



IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case No: 2025-034079

In the matter between:

FUTURE PACKAGING AND MACHINERY (PTY) LTD Applicant

and

NICHOLAS CHRISTIAN POLTI First Respondent

QUICK BOX (PTY) LTD Second Respondent

PRINT LABELS CC Third Respondent

Heard: 22 May 2025

Delivered: This judgment was handed down electronically by circulation to the parties' legal representatives by email and publication on the Labour Court's website. The date for hand-down is deemed to be on 14 July 2025.

JUDGMENT

AH SHENE, AJ

Introduction

[1] The applicant approached the court on an urgent basis to enforce the terms of the restraint of trade and confidentiality agreements as contained in the first respondent's written contract of employment concluded between the applicant and the first respondent (Polti).

[2] The first respondent has opposed this application. The second and third respondents have not opposed the application.

[3] The applicant seeks an order against the first respondent, Polti: interdicting and restraining him until 8 May 2027 and in the Republic of South Africa from:

- '1. being employed and/or involved in any capacity whatsoever with the second and third respondents;
2. being directly or indirectly interested, engaged, concerned, associated with or employed in any capacity whatsoever, in any competitive business (as defined in clause 17.1.2 of the first respondent's contract of employment), or a business which renders prescribed services (as defined in clause 17.1.8), and/or any services of same or similar nature to any services rendered by the applicant or other group companies;
3. soliciting orders from prescribed customers of the applicant (as defined in clause 17.1.6 of his employment contract), and/or the other group of companies for rendering of prescribed services and/or services referred to in clause 17;
4. soliciting any business from or otherwise soliciting, interfering with or enticing away from the applicant and/or the other group companies any prescribed customer;
5. canvassing business in respect of prescribed products (as defined in clause 17.1.7 of his employment contract) from prescribed suppliers (as defined in clause 17.1.9 of his employment contract);
6. canvassing business in respect of prescribed products from prescribed customers;

7. selling or otherwise supplying any prescribed products, and/or any products which are the same as and/or similar to the prescribed products, to any prescribed customer;
8. interdicting and restraining him from disclosing any of the applicant's confidential information to any third party including the second and third respondents and/or from utilising same.'

Urgency

[4] Although urgency was disputed in the respondents' opposing papers, it was not seriously challenged during argument, and submissions were made on the merits of the application.

[5] In *Boomrang Trade CC t/a Border Steel Metals v Groenewald and Another*¹, the court stated that proceedings for the enforcement of the restraint of trade are by their very nature urgent.

[6] The application will be decided as an urgent application.

Factual background

[7] Polti was employed by the applicant for 27 years. He held the position as project director from 22 March 2018 until his dismissal on 9 May 2024. He furthermore held a directorship with the applicant. Polti admits that he was responsible for increasing sales in the business and managed the applicant's relationship with various suppliers and customers.

[8] The applicant seeks an interdict preventing Polti from breaching the confidentiality and restraint undertakings incorporated in the contract of employment, including by continuing to be directly or indirectly engaged, interested in or concerned with, associated with or employed by Quick Box and/or Print Label and by soliciting the applicant's customers.

¹ [2012] ZAECELLD 18 (18 September 2012).

[9] The relevant provisions of the restraint read as follows:

‘17.3 Restraint undertakings

In consideration of the benefits conferred on him or her in terms of this agreement, and in order to protect the proprietary interests of the company and the other group companies and their respective successors in title and assigns, the employee irrevocably undertakes in favour of the company and/or the other group companies he or she shall not for the duration of the agreement (other than for purposes of discharging his duties and functions as an employee of the company and/or providing service to the other group companies, from time to time) and for a period of 36 months calculated from the termination date, anywhere in the prescribed area-

17.3.1 be directly or indirectly interested, engaged, concerned, associated with or employed in any capacity whatsoever, in any competitive business, or a business which renders prescribed services and/or services of the same or similar nature to any services rendered by the company or the other group companies, other than in terms of his employment with the company or the other group of companies; nor

17.3.2 solicit orders from prescribed customers of the company and/or the other group companies for rendering of prescribed services and/or services referred to in 17; nor

17.3.3 solicit any business from or otherwise solicit, interfere with or entice away from the company and/or the other group companies any prescribed customer or attempt to do so; nor

17.3.4 canvass business in respect of prescribed products from the prescribed suppliers; nor

17.3.5 canvass business in respect of prescribed products from prescribed customers; and/or

17.3.6 sell or otherwise supply any prescribed products, and/or any products which are the same as and/or similar to the prescribed products, to any prescribed customer.’

