



IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NUMBER: 93147 / 2019^{1.2}

(1)	REPORTABLE: YES / NO	
(2)	OF INTEREST TO OTHER JUDGES: YES/NO	
(3)	REVISED.	
<u>15 JANUARY 2020</u> DATE		 SIGNATURE

In the matter between:

SAVVY HOLDINGS GROUP (PTY) LTD
APPELLANT

And

ELLY ELIZABETH MARRY JACOB SEWEL

FIRST RESPONDENT

XPAND-MEDIA (PTY) LTD

SECOND RESPONDENT

JUDGMENT

MAVUNDLA J;

- [1] The applicant approached this court seeking the following relief that:
- 1.1 the matter be heard on urgent basis in terms of Rule 6(12) of the Uniform Court Rules:
 - 1.2 an interim interdict be issued in the following terms:
 - a. that the first respondent be restrained and interdicted from being involved, in any capacity including, but not limited to, that of principal, agent, partner, representative, shareholder, consultant, advisor, financier, demonstrator, employer or any like capacity, with any entity in any business which competes with or carries on business activities in the sector of the applicant, pending the finalization of the action brought under case number 82133/2019;
 - b. That the first respondent be restrained from and interdicted from sharing confidential information gathered by virtue of employment by the applicant, alternatively gained access to by virtue of employment by the applicant, which may to be to the detriment of applicant's business success, pending the finalization of the action brought under case number 82133/2019;
 - c. That the first respondent be restrained from and interdicted from communicating, dealing, negotiating prices with or giving quotations to customers or former customers of the applicant in any regard whatsoever, pending the finalization of the action brought under case number 82133/19.
 - 1.3 That the first respondent be directed to terminate her employment with second respondent, pending the finalization of the action brought under case number 82133/2019.
 - 1.4 Cost of this application on a scale as between attorney and client;
 - 1.5 Further and or alternative relief.

- [2] The applicant is a juristic person, whose founding affidavit is deposed to by its only director Mr Armanda Matthysen, a businessman of Beyerspark in Boksburg.
- [3] It is common cause that the first respondent was on or about 1 March 2018 employed by the applicant as a general manager, office manager and human resources officer. The terms and conditions of her employment were regulated by the contract of employment which its effective date was from 6 March 2018. A copy of the employment agreement was attached to the papers as annexure SH3. It contained, inter alia, confidentiality clauses and undertaking not to be engaged in any other business, in competition with the employer's business, be it direct or indirect or as a shareholder, partner, member of a close Corporation, director of a company, or in any other capacity within 1 (one) year after termination of the agreement, in the area of Gauteng.
- [4] It is common cause that the applicant left her employment with the applicant on 3 October 2019.
- [5] According to the applicant during:
- 5.1 October 2019 it became aware that the first respondent had been employed by the second respondent. The applicant also became aware that the first respondent and the second respondent have been contacting the clients and employees of the applicant in order to induce them to move their business relations to the second respondent;
- 5.2 both the first and second respondents have used and are still using the applicant's information, such as clients list and price list specific to various clients, which they have wrongfully misappropriated from the applicant in order to entice the clients and employees of the applicant to move their business relations to the second respondent;
- 5.3 as a result of the above, it is clear, that the first respondent further also breached the agreement in one or more of the following respects:

5.3.1 she engaged in the business of the second respondent in direct competition with the applicant in Gauteng;

5.3.2 alternatively she rendered services to the second respondent through a labour broker;

5.3.3 She rendered services from August 2019 until date hereof and within the twelve months' period of restrained of trade as agreed to between the first respondent and the applicant.

5.3.4 as a direct result of this breach and the misuse of the wrongfully misappropriated information from the applicant, the applicant suffered damages in the amount of R1 364 940. 47, calculated as follows:

- i the respondents cause a client, K2014126770 (Pty) Ltd ta Luvland, to cancel its agreement with the applicant and move its business to the second respondent. The yearly value of this agreement was R971 183.84;
- ii the respondents cause a further client, Sunset Palms, to cancel its agreement with the applicant and move its business this to the second respondent. The yearly value of this agreement was R253 425.00;
- iii the respondents caused a further client, Continental, to and move its business to the second respondent. The yearly value of this agreement was R140 331.63.

[6] The applicant contended that it has a *prima facie* right by virtue of the agreements entered between the applicant and the first respondent and has a an enforceable restrained of trade against the first respondent. The respondent is in the process of enforcing the restrained of trade through the summons it issued against the respondents in this court under case number 82132/2019 on 31 October 2019.

