



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not reportable

Case number: J 583/2018

In the matter between:

STRATOSAT DATACOM (PTY) LTD

Applicant

and

IGNATIUS PETRUS VERMAAK

First Respondent

TINSKY CONNECT (PTY) LTD

Second Respondent

Heard: 3 May 2018, final affidavits and submissions filed by 16 May 2018.

Delivered: 14 June 2018

Summary: Urgent application to enforce restraint of trade undertakings.

JUDGMENT

PRINSLOO. J

Introduction:

- [1] The Applicant filed an urgent application seeking to interdict and restrain the First Respondent (Vermaak) for his own account or as an employee, from carrying on or being engaged, interested or concerned, whether directly or indirectly, in the business of the Second Respondent (Tinsky) and any business carried on in competition with the Applicant's business.

- [2] The Applicant also seeks to interdict and restrain Vermaak from soliciting any business from any person who was a customer of the Applicant at any time during his employment and from divulging or using any of the Applicant's confidential information.
- [3] The Respondents opposed the application.
- [4] Vermaak resigned from the Applicant's employ in September 2017 and left at the end of September 2017. The urgent application seeking to enforce the restraint of trade agreement was filed only in March 2018 and enrolled for hearing on 3 May 2018.
- [5] Vermaak took issue with urgency and submitted that the matter is not urgent because the Applicant waited for more than five months to launch the urgent application. The attack on urgency is not entirely without merit. However, I am mindful of the fact that restraint matters are inherently urgent and *in casu* it is my view that it would be in the interest of the parties that the matter be decided.

Material facts:

- [6] The Applicant conducts business as a technology company that specializes in the supply of satellite, wireless communication, astronomy products and solutions for the African market. The Applicant provides services to major global system for mobile communications (GSM) operators, internet service providers and consumer markets in numerous industries and supplies tailor-made solutions to improve connectivity in Africa.
- [7] The Applicant operates within a highly competitive and specialised industry with a finite number of customers that require telecoms of the nature the Applicant offers.
- [8] The Applicant employed Vermaak in February 2009 as a VSAT engineer and his contract of employment contained restraint and confidentiality undertakings. These were however superseded when the parties concluded a restraint agreement (the restraint) in January 2010. The Applicant was promoted from the position of VSAT engineer to sales manager and his responsibilities included *inter alia*, meeting with clients to build and maintain

good relationships, negotiating and closing deals, representing the Applicant at trade associations, preparing sales reports and managing and driving sales as per the yearly sales budget. The Applicant deemed it necessary and sought to protect its interests in this regard by concluding the restraint agreement in January 2010.

- [9] In January 2016 Vermaak was promoted to sales director for the Democratic Republic of Congo, Angola and Mozambique and in this capacity he was entitled to commission. As sales director Vermaak's function was *inter alia*, to develop new business opportunities with the in-country managers in the respective countries where the Applicant does business and to introduce new products and services into these markets, to grow revenue streams and to build and maintain relationships with the clients.
- [10] Vermaak resigned from the Applicant's employ on 1 September 2017 and gave thirty days' notice. In his resignation letter Vermaak indicated his intention to pursue a career in self-employment.

The restraint of trade agreement

- [11] The Applicant approached the Court on an urgent basis to enforce the terms of the restraint of trade agreement the parties had entered into in January 2010.
- [12] The provisions of the restraint entered into in January 2010 are relevant, not only to the determination of this application, but also to provide context to the agreement as entered into between the parties and it is necessary to consider the restraint agreement in its entirety. The restraint reads as follows:

**MEMORANDUM OF AN AGREEMENT ENTERED INTO BY AND
BETWEEN:**

STRATOSAT DATAACCOM (PTY) LTD ("The Employer")

and

NAAS VERMAAK ("The Employee")

WHEREAS:

1. The employer trades in the specific market of satellite equipment sales and distribution as well as the marketing and sale of related products inclusive of bandwidth and electronic solutions;
- Installation of Vertex Earth station Antennas

- Specialized Supervision Services of Vertex Earth Station Antennas
 - Supply of General Dynamics C4 Satcom Product
 - Supply of Satellite Hardware components
2. The Employee is currently employed by the Employer in the position of General Manager and, by virtue of his employment the employee has gained specific knowledge of the employers know how, marketing tactics, electronic trade secrets, client base, financial structures and technical knowhow;
 3. The employer intends to enter into an agreement with Specialized Turn Key Services (Pty) Ltd, Commsience (Pty) Ltd / Satellite 2000 or any company owned or managed by shareholders, which company trades as the employers and competitor in its field of business and, in terms whereof, the employers intends to second the Services of the employee for use by its competitor on certain terms and conditions;
 4. the employer has a protectable interest in the knowledge and expertise obtained by the employee by virtue of his employment with the employer;
 5. the employee has consented to bind himself to the restraint of trade agreement below.

