



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 26379/2023

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

[2 MAY 2023]

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SIGNATURE

In the matter between:

MICHELIN TYRE COMPANY SOUTH AFRICA (PTY) LIMITED

Applicant

and

MORGAN, CALVIN

First Respondent

CONTINENTAL TYRE SA (PTY) LTD

Second Respondent

Neutral citation: *MICHELIN TYRE COMPANY SOUTH AFRICA (PTY) LIMITED v MORGAN, CALVIN & OTHER* (Case No. 00313/2023) [2023] ZAGPJHC 410 (02 May 2023)

J U D G M E N T:

NEL AJ

INTRODUCTION

- [1] This is a semi-urgent opposed application in terms of which the Applicant essentially seeks an order restraining the First Respondent from taking up employment with any competitors of the Applicant, for the balance of the restraint period applicable to the First Respondent.
- [2] In the Notice of Motion the Applicant ("Michelin") seeks an order, firstly, interdicting and restraining the First Respondent ("Mr Morgan") from being employed by, being associated with or being interested in any manner and in any capacity whatsoever with the Second Respondent ("Continental") or any other person or any entity with which Michelin directly or indirectly competes, in the various segments of the tyre industry including (without limitation) automotive, truck and bus, agriculture, heavy industry, aviation, mining tyres, within the whole of the Republic of South Africa, until 10 June 2023; and secondly, interdicting and restraining Mr Morgan from directly or indirectly or in any like capacity as he did whilst employed at Michelin, whether on his own behalf or on behalf of another entity, soliciting custom from, dealing with, supplying or engaging in any manner whatsoever with any person or entity with whom Michelin dealt whilst Mr Morgan was employed by Michelin, within the whole of the Republic of South Africa, until 10 June 2023.
- [3] The Urgent Application was instituted on 10 March 2023, and set down for hearing on 11 April 2023. As at 10 March 2023, Mr Morgan was employed by

Continental, a direct competitor of Michelin. There is no dispute that Michelin and Continental are direct competitors.

[4] On 27 March 2023, and after the Urgent Application had been launched, Michelin ascertained that Mr Morgan and Continental had concluded a Mutual Separation Agreement, in terms of which Mr Morgan's employment with Continental had been terminated.

[5] As a result of such termination, Michelin sought to amend the relief sought in the Notice of Motion by deleting any reference to Continental, and accordingly not seeking any relief as against Continental.

[6] On 27 March 2023, Mr Morgan advised Michelin's attorneys, by way of a letter, of the termination of the Employment Contract with Continental, and advised Michelin's attorneys that in his opinion the Urgent Application was no longer relevant, was not urgent, and that there was no need for Michelin to pursue the Application any further.

[7] Whilst there was a dispute as to the contents of the letter, and allegations that there were two versions of the letter, nothing turns on such disputes.

[8] Michelin's attorneys responded on 31 March 2023, recording, *inter alia*, that Mr Morgan's contention that the hearing of the Urgent Application is no longer relevant, is incorrect, and that Michelin intended proceeding with the Urgent Application as the termination of Mr Morgan's employment with Continental only addressed the relief sought as far as Continental was concerned, but that such termination did not address the relief sought by Michelin in respect of "*any other person or entity with which the Applicant directly or indirectly*

competes, in the various segments of the tyre industry including ...”, nor did it address the relief as sought in paragraph 2.2 of the Notice of Motion or the costs claimed in the Notice of Motion. Mr Morgan then opposed the Urgent Application.

- [9] The statement in the letter of 31 March 2023, from Michelin’s attorneys to Mr Morgan, to the effect that the termination of Mr Morgan’s employment with Continental only resolves the relief sought by Michelin insofar as it relates to Continental, relates to the remaining relief sought by Michelin, in respect of “any other competitor”.