- [7] The applicant further contended that it has to date suffered damages in the amount of R1 364 940.47, and the respondents have not ceased contacting and or enticing the clients and employees of the applicant to move their business relations to the second respondent. Should the court not come its rescue, it will suffer irreparable harm, in particular because the damages claim it instituted against the respondent might not be finalised in the immediate future, by which time it would have been forced to cease its business and its employees left without employment.
- [8] The applicant further contended in its papers that balance of convenience in this matter favours as a result of the fact that our legal system clearly prohibits the respondents, breaking a valid and enforceable restraint of trade.
- [9] The applicant further contended that it has no other remedy by virtue of the urgency of the matter, which urgency is due to:
- 9.1 the applicant's attorney having addressed a letter requesting an undertaking from respondents that it (sic) will cease its infringement of restraint of trade on 21 October 2019;
 - 9.2 the respondents per letter dated 6 November 2019 marked annexure SH2, duly refused to provide such undertaking to the applicant thus necessitating the applicant to institute a claim for the restraint of trade order and damages suffered as a result of the actions by the respondents on 6 November 2019;
 - 9.3 it came to the applicant's attention on 10 December 2019 that the conduct of the respondents has not ceased and the respondents caused yet another client of the applicant to cancel its service agreement with the applicant resulting in a major loss for the applicant;
 - 9.4 it is the belief of the applicant that as a result if the actions of the respondents has had on its business, the applicant will cease to be financially viable and be forced to close down should this court not hear the matter on urgent basis.

[10] The first respondent in opposing the application contended, *inter alia*, in her answering affidavit that:

10.1 the urgent application was served by the applicant's attorney of record, *via* email on Kern & Partners Attorneys on Friday 13 December 2019 at approximately 12h30;

10.2 it is common cause that the parties are currently engaged in action proceedings in this court under case number 82133/2019, wherein Kern & Partners Attorneys were appointed by the respondents (being the defendants therein) as their attorney of record;

10.3 this urgent application by the applicant does not constitute an interlocutory application under the aforesaid mentioned action proceedings, and therefore amounts to a document initiating new proceedings. Accordingly, service of this application was required to be compliant with rule 4 of the Uniform Rules of Court, and ought to have been served by the sheriff direct on the respondents;

10.3 at no point was it agreed between the parties that Kern & Partners Attorneys would accept service of this application on behalf of the respondents, and therefore service has not been effected;

10.4 The applicant has not sought any condonation for its failure to comply with the requirements for service, nor has the applicant provided any motivation for its failure to comply with the said requirements. Accordingly, service has not been effected and on that ground alone the application falls to be dismissed with a punitive costs order;

10.5 the purported urgency is premised on two aspects, namely:

10.5.1 the respondent's failure to provide an undertaking that they would cease infringing the alleged restraint of trade;

10.5.2 the respondents' purportedly causing a client of the applicant to cancel its service agreement with the applicant resulting in major losses to the applicant;

- 10.6. the alleged letter by the applicant dated 21 October 2019 was addressed to the second respondent, and makes no mention whatsoever of any purported restraint of trade. Therein the applicant makes various allegations against the second respondent and demands an undertaking that the second respondent would cease any further unlawful conduct in competing with the applicant;
- 10.6 the second respondent rightfully refused to provide any undertaking;
- 10.7 the aforesaid exchange of correspondence occurred between 21 October 2019 and 6 November 2019, whereas this application was only served five weeks later on 13 December 2019, which demonstrates that on the applicant's version, the matter was not urgent as alleged;
- 10.8 the applicant has failed to take the court into its confidence, and has deliberately failed to provide any information regarding the client the respondents allegedly caused to cancel its service agreement;
- 10.9 the first respondent dispute that the matter is urgent;
- 10.10 the application was served on Kern & Partners Attorneys on Friday 13 December 2019 at 12h30, affording the respondents until 19 December 2019 to serve a notice to oppose, and until 27 December 2019 to serve an answering affidavit, which conduct of the applicant is an abuse of the court process;
- 10.11 the applicant denies that she is working or engaged in the sector of the applicant, and the applicant has failed at any stage in its affidavit to clearly define its purported "sector" and denies having or intended to contact the applicant's clients or prospective clients.