Now therefore it is agreed that:

- 1.1 For the purposes of this clause, "confidential information" means all the information referred to in clause 1.2 (b) below.
- 1.2 The employee acknowledges that:
 - (a) During his employment with the company he has had access to confidential information of the company including, but without being limited to, information relating to the identity of customers and suppliers of the company, the pricing methods of the company, its trade connections, its manufacturing formulae and processes and its financial and marketing operations;
 - (b) If any of the confidential information were to be given to or used by the company's competitor or potential competitors the company would be severely prejudices and will suffer substantial damage and loss;

- (c) Because he has had access to the confidential information during the period of his employment with the company it is reasonable for the protection of the company that he should be restrained from using it for his own or anyone else's benefit.

1.3 for the reasons stated in 1.2 above the employee undertakes that:

- (a) for as long as he is employed by the company and after the expiry or other termination of his employment for any reason whatsoever, he will not divulge any of the confidential information to any person whatsoever except insofar as may be necessary for the proper performance of his duties to the employer in terms of this agreement; and
- (b) Nor will he use any of the confidential information for his own or anyone else's benefit, unless and until, and then only to the extent, that the confidential information becomes public knowledge through no fault of his.

1.4 For the protection of the business of the employer against the use by anyone else of the confidential information the employee undertakes that while he is employed by the employer and for a period of 2 years after the termination of his employment with the employer for any reason whatsoever he will not, either for his own account or as an employee, be a representative, contractor or employee for Specialized Turn Key Services (Pty) Ltd, Commsience (Pty) Ltd / Satellite 2000 or any affiliate companies mutually or operated by the same shareholders or:

- (a) Carry on or engaged, interested or concerned, whether financially or otherwise and whether directly or indirectly, in any business carried on at the date on which he ceased to be employed by any company or person who operates in competition with the company anywhere in Africa, as specified in clause 1.4
- (b) Solicit business from or canvass any a person who was a customer of the company at any time during the period of his employment with the company;

1.5 The employee acknowledges that each of the undertaking made by him in terms of his agreement shall:

- (a) Be separate and divisible from all the other undertakings;
- (b) If any undertaking is or becomes unenforceable, be severable from and not affect any of the other undertakings or the rest of his agreement;
- (c) Be deemed to be reasonable and necessary to protect the lawful interests of the company.

1.6 The provisions of this clause shall survive the expiration or earlier termination of his employment agreement for any reason whatsoever.'

[13] In summary, the restraint recorded the Applicant's protectable interest as the knowledge and expertise obtained by the employee by virtue of his employment with the Applicant and 'confidential information' includes *inter alia*, information relating to the identity of customers and suppliers of the company, the pricing methods of the company, its trade connections, its manufacturing formulae and processes and its financial and marketing operations.

[14] In January 2016, when promoted to the position of Sales Director for DRC, Angola and Mozambique, the Applicant and Vermaak entered into a written agreement (the commission agreement), which provided *inter alia*, for a commission or bonus structure in respect of Stratosat DRC, Stratosat Mozambique and Stratosat Angola. In August 2017 the parties signed an addendum to the commission agreement whereby Vermaak's territory was increased to include West Africa.

[15] The Applicant's case is that its business operates throughout the African market as satellite services are preferred where fibre and microwave infrastructures are not readily available or as per the customer requirements and the Applicant has sought to protect its interests throughout the continent by virtue of the restraint. Tinsky is based in Gauteng and conducts business in competition with the Applicant and Vermaak is likely to seek business in Africa.

[16] Vermaak has had access to and personally nurtured many customer relationships over a period of employment with the Applicant and he managed *inter alia*, the following entities: Internet Solutions, Mobax, Aucom, Multichoice, Startimes, QKon, Broadlink, MST, IntelSat, Vodacom DRC, Castor Networks

DRC and all customers in Mozambique. Vermaak also had access to confidential information.