THE PRIOR URGENT APPLICATION

- [10] This Urgent Application was preceded by an urgent application launched in the Eastern Cape Division under case number 353/2023, between the same parties, in which Michelin sought essentially the same relief sought in the Notice of Motion utilised in this Urgent Application. The Court that heard the urgent application in the Eastern Cape Division ultimately found that such Court did not have the jurisdiction to determine the relief sought, and accordingly dismissed the application with costs.
- [11] In such regard, Michelin’s attorneys contended that the Eastern Cape Court did not pronounce on the merits of Michelin’s application, and that the merits of Michelin’s claim have not yet been determined. Whilst I accept that it is correct that the merits in the urgent application launched in the Eastern Cape Division have not yet been determined, it is not for me to reconsider the merits of that urgent application, but only the Urgent Application before me, having regard to any changed factual circumstances.

RELEVANT FACTUAL BACKGROUND

[12] On 5 June 2019 Michelin and Mr Morgan concluded a written Agreement of Employment. Mr Morgan was initially employed by Michelin as a Sales Agent, and thereafter as an Accounts Manager until 10 December 2022, when he resigned his employment with Michelin.

[13] The Agreement of Employment contains what is commonly referred to as a Restraint of Trade clause, being clause 23 of the Agreement. It appears from the relief sought that the particular portion of clause 23 that Michelin relies on is clause 23.4, which reads as follows:

"23.4 The Employee undertakes that, in order to preserve and protect the Company's proprietary information, the Employee shall not-

(a) become employed by, be associated with nor be interested in any manner and in any capacity whatsoever with the Company's competitive entities, whether directly or indirectly in competition with the Company, during the term of the Employee's employment or during the restraint period and within the restraint area; nor

(b) Solicit, interfere with nor entice any of the Company's members of staff, customers, clients, and business partnerships, during its term of employment and during the restraint period within the restraint area."

[14] I have accepted for the purposes of determining this Urgent Application that clause 23 must be considered in its entirety in order to determine whether the relief as sought by Michelin should be granted, as the relief sought in the Notice of Motion is wider than what is stipulated in clause 23.4.

[15] The restraint period referred to in clause 23 is a period of 6 months from the date of termination of the employee's employment with Michelin, and the restraint area is defined as being the whole of the Republic of South Africa.

[16] The term "*competitive entities*" is also defined in clause 23, as being:

"entities with which the Company directly or indirectly competes within the various segments of the tyre industry, which includes, but is not limited to, automobile, truck and bus, agriculture, heavy industry, aviation, mining tyres and with the entities of Tyre Plus and MTSC/MTSN or any other Michelin supported and/or owned entity within the restraint area"

Mr Morgan resigned from his employment with Michelin by tendering one month's notice on 10 November 2022, and accordingly his notice period and employment terminated on 10 December 2022.

[17] In the circumstances, the 6-month restraint period as referred to in clause 23 of the Agreement of Employment would expire on 10 June 2023.

[18] Michelin alleges that it attempted to assist Mr Morgan as Mr Morgan was going through "*a difficult time in his personal life*" at the time, and secured employment for Mr Morgan at Minty's, a major tyre retailer dealership which Michelin regarded as not being in competition with Michelin. The potential employment with Minty's is not disputed by Mr Morgan, but he contends that Minty's indirectly competes with Michelin. Mr Morgan seeks to suggest in such regard that Michelin is breaching its own restraint of trade, and is waiving the restraint of trade, by arranging such potential employment with Minty's.

[19] Mr Morgan commenced employment with Continental on 16 January 2023, although the intended date of commencement was 1 February 2023. Mr

Morgan concluded his employment contract with Continental on 23 December 2023.

[20] Mr Morgan posted his new status as Area Sales Manager of Continental on his LinkedIn profile, which is accessible to any member of the public.

[21] On 26 January 2023, Michelin became aware of Mr Morgan's employment with Continental, through the contents of Mr Morgan's profile on LinkedIn.

THE APPLICANT'S CONTENTIONS

[22] As already set out above, at the time of the preparation of the Founding Affidavit and the launching of the Application, Mr Morgan was still employed with Continental.