- 10.12 the applicant is involved in in mobile advertising using trailers, and by the very nature of its business, the identity of the applicant's clients is public knowledge and any third party is at liberty to contact those clients;
- 10.13 the first respondent denies having breached any agreement, having contacted applicant's clients; having utilized any of applicant's information to nor did entice applicant's clients and employees;
- 10.14 no relief is sought against the second respondent;
- 10.15 the first respondent is a 58 year unemployed widow, the interdict sought, if granted, will in effect have the effect of restraining her for a period of four years, with no recourse whatsoever against the applicant, which restraint is too wide and broad and unreasonable;
- 10.16 the application should be dismissed with punitive costs order.
- [11] The second respondent, through the affidavit of its general manager Mr Morne Andries Els contended that:
- 11.1 the business of the applicant entails providing mobile adverting in the form if banners, boards etc. on mobile trailers which are then placed on the side of the road at various high volume traffic locations, such as busy intersections. For the past several years the applicant has been virtually the sole supplier of such service within Boksburg and East Rand area, and as a result thereof has profited greatly;
- 11.2 since July 2019 the second respondent has successfully inserted themselves in this industry in direct competition with the applicant, which has naturally resulted in a decline of the applicant's business;
- 11.3 the applicant has through various ways tried to hamstring the second respondent thus to removing the competition, resulting in

baseless legal litigation and encumbering the second respondent in unnecessarily exorbitant legal expenses;

11.4 from the applicant's notice of motion it does not seem that there is any relief sought against the second respondent;

11.5 the second respondent denied any allegation levelled upon it in the letter of demand to cease acting in competition with the applicant;

11.6 the applicant has, *inter alia*, directly contacted:

11.6.1 the second respondent's client's printing service provider in order to ensure that they would no longer provide printing services to the second respondent, which conduct amounts to unlawful interference;

11.6.2 second respondent's numerous clients stating that the business of the second respondent is unlawful and that applicant intended to suing for damages;

11.7 the second respondent denies:

11.7.1 having caused any of the applicant's clients to cancel their services with the applicant prematurely;

11.7.2 having used any of the applicant's information, nor having appropriated such information wrongfully or at all;

11.7.3 that the applicant has suffered any damages as a result of any conduct on the part of the second respondent or at all;

11.8 in respect of K2014126770 Pty Ltd t/a Luvland, the latter ended its relationship with the applicant as it elected to employ the services of a third party named Next Level Branding. It was only at a later stage that it was agreed that the second respondent would provide advertising in the East Rand area while Next Level Branding would provide these services in Pretoria. The relationship between the applicant and the third party had

terminated before the second respondent had any involvement with this client;

11.9 in respect of Sunset Palms terminating their services agreement with the applicant in March 2019, roughly three months before the second respondent was even incorporated, the second respondent was in no way responsible for the alleged claimed loss;

11.10 Continental has not utilised the services agreement of the applicant for over a year, therefore the applicant cannot hold the second respondent liable for damages due to the fact this client has now elected to employ the services of the second respondent;

11.11 the second respondent prays that the application should be dismissed with punitive attorney and client costs.

[12] The applicant filed its replying affidavit, to which it attached annexure AM 3, an accounting statement of Savvy, showing that it received various payments, *inter alia*, from Sunset Palms; Luvland, and Continental to demonstrate that these were its clients effecting payments as late as in 2019. (I must point out that in so far as:

- i. Sunset Palms there are only five credit payments between 16 / 04 2019 and 24 / 04/ 2019.
- ii. Luvland there are six various payment transactions between 05 /04/ 2019 and 12/ 09/ 2019;
- iii. Continental is concerned, there is only two credit payments transaction between since 13 August 2018 and 05 / 10 /2019.)

[13] the applicant, persists, *inter alia*, that:

13.1 the matter is urgent and that the rules permit that service can be effected upon the respondents' attorneys of record and that *in casu* there was concession, in this regard attaching annexure AMI remitted on 13 / 12 /2019;

