HIGH COURT OF SOUTH AFRICA
GAUTENG PROVINCIAL DIVISION, PRETORIA

Case No: 45865/2014

(1)	REPORTABLE: Yes
(2)	OF INTEREST TO OTHER JUDGES: Yes.
(3)	REVISED.

.....	.....
DATE	SIGNATURE

In the matter between:

THE MBUYANE COMMUNAL PROPERTY ASSOCIATION

Applicant

and

MR ABE SIBIYA N.O. First Respondent
MS NOSIPHO NGCABA N.O. Second Respondent
MS EDNA MOLEWA N.O. Third Respondent
SKUKUZA AIRPORT MANAGEMENT COMPANY (PTY) LTD Fourth Respondent
MR KUSENI D DLAMINI N.O. Fifth Respondent

Case Summary: **Discovery and inspection – Discovery – Production of documents – Two interlocutory applications in application proceedings:**
The first is an application in terms of Rule 35(13) of the Uniform Rules of Court for the provisions of rule 35(14) relating to discovery to be made applicable to the main application and, in terms of rule 30A, to compel the production of documents required in terms of notices in terms of rules 35(12) and 35(14). Notices in terms of rules 35(14) and 30A given without prior direction by court in terms of rule 35(13) that provisions of rule 35(14) relating to discovery apply to main application – such direction by the court an essential prerequisite for notices in terms of rules 35(14) and 30A and for application to compel compliance with notice in terms of rule 35(14).
Remedy of a respondent who wishes to challenge the authority of a person allegedly acting on behalf of a purported applicant is provided in rule 7(1) – party not entitled to production of documents to challenge authority in the affidavits in the main application.

The second is an application in terms of rule 30A, to compel the production of documents required in terms of notices in terms of rule 35(12) - court will not make an order under rule 35(12) against a party to produce a document that cannot be produced or is privileged or irrelevant.

JUDGMENT

MEYER J

INTRODUCTION

[1] These are two applications in terms of rule 30A of the Uniform Rules of Court, which are interlocutory to the main application that is currently pending between *inter alia* The Mbuyane Communal Property Association (Mbuyane), the South African National Parks (SANParks) and the Director-General of the Department of Environmental Affairs (the DEA). The one interlocutory application is brought by the acting chief executive and by the chairman of SANParks, who are the first and fifth respondents in the main application. I refer to them as SANParks and to their interlocutory application as the SANParks application. The other interlocutory application is brought by the Director-General of the DEA. I refer to her as the DEA and to her interlocutory application as the DEA application.

[2] SANParks seeks, in terms of the provisions of rule 35(13) of the Uniform Rules of Court, that the provisions of rule 35(14) relating to discovery be made applicable to the main application and, in terms of rule 30A, for Mbuyane to be compelled to produce the documents required in terms of its notices in terms of rules 35(12) and 35(14), dated 21 July 2014 and 27 November 2014 respectively. The DEA seeks that Mbuyane be compelled, in terms of rule 30A, to produce all the documents referred to in its notices in terms of rule 35(12) dated 31 July 2014 and 16 March 2014.

THE MAIN APPLICATION

[3] In the main application Mbuyane seeks: (a) a declarator that the opening of the Skukuza Airport in the Kruger National Park (the KNP) to scheduled commercial air traffic, be declared unlawful; (b) an interdict to prohibit the use of the Skukuza Airport for scheduled commercial air traffic; (c) in the alternative to the declaratory and interdictory relief, the review and setting aside of the decision of the board of SANParks approving the reopening of the Skukuza Airport to scheduled commercial air traffic; and (d) in the alternative to all the other relief claimed, a mandamus against the the Director-General of the DEA to issue a directive in terms of s 28(12) of the National Environmental Management Act 107 of 1998 (NEMA) to SANParks to: (i) immediately cease the use of the Skukuza Airport for scheduled commercial air traffic; (ii) not to recommence with the use of the Skukuza Airport for scheduled commercial traffic unless and until SANParks has been lawfully authorised to do so by the DEA and the Kruger National Park Management Plan has been amended to provide for the operation of the Skukuza Airport as a commercial airport receiving scheduled commercial flights.