[23] Michelin contended that the employment of Mr Morgan at Continental constitutes a continuing direct breach of clause 23 of the Agreement of Employment, on the basis that Continental is a direct competitor of Michelin, and Mr Morgan's employment with Continental was within the six-month restraint period. Mr Morgan neither admitted nor denied that Continental was a direct competitor of Michelin but it is clear from the factual allegations that Michelin and Continental are in direct competition.

[24] Michelin alleged that if Mr Morgan had not been employed by a competitor of Michelin in the Republic of South Africa during the six-month restraint period, then he would not have breached the restraint.

[25] Michelin alleged that Mr Morgan has substantial knowledge of the business of Michelin, is possessed of Michelin's proprietary and confidential information,

has personal knowledge of the pricing and discount structures of Michelin, the purchasing trends of specific customers, has gained access to Michelin's trade secrets including internal control systems, financial details and details of Michelin's policies relating to recruitment and employment, and a thorough and detailed knowledge of the workings of Michelin, its sales structures, its approach to the sale of tyres, its policies and strategies.

[26] Michelin also sets out in detail the role of Mr Morgan as Accounts Manager, and the nature of the information that Mr Morgan was privy to.

[27] Michelin alleges that, as a result of the knowledge of the confidential information and the proprietary information of Michelin, Mr Morgan "*could if he so wished*" disclose the information," *if he so decides*", to Continental (or any other direct or indirect competitor). Michelin contends that such ability on the part of Mr Morgan constitutes "*good and sufficient grounds*" for the relief sought by Michelin.

[28] Michelin contends that Mr Morgan's employment with Continental (or any other competitor) is "*likely to lead to damages and prejudice to the Applicant*".

[29] Mr Morgan denied the allegations relating to potential harm and prejudice, and alleged that he is not in possession of any trade secrets, confidential and proprietary information, internal control systems or financial details.

[30] Michelin alleged that should Mr Morgan use or divulge Michelin's proprietary and confidential information there is no doubt that Michelin will lose sales in favour of Continental to Michelin's prejudice. It is clear from such allegation that the concern relating to the use of Michelin's proprietary and confidential

information related to Mr Morgan's employment with Continental, but would also apply to any other direct competitor.

[31] Mr Morgan is currently employed, and is no longer employed by Continental (or any other direct competitor).

[32] It is also alleged, in dealing with whether an injury has actually been committed or reasonably apprehended, that Michelin is unaware whether Mr Morgan has disclosed Michelin's proprietary and confidential information, but that there is every likelihood that he may have done so or may do so during the remainder of the restraint period.

[33] Michelin contends it is reasonable to assume or accept that Mr Morgan is likely to have divulged, or may divulge, Michelin's proprietary and confidential information on the basis that Michelin and Continental are direct competitors.

[34] Michelin only became aware of the termination of Mr Morgan's employment with Continental after the preparation and deposing to of the Founding Affidavit, and there are therefore no allegations in the Founding Affidavit suggesting that Mr Morgan will disclose any confidential or proprietary rights, or breach the provisions of the restraint of trade clause in any manner, in respect of any other competitors of Michelin. Insofar as the Notice of Motion has been amended, I have considered such allegations with regard to any other competitor.

[35] In the Replying Affidavit, Michelin alleges that the conduct of Mr Morgan has been dishonest and refers to the contents of a letter dated 27 March 2023 as

an example of such dishonesty. The Applicant also alleges that Mr Morgan is untrustworthy.

[36] In the Replying Affidavit Michelin contends that it is common cause that Mr Morgan bound himself to the restraint, and that he breached the terms of the restraint in taking up employment with Continental, and that such employment only terminated after the launch of the current urgent application.

[37] The Applicant then alleges that in the circumstances Mr Morgan has the onus of showing why the terms of the restraint should not be given effect to.