- 13.2 the summons was issued on 31 October 2019 and when on 10 December 2019 the respondents continued with their conduct, the applicant had no option but to bring the urgent application in order to mitigate its damages;
- 13.3 the respondents were afforded 14 days to file their answering affidavit but took extra 10 days before filing their answering affidavit;
- 13.4 the applicant did apply for condonation.
- [14] Rule 4(1)(a A) provides that: "Where any person to be served with any document initiating application proceedings is already represented by an attorney of record, such document may be served upon such attorney by the party initiating such proceedings."
- [15] In the *Erasmus Superior Court Practice second Edition*, [Service 3, 2016] D1-37 the learned authors stated that: "Subrule (1)(a A) this rule makes it clear that service by the sheriff is not necessary in interlocutory applications where there is already an attorney of record for the respondent.¹ The subrule applies to the service of an application in terms of rule 43 in pending divorce proceedings."
- [16] In the matter of *BHP Billiton Energy Coal SA v Minister of Mineral Resources*² the Court in respect of the aforesaid Subrule (1)(a A) held that: "It is apparent that this Rule applies to proceedings already instituted (*Herbstein and Van Winsen, The Civil Practice of the High Courts of South Africa*, Volume 1, 5th edition, pp. 343 and 359) so that it in effect applies to ancillary and interlocutory applications. It is the Applicant's contention that the interdict proceedings were brought pending the initiation of the review proceedings not later than 25 January 2007 and that the interdict proceedings are indeed interlocutory to the main application, being the review proceedings.

In my opinion it is obvious that the interdict proceedings were instituted on a dispute relating to the refusal of prospecting rights in respect of which the Applicant had the exclusive right to apply and had as its aim to restrain the First, Second and Fourth Respondents from granting any rights mining rights to any other person pending the institution of review proceedings challenging the refusal to grant the Applicant such prospecting rights. As such those proceedings were, so to speak,

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² 2011 (2) A 536 GNP at 542

pendente lite or incidental to the review proceedings which were to be initiated not later than 25 January 2006 (see: *South Cape Corporation (Pty) Ltd v Engineering Management Services* 1977(3) SA 534 (A) at 549G-H). It had at its aim to protect the very interest which formed the subject of the review application until such time as the review application has been pronounced upon.

I am accordingly satisfied that the Applicant's attorney of record was by virtue of Rule 4(1)(aA) entitled to serve the review proceedings on the State Attorney who was on record in the interdict proceedings, who eventually came on record in the review proceedings and who, incidentally, in effect confirmed that they were still on record and agreed to accept serve on behalf of the Respondents."

[17] This decision in *BHP Billiton Energy Coal SA v Minister of Mineral Resources supra* was confirmed by the Supreme Court of Appeal in the matter of *Finishing Touch v BHP Billiton Energy Coal SA*,³ a matter which did not deal with rule 43, clearly pointing out that the thus rule is not confined to rule 43, as contended, with respect, by the learned authors in the Erasmus Superior Court Practice Second Edition vide paragraph [14] *supra*.

[18] The applicant has already initiated aa damages action against the present respondents (therein as defendants) and the attorneys of record are the same attorneys for the respondents in this application. In the damages action, the question of restraint clause is one of the issues to be decided, which will be dealing with the rights and interest of the present applicant. In the present application the applicant seeks protection of its commercial interest through an interim restraint order against the respondents. In both matters the parties are the same, and the attorneys are the same. The applicant has placed, albeit through replying affidavit a letter indicating that the respondents' attorneys of record agreed to accept service of the present application on behalf of the respondents. That being the position, in my view, there is no prejudice suffered by the respondents in finding that although the application is not an interlocutory application to the main action, the service on their attorneys of record cannot be faulted.

³ 2013 (2) SA 204 at 211D--213A.

- [19] The respondents complain about the extent to which the applicant abridged the time frames provided for by rule 6(5). In the matter of *Luna Meubels Vevaardigers (Edms) Bpk v Makin and Another (t/a Makinn's Furniture Manufactures)*⁴ the Court cautioned that practitioners should carefully analyse the facts of each case to determine, for the purposes of setting the case down for hearing, whether a greater or lesser degree of relaxation of the Rules and of the ordinary practice of the Court is required. The degree of relaxation should not be greater than the exigency of the case demands. It must be commensurate therewith. Mere lip service to the requirements of Rule 6 (12) (b) will not do and an applicant must make out a case in the founding affidavit to justify the particular extent of the departure from the norm, which is involved in the time and day for which the matter will be set down.
- [20] A party bringing an urgent application must depart as little as possible from rule 6(5)(a), depending on the degree of urgency; *vide Gallagher v Norman's Transport Lines (Pty) Ltd*⁵. The degree of relaxation of the time frames prescribed by 6(5) (a), should not be greater than the exigency of the case demands. It must be commensurate therewith.
- [21] The application was served on the respondent's attorney of record on 13 December 2019. The respondents were afforded until 19 December 2019 to serve a notice to oppose, which was a period of mere three working court days, and until 27 December 2019 to serve their answering affidavit, which was again a mere three court days, disregarding the fact that it was during festive season. However, the respondents filed their answering affidavit on 6 January 2020. In as much as the time frames were truncated to a bare minimum, which was unreasonable, I do not think that this warrants the dismissal of the application. In my mind the respondents have shown no prejudice suffered on their part as a result of such unreasonable abridgment of time frames. However, the court is entitled, within its discretion, to condone such unreasonable abridgment but show its disapproval by way of mulcting the applicant with punitive costs or disallow the applicant

⁴ 1977 (4) SA 135 (W) at 136D-E.