[10] For the purposes of interpretation of clause 17.3 of the restraint, the expression “*prescribed customer*”, means any person, firm, partnership, business,

undertaking, company, close corporation or other concern, entity or association of persons –

‘17.1.6.1 which is a customer or client of the company and/or the other group companies, or was a customer or client of the company, and/or the other group of companies at any time during the 12 months preceding the termination date or was accustomed to dealing with prior to the termination date.’

[11] “*Prescribed products*” meant all goods dealt with by the applicant in the ordinary course of business as contained in clause 17.1.7 of the employment contract.

[12] A “*prescribed service*” means any services which are dealt in by the company and/or any group company, as the case may be, in the ordinary course of business in accordance with clause 17.1.8 of the employment contract.

[13] “*Competitive business*” in terms of clause 17.1.2 of the agreement means any business that carries on interested in, involved, engaged or concerned in a business that is the same or similar to or directly competitive with the business of the applicant.

Issues to be decided

[14] It is trite that restraint of trade agreements are valid and will be enforceable if there is an interest that requires protection and that it is reasonable.

[15] Polti signed the contract of employment containing a restraint of trade undertaking.

[16] The applicant bears the onus to demonstrate that Polti is bound by the restraint of trade agreement and in breach of the undertakings. Thereafter, the onus shifts to Polti to prove that he did not hold customer connections on behalf of the applicant and that he was not privy to its confidential information. In the event that Polti is found in breach, whether the restraint undertakings would be unreasonable.

Applicable legal principles

[17] In *Esquire System Technology (Pty) Ltd t/a Esquire Technologies v Cronje and Another*², the position regarding restraints of trade in our law, having considered the position before and after the constitutional dispensation, has been summarised as follows:

- ‘1. Covenants in restraint of trade are valid. Like all other contractual stipulations, however, they are unenforceable when, and to the extent that, their enforcement would be contrary to public policy. It is against public policy to enforce a covenant which is unreasonable, one which unreasonably restricts the covenantor’s freedom to trade or to work.
2. Insofar as it has that effect, the covenant will not therefore be enforced. Whether it is indeed unreasonable must be determined with reference to the circumstances of the case.
3. Such circumstances are not limited to those that existed when the parties entered into the covenant. Account must also be taken of what has happened since then and, in particular, of the situation prevailing at the time the enforcement is sought.
4. Where the onus lies in a particular case is a consequence of the substantive law on the issue.
5. What that calls for is a value judgment, rather than a determination of what facts have been proved, and the incidence of the onus accordingly plays no role.
6. A court must make a value judgment with two principal policy considerations in mind in determining the reasonableness of a restraint:
 - 6.1 The first is that the public interest required that parties should comply with their contractual obligations, a notion expressed by the maxim *pacta servanda sunt*.
 - 6.2 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.’

² [2010] ZALC 198; (2011) 32 ILJ 601 (LC) at para 36.

[18] In *Labournet (Pty) Ltd v Jankielsohn and Another*³, the Labour Appeal Court considered the applicable legal principles and held that:

[40] In *Reddy*, the Supreme Court of Appeal preferred not to become embroiled in the issue of *onus* and adopted a pragmatic approach, which according to it, was consistent with an approach where there was a direct application of the Constitution to restraint agreements. This approach was specifically adopted in respect of motion proceedings for the enforcement of restraints where the issue for determination was the reasonableness of the restraint. In terms of that approach, where the facts, concerning the reasonableness, had been canvassed in the affidavits – genuine disputes of fact are to be resolved in favour of the party sought to be restrained by applying the so-called *Plascon-Evans* rule. If the accepted facts show that the restraint is reasonable, then the applicant must succeed, but if they show that the restraint is unreasonable then the respondent in those proceedings must succeed.

...

