



IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL DIVISION, PIETERMARITZBURG
JUDGMENT

CASE NO: 12634/2015

In the matter between:

JOHANNES VAN VEIJEREN trading as
VAN VEIJEREN & PARTNERS

APPLICANT

And

TONYA KRUGER

RESPONDENT

ORDER

- (a) The respondent is interdicted from either directly or indirectly being employed by or have an interest, either as employee, principal, agent, member, shareholder, director, partner, consultant, financier or advisor in any concern or entity which carries on a Radiology Practice, or a business that renders Diagnostic Ultrasound, Foetal Assessment, Doppler Studies and/or Musculo Skeletal ultrasound services, within a radius of 70 kilometers from

Newcastle, Dundee and/or Vryheid, KwaZulu-Natal, for a period of 12 months from date of grant of this order;

- (b) The respondent is hereby ordered to forthwith cease her Sonographer practice in which she renders Diagnostic Ultrasound, Foetal Assessment, Doppler Studies, and Musculo Skeletal Ultrasound services from 234 Utrecht Street, Vryheid, KwaZulu-Natal;
- (c) The respondent is ordered to pay the costs of this application.

JUDGMENT

SEEGOBIN J:

INTRODUCTION

[1] From the seminal decision in *Magna Alloys and Research (SA) (Pty) Ltd v Ellis*¹ to the decisions in *Basson v Chilwan and Others*² and *Reddy v Siemens Telecommunications (Pty) Ltd*,³ our courts have consistently held that restraint of trade agreements are enforceable unless and to the extent that they are contrary to public policy because they impose an unreasonable restriction on a person's freedom to trade or to work. Differently put, a restraint of trade agreement is valid and enforceable unless it is unreasonable.

¹ 1984 (4) SA 874 (A).

² 1993 (3) SA 742 (A).

³ 2007 (2) SA 486 (SCA).

[2] In *Magna Alloys*⁴ it was held that a restraint will be considered to be unreasonable and thus contrary to public policy, and therefore unenforceable, if it does not protect a legally recognizable interest of the employer but merely seeks to exclude or eliminate competition. An applicant seeking to enforce a restraint of trade agreement need only invoke the contract and prove its breach. The *onus* to prove that the restraint is unreasonable and therefore unenforceable rests on the party resisting its enforcement.

[3] In *Basson v Chilwan*,⁵ Nienaber JA identified four questions that should be asked when considering the reasonableness of a restraint, namely:

- (a) Is there an interest of the one party which is deserving of protection at the termination of the agreement?
- (b) Is such interest being prejudiced by the other party?
- (c) If so, does such interest so weigh up qualitatively and quantitatively against the interest of the other party not to be economically inactive and unproductive?
- (d) Is there any other aspect of public policy having nothing to do with the relationship between the parties but which requires that the restraint should either be maintained or rejected?

[4] Malan AJA in *Reddy v Siemens*⁶ held that a court must make a value judgment with two principal policy considerations in mind in determining the reasonableness of a restraint: the *first* is that the public interest requires that parties should comply with their contractual obligations, a notion expressed by the maxim *pacta servanda sunt*; and the *second* is that all persons should in the interests of society be productive and be permitted to engage in trade and commerce or the professions. The court went on to state the following:

⁴ At 893 C-G and 898D.

⁵ At 767A-D.

⁶ Para [15].

“Both considerations reflect not only common-law but also constitutional values. Contractual authority is part of freedom informing the constitutional value of dignity, and it is by entering into contracts that an individual takes part in economic life. In this sense, freedom to contract is an integral part of the fundamental right referred to in s22. Section 22 of the Constitution guarantees ‘[e]very citizen . . . the right to choose their trade, occupation or profession freely’ reflecting the closeness of the relationship between the freedom to choose a vocation and the nature of a society based on human dignity as contemplated by the Constitution. It is also an incident of the right to property to the extent that s25 protects the acquisition, use, enjoyment and exploitation of property, and of the fundamental rights in respect of freedom of association (s18), labour relations (s23) and cultural, religious and linguistic communities (s31).”⁷

THE APPLICATION

[5] All this brings me to the present application which was launched as a matter of urgency on 12 September 2015. The issue of urgency is now academic as a period of about eight months have now passed since the application was first launched. The disputes having been fully ventilated on the papers, the applicant now seeks final relief. The test for final relief in motion proceedings is well-established:⁸ a final order can only be granted in motion proceedings if the facts stated by the respondent together with the admitted facts in the applicant’s affidavits justify the order sought, and this applies irrespective of where the *onus* lies.

