



**IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)**

CASE NO: 120432/2023

In the matter between:

**COMMERCIAL MOBILE TRUCK & TRAILER
ALIGNMENT SERVICES (PTY) LTD**

Applicant

and

DELETE WHICHEVER IS NOT APPLICABLE
(1) REPORTABLE: NO
(2) OF INTEREST TO OTHERS JUDGES: NO
(3) REVISED

01 DECEMBER 2023

**GERHARDUS DANIEL HARMSE
KAREL JOHANNES HARMSE**

First Respondent
Second Respondent

JUDGMENT

NGALWANA AJ

[1] This is an application for a final interdict intended to stop former employees from competing with their former employer in the alignment business. It is brought on an urgent basis in the following terms:

- “2. That the First and Second Respondent be interdicted and restrained from using the Applicant’s confidential information including its technical know-how, business connections, customer lists, marketing information acquired by the Respondents during the course of their employment at the Applicant.
3. That the First and Second Respondent be interdicted and restrained from enticing, soliciting or canvassing business from any of the Applicant’s customers.
4. That the First and Second Respondent be interdicted and restrained from becoming engaged, associated or interested, directly or indirectly, in any company, firm, business, trust or undertaking which carries on business directly or indirectly in competition with the Applicant’s business.
5. That the relief set out in paragraphs 3 and 4 above be enforced against the First and Second Respondents for a period of 5 (five) years within a radius of 250km from the Applicant’s business premises with effect 4 November 2023.”

[2] The Applicant also seeks costs against the Respondents on attorney and client scale.

[3] The application was launched on Friday 17 November 2023, calling on the Respondents to file answering papers by 12h00 on Wednesday 22 November 2023. The notice of motion informed the Respondents that the application would be heard at 10h00 on Tuesday 28 November 2023 after the First Respondent had filed his replying affidavit by 12h00 on Thursday 23 November 2023.

[4] Answering papers were filed as directed, and the Applicant filed its replying papers as undertaken. In it, it pleads new facts that it styles “*new developments*” to which the Respondents filed what they style “*rebuttal affidavit*” on Wednesday 29 November 2023. Not to be outdone, the Applicant filed a “*further affidavit*” on Thursday 30 November 2023 in which it seeks to reply further to the matter pleaded in the “*rebuttal affidavit*”.

[5] The application then served before me in the afternoon on Thursday 30 November 2023. By that time, the Applicant had filed a draft order in the following material terms:

- “2. That an interim interdict be granted upon the terms set out in paragraphs 2.1, 2.2, 2.3 and 2.4 below pending the outcome of a hearing of oral evidence to determine whether the Applicant is entitled to a final interdict:
- 2.1 That the First and Second Respondent be interdicted and restrained from using the Applicant’s confidential information including its technical know-how, business connections, customer lists, marketing information acquired during the course of the First and Second Respondents’ employment at the Applicant.
 - 2.2 That the First and Second Respondent be interdicted and restrained from enticing, soliciting or canvassing business from any of the Applicant’s customers.
 - 2.3 That the First and Second Respondent be interdicted and restrained from becoming engaged, associated or interested, directly or indirectly, on or to any company, firm, business, trust or undertaking which carries on business directly or indirectly in competition with the Applicant’s business in this regard.
 - 2.4 That the relief set out in paragraphs 3 and 4 above [sic] be enforced against the First and Second Respondents within a radius of 250km from the Applicant’s business premises with effect 4 November 2023 for a period of 24 months.
- 3. That the Applicant shall refer this matter to open court within (10) TEN days from date of this order.
 - 4. That the Uniform Rules pertaining to the conduct of hearings in open court shall apply.
 - 5. Costs of the matter, to date hereof, is reserved for determination at the final hearing of the matter.”

[6] This is a material departure from the final interdict relief that is sought in the notice of motion. No amendment of that notice of motion was sought. When this was put to Counsel, Counsel’s response was that the Applicant could not have known of the new developments at the time of launching the application. That is a not satisfactory answer.

[7] In my view, this material *volte face*, without leave, is a clear demonstration that the application is not urgent. An applicant cannot bring an application on an urgent

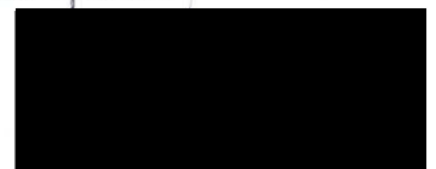
basis, then ask the court to refer the matter to oral evidence “*within 10 days*” for the determination of facts that should have been pleaded in the founding affidavit. It was put to Counsel that the Applicant had at least two opportunities to assess the urgency of the matter: first at the time of preparing the founding affidavit and on assessment of available facts then and, second, at the time of receiving the Respondents’ answering papers. No satisfactory response was provided. There was a third opportunity at the time of the Applicant happening upon “*new developments*” when preparing its replying affidavit. It must have become clear then that the Applicant does not have all the facts it requires at that stage to mount an urgent application for a final interdict which requires that it proves a clear right. This cannot be remedied, in urgent court, by shifting gear and seeking an interim interdict pending determination in oral evidence of the very facts that should have been pleaded in the founding affidavit.

[8] I am constrained to agree with Counsel for the Respondents that this constitutes abuse of court process. Consequently, costs on attorney and client scale must follow the cause.

Order

In the result, I make the following order:

1. The application is struck off the roll for lack of urgency.
2. The Applicants is to pay the costs of this application on attorney and client scale, including costs consequent upon the appointment of junior counsel.



V NGALWANA
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION OF THE HIGH COURT, PRETORIA

Delivered: This judgement was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the Parties/their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date for hand-down is deemed to be 01 December 2023.

Date of hearing: 30 November 2023

Date of judgment: 01 December 2023

Appearances:

Attorneys for the Applicant:

Couzyn Hertzog & Horak Attorneys

Counsel for the Applicant:

De Bruyn (064 786 9133)

Attorneys for First Respondents:

KMG & Associates

Counsel for First Respondents:

Van der Westhuizen (084 563 4420)