[43] It is now clear from, *inter alia*, *Basson* and *Reddy* that the reasonableness and enforceability of a restraint depend on the nature of the activity sought to be restrained, the *rationale* (purpose) for the restraint, the duration of the restraint, the area of the restraint, as well as the parties' respective bargaining positions. The reasonableness of the restraint is determined with reference to the circumstances at the time the restraint is sought to be enforced. With reference particularly to the facts of this matter, it is an established principle of law that the employee cannot be interdicted or restrained from taking away his or her experience, skills or knowledge, even if those were acquired as a result of the training which the employer provided to the employee.'

[19] The test set out in *Basson v Chilwan and others*⁴, to determine the reasonableness or otherwise of a restraint of trade provision is the following –

³ [2017] ZALAC 7; (2017) 38 ILJ 1302 (LAC) at paras 40 and 43.

⁴ 1993 (3) SA 742 A; [1993] 2 All SA 373 (A) at 7761-J.

19.1. Is there an interest of the one party which is deserving of protection at the termination of the agreement?

19.2. Is such interest being prejudiced by the other party?

19.3. If so, does such interest weigh up qualitatively and quantitatively against the interest of the latter party that the latter party should not be economically inactive and unproductive?

19.4. Is there another facet 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?

[20] In *Kwik Kopy (SA) (Pty) Ltd v Van Haarlem and another*⁵, a further consideration was added, namely, whether the restraint goes further than is necessary to protect the interests.

The first respondents' breach

[21] *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd*⁶, the Supreme Court of Appeal clarified the issue relating to dispute of fact in application proceedings. The general rule is that final relief may only be granted if those facts as stated by the respondent, together with those facts stated by the applicant that are admitted by the respondent, justify the granting of an order.

[22] In *Rail Commuters Action Group and others v Transnet Ltd t/a Metrorail and others*⁷, the court added another dimension to the enquiry in applying the *Plascon-Evans* principle, where the court said:

"Ordinarily, the Court will consider those facts alleged by the applicant and admitted by the respondent together with the facts as stated by the respondent to consider whether relief should be granted. Where however a denial by a respondent is not real, genuine or in good faith, the respondent has not sought that the dispute be referred to evidence, and the Court is persuaded of the inherent credibility of the facts asserted by an

⁵ 1999 (1) SA 472 (W) at 484E.

⁶ [1984] ZASCA 51; [1984] 2 All SA 366 (A).

⁷ 2005 (2) SA 359 (CC)

applicant, the Court may adjudicate the matter on the basis of the facts asserted by the applicant."

[23] It is common cause that on 22 March 2018, Polti entered into a contract of employment, the terms of which included a restraint of trade obligation for a period of 36 months from the termination of employment with the applicant. In the circumstances, the restraint operates from 9 May 2024 to 8 May 2027, and the applicant seeks to enforce the restraint agreement across the Republic of South Africa.

[24] The applicant contends that Polti, is employed by the second respondent (Quick Box), who is a competitor. Whether or not Polti is in fact employed or directly or indirectly engaged, interested in or concerned with Quick Box and/or Print Label is in dispute.

[25] The applicant stipulates that it conducts business in direct competition with the second respondent (Quick Box) and the third respondent.

[26] Polti denied that the two companies are in direct competition with the applicant as the applicant's client base deals with large scale packaging solutions, whereas Quick Box services clients who require small scale solutions. He describes the relationship as symbiotic.

[27] In accordance with the facts and definition as described in clause 17.1.2 of the employment contract, it is evident that the business Quick Box and Print and Label conducts, "*same or similar to or directly competitive*" with the business of the applicant.

[28] The following facts are common cause between the parties:

28.1. That Polti occupies a personal office at and within the premises of Quick Box;⁸

28.2. He is not charged with the occupation of his personal office;⁹

⁸ Founding affidavit: Annexure "FA9", paras 117 – 125 [001-118 of CaseLines] and replying affidavit: para 20.2 [004-13 of CaseLines].

- 28.3. No lease for the personal office has been produced;
- 28.4. He is a trustee of the KIT, which has a share in Goldrock, in which he is a trustee of the Kade Investment Trust which has a share in Goldrock Investment (Pty) Ltd (Goldrock), which is the owner of 8 Boaturn Street;
- 28.5. He acts as a representative on behalf of Goldrock;
- 28.6. The premises only bear the names "Quick Box" and "Print-a-Label";
- 28.7. He says nothing about his day-to-day activities or how he occupies himself.

