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IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CIRCUIT LOCAL DIVISION, THEMBALETHU)

Case number: 587/2023

In the matter between:

R[...] H[...] K[...] Applicant

and

DANIELLE LAWRENCE Respondent

***Coram*:**		Van Zyl, J
Heard on:		30 July 2026
Judgment:	:	2 November 2026

Summary: Subpoena *duces tecum* – applicant seeking to compel compliance with subpoena – no evidence from court-appointed forensic expert to whom power to subpoena was granted - sweeping request for wide-ranging documentation – insufficient explanation of relevance or need for documentation sought – application dismissed, and subpoena set aside

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ORDER

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1. The applicant's application to compel compliance with the subpoena *duces tecum* directed at the respondent and issued at the instance of the applicant under case number 587/2024 on 27 March 2026 is dismissed.

2. The subpoena is set aside.

3. There is no order as to costs.

JUDGMENT

VAN ZYL, J:

Introduction

1. It is trite that a subpoena *duces tecum* is not immune from judicial control. The court retains an inherent supervisory power to prevent misuse of its process:

"*[22] Our courts have repeatedly emphasised the importance of the general duty resting on all members of society to give whatever evidence they are capable of giving, coupled with the concomitant right of litigants to command such assistance. Nonetheless, wide as the right to subpoena a witness may be, it is not untrammelled. Should the court be satisfied in any particular case that the issue of a subpoena indeed constitutes an abuse it is quite entitled to set it aside.*" [1]

2. This application involves but one skirmish in the course of long-running matrimonial litigation between the applicant and her husband, Mr F[...]. The applicant and Mr F[...] are estranged. The respondent is Mr F[...]'s current partner. She is not a party to the divorce action.

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11 *Myers v Marcus* 2004 (5) SA 315 (C) para 22. .See also the provisions of section 36(5)(c) of the Superior Court's Act 10 of 2013.

3. The matter concerns a subpoena *duces tecum* that was, on the respondent's case, issued contrary to the terms of a court order and which seeks to compel the respondent to furnish a swathe of documentation that bears no relevance to the purpose for which it is purportedly required.

4. The applicant seeks an order compelling the respondent to comply with the terms of the subpoena. The documents sought all relate to the respondent's own financial affairs. The respondent opposes the application, and contends that the subpoena cannot be allowed to stand. The parties are both unpresented, and there is little love lost between them. There are wide-ranging allegations on the papers in support of what are essentially narrow questions. I do not intend to engage with all of these allegations, but shall try to focus on the core aspects.

5. There was an initial complaint from the applicant about the lateness of the respondent's opposition of the application to compel, and about the manner of service of the respondent's documents. In the interests of justice, any defects in these processes should be condoned. There was no prejudice in the exchange of papers, albeit out of time. Both parties had sight of the relevant documentation, and were able to present detailed argument.

The ambit of the subpoena

6. The subpoena was issued on 27 March 2026. It requires the production of extensive banking records, employment offers and agreements, details of "*loans, earnings, bonuses and fees*", payslips, tax returns, motor vehicle documentation, immovable property documentation, and other financial information and correspondence relating to the respondent, for the period 2021 to 2024. Almost each of its 58 categories of requests encompasses, in tun, further ranges of documents.

7. The applicant caused the subpoena to be issued on the basis of an order granted by this court (the Honourable Justice Gamble presiding) on 29 April

2024 in proceedings between the applicant and Mr F[...] under Rule 43(6). In terms of paragraph 2 of that order, the applicant was entitled, at her own expense, to appoint a "*forensic expert … to further investigate the value of the estate, and should it be proven that the Respondent has understated the value of the estate by more than 15%, which value is at the time of this order, the Respondent shall reimburse the Applicant for her costs of the forensic expert and pay to the Applicant her 50% of the shortfall she would have been entitled to …*"

8. The powers of the forensic expert are set out in an annexure to the Ganble J order. It includes, as part of the investigation into Mr F[...]'s assets and liabilities, the power to "*subpoena any person whom he believes may give information regarding the existence, identity or value of any assets or liabilities of the Defendant's [that is, Mr F[...]'s] estate*".