- [17] The basis of this urgent application is the breach of Vermaak's restraint of trade undertakings by virtue of his association with Tinsky, registered to conduct business in direct competition with the Applicant and by Vermaak unlawfully approaching the Applicant's customers and suppliers.

The restraint of trade agreement was superseded

- [18] Vermaak raised two issues in respect of the restraint.
- [19] Firstly, that the restraint provisions were only applicable at the time of his employment as a general / sales manager and became superseded by the subsequent commission agreements whereby he was appointed as a director of the Applicant. Vermaak's case is that when he was appointed as a director in January 2016, the restraint entered into in January 2010 was executed. He was told that he was no longer an employee of the Applicant in the ordinary sense and the scope of his work and responsibility changed drastically. The parties agreed that only the commission agreements would apply and those agreements do not contain any restraint or confidentiality provisions.
- [20] The Applicant disputed that the restraint agreement only related to Vermaak's position as general manager and not as sales director and that the restraint agreement was novated by the subsequent commission agreements. Vermaak was promoted to the position of sales director, which entailed added responsibilities but which is of no moment as the restraint agreement was in respect of his employment with the Applicant and was triggered by the termination of his employment.
- [21] In *Bonfiglioli SA (Pty) Ltd v Panaino*¹ the Labour Appeal Court (LAC) confirmed that a contract in restraint of trade is one that prevents an employee from exercising his or her trade, profession or calling, or engaging in the same business venture as the employer for a specified period, and within a specified area after leaving employment. The restraint agreement is therefore geared at protecting the employer's proprietary interest after the employee has left the employer's employment. The legitimate object of a restraint is to protect the

¹ (2015) 36 ILJ 947 (LAC).

employer's goodwill and customer connections (or trade secrets) and the restraint accordingly remains effective for a specified period (which must be reasonable) after the employment relationship has come to an end. The need for the protection exists therefore independently of the manner in which the contract of employment is terminated.

- [22] If *in casu* Vermaak's interpretation is accepted, it would mean that the Applicant wanted to protect its interest only during the period that Vermaak was employed as sales manager, whereas the need for protection arose by virtue of his employment with the Applicant and would in fact arise only after the termination of employment. The restraint agreement would, on Vermaak's interpretation, yield not only an insensible but also an unbusinesslike result.
- [23] The restraint was entered into by virtue of Vermaak's employment and the knowledge he gained as a result of that and was not limited to his position of general / sales manager.
- [24] The restraint agreement remains applicable.

Limited terms of the restraint of trade agreement

- [25] Secondly, and if the restraint agreement the Applicant relies upon remained applicable, Vermaak's contention is that it is taken entirely out of context.
- [26] Having found that the restraint agreement entered into between the parties in January 2010 remains applicable, the question that leaps out is what was restrained and protected in the said agreement.
- [27] In my view two main aspects were addressed and agreed upon in the restraint agreement.
- [28] The first is contained in clause 1.1 – 1.3 of the restraint agreement, which deals with confidential information and provided that "during his employment with the company he has had access to confidential information of the company including, but without being limited to, information relating to the identity of customers and suppliers of the company, the pricing methods of the company, its trade connections, its manufacturing formulae and processes and its financial and marketing operations."

[29] It is evident from the restraint agreement that Vermaak is restrained, after the termination of his employment, from divulging or using any of the Applicant's confidential information. The terms of the restraint are clear on this aspect and the Applicant's protection in this regard is not limited as it provides for 'any' of the Applicant's confidential information.

[30] The second aspect is provided for in clause 1.4 of the restraint agreement and it is the main issue in dispute. It provides that:

'For the protection of the business of the employer against the use by anyone else of the confidential information the employee undertakes that while he is employed by the employer and for a period of 2 years after the termination of his employment with the employer for any reason whatsoever he will not, either for his own account or as an employee, be a representative, contractor or employee for Specialized Turn Key Services (Pty) Ltd, Commsience (Pty) Ltd / Satellite 2000 or any affiliate companies mutually or operated by the same shareholders or:

(a) Carry on or be engaged, interested or concerned, whether financially or otherwise and whether directly or indirectly, in any business carried on at the date on which he ceased to be employed by any company or person who operates in competition with the company anywhere in Africa, as specified in clause 1.4

(b) Solicit business from or canvass any person who was a customer of the company at any time during the period of his employment with the company.'