[29] In January 2025, the applicant hired a private detective, Groenewald, who observed Polti's vehicle at Quick Box's premises. He set up a fictitious company and approached Quick Box for a quotation. Upon his arrival, he met Britany Smit and made enquiries about various boxes. She then referred him to her boss, Polti. It is common cause that Polti met with Groenewald at his personal office. The transcript, which was admitted, shows that Polti was actively enquiring about Groenewald's requirements in respect of the product needed and showed him various print jobs that Quick Box could assist with.

[30] The applicant furthermore alleges that the following facts show that the first respondent is in fact an employee of the second respondent:

- 30.1. Polti knew the prices of the boxes;
- 30.2. He stated that "*they could do any sizes*";
- 30.3. He stated that "*they could show him the quality of the print*";
- 30.4. He stated that "*they do machinery, corrugated plastic tapes creping*";
- 30.5. He stated that "*he put in a machine at Dischem to shred up the old boxes*";
- 30.6. He indicates to Groenewald that he would "*guide him*";
- 30.7. He stated that he was "*lying low because he is restrained and he is just tired of the litigation and he is avoiding it for now*"; and
- 30.8. Immediately after making the aforementioned comments, he says: "*I can assist: I will do your costing to the cent*".

⁹ Founding affidavit: Annexure "FA9", para 100.

[31] It is clear that Polti, in his exchange with Groenewald, advised him that he would provide a quotation and secured Groenewald's email address.

[32] Polti on the other hand, denies that the exchanges show that he is employed by Quick Box, as he was simply assisting the employee, Smit. The reason she referred to him as "*her boss*" is that she also assisted him at Goldrock Investments. Polti admits that he had this discussion with Groenewald and that the exchanges were mere puffery.

[33] Polti has denied being an employee of Quick Box. The facts show that the applicant had considerable involvement and knowledge of the business that Quick Box deals in. He showed Groenewald products that Quick Box sells. Polti says Ms Britton refers to him as her boss because she also works for Goldrock Investments. This explanation makes no sense, especially taking into account that Groenewald sought a quote or advice from Quick Box. Surely, it is expected that Ms Smit would call a sales representative or manager of Quick Box. In addition, the Polti's comments during his conversation with Groenewald that "*he was laying low*"; "*he is just here for packaging*"; "*he developed this business*", creates the impression that Polti is either working for Quick Box, alternatively he is directly or indirectly engaged or interested in Quick Box. Polti, also provided Quick Box with a loan. The inherent credibility of Polti's version is rejected as all these facts demonstrate that Polti has breached clause 17.3.1 of the contract of employment.

Was Polti in possession of Confidential information and customer connections?

[34] The applicant alleges that Polti, while in their employ, had access to the full company customer data base. This included selling prices to customers, supplier details and costing, including rebate and discount structures, the product list, cost prices, business IP including how the applicant made up the products, the average GP% and training information.

[35] Polti admits that he was in possession of confidential information. In terms of the employment contract Polti acknowledged and agreed that by reason of his association with the company and other group company, he has acquired and will

acquire considerable knowledge and know how relating to the company, the other group companies and their respective businesses. As senior employee who was also the director of the company, he was privy to confidential information and responsible for businesses in the Fast Moving Consumer Goods sector, the pharmaceutical, industrial sectors and the cellular industry. With regard to the applicant's profitability model, its pricing and profitability calculators, detailed high-level financial information, the income and balance sheet, yearly sales figures, its top customers, and top suppliers, I accept that this would constitute confidential information. However, Polti states that he did not update and create profitability models for clients¹⁰, but he exercised reasonable discretion in making decisions that concerned the operations and interests of the applicant¹¹. He engaged with suppliers of the applicant, but this was not frequent and only with key suppliers when necessary. Despite this, and taking into account that he exercised reasonable discretion in making decisions in the business, it has to be accepted that he had access to confidential information and that the position he held with the company gave him insight into this.

[36] In an application such as the present, all the applicant needs to show is that there is confidential information to which the employee had access to and which he or she could transmit if so inclined. It is thus not necessary to show that the applicant has in fact used the information¹². As a result, I am satisfied that the confidential information is worthy of protection.