⁵ 1992 (3) SA 500 at 502E-503 D.

such costs as befit the noncompliant depending on the ultimate outcome of the application.

[22] In my view, the application pertains to protection of a commercial interest through an interim relief pending the finalization of the damages claim. According to the applicant, it became aware of the alleged enticement of its clients by the respondents in November 2019. Instead of approaching the court immediately on urgent basis for the necessary restraint interdict, it chose to issue summons. It was only after the 10 December 2019 when it realised that the alleged transgressions were not desisting that it brought the urgent application. In my view, it cannot be said that the delay was inordinate to a degree warranting the application to be dismissed for lack of urgency, which urgency I assume; vide in this regard the authority immediately herein below.

[23] In the matter of *Bundle Investments (Pty) Ltd v Registrar of Deeds and Others*⁶ the Court held that:

“Although it could conceivably be argued that the applicant was somewhat dilatory in obtaining the required consent, the explanation furnished by the applicant for the delay is not unreasonable. The urgency of commercial interests, as *in casu*, may justify the application of Rule 6(12) no less than other interest and, for purposes of deciding upon urgency, I must assume that the applicant’s case is a good one and that it has a right to the relief which it seeks. (See *Twentieth Century Fox Film Corporation and Another v Anthony Black Films (Pty) Ltd* 1982 (3) SA 582 (W) at 586.”

At page 215 I-216A in the *Bundle Investments (Pty) Ltd v Registrar of Deeds (supra)* the Court cited from *Films Rover International Ltd and Others v Cannon Films Sales Ltd* [1986] 3All ER 722(Ch) at 780-I where it was held that:

“The principal dilemma about the grant of interlocutory injunctions, whether prohibitory or mandatory, is that there is by definition a risk that the court may make the “wrong” decision, in the sense of granting an injunction to a party who fails to establish his right at the trial or would fail if there was a trial or alternatively, in failing to grant an injunction to a party who succeeds (or would succeed at trial). A fundamental principle is therefore that the court should take whichever course appears to carry the lower risk of injustice if it should turn out to have been “wrong” in the sense I have described.”

⁶ 2001 (2) SA 203 at 213E-F.

[24] It is trite that where an interim relief is sought, for the applicant to succeed it / he / she must show:

- “(1) that the right which is subject matter of the main action and which he seeks to protect by means of an interim relief is clear or if not clear, is *prima facie* established though open to some doubt,
- (11) that, if the right is only *prima facie* established, there is a well-grounded apprehension of irreparable harm to the applicant if the interim relief is not granted and he ultimately succeeds in establishing his right,
- (111) that the balance of convenience favours the grant of interim relief; and
- (iv) that the applicant has no other satisfactory remedy.”; *vide Bandle Investments (Pty) Ltd v Registrar of Deeds*.⁷ In *Fedsure Life Assurance v Worldwide African Investments Holdings*⁸ the court sets out the law in regard to interdicts as follows:

‘[25] Where the right asserted on the strength of which an interim interdict is sought is not clear, the position is as follows according to *Eriksen Motors (Welkom) Ltd v Warrenton and Another* 1973 (3) SA 685 (A) at 691C-G:

‘The granting of an interim interdict pending an action is an extraordinary remedy within the discretion of the Court. Where the right which it is sought to protect is not clear, the Court’s approach in the matter of an interim interdict was lucidly laid down by Innes JA in *Setlogelo v Setlogelo* 1914 AD 221 at 227. In general, the requisites are-

- (a) a right which, ‘THOUGH *prima facie* established, is open to some doubt’;
- (b) a well-grounded apprehension of irreparable injury;
- (c) the absence of ordinary remedy.

in exercising its discretion, the Court weighs, *inter alia*, the prejudice to the applicant, if the interdict is withheld, against the prejudice to the respondent if it is granted. This is sometimes called the balance of convenience.”

[25] The very fact that the applicant has already issued summons negates any suggestion that it has no other alternative relief. I do bear in mind the fact that the applicant contended that if not granted the relief sought, by the time the damages claim is finalized it would have been financially wiped off. I am not persuaded by this submission. The financial statements produced relating to the clients allegedly touted away by the respondents, clearly indicate that there was not much financial activity, even before the alleged touting away; *vide* paragraph “[12]” *supra*.