[31] Vermaak's case is that the relevant restraint and confidentiality provisions in the restraint related to a limited number of entities only. Those are Specialized Turn Key Services (Pty) Ltd, Commsience (Pty) Ltd, Satellite 2000 or any affiliate companies mutually owned or operated by the same shareholders (collectively referred to as 'the entities'). Vermaak contended that he is not involved in any of the aforesaid entities thus he is not in breach of the restraint agreement.

[32] The Supreme Court of Appeal in *Natal Joint Municipal Pension Fund v Endumeni Municipality*² affirmed the principles applicable to the interpretation of legislation and contracts. What the judgment underscores is that the exercise of interpretation does not require a court to discern the intention of the legislature or the parties to a contract only by reference to plain meaning of words with a deferential nod, if necessary, in the direction of the *Oxford English Dictionary*. Wallis JA said the following at paragraph 18:

'The present state of the law can be expressed as follows: interpretation is the process of attributing meaning to the words used in a document, be it legislation, some other statutory instrument, or contract, having regard to the context provided by reading the particular provision or provisions in the light of the document as a whole and the circumstances attendant upon its coming into existence. Whatever the nature of the document, consideration must be given to the language used in the light of the ordinary rules of grammar and syntax; the context in which the provision appears; the apparent purpose to which it is directed and the material known to those responsible for its production. Where more than one meaning is possible each possibility must be weighed in the light of all these factors. The process is objective, not subjective. A sensible meaning is to be preferred to one that leads to insensible or unbusinesslike results or undermines the apparent purpose of the document.... The "inevitable point of departure is the language of the provision itself" read in context and having regard to the purpose of the provision and the background to the preparation and production of the document....' '

And further at paragraph 26:

'In between these two extremes, in most cases the court is faced with two or more possible meanings that are to a greater or lesser degree available on the language used. Here it is usually said that the language is ambiguous although the only ambiguity lies in selecting the proper meaning (on which views may legitimately differ). In resolving the problem, the apparent purpose of the provision and the context in which it occurs will be important guides to the correct interpretation. An interpretation will not be given that leads to impractical, unbusinesslike or oppressive consequences or that will stultify the broader operation of the legislation or contract under consideration.'

² 2012 (4) SA 593 (SCA).

- [33] In *Bothma-Batho Transport (Edms) Bpk v S Bothma and Seun Transport (Edms) Bpk*³ the Supreme Court of Appeal also considered the principles applicable to the interpretation of legislation and contracts and held that:

'Whilst the starting point remains the words of the document, which are the only relevant medium through which the parties have expressed their contractual intentions, the process of interpretation does not stop at a perceived literal meaning of those words, but considers them in the light of all relevant and admissible context, including the circumstances in which the document came into being. The former distinction between permissible background and surrounding circumstances, never very clear, has fallen away. Interpretation is no longer a process that occurs in stages but is essentially one unitary exercise.'

- [34] In interpreting the terms of the restraint agreement, this Court should have regard to the words used, the context provided by reading the particular provision or provisions in the light of the document as a whole and the circumstances attendant upon its coming into existence.
- [35] In clause 3 of the preamble of the restraint agreement some context is given to the agreement when it is recorded that the Applicant intended to enter into an agreement with the entities and intended to second Vermaak's services for use by its competitor, on certain terms and conditions. It was then agreed between the parties that Vermaak would not divulge or use confidential information and that for the Applicant's protection, Vermaak would not for a period of two years after the termination of his employment, either for his own account or as an employee, representative or contractor of any of the entities, carry on or be engaged, interested or concerned in any business carried on by the specified entities in competition with the Applicant, anywhere in Africa.
- [36] Applying the principles applicable to the interpretation of contracts, clause 1.4. cannot and should not be read, construed or considered in isolation and the broader context of the restraint should be considered as a whole. It is evident that the restraint agreement was entered into at a time when the Applicant envisaged the secondment of Vermaak's services to the entities, who are competitors, and sought protection of its business by entering into the restraint

³ 2012 (2) ALL SA 517 (SCA) at para 12.

agreement. No subsequent restraint agreement was entered into and at no point were the terms of clause 1.4 amended or expanded to include other entities or all competitors.

[37] The protection the Applicant sought and agreed upon with Vermaak, was in respect of the specified entities and in my view the Applicant is entitled to enforce its restraint in respect of the specified entities.

