



**IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL LOCAL DIVISION, DURBAN**

Case no: D8229/2024

In the matter between:

VOLTEX (PTY) LTD

Applicant

and

VERNON VENKATAS

First Respondent

NITHIANADHAN MOODLEY

Second Respondent

MV TRANSMISSION AND DISTRIBUTION (PTY) LTD

Third Respondent

ORDER

Having read the papers and after hearing counsel, the following order is made:

1. Condonation for the late filing of the applicant's replying affidavit is granted.
2. The rule nisi issued on 22 July 2024 is discharged.
3. The respondents are to pay the applicant's costs of the application including the costs of senior and junior counsel where so employed on scale B.

JUDGMENT

Date delivered: 9 July 2025

Masipa J

Introduction

[1] This is an application by the applicant for the confirmation of a rule nisi granted on 22 July 2024, which sought to enforce a restraint of trade and related relief against the respondents, pending the outcome of final proceedings. The application was unopposed when initially enrolled, and the rule nisi was granted interdicting and restraining the first and second respondents from competing with its business, soliciting its customers, or making use of its confidential information for a period of eight months, ending on 31 March 2025.

[2] Opposition followed some months later, but the matter was not finalised before the expiry of the restraint period. There is also an issue of the applicant filing it replying affidavit out of time with a condonation application. Nothing much turns of this and condonation is granted.

[3] At the time of the present hearing, the restraint period had lapsed, and the relief sought in respect of the merits had become moot. Despite the period of restraint having now lapsed, the applicant nonetheless persists in seeking confirmation of the rule nisi. Its position is that it remains entitled to such confirmation for purposes of costs and the vindication of its rights.

Background

[4] The first and second respondents were employed in the applicant's transmission and distribution division. Before resigning, they established the third respondent together with their spouses for the purpose of competing in the same niche industry. The applicant brought this application on an urgent basis to protect its interests, asserting that the respondents were in breach of restraint and confidentiality undertakings.

[5] The applicant contends that the respondents held confidential knowledge of its customer and supplier base in a niche market and that they had admitted an intention to approach such customers following their resignation. The applicant also asserts that the mere potential for misuse of this information justifies the restraint.

The respondents, for their part, deny any unlawful conduct, assert that the knowledge they held was either general industry knowledge or obtained prior to their employment with the applicant, and describe the application as punitive and abusive.

[6] It is apparent that there are material disputes of fact regarding the nature and extent of any confidential information, and the protectability thereof. These disputes would not have been capable of resolution on the papers and would have necessitated referral to oral evidence had the matter not become moot.

Mootness

[7] It is trite that courts do not determine academic questions or grant orders where no practical effect will result. A matter that is moot falls outside the jurisdiction of the court unless the interests of justice demand otherwise. This principle has been repeatedly affirmed, most notably in *JT Publishing (Pty) Ltd and Another v Minister of Safety and Security and Others*.¹ In applications of this nature, mootness does not deprive the court of jurisdiction, but it may affect the justiciability of the matter. Accordingly, an application that will have no practical effect or result, may be dismissed on that ground alone.

[8] In *President of the Republic of South Africa v Democratic Alliance and Others*² and reiterated in *Women in Capital Growth (Pty) Ltd and Another v Scott and Others*,³ the courts affirmed that moot matters should only be determined where the interests of justice so require, including where a judgment will have a precedential effect or address a recurring legal issue. In this matter, no declaratory relief is sought, and the applicant did not argue that a live controversy persists. The order sought was linked directly to a time-bound restraint period which has since expired. The confirmation of the rule nisi would therefore serve no enforceable purpose. Accordingly, the merits of the matter are no longer justiciable. Although the merits have fallen away, the issue of who should bear the costs of the urgent application remains a live controversy.

¹ *JT Publishing (Pty) Ltd and Another v Minister of Safety and Security and Others* 1997 (3) SA 514 (CC).

² *President of the Republic of South Africa v Democratic Alliance and Others* 2020 (1) SA 428 (CC).

³ *Women in Capital Growth (Pty) Ltd and Another v Scott and Others* [2020] ZASCA 95.

Costs

[9] The crux of this judgment lies in the appropriate treatment of costs in motion proceedings. Thus, the discretion to determine costs must be exercised afresh by this court, applying the usual principles applicable to motion proceedings where no order on the merits is granted.

[10] The general rule is that costs follow the result. However, where the application becomes moot before final determination, the court must consider the parties' conduct, the reasonableness of the litigation, and whether the applicant acted oppressively or the respondents unreasonably withheld consent.

[11] The applicant launched the proceedings in this matter and obtained interim relief. It thereafter persisted with the matter even when it became apparent that the restraint period would expire before the hearing. It made overtures to the respondents' attorneys offering to resolve the issue of costs. These were declined. There is evidence that the applicant delayed in filing its replying affidavit, which may have contributed to the lapse of the relief. However, the respondents' stance asserting that they were free to approach the applicant's clients and denying any enforceable confidentiality demonstrates a serious dispute which would have required adjudication, but for the effluxion of time.

[12] It is not in dispute that the applicant was entitled to the interim relief at the time that it was granted. The respondents conduct therefore necessitated the application and the incurring of costs by the applicant. The fact that the matter was rendered moot by the respondents' subsequent compliance does not entitle the respondents to escape the costs consequences of their earlier conduct.

[13] The respondents' allegation that the application was motivated by malice and intended to suppress competition is not supported by the evidence on record. They argue that, given the expiry of the restraint period, the applicant ought to have withdrawn the application and sought recovery of costs in terms of Uniform Rule 41. In my view, this was unnecessary. The matter was already pending before the court, and all the relevant facts required for a determination on costs were properly before it.

[14] Importantly, the main relief became moot through the passage of time and procedural delay, not because the relief was abandoned or withdrawn. The applicant had on the face of it, a legitimate basis for seeking protection of its commercial interests, and it was not unreasonable for it to institute the application. However, by the time the matter was heard, there was no longer a practical or legal basis for granting the relief save for the determination of costs which remained a live issue.

Order

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

1. Condonation for the late filing of the applicant's replying affidavit is granted.
2. The rule nisi issued on 22 July 2024 is discharged.
3. The respondents are to pay the applicant's costs of the application including the costs of senior and junior counsel where so employed on scale B.

Masipa J

DETAILS OF THE HEARING

Matter heard on: 11 June 2025

Judgment Date: 9 July 2025

Appearance Details:

For the applicant: Mr E Misrachi

Instructed by: Orelowitz Inc Attorneys

For the respondents: Mr N Riley

Instructed by: S T Attorneys