BACKGROUND

[4] Mbuyane is a Community Property Association registered in terms of the Community Property Association Act 28 of 1996 (the CPA Act). Mbuyane was established with the specific purpose of harnessing and using the benefits accruing to the historically disadvantaged community of Dwaleni from its contribution to the Kruger Mpumalanga International Airport (the KMIA). The Dwaleni community, through Mbuyane, owns 10% of the shareholding in Primkop Airport Management (Pty) Ltd (PAM), which company in turns owns and operates the KMIA. The KMIA is

an international airport outside the KNP and it, according to Mbuyane, commenced operations during 2001. In return for having made some of the community's land available for KMIA, the community, represented by Mbuyane, received a 10% shareholding in PAM. Mbuyane states that it 'receives substantial direct benefits from the shareholding'. It receives a monthly levy on all passengers and freight departing from the KMIA.

[5] The Skukuza airport had been upgraded and scheduled commercial flights into the KNP commenced on 2 June 2014. Mbuyane contends that the SANPark's decision to reopen the Skukuza Airport is unlawful because the use of a commercial airport receiving scheduled commercial flights is not provided for in the statutory management plan for the KNP, it is not a purpose for which the KNP was declared a national protected area and entails activities listed in NEMA for which prior authorization is required.

[6] Mbuyane further contends that the DEA decision not to issue a directive in terms of s 28(12) of NEMA directing SANParks to cease the use of the Skukuza Airport for scheduled commercial air traffic and to investigate, evaluate and assess the social, economic and environmental impacts of the expansion and reopening of the Skukuza Airport to scheduled commercial air traffic, is unlawful, that that activity 'threatens the KNP and the environment with significant pollution, degradation and/or disruption in respect of which the statutory duty of care imposed by s 28(1) of NEMA has not been discharged' and it is an activity which requires prior environmental authorization in terms of the provisions of NEMA, which authorization has not been sought or granted.

[7] A key issue raised by Mbuyane is that '[t]here has been no consideration, assessment or evaluation of the social and/or economic impacts of reopening the Skukuza Airport and no proper consideration, assessment or evaluation of its environmental impacts'. Mbuyane states in the main application that the decision to reopen the Skukuza Airport to scheduled commercial air traffic 'runs contrary to the social and economic needs and interests of' Mbuyane. It is common cause, at least in the interlocutory proceedings before me, that Mbuyane in essence is seeking to protect its commercial interests as a 10% shareholder in a competitor. It therefore, so its counsel argues, has the requisite *locus standi* to have launched the main application.

THE SANPARKS APPLICATION

[8] SANParks seeks the production of the documents listed in prayers 2.1 – 2.6 and 2.8 – 2.12 of its notice of motion. It no longer seeks the production of the documents referred to in prayers 2.7 and 2.13. The production of the documents listed in prayers 2.1, 2.4 and 2.10 is sought in terms of rule 35(12) and the production of the other documents in terms of rule 35(14).

[9] SANParks contends that the documents are relevant to three reasonably anticipated issues in the main application: First, the documents sought in terms of prayers 2.1, 2.2, 2.3, 2.4, 2.6 and 2.10 are relevant to an anticipated challenge to the authority and capacity of the then chairman of Mbuyane, the late Mr Mandlezizwe Rollnick Phenyane, to have given a mandate to Mbuyane's attorney, Mr Kallie Erasmus, to institute the main application on Mbuyane's behalf. In other words, whether Mbuyane has indeed authorised the institution of the main application or whether the application is merely pursued by Mbuyane's attorney in the furtherance

of his own interests. Second, the documents required in terms of prayers 2.1, 2.5, 2.8 and 2.9 are relevant to an anticipated challenge to Mbuyane's *locus standi* as the applicant in the main application. Third, the documents sought in terms of prayers 2.11 and 2.12 are relevant to an anticipated challenge to the reasonableness of Mbuyane's delay in launching the main application and that its explanation for the delay is unsatisfactory. The respondents intend to raise the defence that the provisions of s 7(1) of the Promotion of Administrative Justice Act 3 of 2000 have not been complied with.