[38] The Applicant alleges that in the event of the relief being sought in the Notice of Motion (as amended) not being granted, there is nothing that would prevent Mr Morgan from again breaching the restraint provisions of the Agreement of Employment, that the threat of such breach remains, and having regard to Mr Morgan's "*dishonesty*" there is every reason to believe that Mr Morgan will, during the remaining period of the restraint seek to breach it.

[39] It is also alleged in the Replying Affidavit that the breach of the terms of the restraint provisions are common cause, and that such breach does not disappear by the termination, after the issue of the urgent application, of the employment with Continental.

[40] It is also alleged that Mr Morgan's refusal to accept that the terms of the restraint of trade are applicable to him, show that the relief sought is necessary, and that Mr Morgan could easily take up a different employment with a competitor of Michelin, and that accordingly the need for the Application and its continuation is entirely of Mr Morgan's own making.

[41] Michelin also alleges that Mr Morgan "*could share*" confidential information that he has, in respect of Michelin with other competitors of Michelin, and that he "*may do so*" unless the relief sought is granted.

[42] In the Replying Affidavit it is also alleged that the conduct of Mr Morgan shows that he "*cannot be trusted*" and that he could take up employment contrary to his restraint, with competitors of Michelin. It is also alleged that Mr Morgan does not believe that the terms of the restraint provisions, that he agreed to, bind him and his conduct shows that a Court Order is necessary to protect Michelin's interests.

[43] It is also alleged that at no point has Mr Morgan stated that he appreciates the extent of his restraint and will not seek employment contrary to it.

THE FIRST RESPONDNET'S CONTENTIONS

[44] Mr Morgan represented himself in the Urgent Application, and prepared the affidavits and documents himself.

[45] Mr Morgan's Answering Affidavit is somewhat vague, as rather than dealing pertinently with specific allegations, Mr Morgan repeatedly stated that many of the allegations of Michelin "*were neither admitted nor denied*".

[46] Mr Morgan contended that the Application was not urgent, primarily as Mr Morgan is no longer employed by Continental, and that Michelin would be afforded redress at any hearing in due course.

[47] Mr Morgan contended that Michelin has not set out in its founding papers the interest that Michelin seeks to protect by way of the enforcement of the

restraint of trade, and that there is no threat to any interest of Michelin by Mr Morgan.

[48] Mr Morgan also contends that the duration of the restraint of trade and the geographical area applicable to the restraint of trade is unreasonable.

[49] Mr Morgan relies on Section 22 of the Constitution, and alleges that such section provides every citizen with the right to choose their trade, occupation or position freely, and that the restraint of trade is in conflict with Section 22 of the Constitution, and is therefore unreasonable and unconstitutional.

[50] Mr Morgan also referred to the effects of the Covid-19 pandemic and suggested that restraints of trade should not be enforceable during the Covid-19 pandemic and the continuous effects of such pandemic.

URGENCY

[51] The principles applicable to urgent applications have been well-established by a plethora of case law over time.

[52] Every applicant for urgent relief must satisfy the two-stage test, by setting out explicitly in the founding affidavit the facts that firstly, render the application urgent, and secondly, why such an application cannot be afforded substantial redress at a hearing in due course.¹

[53] When assessing an application in order to determine whether the application should be heard as an urgent application, the Court must, as a starting point,

¹ See: *Luna Meubelvervaardigers (Edms) Bpk v Makin (t/a Makin's Furniture Manufacturers)* 1977 (4) SA 135 (W) at 137; *East Rock Trading 7 (Pty) Ltd and Another v Eagle Valley Granite (Pty) Ltd and Another* ZAGRJHC (23 September 2011) at paras 6 and 7.

accept that the applicant has made out a proper case for the granting of the relief sought. Once the aspect of urgency is determined, the merits of the application will be considered.

[54] Mr Morgan contended that the Application was not urgent, as Michelin pursued the relief sought at its leisure. Such contention is not correct. Michelin launched the urgent application in the Eastern Cape Division promptly, and once that application was dismissed, pursued this Urgent Application without delay.

