall pay the costs of this application, including the costs reserved on 30 April 2026 and the costs of 28 May 2026, on the party and party scale, Scale B.



M WESSELS
ACTING JUDGE OF THE HIGH COURT
NORTH WEST DIVISION, MAHIKENG

Appearances:

For the applicant:

Adv E Malherbe

Instructed by:

Stan Fanaroff and Associates

c/o CJP Oelofse Attorneys

Mahikeng

For the first respondent:

Adv SD Mbeki

Instructed by:

Leepile Attorneys

c/o Motshabi and Associates

Mahikeng