[10] It is now trite that the remedy of a respondent who wishes to challenge the authority of a person allegedly acting on behalf of a purported applicant is provided in rule 7(1) of the Uniform Rules of Court, which in its relevant part provides that-

'. . . the authority of anyone acting on behalf of a party may, within 10 days after it has come to the notice of a party that such person is so acting, or with the leave of the court on good cause shown at any time before judgment, be disputed, whereafter such person may no longer act unless he satisfies the court that he is authorised so to act, and to enable him to do so the court may postpone the hearing of the action or application.'

[11] In *Unlawful Occupiers, School Site v City of Johannesburg* 2005 (4) SA 199 (SCA), Brand JA said the following:

'[14] . . . The issue raised had been decided conclusively in the judgment of Flemming DJP in *Eskom v Soweto City Council* 1992 (2) SA 703 (W), which was referred to with approval by this Court in *Ganes and Another v Telecom Namibia Ltd* 2004 (3) SA 615 (SCA) at 624I - 625A. The import of the judgment in *Eskom* is that the remedy of a respondent who wishes to challenge the authority of a person allegedly acting on behalf of the purported applicant is provided for in Rule 7(1) of the Uniform Rules of Court. The *ratio decidendi* appears from the following dicta (at 705D - H):

'The care displayed in the past about proof of authority was rational. It was inspired by the fear that a person may deny that he was party to litigation carried on in his name. His signature to the process, or when that does not eventuate, formal proof of authority would avoid undue risk to the opposite party, to the administration of justice and sometimes even to his own attorney. . . .

The developed view, adopted in Court Rule 7(1), is that the risk is adequately managed on a different level. If the attorney is authorised to bring the application on behalf of the applicant, the application necessarily is that of the applicant. There is no need that any other person, whether he be a witness or someone who becomes involved especially in the context of authority, should additionally be authorised. It is therefore sufficient to know whether or not the attorney acts with authority.

As to when and how the attorney's authority should be proved, the Rule-maker made a policy decision. Perhaps because the risk is minimal that an attorney will act for a person without authority to do so, proof is dispensed with except only if the other party challenges the authority. See Rule 7(1).'

And (at 706B - D):

'If the applicant had qualms about whether the ''interlocutory application'' is authorised by respondent, that authority had to be challenged on the level of whether [the respondent's attorney] held empowerment. Apart from more informal requests or enquiries, applicant's remedy was to use Court Rule 7(1). It was not to hand up heads of argument, apply textual analysis and make submissions about the adequacy of the words used by a deponent about his own authority.'

[15] These remarks by Flemming DJP must be understood against the background that Rule 7(1) in its present form was introduced by way of an amendment only in 1987. Prior to the amendment an attorney was obliged to file a power of attorney whenever a summons was issued in an action, but not in motion proceedings. The underlying reason for the distinction, so it was said, was that in motion proceedings there is always an affidavit signed by the applicant personally or by someone whose authority appears from the papers (see eg *Ex*

parte De Villiers 1973 (2) SA 396 (NC)). On the basis of this reasoning it is readily understandable why, before 1987, the challenge to authority could be directed only at the adequacy of the averments in the applicant's papers and pre-1987 decisions regarding proof of authority should be read in that light.