⁷ The rights referred to by Malan AJA herein were those in terms of the interim constitution. These have not been affected by the final constitution of 1996.

⁸ *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* 1984(3) SA 623 (A).

BACKGROUND FACTS

[6] The relevant background facts are not complicated. They can conveniently be summarized as follows:

- 6.1 The applicant, a qualified radiologist, conducts his radiology practices in Newcastle, Dundee and Vryheid in KwaZulu-Natal. These practices render, amongst others, the following sonographer (ultrasound) services, namely, general ultrasound, musculo skeletal ultrasound (MSK) (i.e. the examination of muscles, joints and the like), foetal assessments and Doppler studies (i.e. vascular examinations).
- 6.2 The respondent, on the other hand, is not a qualified radiologist. She is, however, a qualified radiographer and also holds a B-Tech diploma in sonography. In 2006 she accepted a position to work in the applicant's practice at Vryheid as a sonographer, radiographer and practice manager.
- 6.3 The relationship between the parties was governed by an employment contract (the contract) which was signed on 22 February 2006. The contract consisted of an appointment letter, a document titled 'My Employer and Me', a confidentiality undertaking and restraint as well as an addendum "A" thereto.⁹
- 6.4 For the purposes of the present dispute it suffices to have reference to the following terms and conditions:
 - 6.4.1 In terms of clause 3.1.4 of the document titled 'My Employer and Me', it was agreed that the work done in

⁹ Founding Affidavit, Annexures "A", "B", "C" and "D" and addendum "A", pages 23-53.

the applicant's practice was of such a nature that all information obtained during the performance of the work must be kept confidential and may not be disclosed to any person outside the practice. This also applied to the names and information concerning the health of any patient.

- 6.4.2 Clause 7 of the same document stipulated that the agreement was conditional upon the respondent signing the confidentiality undertaking and restraint.
- 6.4.3 Clause 2 of the confidentiality undertaking and restraint recorded that the respondent will, as a consequence of her employment, have access to trade secrets and confidential information and that she agrees, undertakes and binds herself, in order to protect the applicant's proprietary interest and the trade secrets and confidential information that, during the period of her employment and forever thereafter, she will not, either directly or indirectly, use, disclose, divulge or make known any of the trade secrets or confidential information.
- 6.4.4 Clause 4 of the confidentiality undertaking and restraint provides that respondent agrees that applicant's proprietary interest in the trade secrets and confidential information will be prejudiced if she takes up employment or becomes interested in any concern within the area of applicant's operation that competes with him and it is accordingly agreed that in order to protect such

proprietary interest, she binds herself, during the period of her employment and for five years after termination thereof, not to encourage, assist, persuade, induce, incite or procure any of his employees or become employed by or interested in (whatsoever capacity, either directly or indirectly) any concern of whatsoever nature which carries on as a part of or as the whole of its undertaking or business, the same business similar to or like his business. Respondent shall also not approach, advise or contact in order to, either directly or indirectly, solicit the custom of any person or entity who was a customer or with whom or to whom or on behalf of the applicant, negotiations, discussions or representations, were entered into or made during the period of her employment. She will not either directly or indirectly be employed by or have an interest in, either as employee, principal, agent, member, shareholder, director, partner, consultant, financier or advisor or any other like capacity in any concern or entity which carried on a business similar to or like my business within the area of his operation, which she acknowledged to be fully acquainted with. The restraint specifically refers to areas surrounding Newcastle, Dundee and Vryheid with a 100 kilometer radius around it. Respondent acknowledged that the restraints imposed are reasonable in all respects.

- 6.4.5 Clause 3 of annexure “D” recorded that although the respondent will be mainly employed in the applicant’s

Vryheid practice, she shall also attend the Dundee practice and surrounding towns on a weekly basis.

6.4.6 Clause 7 of annexure “D” provided that before the conclusion of the period of contract, the period may be extended by agreement in writing between the parties either for a fixed period or for an indefinite period, and during such extended period all the terms and conditions of the agreement shall apply.

6.5 There is no dispute that the contract period was extended from time to time in terms of various addenda signed by the parties, the last of which was concluded on 25 April 2013.¹⁰ The restraint which forms the subject matter of the present dispute between the parties is contained in clause 9 of the addendum. It provides as follows:

“Kruger will not either directly or indirectly be employed by or have an interest in, either as employee, principal, agent, member, shareholder, director, partner, consultant, financier or advisor or in any other like capacity in any concern or entity which carries on Radiology Practice or a business similar to or alike the business of Van Veijeren within a radius of 70km to Van Veijeren’s various practices, which Kruger acknowledges to be fully acquainted with.