⁷ *Supra* at 214I-2015B;

⁸ 2003 (3) SA 268 WLD at 277F-H.

- [26] The applicant seeks an order directing the first respondent to terminate her employment with the second respondent. It also seeks an order interdicting her from using whatever information relating to the applicant's clients, unlawfully procured. An employee of any company would invariably obtain through the work certain information, *in casu* such as customers of the applicant. The first respondent also has a right to ply her "profession" or work skills to even set out her own business or practice.
- [27] There are therefore two competing interest the court has to look at, that of the applicant and of the first respondent. The second respondent contended that whatever client's applicant is moaning of, their information is out in the public as same is displaced on billboards along busy intersections. This as much has not been refuted by the applicant, as such I must accept this version.
- [28] In the context of balance of convenience, it is apposite to cite the matter of *Basson v Chilwan and Others*⁹ where the Appellate Court held that there are four questions that arise in restraint matters and these are:
- (a) whether the claiming party has a protectable interest;
 - (b) whether such interest has been prejudiced by the other party;
 - (c) if so, whether such interest, weighed qualitatively and quantitatively against the interest of the other party, such that the latter should not be economically inactive and unproductive; and
 - (d) whether there is another facet of public policy having nothing to do with the relationship between the parties which requires restraint either to be enforced or to be voided; and that the views of the parties as regards reasonableness of the restraint is never decisive but only a factor to be considered in decision as to reasonableness.
- [29] In the matter of *Interest Computation Experts en Andere v Nel en Andere*¹⁰ the Court cited Grooskopft AJ in *Sunshine Records (Pty) Ltd v Frohling and Others*¹¹ as saying that:

⁹1993 (3) SA 742 (AD) .

¹⁰ 1995 (1) SA 174 (TPD) at 179F-H.

"In determining whether a restriction on the freedom to trade or to practise a profession is enforceable; a court should have regard to two main considerations. The first is that the public interest requires, in general, that parties should comply with their contractual obligations even if these are unreasonable or unfair. The second consideration is that all persons should, in the interests of society, be permitted as far as possible to engage in commerce or the professions or, expressing this differently, that it is detrimental to society if an unreasonable fetter is placed on a person's freedom of trade or to pursue a profession. In applying these two main considerations a court will obviously have regard to the circumstances of the case before it. In general, however, it will be contrary to the public interest to enforce an unreasonable restriction on a person's freedom to trade."

- [30] The first respondent is a 57-year-old widow. The order directing her to terminate her employment with the second respondent would be draconian and against public policy. Besides, it is uncertain when the main trial would be finalized. The effect of such an order would commission the first respondent to undefined period of unemployment, which would be unreasonable and prejudicial to her. In my view her prejudice by far outweighs whatever commercial prejudice the applicant would suffer, which in any event can still be addressed through the damages claim already in progress.
- [31] On the other hand, the sector the applicant seeks to lay claim to, is undefined. The applicant, when the court asked it about this alleged sector, responded through its counsel that the first respondent knows it. I must hasten to state that this was a vague response and the sector remains undefined, therefore it would be imprudent and unreasonable to issue an order that denies a person not to work in an undefined sector. The balance of convenience dictate that the court should incline towards the side of the first respondent, I may as well say of the second respondent as well and refuse to grant the applicant the reliefs sought. Besides, on the notice of motion itself there was no particular relief sought against the second respondent. Therefore the application stands to be dismissed.
- [32] It is trite that costs follow the event. The applicant had sought costs on attorney and client basis. I see no reason why the respondents are not entitled to the same type of costs order. Accordingly, in the exercise of my discretion, the costs of this application must be borne by the applicant on the scale of attorney and client.

¹¹ 1990 (4) SA 782 (A) at 794B-E.

[33] In the result the following order is issued:

- i. That the application is dismissed;
- ii. That the applicant is ordered to pay the costs of the application on attorney and client scale.



N.M. MAVUNDLA

JUDGE OF THE HIGH COURT

Date of Hearing : 07 / 01 / 2020

Date of Judgment : 15 / 01 / 2020

Applicant's Advocate : ADV B BESTER

INSTRUCTED BY : COETZEE ATTORNEYS

Respondent's Advocate : ADV G.H. JANSE VAN VUUREN

INSTRUCTED BY : KEN & PARTNERS