[16] However, as Flemming DJP has said, now that the new Rule 7(1) remedy is available, a party who wishes to raise the issue of authority should not adopt the procedure followed by the appellants in this matter, ie by way of argument based on no more than a textual analysis of the words used by a deponent in an attempt to prove his or her own authority. This method invariably resulted in a costly and wasteful investigation, which normally leads to the conclusion that the application was indeed authorised. After all, there is rarely any motivation for deliberately launching an unauthorised application. In the present case, for example, the respondent's challenge resulted in the filing of pages of resolutions annexed to a supplementary affidavit followed by lengthy technical arguments on both sides. All this culminated in the following question: Is it conceivable that an application of this magnitude could have been launched on behalf of the municipality with the knowledge of but against the advice of its own director of legal services? That question can, in my view, be answered only in the negative.'

[12] The challenge to authority, therefore, is not one that should be ventilated in the founding, answering and replying affidavits in the main application and SANParks, therefore, is not entitled to the production of the documents required in terms of prayers 2.2, 2.3, 2.4, 2.6 and 2.10 of its notice of motion. Its remedy is provided in rule 7(1).

[13] Mbuyane is a Community Property Association. It is in terms of sections 8(1) and 8(2) of the CPA Act obliged to have a constitution. It has one. Section 8(2)(d) of the CPA Act requires that the constitution of a community property association must deal with certain matters referred to in the Schedule to the Act. In terms of item 3 of

the Schedule, the constitution of a community property association must *inter alia* address its objects and the purposes for which the property owned by the association may be used and the physical division and allocation of the property.

[14] Mbuyane's constitution describes a very limited object for it. Its constitution states:

'Objects of the Association

The Association is created for the benefit of the inhabitants of Dwaleni township and the members of the Mbuyane Tribe (hereinafter referred to as the community) and the objects of the Association shall be:

3.1 To receive, hold, manage and deal with:

3.1.1 the 10% (ten percent) share and other benefits the community is to receive from Primkop Airport Management (Pty) Ltd (hereinafter referred to as PAM) emanating from the proposed international airport to be constructed at Primkop in terms of the democratic resolution annexed hereto and marked "A"; and

3.1.2 any other property as defined in the Act as resolved from time to time by the Association.

3.2 To apply the property and benefits referred to in 3.1 above to the benefit of the community collectively in terms of sustainable development principles set out below;

3.3 To undertake such projects and activities as will promote participatory and sustainable development for the community to collective benefit of all members;

3.4 To represent the community in the management of PAM;'

[15] SANParks states the following in its replying affidavit:

'13. What the applicant [Mbuyane] seeks to do is to protect its interests as 10% shareholder in a competitor, and restrict competition. The applicant is in essence seeking to protect its commercial interests.'

[16] SANParks contends that Mbuyane has a limited object and does not have the power to act outside the ambit of its limited object. It, however, concedes that Mbuyane is also seeking to protect its commercial interests. Whether or not the launching of the main application falls within the ambit of Mbuyane's stated objects depends on a scrutiny of the relief sought in the main application and the interpretation of Mbuyane's objects and not on a factual enquiry as to the extent of its financial prejudice, if any. The nature and extent of the financial benefits it received or receives as a result of its shareholding in PAM and the economic impact on it are not relevant to the *locus standi* enquiry.

[17] SANParks further argues that the extent of any financial prejudice which Mbuyane allegedly suffered is relevant, because if it had suffered no prejudice then relief in the main application will not be granted. Courts do not hear, it argues, academic matters. This point seems to have been raised as an afterthought and is a mere fishing expedition that is likely to result in an extension of the issues. It is trite that it is only in exceptional circumstances that the rules of discovery should be made to apply to application proceedings. One of the factors taken into account by the court in exercising its discretion in directing that the rules of discovery should be made to apply to application proceedings, is whether the application for a direction was well directed and not a fishing expedition. (See *Premier Freight (Pty) Ltd v Breathetex Corporation (Pty) Ltd* 2003 (6) SA 190 (SE), paras 7 and 15-22.)

[18] Mbuyane's case in the main application is essentially that the expansion of the Skukuza Airport and its use for scheduled commercial air traffic are prohibited activities that required prior investigation and DEA approval in terms of NEMA. The investigation, it contends, would have included an evaluation and assessment of the social, economic and environmental impacts. Mbuyane does not need to establish

any economic impact on it nor is the court hearing the main application enjoined to assess the impacts. SANParks, therefore, is not entitled to the production of the documents required in terms of prayers 2.1, 2.5, 2.8, 2.9 of its notice of motion.