[37] I now turn to customer connections. Polti admitted that he engaged with customers of the applicant to supply goods and services and had the discretion to structure deals for customers, subject to the procurement procedures and processes. Polti also alleges that he only had direct contact with 25 customers, compared to the applicant's 800 customers

¹⁰ Answering affidavit: para 112 case lines : 003-27.

¹¹ Answering Affidavit: para 100 case lines 003-24

¹² *Gilbacro AFS (Pty) Ltd t/a Gilbarco Mea v Hattingh and others* J1134/2022 [2022] ZALCJHB 149 (25 October 2022).

[38] In *New Justfun Group (Pty) Ltd v Turner & others*¹³, the court enforced the restraint of trade and held, with reference to customer connections, that it is sufficient for the applicant to show that the customer contact exists and that they can be exploited by the former employee and with reference to confidential information that:

[14] ... The respondent must establish that he or she had no access to that information or that he or she had never acquired any significant personal knowledge of, for instance, the applicant's customers while in the applicant's employ. All that an applicant need show is that there is secret information to which the respondent had access and which in theory the respondent could transmit to the new employer should he or she desire to do so.

...

[20] ... it remains ultimately for [the respondent] to establish that she had no access to confidential information and that she never acquired any significant personal knowledge of, or influence over the applicant's customers.¹⁴

[39] The applicant must show that Polti had customer contact and that he was able to exploit that. During Polti's discussion with Groenewald, he advised him that they installed a machine at Dischem. Dischem is one of the applicant's clients. Polti, reached out to Shaun Rheeder of Reenbunger Imports.

[40] Polti disputes that Quick Box is a competitor of the applicant and that it has changed its operations to compete with the applicant, and that the core business of the applicant and Quick Box is distinguishable. Even so, Quick Box is engaged or concerned with a business same or similar to that of the applicant.

[41] Polti has, however, not established that he has never acquired any significant personal knowledge or influence over the applicant's customers while being employed by the applicant. He admits that he was engaged with customers to supply goods, services and engaged with key suppliers when necessary. Having considered the conspectus of the facts before me, the facts show that he has customer connections.

¹³ (2018) 39 ILJ 2721 (LC).

¹⁴ Ibid at paras 14 and 20.

[42] In respect of Polti's undertaking relating to the 25 clients, there are times when such an undertaking would establish that there is no breach of the restraint. In this instance, the undertaking is only provided in respect of 25 clients. Polti, was a senior manager, and director of the company, who engaged with customers of the applicant to supply goods and services and had the discretion to structure deals for customers. Taking a conspectus of factors into account, I am not convinced that the undertaking is sufficient to protect the applicant from the risk it seeks to prevent.

[43] As a result, the applicant has a clear right to protect its interests and is not required to run the risk that confidential information will be disclosed and customer connections being utilised. As a result, the applicant is entitled to protection.

Reasonableness of the restraint and duration

[44] Despite being entitled to protection, this court must determine if the restraint is reasonable. If so, the restraint will be enforceable. This court is required to weigh up qualitatively and quantitatively Polti's interests to be economically active. Public policy requires parties to adhere to their contractual obligations.¹⁵In *Magna Alloys and Research (SA) (Pty) Ltd v Ellis*¹⁶, Rabie CJ held that a court may in the public interest, order that either the whole or only a part of the restraint of trade be enforced.

[45] It has been submitted that the enforcement of the restraint agreement would be unreasonable and against public policy, as it would prevent Polti from using his skills and practising a trade to earn a living. Considering what has been placed before this court and the findings made above, I am of the view that the enforcement of the restraint would be reasonable. I turn to the duration of the restraint.

[46] The question that arises is whether the restraint undertaking is unreasonably long, since it operates for a period of 36 months. Polti was suspended in December 2023 and dismissed in May 2024. As such, Mr Mundell, for the first respondent, argued that the period of suspension from 4 December 2024 to 9 May 2024 should be taken into account when determining the reasonableness of the restraint.

¹⁵ *Reddy v Siemens Telecommunications (Pty) Ltd* [2006] ZASCA 135; 2007 (2) SA 486 (SCA).