Kruger hereby acknowledges that the restraints imposed on her in terms of this contract are reasonable in all respects and are seasonably [sic] required by Van Veijeren to protect and maintain the proprietary interest in his business as set out above and maybe [sic] enforced against the [sic] Kruger by Van Veijeren.

¹⁰ Founding Affidavit, Annexure “F”, pages 51-53.

The provisions of the restraints above are severable as to each of the undertakings set out in respect of each of the businesses and each of the area of operations of Van Veijeren.”

6.6 Throughout the duration of her employment with the applicant the respondent’s duties remained virtually the same. These were stipulated in the employment contract and the various addenda which were concluded from time to time. The duties constituted the following:

- The respondent was to perform all such duties as assigned to her from time to time by the applicant.
- The respondent was required to devote all of her time and attention in performing her duties under the agreement.
- The respondent was required to use her best endeavours to promote and extend the applicant’s business.
- The respondent was required to attend the Dundee practice and the surrounding towns on a weekly basis in order to do ultrasounds.
- The respondent was required to do ultrasounds as well as general radiology at the Vryheid practice.

6.7 While the restraint in annexure “C” stipulated a radius of 100 kilometers from Newcastle, Dundee and Vryheid and was for a period of five years, the restraint in annexure “F” stipulated a radius of 70 kilometers from the three practices referred to above.

6.8 It is common cause that the respondent left the applicant’s practice with effect from 31 May 2015. It is not disputed that by 15 June 2015 the respondent opened a practice for her own

account in Vryheid from which she conducts foetal ultra-sounds. By the 14 August 2015 the applicant established, through certain social media, that the respondent also opened a sonographer practice in Vryheid. The present application was launched on 18 September 2015. This was not before the applicant had, through his attorneys, requested the respondent to desist from her conduct which she refused to do.

[7] While in the notice of motion the applicant sought an enforcement of the restraint for a period of 24 months, in his heads of argument and in oral submissions before me on 13 June 2016, Mr *van Rooyen* who appeared on behalf of the applicant indicated that the applicant would be content to have the restraint period reduced to 12 months.

APPLICANT'S CASE

[8] On behalf of the applicant it was argued that the respondent does not dispute that she is in breach of the restraint. She accordingly bears the *onus* of establishing on a balance of probabilities that the restraint is unreasonable, that it offends against public policy and that it is unenforceable. It was contended that the applicant has a proprietary interest in his customer base which includes patients and referring doctors/physicians. It was argued that the applicant was afforded no opportunity after the departure of the respondent to re-arrange his affairs in Vryheid before the respondent unlawfully started competing with him in breach of the restraint.

[9] It was further argued that the applicant has demonstrated a material decline in his Vryheid practice and this was directly attributed to the conduct of the respondent. According to the applicant the area in which the restraint is to be

applicable does not preclude the respondent from pursuing her practice and from earning an income. It was submitted that the fact that the restraint is open-ended does not make it unenforceable.

RESPONDENT'S CASE

[10] While the respondent did not dispute the restraint and its terms, Ms *Bosman*, who appeared on behalf of the respondent, contended strongly that it would be unreasonable to enforce the restraint against the respondent, given the fact that she has been out of the applicant's employ for just over a year in circumstances where:

- 10.1 *first*, the applicant has no proprietary interests that are worthy of protection;
- 10.2 *second*, the enforcement of the restraint will mean that the respondent is unable to practice her profession as a sonographer and ultra-sound practitioner within a 70 kilometer radius of Vryheid, Newcastle and Dundee for a period of 12 months; and
- 10.3 *third*, the enforcement of the restraint would be aimed at limiting competition for sonography and ultra-sound services in Vryheid.

[11] Ms Basson listed the following areas of dispute that exist between the parties. These relate to the following:

- (a) Whether the applicant has proprietary interests in confidential information or customer connection which are protectable;
- (b) Whether the applicant's patient base is proprietary and accordingly protectable;

- (c) Whether the applicant's referring physicians are proprietary to the applicant and accordingly protectable;
- (d) Whether the restraint restricts the respondent from exercising her profession, skills and expertise as a sonographer and ultrasound practitioner;
- (e) Whether the enforcement of the restraint is ought to limit competition for sonography and ultrasound services in Vryheid;
- (f) Whether the restraint is overbroad in terms of duration;
- (g) Whether the restraint is overbroad in terms of area.