[19] In its supplementary affidavit in the main application, Mbuyane *inter alia* states the following regarding its delay in launching the main application:

'49. Despite being a shareholder in PAM, the applicant [Mbuyane] was excluded from participating in the management of the company until November 2013. It received no briefings, reports, minutes or any other information that could have alerted it to SANParks' intention aforesaid.

50. Pursuant to a resolution passed by the applicant on 12 June 2013, the applicant's attorney of record, Mr Gideon Erasmus, was appointed as a director of PAM, representing the applicant on 16 August 2013.

51. At the first director's meeting he attended, held on 15 November 2013, Mr Erasmus learnt of SANParks' intention to open Skukuza airport to commercial traffic. A confirmatory affidavit by Mr Erasmus is attached hereto as annexure SUP02.'

[20] In paragraphs 2.11 and 2.12 of its notice of motion SANParks seeks the production of the minutes of directors' meeting of PAM held on 15 November 2013 and the minutes of all directors' meetings of PAM held in the period of 16 August 2013 to 15 November 2013. SANParks argues that it requires copies of the minutes of the meeting of the directors of PAM on 15 November 2013 to determine the discussion and the resolution of PAM's board of directors concerning the issue of the reopening of the Skukuza Airport to scheduled commercial air traffic. But Mbuyane does not suggest that there was any discussion or resolution adopted regarding the opening of the Skukuza Airport at the meeting of directors of PAM's board on 15 November 2013. What is said and what Mr Erasmus confirms, is that he learnt of

SANParks' intention to open Skukuza airport to commercial traffic at the first directors meeting of PAM, which he attended on 15 November 2013.

[21] SANParks further argues that it requires the minutes of the meetings of the directors of PAM during the period 16 August 2013 to 15 November 2013 to establish exactly what Mbuyane's knowledge was of the reopening of the Skukuza Airport and Mbuyane's participation in the management of PAM during this period of time. It is important to obtain these minutes, it argues, to determine to what extent, if any, Mbuyane can be excused for the late lodging of the main application. But what Mbuyane states in its supplementary founding affidavit is that it did not participate in the management of PAM until November 2013. It states that it did not receive briefings, reports, minutes or any other information that could have alerted it to SANParks' intention to reopen the Skukuza Airport to commercial traffic.

[22] I am unable to conclude that the minutes of directors' meeting of PAM held on 15 November 2013 and the minutes of all directors' meetings of PAM held in the period of 16 August 2013 to 15 November 2013, which SANParks requires to be produced are relevant to a 'reasonably' anticipated issue in the main application. The ineluctable inference is that these minutes of PAM's board meetings are required for a mere fishing expedition. SANParks, therefore, is not entitled to the production of the documents required in terms of prayers 2.11 and 2.12 of its notice of motion.

[23] There is yet another reason why the relief claimed in prayers 2.2, 2.3, 2.5, 2.6, 2.8, 2.9, 2.11 and 2.12 of the notice of motion should be refused. The SANParks application is an application in terms of rule 30A of the Uniform Rules of Court, which provides as follows:

‘(1) Where a party fails to comply with these rules or with a request made or notice given pursuant thereto, any other party may notify the defaulting party that he or she intends, after the lapse of 10 days, to apply for an order that such rule, notice or request be complied with or that the claim or defence be struck out.

(2) Failing compliance within 10 days, application may on notice be made to the court and the court may make such order thereon as it seems meet.’