[55] The Application is clearly urgent, as if Michelin is entitled to the relief sought, Mr Morgan must be restrained from breaching the provisions of the restraint provisions in the Agreement of Employment without delay.

[56] It is also clear that it is highly unlikely that Michelin would be able to obtain substantial redress at a hearing in due course, as the extent of any compensation that Michelin may be entitled to, would be almost impossible to prove.

[57] Restraint of trade applications are, by their very nature, urgent, having regard to the nature of the harm sought to be protected, and the duration of the restraint of trade periods.²

[58] I am satisfied that this Application should be determined as an urgent application, and that it meets the requirements of urgency.

² *Mozart Ice Cream Franchises (Pty) Ltd v Davidoff* 2009 (3) SA 78 (C) at 88.

THE RELEVANT LEGAL PRINCIPLES

[59] It is trite that restraint of trade agreements are valid and enforceable in the Republic of South Africa, and that such agreements should be honoured in their terms, unless such restraint of trade provisions unreasonably restrict a person's right to trade or work, or are in conflict with public policy.³

[60] A party that challenges the enforceability of a restraint of trade agreement bears the burden of alleging and proving that the restraint of trade provision is unreasonable or unconstitutional. Restraint of trade agreements are enforced having regard to the constitutional dispensation, but the mere fact that Section 22 of the Constitution confers a right to work, does not prevent restraint of trade agreements from being enforced. The right to work must be balanced with the right to enter into a contract which contains a restraint of trade provision, on a free and voluntary basis.⁴

[61] The reasonableness or otherwise of a restraint of trade provision was considered in the matter of *Basson v Chilwan and Others*⁵, where the Court held that the reasonableness should be determined with reference to the following considerations:

[61.1] Is there an interest deserving of protection at the termination of the agreement?

³ *Magna Alloys and Research SA (Pty) Ltd v Ellis* 1984 (4) SA 874 (A). See also *Reddy v Siemens Telecommunications (Pty) Ltd* 2007 (2) SA 486 (SCA) at para [15] and [16].

⁴ *Reddy v Siemens Telecommunications*, *supra*, and *Pronto Computer Solutions (Pty) Ltd v Van der Merwe and Others* 2022 JDR 2259 (MN).

⁵ 1993 (3) SA 742 (A) at 767G

- [61.2] Is that interest being prejudiced?
- [61.3] If so, how does that interest weight up qualitatively and quantitatively against the interest of the other party not to be economically inactive and unproductive; and
- [61.4] Is there any other facet of public policy not having anything to do with the relationship between the contracting parties which requires that the restraint should either be enforced or disallowed.
- [62] Had Mr Morgan still been employed by Continental at the time that the urgent application was heard, I would have been inclined to grant the relief as sought by Michelin. In my view, the restraint provisions set out in clause 23.4 are not unreasonable or unconstitutional, and do not unnecessarily restrain Mr Morgan from being economically active.
- [63] I must however give consideration to the fact that at the time that this Urgent Application was heard, Mr Morgan was not employed by a competitor of Michelin, and was not factually breaching any provisions of clause 34.
- [64] As set out above, Mr Morgan had breached the provisions of clause 34 during his employment with Continental. Michelin contends that Mr Morgan may well breach such provisions again before 10 June 2023, unless interdicted.
- [65] In the *Basson* matter it was held by Botha JA (in a separate judgment) that:

"The incidence of the onus in a case concerning the enforceability of a contractual position in restraint of trade does not appear to me in principle to entail any greater or more significant consequences than in any other civil case in general. The effect of it in practical terms is this: the covenantee seeking to enforce the restraint need do no more than

*to invoke the provisions of the contract and prove the breach ..."*⁶ [my emphasis]

[66] In the matter of *White River Marketing (Pty) Ltd and Another v Rothwell and Another*⁷ the Court held as follows:⁸

