

REPUBLIC OF SOUTH AFRICA


 IN THE HIGH COURT OF SOUTH AFRICA
 GAUTENG DIVISION, JOHANNESBURG

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
(3)	REVISED.
 SIGNATURE 03/06/2025 DATE	

CASE NUMBER: 2022-5914

In the matter between:

GRAND GAMING GAUTENG (RF) (PTY) LTD**Plaintiff**

and

REZANNE BAKKES**Defendant**

Heard: 5-7 May 2025

Delivered: 7 May 2025 (*ex tempore*)

J U D G M E N T

YACOOB, J:

- [1] The plaintiff in this matter, Grand Gaming Gauteng, sues the defendant, a former employee, for damages as a result of an alleged breach of her employment agreement and the restraint clause of that agreement.
- [2] In claim one, the plaintiff alleges that Ms Bakkes, the defendant, shared confidential information with Nicholas Weaver, at the time the General Manager of Grand Gaming Hot Slots ("Hot Slots"), a related entity which the plaintiff contends is a competitor, without having authority to do so; that this was a breach

of the employment contract, and that it resulted in the plaintiff suffering damages. The confidential information Ms Bakkes was alleged in the pleadings to have shared is that "the Defendant exchanged emails with Nicholas Weaver, advising him of the proposed contractual terms that the Plaintiff wanted to offer to Mango Moon, being a 50% equal share of the revenue on a 4(four) year contract)."

- [3] Ms Bakkes is also alleged to have deceived the plaintiff by informing the plaintiff that "Mango Moon was no longer willing to sign up with the Plaintiff and would remain attached to" their existing contract, while a mere two days later she then strategized with Mr Weaver to acquire Mango Moon for Hot Slots. It is then pleaded that, had the plaintiff secured the contract, it would have lost an amount of R2 705 902.
- [4] In claim two, the plaintiff alleges that Ms Bakkes shared, without authorization, the terms of a proposed agreement with an existing client of the plaintiff's, Pedro's with another competitor of the plaintiff, Vukani Gaming Gauteng (Pty) Ltd ("Vukani"), as a result of which Vukani was able to make a more advantageous offer to Pedro's than that of the plaintiff.
- [5] It is pleaded also that Ms Bakkes acted fraudulently by misrepresenting to the plaintiff what the appropriate offer to Pedro's should be, that she induced an offer to Pedro's on specific terms by the plaintiff, and then told Pedro's that the plaintiff would not agree to the more favourable terms Pedro's sought. The plaintiff claims that this resulted in a loss of R3 027 962.
- [6] The plaintiff called two witnesses and closed its case, whereupon Ms Bakkes brought an application for absolution from the instance in accordance with Rule 39(6) of the Uniform Rules of Court, which provides that, at the close of the plaintiff's case, the defendant may apply for absolution from the instance, before the defendant commences their own case.
- [7] The correct approach to an application for absolution at the end of a plaintiff's case was stated by Harms JA in *Gordon Lloyd Page & Associates v Rivera*:¹

¹ 2001 (1) SA 88 (SCA) at 92–93, followed in *De Klerk v ABSA Bank Ltd* 2003 (4) SA 315 (SCA) at 323. See also *Klerk NO v SA Metal & Machinery Co (Pty) Ltd* [2001] 4 All SA 13 (E) at 33–34; *Momentum*

"The test for absolution to be applied by a trial court at the end of a plaintiff's case was formulated in *Claude Neon Lights (SA) Ltd v Daniel* 1976 (4) SA 403 (A) at 409G–H in these terms:

'... (W)hen absolution from the instance is sought at the close of plaintiff's case, the test to be applied is not whether the evidence led by plaintiff establishes what would finally be required to be established, but whether there is evidence upon which a Court, applying its mind reasonably to such evidence, could or might (not should, nor ought to) find for the plaintiff. (*Gascoyne v Paul & Hunter* 1917 TPD 170 at 173; *Ruto Flour Mills (Pty) Ltd v Adelson* (2) 1958 (4) SA 307 (T).'

This implies that a plaintiff has to make out a *prima facie* case — in the sense that there is evidence relating to all the elements of the claim — to survive absolution because without such evidence no Court could find for the plaintiff (*Marine & Trade Insurance Co Ltd v Van der Schyff* 1972 (1) SA 26 (A) at 37G–38A; *Schmidt Bewysreg* 4th ed at 91–2). The test has from time to time been formulated in different terms, especially it has been said that the Court must consider whether there is 'evidence upon which a reasonable man might find for the plaintiff' (*Gascoyne (loc cit)*) — a test which had its origin in jury trials when the 'reasonable man' was a reasonable member of the jury (*Ruto Flour Mills*). Such a formulation tends to cloud the issue. The Court ought not to be concerned with what someone else might think; it should rather be concerned with its own judgment and not that of another 'reasonable' person or Court. Having said this, absolution at the end of a plaintiff's case, in the ordinary course of events, will nevertheless be granted sparingly but when the occasion arises, a Court should order it in the interests of justice."

- [8] It is of course the case, as pointed out for the plaintiff, that the court may have regard to the possibility that the plaintiff's case may be strengthened by evidence emerging during the defendant's case.²
- [9] In this case, the first witness, Mr Nyakatya, was the only witness who testified on claim one. He testified that Ms Bakkes exchanged emails with Mr Weaver. None of those emails showed that Ms Bakkes disclosed information detailing what the plaintiff was offering Mango Moon as pleaded.

Life v Thirion [2002] 2 All SA 62 (C) at 73; *Swire Pacific Offshore Service (Pty) Ltd v MV 'Roxana Bank'* [2003] 4 All SA 520 (C) at 521.

² *Ruto Flour mills (Pty) Ltd v Adelson* (2) 1958 (4) SA 307 (T)

- [10] There was also no evidence of where the quantification of damages came from. Mr Nyakatya testified that it was extrapolated from "numbers" provided by the potential client. But none of that data was before the court.
- [11] Even if I assume in the plaintiff's favour that the defendant's evidence may strengthen its case, this would not assist to prove the damages. It must also be noted that plaintiff refused at the pretrial conference to split quantum and merits, and closed its case after the two witnesses testified, fully aware already of the *lacunae* in the evidence.
- [12] On claim two, there is no evidence that Ms Bakkes shared with the competitor what the plaintiff was going to offer Pedro's. There is evidence that the owner of Pedro's told the plaintiff's representatives that Ms Bakkes came to Pedro's with the competitor with which Pedro's eventually signed an agreement. In my view the conclusion sought by the plaintiff from this evidence is an unsubstantiated leap for the court to make.
- [13] On this claim too, there is no evidence in support of the amount claimed. There is evidence that the amount is calculated from data obtained by the plaintiff from its machines during the lifetime of its contract with Pedro's, but again that particular evidence is not produced for the court.
- [14] In these circumstances there is no possibility of judgment being granted for the plaintiff.
- [15] In the result, I order:

Absolution from the instance is granted, the plaintiff to pay the defendant's costs..


S. YACOOB
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, JOHANNESBURG

APPEARANCES

For the plaintiff:

L Siyo

Instructed by:

Cliffe Dekker Hofmeyr Inc

For the defendant:

N Smit

Instructed by:

Albasini Attorneys