[24] SANParks required the production of the documents in terms of its notices in terms of rules 35(12) and 35(14) dated 21 July 2014 and 27 November 2014 respectively. Mbuyane failed to comply with SANParks’ notices. On 18 February 2016, SANParks notified Mbuyane in terms of a notice in terms of rule 30A(1) that it intends, after the lapse of 10 days, to apply for an order that the documents it requested in terms of its notices in terms of rules 35(12) and 35(14) be produced and for Mbuyane to allow copies thereof to be made. Mbuyane failed to fully comply with SANParks’ notice in terms of Rule 30A. SANParks then launched the present application in terms of Rule 30A(2) based thereon that its notices in terms of rules 35(12) and 35(14) have, despite notice in terms of rule 30A (1), not been complied with and in which it seeks an order compelling compliance.

[25] As a general rule discovery does not form part of the procedure for applications. A court, however, may in terms of rule 35(13) direct that the rules relating to discovery apply to applications. (See *Premier Freight* (supra), paras 4-5.) It is, as I have mentioned, trite that it is only in exceptional circumstances that a court will direct that the rules of discovery should be made to apply to application proceedings. In *Loretz v MacKenzie* 1999 (2) SA 72 (T), at 75A-G, Southwood J said the following:

'The Rules, and in particular Rule 35(13), provide for a party to seek to have the Rules of discovery made applicable to a particular application. That is an essential prerequisite for a notice in terms of Rule 35(1) and obviously for an application to compel compliance with a notice in terms of Rule 35(1).'

And in *Afrisun Mpumalanga (Pty) Ltd v Kunene NO and others* 1999 (2) SA 599 (T), at 611G-H, Southwood J re-affirmed *Loretz* in holding that-

'. . . the difficulty which the applicant faces in this case is that this Court has already held in the matter of *IJ Loretz v RA MacKenzie . . .* that in the absence of a direction in terms of Rule 35(13) of the Uniform Rules that the provisions of Rule 35 relating to discovery apply to a particular application they do not apply.'

[26] SANParks faces the same difficulty in this case. It placed the cart before the horse. The provisions of rule 35(14) relating to discovery do not apply to applications without a direction having been given by a court in terms of rule 35(13). The provisions of rule 35(14), therefore, did not apply to the main application at the time when SANParks delivered its notices in terms of rule 35(14) nor did it apply at the time of its notice in terms of rule 30A (1). A direction by the court that rule 35(14) relating to discovery apply to the main application was an essential prerequisite for SANParks notice in terms of rule 35(14), for its notice in terms of rule 30A(1) and for its application to compel compliance with its notice in terms of rule 35(14).

THE DEA APPLICATION

[27] The DEA seeks that Mbuyane be compelled, in terms of rule 30A, to produce the documents referred to in its notices in terms of rule 35(12), which rule of discovery provides for the production and copying of any document or tape recording referred to in a pleading or affidavit. The first difficulty which the DEA faces, is that the documents it seeks to have produced in terms of paragraphs 1 and 3 of its

notice in terms of rule 35(12) dated 28 July 2014 and in terms of paragraphs 1, 2 and 4 of its notice in terms of rule 35(12) dated 15 March 2016, have not been referred to by Mbuyane in its papers in the main application.

[28] Furthermore, the documents referred to in paragraph 5 of each notice (copies of the documents provided to Mbuyane by SANParks on 28 May 2014) were made available to the DEA for inspection and copying. Mbuyane's attorney failed to make copies of these documents for the DEA and adopted the stance that Mbuyane was only required, in terms of the provisions of rule 35(12) and in terms of the DEA's notices, to produce them for inspection 'and to permit' the DEA to make 'a copy or transcription thereof'. Attorneys acting for parties who produce documents often make copies thereof for their counter-parties, and such practice is commendable, but there is no obligation in terms of rule 35(12) on a party who produces documents to make copies thereof.