"As for the merits, in the case of a former employer seeking to enforce a restraint against a former employee, the onus is first proving the existence of a restraint obligation that applies to the former employee. Second, and if a restraint obligation is shown to exist, the employer must prove that the former employee acted in breach of the restraint obligation imposed by the restraint. Once the breach is shown to exist, the determination turns to whether the facts, considered as a whole, show that the enforcement of the restraint would be reasonable in the circumstances." [my emphasis]

[67] I am therefore of the view that in order to enforce the restraint provisions contained in the Agreement of Employment, Michelin must show that Mr Morgan is in breach of the restraint provisions.

THE MERITS OF THE URGENT APPLICATION

[68] There can be no doubt that Michelin has proven the existence of a restraint obligation, as contained in the Agreement of Employment, that applies to Mr Morgan.

[69] Mr Morgan is currently unemployed. This is not disputed by Michelin, which has accepted that the employment relationship between Mr Morgan and Continental had terminated.

⁶ See also *DIY Superstores (Pty) Ltd v Kruger* 2022 JDR 0990 (FB) at para [33]; *Kalex Flavours and Fragrances (Pty) Ltd v Muller* 2020 JDR 2372 (GJ) at para [8], and *CJP Chemicals (Pty) Ltd v Dapshis* 2021 JDR 1707 (ECP) at para [13].

⁷ 2022 JDR 1186 (GJ).

⁸ At para [7].

[70] I therefore enquired from Applicant's counsel as to whether the application had not become moot, in that Mr Morgan was no longer employed by Continental or any other entity.

[71] In response to my question, Applicant's counsel stated that the Application would not be moot, because Michelin cannot trust Mr Morgan, and enquired as to what the consequences would be if Mr Morgan took up employment with a competitor such as Dunlop.

[72] There is no evidence or suggestion that Mr Morgan is currently in breach of the restraint of trade position, or that he has taken up, or intends to take up, employment with any competitor of Michelin. Whilst the possibility does exist, such possibility does not constitute a factual breach.

[73] It must be recorded that in the Replying Affidavit it was alleged that in the event of Mr Morgan joining another competitor of Michelin, he would again have the opportunity to use confidential information of Michelin to the disadvantage of Michelin, and that is what Michelin seeks to prevent.

[74] There is however no evidence that Mr Morgan intends joining any competitor of Michelin, and any submissions relating to such possibility are simply assumptions.

[75] The Applicant's counsel also referred me to the matter of *Experian South Africa (Pty) Ltd v Haynes and Another*⁹ where the Court stated as follows:

"Where an applicant as employer has endeavoured to safeguard itself against the unpoliceable danger of the respondent communicating its trade secrets to, or utilising its customer connection on behalf of a rival

⁹ 2013 (1) SA 135 (GSJ) at para [21].

concern, after entering that rival concern's employ, by obtaining a restraint preventing the respondent from being employed by a competitor, the risk that the respondent will do so is one which the applicant does not have to run and neither is it incumbent upon the applicant to enquire into the bona fides of the respondent, and demonstrate that he is male fide, before being allowed to enforce its contractually agreed right to restrain the respondent from entering the employ of a direct competitor."

[76] The reference to paragraph [21] of the *Experian* matter was in support of counsel's contention that the fact that Mr Morgan is currently unemployed, and that there is currently no indication that he will become employed by a direct competitor in the near future, is irrelevant, on the basis that Michelin need not run the risk that Mr Morgan will communicate trade secrets to, or utilise its customer connections, on behalf of a rival competitor, and neither is it incumbent upon Michelin to enquire into the *bona fides* of Mr Morgan or demonstrate that he is *mala fide*, before being allowed to enforce the restraint provision.

[77] Such interpretation does not accord with the established legal principles that a party wishing to enforce a restraint provision must show firstly the existence of the restraint provision and secondly a breach of the restraint provision.