[12] It would seem to me that the issues outlined in sub-para's (a), (b), (c) and (d) above can be grouped together and dealt with as one. The same would apply to those in sub-para's (f) and (g). The issues raised in (f) and (g) really turn on the question of reasonableness. In addressing these issues I will also endeavor to address the four questions posed in *Basson, supra*. The issue of 'competition' in sub-para (e) will, as far as possible, be dealt with separately.

FINDINGS

[13] The applicant alleged that in the period of nine years in which the respondent was employed at his Vryheid practice, she not only gained vast knowledge of his patient base but also of his referring doctors/physicians with whom she had contact. The respondent denies that either of these aspects are in fact proprietary to the applicant and protectable in his hands. She avers that she had no dealings with the applicant's patients at his Newcastle and Dundee practices since she only worked at his Vryheid practice. She furthermore contends that patients treated at the Vryheid practice "or the Newcastle or Dundee practices" are not proprietary to the applicant but are the patients of the general practitioners and doctors who refer them for radiography or ultrasound

services. She avers that when patients are referred for radiography or ultrasound services by their doctors, they are provided with a form and are afforded the choice of engaging a radiographer or ultrasound practitioner. As such, no repeat business can be garnered from these patients due to some kind of customer connection.

[14] The legal position where an employer seeks to enforce a restraint of trade agreement on the basis of a risk of harm to its trade connections and in particular its connections with its customers, has been authoritatively set out in the following terms:

“The need of an employer to protect his trade connections arises where the employee has access to customers and is in a position to build up a particular relationship with the customers so that when he leaves the employer's service he could easily induce the customers to follow him to a new business (Joubert *General Principles of the Law of Contract* at 149). Heydon *The Restraint of Trade Doctrine* (1971) at 108, quoting an American case, says that the 'customer contact' doctrine depends on the notion that 'the employee, by contact with the customer, gets the customer so strongly attached to him that when the employee quits and joins a rival he automatically carries the customer with him in his pocket.

In *Morris (Herbert) Ltd v Saxelby* [1916] 1 AC 688 (HL) at 709 it was said that the relationship must be such that the employee acquires 'such personal knowledge of and influence over the customers of his employer . . . as would enable him (the servant or apprentice), if competition were allowed, to take advantage of his employer's trade connection . . .'

This statement has been applied in our Courts (for example, by Eksteen J in *Recycling Industries (Pty) Ltd v Mohammed and Another* 1981(3) SA 250 (E) at 256C-F). Whether the criteria referred to are satisfied is essentially a question of fact in each case, and in many, one of degree. Much will depend on the duties of the employee; his personality; the frequency and duration of contact between him and the customers;

where such contact takes place; what knowledge he gains of their requirements and business; the general nature of their relationship (including whether an attachment is formed between them, the extent to which customers rely on the employee and how personal their association is); how competitive the rival businesses are; in the case of a salesman, the type of product being sold; and whether there is evidence that customers were lost after the employee left. . . .”

[15] In *Walter McNaughton (Pty) Ltd v Schwartz & Others*,¹¹ van Reenen J pointed out that:

“For information to be confidential, it must (a) be capable of application in trade or industry, that is, it must be useful; not be public knowledge and property; (b) it must be known only to a restricted number of people or a closed circle, and (c) be of economic value to the person seeking to protect it.”

[16] In *Den Braven SA (Pty) Ltd v Pillay and Another*,¹² it was pointed out that in considering the facts of a particular case it must always be borne in mind that a protectable interest in the form of customer connection does not come into being simply because the former employee had contact with the employer’s customers in the course of their work. The connection between the former employee and the customer must be such that it will probably enable the former employee to induce the customer to follow him or her to a new business.

[17] The facts which are relevant to this aspect of the matter are the following. By all accounts the applicant’s practice was well-established. This is evident from the fact that he not only conducted his practice from Vryheid but also from Newcastle and Dundee. In the nine odd years that the respondent was employed by the applicant, she not only carried out her professional duties as a radiographer and sonographer, she was also the practice manager. It stands to

¹¹ 2004 (3) SA 381 (C) at 390C-D.

¹² 2008 (6) SA 229 (D).

reason that she was the face of the practice. She not only dealt with the patients who were referred to the practice by the general practitioners in the area, but also with the general practitioners themselves. In such circumstances, it is reasonable to infer that whatever links she was able to forge she did so in the course of her employment with the applicant.