[38] Clause 1.4 of the restraint agreement cannot be interpreted or understood to include all the entities the Applicant has listed in the application before me, as clause 1.4 is qualified and refers to specific entities.

Breach of the restraint of trade agreement

[39] The next issue to be decided is whether Vermaak has breached the restraint agreement.

[40] The Applicant bears the onus of invoking the contract and to establish that Vermaak has entered into the contract which contained the restraint and confidentiality undertakings it seeks to enforce and to prove the breach thereof.

[41] The Applicant seeks to enforce the restraint agreement and in support of the alleged breach of the restraint undertakings, made several statements in its founding affidavit to show that Vermaak *inter alia*, provided quotations, contacted clients to discuss business opportunities and required advice on how to rectify an antenna issue. Most of the averments however referred to unidentified clients and unnamed entities. The Applicant did this 'to protect the very delicate relationship that it has with its clients' and because it 'wished to guard against embroiling its clients in litigation.'

[42] The Applicant cannot have its cake and eat it. The Applicant seeks to enforce a restraint agreement, without providing this Court with all the information and where it did so, it did so only because it 'has been pressed on the issue'. The Applicant made allegations regarding its conclusions from conversations with clients but provided no substantiating evidence or documents to support its allegations.

[43] In the Applicant's replying affidavit, it made a without prejudice tender and as a compromise indicated that it would agree to an order which permits the Respondents to sell box drop, anywhere in Africa, provided that the Respondents do not, until 30 March 2019:

- ' i) Offer any services in relation thereto including, but not limited to, installation, commissioning, maintenance, support and network monitoring and control; and
- ii) Buy from, or sell box drop to the Applicant's suppliers and customers, as the case may be, or otherwise deal with the Applicant's suppliers and/or customers listed in annexure "X" until 30 March 2019.'

[44] The Applicant stated that the aforesaid tender sought to create space for Vermaak to continue making a living selling box drop, but in doing so, not to exploit the trade connections and/or confidential information he had access to while in the Applicant's employ.

[45] Vermaak denies that he has breached the restraint agreement, as the customers and suppliers listed in the Applicant's annexure "X", are not covered by the restraint agreement.

[46] In argument Mr Cook on behalf of Vermaak indicated that Vermaak was prepared to accept paragraph i) of the tender (as set out *supra*), but for ENRC/ERG, with whom Vermaak has an existing contract in place. Mr Cook submitted that there was no justification for paragraph ii) of the tender as it prohibits Vermaak from buying from or selling to entities in annexure "X", when there is no exclusivity as those are the suppliers and customers in the market and in an industry where price is king.

[47] The parties filed further affidavits and submissions in respect of annexure "X". Those affidavits and submissions however did not change the fact that in terms of the restraint agreement, Vermaak would be restrained for a period of two years after the termination of his employment from carrying on or being engaged, interested or concerned in any business carried on by the specified entities in competition with the Applicant, anywhere in Africa. Annexure "X" contains a list of 14 suppliers and 15 clients the Applicant seeks to restrain the Applicant from buying from, selling to or otherwise dealing with. The entities

specified in the restraint agreement do not appear on the annexure “X” list and *vice versa*.

[48] Be that as it may, the Respondents rejected the with prejudice tender.

The confidentiality undertakings

[49] The Applicant seeks an order interdicting and restraining Vermaak from divulging to any person any of the Applicant’s confidential information and using such information for his own or any other party’s benefit.

[50] I have already found that this part of the restraint agreement is not limited to specified entities.

[51] This relief sought is in accordance with the terms of the restraint agreement where Vermaak undertook not to divulge any of the confidential information to any person whatsoever, nor to use it for his own or anyone else’s benefit. Confidential information included, but without being limited to, information relating to the identity of customers and suppliers of the company, the pricing methods of the company, its trade connections, its manufacturing formulae and processes and its financial and marketing operations.

[52] In *Jonsson Workwear (Pty) Ltd v Williamson and Another*⁴ the Court held that:

‘What thus must now be done, as part of the value judgment to be exercised in this matter, is to determine whether there is a case made out on the proper accepted facts as to whether the information the first respondent had access to whilst employed with the applicant would fall within the parameters of what could be classified as confidential information in terms of the above authorities, and also whether this information would be of benefit to the second respondent as employer of the first respondent.’