[78] In addition, the quoted portion of paragraph [21] of the *Experian* matter cannot be read in isolation, and upon a full reading of paragraphs [20], [21] and [22] of the *Experian* matter it is clear that an ex-employer seeking to enforce a restraint provision must also prove that the ex-employee is going to be employed by a new employer that is a competitor of the ex-employer.

[79] The last sentence of paragraph [21] makes such position clear, and reads as follows:

“In such circumstances all that the applicant need do is to show that there is secret information to which the respondent had access, and which, in theory, the respondent could transmit to the new employer should he desire to do so.” [my emphasis]

[80] In the *Experian* matter, it is recorded as follows at paragraph [14]:

“The position in our law is, therefore, that a party seeking to enforce a contract in restraint of trade is required only to invoke the restraint agreement and prove a breach thereof. Thereupon, a party who seeks to avoid the restraint bears the onus to demonstrate, on a balance of probabilities, that the restraint agreement is unenforceable because it is unreasonable.”

[81] It is accordingly clear that the *Experian* matter follows the principles set out in the *Basson* matter and the *White River Marketing* matter, which I have referred to above, as well as the other cases referred to at footnote 4.¹⁰

[82] In the circumstances, there can be no doubt that for Michelin to succeed in its application, and to be granted the relief as sought in its Notice of Motion, Michelin must prove firstly that there is a restraint of trade agreement applicable to Mr Morgan, and secondly that Mr Morgan is in breach of such restraint of trade agreement.

[83] As already set out above, it is clear that there are restraint of trade provisions set out in Mr Morgan’s Agreement of Employment with Michelin, but it has not been established that Mr Morgan is currently in breach of such restraint provisions.

[84] In the circumstances, Michelin has not met the requirements that are necessary for it to be granted the relief as sought in the Notice of Motion.

¹⁰ See also *New Just Fun Group (Pty) Ltd v Turner* (2018) 39 ILJ 2721 (LC) at para [13]; and *Pronto Computer Solution (Pty) Ltd v Van der Merwe and Others* 2022 JDR 2259 (MN) at para [31].

ENFORCEABILITY OF THE RESTRAINT OF TRADE PROVISIONS

[85] As set out above, Mr Morgan contends that the restraint of trade provisions contained in the Agreement of Employment as concluded between Michelin and Mr Morgan are unconstitutional, unreasonable and unenforceable. Mr Morgan also contends that restraint of trade provisions should not be enforceable during the Covid-19 pandemic and the continued results and effects of the Covid-19 pandemic.

[86] As Mr Morgan is a layperson, and is representing himself, I believe it is necessary to point out that the finding by me that Michelin is not entitled to the relief as sought in the Notice of Motion, does not mean that I have found that the restraint of trade provisions are unconstitutional, unreasonable or unenforceable.

COSTS

[87] Michelin only ascertained after launching the Urgent Application that Mr Morgan was no longer employed by a competitor of Michelin, and should not be penalised for the launching of the Urgent Application.

[88] Whilst I am of the view that Michelin should, at that point, have reassessed whether it was prudent to pursue the Application, Mr Morgan only sought an order to the effect that the Application be dismissed, and that each party should pay its own costs.

[89] Mr Morgan, who represented himself, would, in all likelihood, not have incurred any legal costs in the strict procedural legal sense, and I accordingly believe