¹⁶ 1984 (4) SA 874 (A)

[47] The applicant seeks to enforce the restraint throughout the Republic of South Africa, and therefore, the duration of the restraint must be subjected to scrutiny. The applicant asserts that the period is not unreasonable, taking into account that Polti was a senior manager and a director of the company.

[48] In *Vodacom (Pty) Ltd v Motsa & another*¹⁷, the court held:

‘[26] I see no reason to adopt a different approach. While I appreciate that in South Africa the onus is on the party resisting a restraint to establish that it is unreasonable in one or more respects, it seems to me that any consideration of reasonableness, especially in relation to the duration of a restraint, ought necessarily to take account of the full period that an employee is out of the market. Put another way, any period of enforced commercial inactivity prior to the termination of employment is relevant to the assessment of the reasonableness of any restraint that applies post termination. This position would be consistent with the broader public interest, which militates against having experienced and competent employees inactive and their skills atrophy during any unreasonably long exclusion from commercial activity. Not that these considerations are definitive, of course - the courts must also take into account the fact that highly- paid executive employees command the eye-watering remuneration packages they do at least partly on account of restraint and other ‘golden handcuff clauses in their contracts. But ultimately, the question that remains to be answered is whether any period of enforced commercial inactivity, whether by way of a garden leave clause or a more conventional restraint or both, is unreasonable having regard to the proprietary interests that the employer seeks to protect.’

[49] Clause 17.3 relating to the restraint undertaking, provides for a 36 month period calculated from the termination date, anywhere within the prescribed area. I have considered the above authorities, taken cognisance of the fact that Polti was suspended in December 2023 and dismissed in May 2024. As stated in *Vodacom supra*, any period of enforced commercial inactivity should be taken into account

¹⁷ (2016) 37 ILJ 1241 (LC); [2016] 5 BLLR 523 (LC).

when determining the reasonableness of the restraint. As a result, the restraint should be implemented from December 2023. The period of the restraint is 36 months. The applicant has a right to hold Polti to the agreement on the basis of *pacta servanda sunt*. This however, has to be balanced against Polti's right to be economically active. In Polti's answering and replying affidavits, he asserts that, the period of restraint is too long and that it should be reduced to 12 months. He is unemployed and has suffered financially. Clause 17.3 prohibits Polti from plying his trade throughout South Africa.

[50] The applicant alleges that it does not seek to prevent Polti from using his standard skills as either a manager or salesman. I find that the partial enforcement of the restraint will ensure the protection of the applicant's proprietary interest and that it will be sufficiently protected if the restriction mentioned in paragraph 2 of the Notice of Motion endures for 2 years from the date of suspension.

Costs

[51] The Labour Appeal Court has held that where this court exercises its jurisdiction under section 77 (3) of the BCEA, the requirements in terms of section 162 of the LRA, does not come into operation. In this instance, both parties are partially successful and therefore this is a matter where each party should bear their own costs.

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

Order

1. The first respondent is interdicted and restrained until December 2025 and within the Republic of South Africa, from directly or indirectly:
 - '1.1 Being employed and/or involved in any capacity whatsoever with the second and third respondents;
 - 1.2 Being directly or indirectly interested, engaged, concerned, associated with or employed in any capacity whatsoever, in any competitive business and/or any services of same or similar nature to any services rendered by the applicant or other group companies;

1.3 Soliciting orders from prescribed customers of the applicant and/or the other group of companies for rendering of prescribed services and/or services;

1.4 Soliciting any business from or otherwise soliciting, interfering with or enticing away from the applicant and/or the other group companies any prescribed customer;

1.5 Canvassing business in respect of prescribed products;

1.6 Canvassing business in respect of prescribed products from prescribed customers;

1.7 Selling or otherwise supplying any prescribed products, and/or any products which are the same as and/or similar to the prescribed products, to any prescribed customer;

1.8 Interdicting and restraining the first respondent from disclosing and or utilising any of the applicant's confidential information to any third party including the second and third respondents'

2 Each party must pay their own costs.

3 The application is dealt with as one of urgency and any non-compliance with the forms and service provided for in the rules of court is condoned.

L. Ah Shene

Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicant: D Pretorius of Fluxmans

For the Respondent: E Coll of Ellis Coll Attorneys