9. It is common cause between the parties that the appointed forensic investigator may, where lawfully justified, obtain documents and issue subpoenas in aid of that process. The purpose of the power to subpoena information from third parties is directed at enabling the trial court to determine the patrimonial consequences of the marriage between the applicant and Mr F[...]. The expert is authorised to obtain information from Mr F[...] and his businesses regarding his assets and liabilities, to inspect relevant documentation for the purpose of establishing the composition and value of his estate, to interview the accountants, auditors and bookkeepers of entities in which Mr F[...] has or had a financial interest, and to subpoena any person believed to have information regarding the existence, identity, or value of any assets or liabilities forming part of his estate.

10. These powers are not unlimited. The order does not make away with the ordinary requirements of relevance and specificity. It is specifically aimed at the identification, composition, and valuation of Mr Frank's estate, and thus authorises the subpoena of persons whom the forensic expert, in the course of the fulfilment of his duties, believes may provide information regarding his assets and liabilities.

11. The order also does not authorise the applicant to issue subpoenas to third parties – such as the respondent - on her own inference that information related to Mr Frank's estate may exists within third party affairs. It is clear from the papers and from the oral argument addressed to the court that the applicant essentially acted of her own accord in having the impugned subpoena issued. What the forensic expert has done since the grant of the Gamble J order is unclear.

12. The respondent's objection is aimed at the breadth and vagueness of the subpoena. She acknowledges that, as Mr Frank's partner, there were naturally financial transactions between them. That fact alone however does not justify the inference that she possesses material information regarding the existence, identity, or value of Mr Frank's estate. Financial interaction does not, without more, establish that the respondent is holding or concealing assets for Mr F[...], or that she is his nominee, or that further undisclosed arrangements between the two of them exist. Other than suspicion and conjecture, the applicant's papers do not explain what facts gave rise to such a belief on the forensic expert's part, or why the extensive categories of documents sought are reasonably necessary for the proper completion of his mandate.

13. It appears from the papers that the present subpoena is, in substance, a re-issue of an earlier subpoena to which the respondent had also objected. The previous subpoena had been issued about one year ago. The present subpoena covers the same ground, but on an expanded basis, and without any proper engagement with the respondent's earlier objection.

14. It appears, further, from the respondent's papers that Mr F[...] himself has already made extensive disclosure prior to the issue of the subpoena. These documents are available to the forensic expert. The applicant's case in seeking to compel the production of the respondent's records is premised on the proposition that the forensic exercise cannot properly proceed without the respondent information because of non-disclosure, or insufficient disclosure,

by Mr F[...]. There is, however, nothing on the papers from the forensic expert to explain what assessment has already been undertaken, what specific deficiencies remain, and why the subpoenaed broad-stroke categories of documentation from the third party respondent are necessary notwithstanding the disclosure already available.

15. In *Beinash v Wixley*[2] the Supreme Court of Appeal held that a subpoena may constitute an abuse of process where it is framed in terms so wide and insufficiently specific that it becomes oppressive or vexatious, or amounts to a fishing expedition:

> *"What does constitute an abuse of the process of the Court is a matter which needs to be determined by the circumstances of each case. There can be no all-encompassing definition of the concept of "abuse of process". It can be said in general terms, however, that an abuse of process takes place where the procedures permitted by the Rules of the Court to facilitate the pursuit of the truth are used for a purpose extraneous to that objective. . . . A subpoena duces tecum must have a legitimate purpose. . . .*
> *Ordinarily, a litigant is of course entitled to obtain the production of any document relevant to his or her case in the pursuit of the truth, unless the disclosure of the document is protected by law. The process of a subpoena is designed precisely to protect that right. The ends of justice would be prejudiced if that right was impeded. For this reason the Court must be cautious in exercising its power to set aside a subpoena on the grounds that it constitutes an abuse of process. It is a power which will be exercised in rare cases, but once it is clear that the subpoena in issue in any particular matter constitutes an abuse of the process, the Court will not hesitate to say so and to protect both the Court and the parties affected thereby from such abuse.*"