[29] Mbuyane resisted the production of the documents required by the DEA *inter alia* on the basis that they are not relevant to any matter in question in the proceedings. The DEA, on the other hand, adopted the stance from the outset that the production of documents in terms of rule 35(12) cannot legally be resisted on the ground that they are not relevant. It found support for its stance in *Machigawuta and Others v Mogale Alloys (Pty) Ltd and Others* 2012 (4) SA 113 (GSJ), wherein Notshe AJ concluded thus:

'[27] In my view the express requirement of relevance in subrules 35(1), (3) and (11), and the absence of such in subrule 35(12), is a clear indication that relevance is not a requirement in respect of subrule 35(12). Otherwise it would have been expressly required as in other subrules. There is no other plausible explanation.

[28] I am not even convinced that privileged documents are excluded from the ambit of rule 35(12). Why would a document be referred to in an affidavit or pleadings, if it is privileged? How does the other party deal with the contents of that document if he is prohibited from demanding that it be produced? These questions demonstrate that, once a document is referred to in the pleadings or affidavit, it is liable to be requested to be produced.'

[30] I am respectfully unable to follow the conclusion in *Machigawuta* that 'once a document is referred to in the pleadings or affidavit, it is liable to be requested to be produced'. In *Centre for Child Law v Hoërskool Fochville and another* 2016 (2) SA 121 (SCA), the Supreme Court of Appeal considered the proper approach to an application under rule 30A to compel production of documents requested in terms of rule 35(12). The Supreme Court of Appeal referred to the conflicting judgments on where the *onus* lay in an application to compel the production of documents. Ponnan JA then continued to hold:

'For my part, I entertain serious reservations as to whether an application such as this should be approached on the basis of an *onus*. Approaching the matter on the basis of an *onus* may well be to misconceive the nature of the enquiry. I thus deem it unnecessary to attempt to resolve the disharmony on the point. That notwithstanding, it is important to point out that the term *onus* is not to be confused with the burden to adduce evidence (for example, that a document is privileged or irrelevant or does not exist). In my view a court has a general discretion in terms of which it is required to try to strike a balance between the conflicting interests of the parties to the case. Implicit in that is that it should not fetter its own discretion in any manner and particularly not by adopting a predisposition either in favour of or against granting production. And, in the exercise of that discretion, it is obvious, I think, that a court will not make an order against a party to produce a document that cannot be produced or is privileged or irrelevant.'

[31] Both parties have failed to adequately ventilate the question of relevance in the DEA application. This may well be ascribed to the stance adopted by the DEA from the outset that once a document had been referred to the other party is entitled to its production. The costs order which I propose to make will reflect my disapproval of the manner in which this application has been dealt with by both sides. Insofar as the DEA requires certain of the documents they seek to be produced 'to verify' the authority of Mbuyane's attorney to have launched the main application, its remedy is provided in rule 7(1) of the Uniform Rules of Court and insofar as it requires certain documents pertaining to the nature and extent of the financial benefits Mbuyane received or receives as a result of its shareholding in PAM and pertaining to the economic impact of the use of the Skukuza Airport for scheduled commercial air traffic on Mbuyane, such documents are for the reasons that I have already given, not relevant to the *locus standi* enquiry.

ORDER

[32] In the result the following order is made:

(a) The interlocutory application in terms of rules 35(13) and 30A of the Uniform Rules of Court, dated 18 October 2016, brought by the first and fifth respondents in the main application, is dismissed with costs.

(b) The interlocutory application in terms of Rule 30A of the Uniform Rules of Court, dated 19 September 2016, brought by the second respondent in the main application, is dismissed and each party is to pay their own costs.

P.A. MEYER
JUDGE OF THE HIGH COURT

Date of hearing:	11 May 2017
Date of judgment:	2 October 2017
Counsel for applicant (in the main application):	Adv Luderitz SC
Instructed by:	Erasmus Attorneys, Waterkloof, Pretoria
Counsel for 1st and 5th respondents (in the main application):	Adv NGD Maritz SC (assisted by Adv A Higgs)
Instructed by:	Savage Jooste & Adams, Nieuw Muckleneuk, Pretoria
Counsel for 2nd respondent (in the main application):	Adv. I Ellis SC (assisted by Adv KD Magano)
Instructed by:	State Attorney, Pretoria