[53] The confidential information Vermaak has had access to of which he has detailed knowledge and understanding of include *inter alia*, cost and pricing structure and strategy, supply chain and distribution process, margins made on respective historic deals, sales staff commission structures, the abilities of the Applicant’s technical team, the inter-company financial structures, loan agreements, terms and the status thereof, inter-company transfer pricing

⁴ (2014) 35 ILJ 712 (LC) at para 49.

strategy, the company culture and the strong and weak points thereof and the Applicant's customer base, their contact details, office locations and the nature and terms of such contracts. This information remains commercially valuable for long periods of time.

- [54] The Applicant's case is that Vermaak was a director and he had access to information which accompanied the position. Vermaak was privy to confidential information which he can use to the detriment of the Applicant and he forged trade connections which he can exploit to the detriment of the Applicant.
- [55] Vermaak submitted that he was made to wipe clean his computer and hard drive of any software and or company information upon his resignation and he disputed that he is in possession of any confidential information. In respect of cost and pricing structures, Vermaak explained that those constantly fluctuate and he is not vested with the Applicant's or any of its competitors discounting structures. Vermaak is running a start-up business, with no sales staff and any knowledge or understanding of the Applicant's supply chain and distribution process, commission structures, inter-company financial structures, abilities of the technical team and the Applicant's culture serve no purpose and are of no value to him in his one man show business. Vermaak's case is that the Applicant failed to show that there was anything worthy of protection.
- [56] The reality is that Vermaak has to show that he did not have access to the Applicant's confidential information. Vermaak failed to do so, instead his case is that the Applicant's confidential information is of no use to him.
- [57] I accept that Vermaak had access to confidential information while in the Applicant's employ and whether he retained the information or not, is not material. The fact remains he had access to it. Vermaak has had access to information which is not ordinarily known by the Applicant's competitors and which could be of economic benefit to its competitors. This is sufficient to enforce the restraint in this regard.
- [58] Vermaak provided an explanation in respect of every aspect of confidential information raised by the Applicant, but he did not address the issue of the Applicant's customer base. Even if I were to accept that the issues addressed *supra* are of no value to Vermaak and would serve no purpose in his business,

the same cannot be said about the Applicant's customer base and trade connections.

- [59] Vermaak has had access to the Applicant's customer base, trade connections, pricing structures and other confidential information of which he gained knowledge while in the employ of the Applicant. This information is indeed valuable and worthy of protection, as it could be used to the benefit of a competitor and potentially exploited. The risk that Vermaak will disclose or use confidential information, is one the Applicant is not required to run.
- [60] The Applicant is entitled to an order enforcing the restraint agreement to the extent that its confidential information is protected and not infringed upon. In fact, Vermaak undertook not to disclose or use the Applicant's confidential information, as defined in the restraint agreement, and he is bound by that undertaking.

The clause 1.4 restraint undertakings

- [61] The Applicant seeks an order to interdict and restrain Vermaak throughout Africa and until 30 September 2019 for his own account or as an employee from carrying on or be engaged, interested or concerned, whether directly or indirectly in the business of Tinsky and any business carried on in competition with the business of the Applicant.
- [62] In my view the Applicant seeks to enforce the restraint agreement far beyond its terms and contractual undertakings. The Applicant seeks relief from this Court where it is unable to establish the terms it seeks to enforce, let alone a breach of these restraint undertakings.
- [63] Absent a clear restraint agreement in the terms the Applicant seeks, this Court is in no position to grant the relief sought. To do otherwise would be to interfere in a free and competitive market, without any contractual or legal basis to do so.

Costs

- [64] This Court has a broad discretion in respect of costs. The Applicant was partially successful in this application and the Respondents were partially successful in defending the relief sought.

[65] In my view this is a case where the interests of justice will be best served by making no order as to costs.

[66] In the premises, I make the following order:

Order

1. The First Respondent is interdicted and restrained from divulging to any person any of the Applicant's confidential information;
2. The First Respondent is interdicted and restrained from using any of the Applicant's confidential information for his own or any other party's benefit;
3. There is no order as to costs.

C. Prinsloo

Judge of the Labour Court of South Africa

Appearances:

For the Applicant: Advocate C Whitcutt SC with Advocate C de Witt

Instructed by: Eversheds Sutherland Attorneys

For the Respondents: Advocate A Cook

Instructed by: Aucamp Attorneys