16. I agree with the respondent that the principle in *Beinash* is directly applicable in the present matter. A person served with a subpoena is placed under threat of coercive sanction,[3] and is required to respond. For that reason, the documents sought must be described with sufficient certainty, must be

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2 1997 (3) SA 721 (SCA) at 734G-735A.
3 See section 35 of the Superior Courts Act.

relevant to a legitimate forensic purpose, and must not amount to a broad or roving enquiry into the respondent's private affairs. The court's process may not be used to cast the net as widely as possible in the hope that something useful may emerge. The subpoenaing party must show a proper evidential basis for requiring the particular categories of documents demanded. Where a subpoena is framed in vague, sweeping, or duplicative terms, especially against a non-party witness, the court is entitled and obliged to intervene to prevent oppression and abuse of process.

17. In the present matter the applicant is usurping the role of the court-ordered forensic auditor. As indicated, there is no affidavit from the expert himself to confirm that the respondent's documents are relevant to and necessary for the purposes of his investigation into Mr Frank's estate. There is no interim audit report, no status update on the progress of the investigation, no response to the objections raised to the subpoena, and no explanation from the expert to justify the breadth of the subpoena. What is sought from the respondent are not narrow requests directed at identified evidential gaps. They are broad classes of documents touching virtually *every* aspect of the respondent's private financial and personal affairs over several years. The respondent herself avers that Mr F[...]'s disclosure comprises more than 1 500 pages of documents, and includes categories directly corresponding with all of the categories now sought from the respondent. The expert does not say why the information obtained from Mr F[...] is not sufficient, or is questionable.

18. Whilst, therefore, the applicant states that she is not satisfied with Mr F[...]'s disclosure in various aspects, her suspicions are not underpinned by the considered opinion of the court-ordered expert. The expert may, of course, be able to identify specific unresolved items, but that is not what the present subpoena does. It seeks instead to compel disclosure from the respondent on the premise that explanations may be, or may become, necessary. The court-authorised forensic process exists to analyse Mr Frank's disclosure, reconcile records, identify inconsistencies, and then seek targeted further information where required. The present application seeks to reverse that order by

assuming hidden dealings, and using that assumption to compel compliance with a sweeping subpoena.

19. The applicant alleges that the respondent "*repeatedly contends*" she is an unrelated third party, but is "*nevertheless in possession of multiple Court documents … which are official documents and not addressed to her.*" This is denied on the papers. The applicant further asserts that the respondent advances "*baseless allegations*" which "*deflect from the core matter and create collateral unnecessary side disputes*" and that the respondent "*persists in relying on historical papers and objections relating to a different subpoena*." This leads to the proposition that the respondent must now be "*independently assessed*", essentially as a separate subject of forensic investigation, despite not being a party to the divorce, not holding any relevant position as regards Mr F[...]'s estate, and in the absence of an affidavit from the forensic expert stating that such an independent audit of the respondent is necessary to complete his mandate.

20. I accordingly agree with the respondent's argument that the applicant, by way of the subpoena, seeks to interfere in the valuation process agreed to in the Gamble J order. Her actions are in conflict with the terms of the order, to which she is bound. Her rights and duties in relation to the valuation process are regulated by the court order.

21. I accept that the subpoena may be valid from a purely procedural or technical perspective, meaning that it has been lawfully issued and is a binding court process which must be complied with until stayed or set aside.[4] Section 35(4) of the Superior Courts Act provides that a person "*subpoenaed to attend any proceedings as a witness or to produce any document or thing who fails without reasonable excuse to obey such subpoena, is guilty of an*

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4 *Department of Transport and other v Tasima (Pty) Ltd* 2017 (2) SA 622 (CC) para 181: *"The general rule is that orders that do not concern constitutional invalidity do have force from the moment they are issued. And in light of section 165(5) of the Constitution, the order is binding, irrespective of whether or not it is valid, until set aside.*"

offence and liable upon conviction to a fine or to imprisonment for a period not exceeding three months".[5]