[18] I further consider that apart from rendering professional services to the practices patients and general practitioners over a lengthy period of time, it is reasonable to assume that the respondent also interacted with and forged relationships with medical sales persons and other suppliers of goods and services to the practice. Again, all this would have taken place in the course of her employment with the applicant.

[19] In my view, whatever relationships the applicant established and whatever ‘customers’ (whether in the nature of general practitioners or patients) she procured by her own efforts in the course of her employment, it cannot be denied that these were customers of the applicant.

[20] I further consider that in her capacity as practice manager, the applicant would have gained intimate, useful and confidential knowledge of the applicant’s practice, particular those aspects relating to the applicant’s customer base, his suppliers and how the practice operated. The confidential nature of all this information can only be relevant and applicable to the particular practice, it would have been known only to the applicant and respondent and lastly, its economic value is only applicable to the applicant who seeks to protect it.

[21] While in the one breath, the applicant claims that the patients treated at the Vryheid practice are not proprietary to the applicant but are patients of the general practitioners and doctors who refer them, in the very next, she suggests

that patients who are referred for radiography or ultrasound services by their doctors are simply provided with a form and are afforded the opportunity of making their own choice. This argument is not only contradictory but it is also devoid of any substance. It is most improbable, in my view, that a doctor would simply provide a patient with a form and request that he/she find a radiographer/radiologist of their choice. The more probable scenario is that the referring doctor will direct the patient to a particular practice with which he has developed a close relationship which in the present case would be that of the applicant.

[22] Having regard to the diverse nature of the services provided by the applicant in the Vryheid practice, the number of years that the respondent worked for him and the access which she had not only to his ‘doctor/patient’ base which allowed her to forge her own relationships, but also to all the confidential information pertaining to his practice, it is disingenuous for the respondent to suggest that no protectable interest exists which warrant protection. The fact that the applicant did not offer ultrasound or sonography services at the Vryheid practice until December 2015 is, in my view, immaterial. The point is that the respondent gave him no opportunity to rearrange his practice when she left at the end of May 2015. Judging from the fact that she was able to start her own practice barely three weeks after leaving the applicant indicates, in my view, just how strong a bond she managed to establish with the applicant’s referring doctors/patients, thus allowing her to virtually carry them ‘in her pocket’ when she left.

[23] As for her right (and freedom) to carry out her profession, skills and expertise as a sonographer and ultrasound practitioner is concerned, I do not consider that the restraint unduly restricts her from doing so. She can do so anywhere else but not within a radius of 70 kilometers of the applicant’s

practices. I accordingly conclude on these aspects that the applicant has clearly demonstrated that he has a protectable interest which deserves protection by the restraint and the respondent has flagrantly breached same.

[24] Turning to the issue of competition as raised by Ms Bosman in sub-para (e) above, it was submitted that the restraint seeks to prevent the respondent from using her skills and expertise as a sonographer and ultrasound practitioner. It was contended that to impose a geographic radius of 70 kilometers from the towns of Vryheid, Newcastle and Dundee would be unreasonable especially in circumstances where the respondent has only worked in Vryheid and not in Dundee and Newcastle. Additionally, it was pointed out that the respondent lives in Vryheid and raises her family there.

[25] There are two considerations that apply here. *First*, it is a matter of great public interest and concern that agreements concluded by the parties thereto with serious contractual and binding intent, should be enforced, unless there is a more compelling public interest which over-rides the legal maxim of *pacta servanda sunt*.¹³ *Second*, in a society where promotion of the principle of commercial competition is believed to be in the interests of society, any attempt to restrict unreasonably, or reduce, healthy competition and therefore a person's right to participate freely in a trade or business will be regarded as harmful and tending to lessen the performance of participants in business and the economy.¹⁴

[26] In the present matter no dispute whatsoever exists regarding the conclusion of the various agreements between the parties from time to time. Nor is there any suggestion on the part of the respondent that she was misled in any way by the applicant regarding the full import and implication of the

¹³ Saner, *Agreements in Restraints of Trade in SA*, 1-8, and the authorities referred to in footnote 29.

¹⁴ *Forwarding African Transport Services CC t/a FATS v Manica Africa (Pty) Ltd* [2004] 4 All SA 527(D) 530i-531c.

restraint clauses. If anything, an examination of the restraint clauses as they appeared in the various annexures from the commencement of the employment contract until the last one which terminated on 31 May 2015, indicates that at each stage the respondent was able to negotiate for more favourable terms concerning the duration of the restraint and the area of its application. She cannot now be seen to complain that it prevents her from competing unfairly in the same field as the applicant.