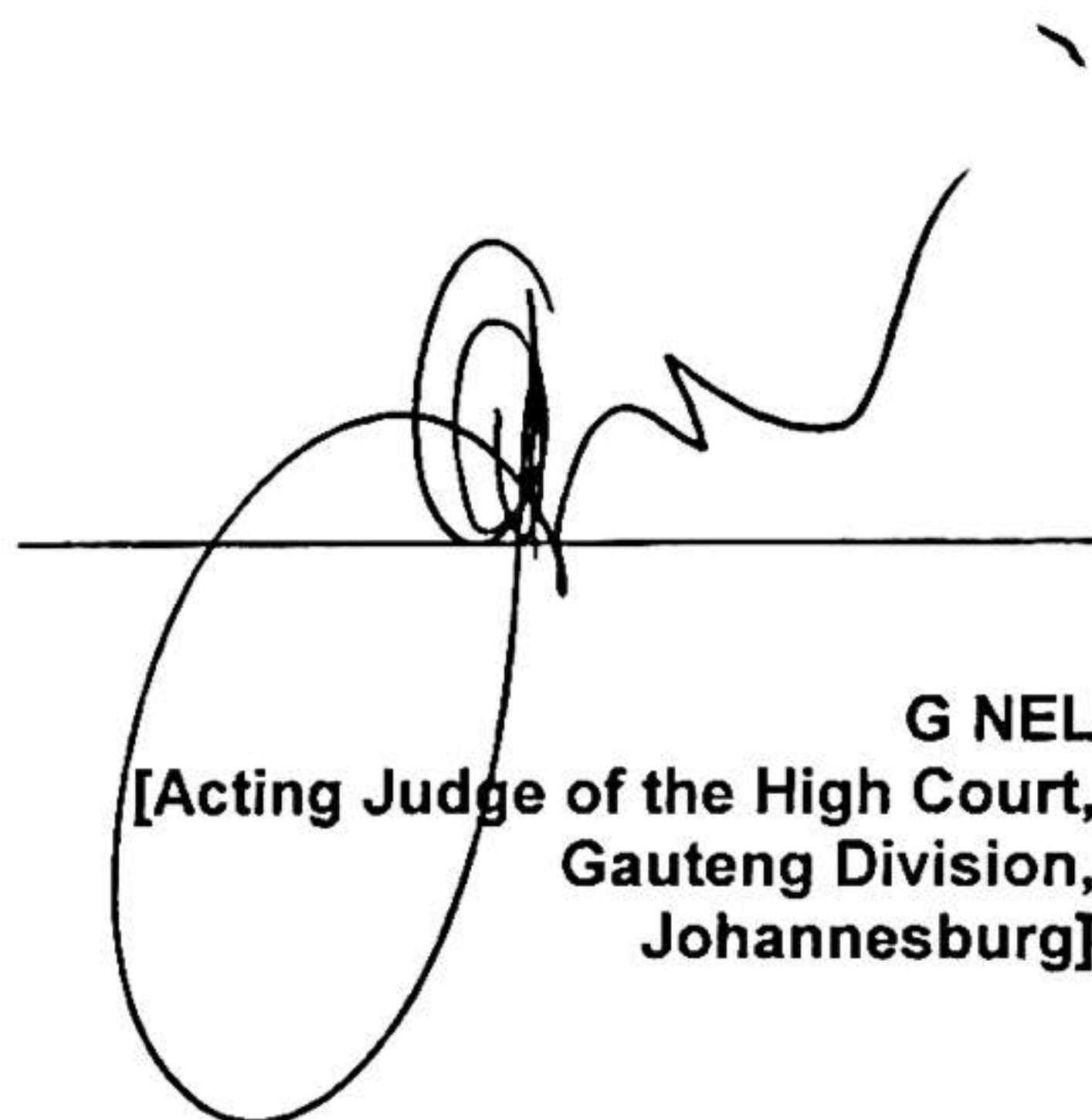
that it is appropriate that each party should be ordered to pay its own costs insofar as costs have been incurred by such parties.

ORDER

[90] I accordingly make the following Order:

[90.1] The Application is dismissed.

[90.2] Each party is to pay its own costs.



A handwritten signature in black ink, consisting of a large loop and a series of smaller strokes, is written over a horizontal line.

G NEL
[Acting Judge of the High Court,
Gauteng Division,
Johannesburg]

APPEARANCES

For the Applicant:

Adv JW Steyn

Instructed by:

AB Scarrott Attorneys

For the Respondent:

Appeared in person

Judgment heard:

11 April 2023

Judgment delivered:

02 May 2023