22. This does not, however, assist the applicant's case. The respondent's complaint is not directed at the formal validity of the subpoena, but at its effect and the circumstances in which it was issued. It seeks to achieve that which the agreed court order expressly prohibits. The subpoena seeks disclosure of 4 years' confidential financial information from a third party who, on the papers, have no interest in the litigation between the warring spouses, at least as far as their financial disputes are concerned. There is no reason to disregard the respondent's allegations as bald, far-fetched, or plainly untenable.[6] I accept that disclosure of the respondent's personal information could result in irreversible prejudice to her. There is much animosity between the applicant and Mr F[...], and it appears that the court process is being used to intimidate the respondent.

Conclusion and costs

23. In summary: Mr F[...] has made substantial disclosure pursuant to the Gamble J order. The applicant relies upon material from that disclosure in support of the present application, in the absence of an affidavit from the court-appointed expert explaining the deficiencies in Mr F[...]'s documentation. The categories of documentation sought from the respondent materially overlap with categories already available from Mr F[...]. The terms of the subpoena are overbroad, and ; and fail to specify the unresolved forensic issues arising from Mr F[...]'s disclosure. It constitutes an abuse of process.

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5 In *Minister of Police and others v Premier of the Western Cape and others* 2014 (1) SA 1 (CC) para 1 fn 1 a subpoena is described as *"a court order commanding the presence of a witness under a penalty or fine for failure*".

6 *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* 1984 (3) SA 623 (A) at 634H-I: "… *where in proceedings on notice of motion disputes of fact have arisen on the affidavits, a final order, whether it be an interdict or some other form of relief, may be granted if those facts averred in the applicant's affidavits which have been admitted by the respondent, together with the facts alleged by the respondent, justify such an order*."

24. It follows that the application to compel compliance with the subpoena falls to be dismissed.

25. There was no formal counter-application for the setting aside of the subpoena, no doubt because both parties were unrepresented and the papers were not formulated with lawyerly precision. The possibility was, however, raised in the course of oral argument. It seems to me that it would not be prudent merely to dismiss the application to compel, and to leave the subpoena itself in limbo. In circumstances such as the present, where the parties are both lay litigants, a court needs to be somewhat robust in leading the dispute to a sensible conclusion.

26. Section 36(5)(c) of the Superior Courts Act 10 of 2013 provides that "*[w]hen a subpoena is issued to … produce any book, paper or document in any proceedings, and it appears that- … to compel him or her to attend would be an abuse of the process of the court, any judge of the court concerned may, notwithstanding anything contained in this section, after reasonable notice by the Registrar to the party who sued out the subpoena and after hearing that party in chambers if he or she appears, make an order cancelling such subpoena*".

27. Once the respondent's banking and other personal information is disclosed under the subpoena, as the respondent would have to do under Rule 38,[7] confidentiality is permanently lost. This is grave prejudice in circumstances that do not warrant it, fro the reasons I have already set out. The justification for setting aside the subpoena arises not only from its use by the applicant as a weapon *in terrorem*. It also stems from the fact that it was issued at the instance of the applicant rather than the forensic expert to whom the power was expressly given under the Gamble J order. As indicated, such expert has been conspicuously absent from these proceedings.

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[7] See Uniform Rule 38(1)(b)(iv): "*Within five days of lodgement with the registrar, the party causing the subpoena to be issued for the production of the document shall inform all other parties that the said document is available for inspection and copying and of any conditions set by the registrar for inspection and copying.*"

28. The parties were both unrepresented throughout the course of this application. There will accordingly be no order as to costs.

Order

29. In the premises, it is ordered as follows:

1. **The applicant's application to compel compliance with the subpoena *duces tecum* directed at the respondent and issued at the instance of the applicant under case number 587/2024 on 27 March 2026 is dismissed.**

2. **The subpoena is set aside.**

3. **There is no order as to costs.**

P. S. VAN ZYL
Judge of the High Court

Appearances:

For the applicant:	In person
For the respondent:	In person