[27] As for the second issue referred to above, I have already found that the applicant has a proprietary interest which is deserving of protection by the restraint. In my view, the restraint contained in clause 9 of Annexure “F”, does not seek to prevent the respondent from pursuing her profession as a sonographer or radiographer entirely. It merely restricts her from doing so for a limited period and only insofar as the three towns in which the applicant has his practices concentrated. She is otherwise free to pursue her economic activity anywhere else in the Republic. It is noted that she has also established a practice in Piet Retief.

[28] A further point that should be made here is that the respondent cannot claim that she walked into the respondent’s practice with all the requisite skills and expertise of a sonographer and radiographer. Much of this was acquired by her in the course of her employment with the applicant in the nine years that she worked for him. At paragraph 34 of his replying affidavit, the applicant points out that he also sent the respondent on a mammography course at his own expense. It seems to me that her employment with the applicant allowed the respondent to acquire far more knowledge, skill and expertise about the profession than she otherwise had when she first started working for him.

[29] On the issue of overbreadth of the restraint, both in terms of duration as well as in terms of area, as contended for by Ms *Bosman* in sub-paras (f) and (g) *supra*, I believe that the following considerations may be relevant. Problems associated with issues of overbreadth in the field of restraints of trade agreements are on-going. These seem to arise especially at the enforcement stage, as in the present matter. Ms *Bosman* contended that it would be unfair and against public policy to enforce the restraint in its current form bearing in mind that the respondent did not perform any services at Dundee or Newcastle, and furthermore that the designation of 70 kilometers was arbitrary given that there are no towns of any significance in any of these areas.

[30] I find it strange that the respondent only now seeks to complain about the extent of the restraint. It is significant that she raised no such complaints when the last extension of her contract was concluded. One would have expected her to have done it then. In any event, I see no merit in her complaint. While she now maintains that she did not perform any services in Newcastle and Dundee, in paragraph 16 of her answering affidavit, she avers that she did work in the Dundee practice until about 2007 on a weekly basis. Her assertions to the contrary are, in my view, disingenuous and rather opportunistic. I accordingly conclude that there is nothing unreasonable or arbitrary either about the duration of the restraint or the area it covers. This is what she agreed to and this is what she should be held to.

CONCLUSION

[31] Based on all of the above I am not persuaded that the respondent has discharged the *onus* resting on her. She has failed to establish that the restraint is unreasonable or that it offends against public policy. She has been in flagrant breach of the restraint since the 15 June 2015 despite the efforts on the part of

the applicant (through his attorneys) to convince her to desist from such conduct.

[32] As far as the duration of the restraint is concerned, I believe that the applicant has been fair to suggest that it should be for a period of 12 months. Inasmuch as the applicant may complain that the enforcement of the restraint will cause her to suffer some hardship at this stage, she must bear in mind that thus far she has had the full financial benefit of a practice at Vryheid in material breach of a restraint undertaking which she all along agreed to.

[33] I accordingly conclude that the applicant has established quite conclusively that he has an interest that deserves protection and that such interest has been severely threatened by the conduct of the respondent. I am also satisfied that the protection of the applicant's interest does not in any way prevent the respondent from being economically active and productive.

ORDER

[34] In the result, I make the following order:

- (a) The respondent is interdicted from either directly or indirectly being employed by or have an interest, either as employee, principal, agent, member, shareholder, director, partner, consultant, financier or advisor in any concern or entity which carries on a Radiology Practice, or a business that renders Diagnostic Ultrasound, Foetal Assessment, Doppler Studies and/or Musculo Skeletal ultrasound services, within a radius of 70 kilometers from Newcastle, Dundee and/or Vryheid, KwaZulu-Natal, for a period of 12 months from date of grant of this order;

- (b) The respondent is hereby ordered to forthwith cease her Sonographer practice in which she renders Diagnostic Ultrasound, Foetal Assessment, Doppler Studies, and Musculo Skeletal Ultrasound services from 234 Utrecht Street, Vryheid, KwaZulu-Natal;
- (c) The respondent is ordered to pay the costs of this application.

Date of Hearing	:	13 June 2016
Date of Judgment	:	24 June 2016
Counsel for Applicant	:	RM van Rooyen
Instructed by	:	De Jager Baqwa Maritz Inc. c/o Venns Attorneys
Counsel for Respondent	:	Ms P Bosman
Instructed by	:	Corien Potgieter Inc. c/o Viv Greene Attorneys