



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable
Case No: 2025-094429

In the matter between:

ARNOLDUS STEFANUS STRYDOM

Applicant

and

ANGELIQUE CASTRO

First Respondent

Heard: 15 August 2025

Delivered: 21 August 2025

JUDGMENT

ERASMUS, AJ

Introduction

[1] This is an application in terms of Rule 39 of the Labour Court Rules¹ to enforce a restraint of trade.

¹ GN 4775 of 2024: Rules Regulating the Conduct of the Proceedings of the Labour Court.

[2] The Applicant, in essence, seeks to interdict the Respondent from working for or owning a medical practice within a 10 km radius of the Applicant's premises for a period of three years and from engaging with the Applicant's clients for a period of one year. The application is opposed.

Factual background

[3] The Applicant is a doctor and general practitioner, and has been practising as such in the Mulbarton area for the last 28 years, initially in the Mulbarton Shopping Centre and for the past 10 years in the Strydom Medi Centre, across the road from the shopping centre. He is assisted in the practice by his wife, Dr Letitia Strydom, and he employs five medical doctors and eleven staff members consisting of dispensary staff, a sister, receptionists, administrative staff and a cleaner.

[4] The Respondent commenced employment with the Applicant on 1 May 2021, immediately after completing her compulsory community service to qualify as a medical practitioner.

[5] Upon taking up employment with the Respondent, the Applicant and Respondent entered into an employment contract. The provisions of the contract which are relevant to these proceedings state as follows:

'Confidentiality and Conflict of Interest

13.1. The Employee records, acknowledges and agrees that:

13.1.1. During the course of his employment in terms of this agreement, the Employee shall become acquainted with, gain personal and in-depth knowledge of and have direct access to strategic, sensitive and confidential information of the Employer (including the Employer's technical and business know-how, confidential information, goodwill and intangible assets in general - hereinafter collectively referred to as "the Confidential Information ") which is not readily available to a competitor of the Employer;

13.1.2. The Confidential Information is of strategic importance to the business of the Employer and the Employer accordingly has a legitimate proprietary and commercial interest therein which the Employer is entitled to protect.

13.1.3. Should any of the Confidential Information become available to a competitor of the Employer, it could cause the Employer considerable financial loss.

13.1.4. The only effective and reasonable manner in which the Employer 's legitimate proprietary and commercial interests in the Confidential Information could be protected so as to avoid financial loss to the Employer is by way of the Employee furnishing the confidentiality undertakings provided for in clause 13.2 below.

13.2. In consideration of the benefits accruing to the Employee in terms of this agreement and in the interest of the protection and maintenance of the Employer's Confidential Information, the Employee undertakes to the Employer that:

13.2.1. He shall not during his employment by the Employer or at any time thereafter, either himself utilise and/or directly or indirectly divulge and/or disclose to any third party (except as required by the terms and nature of the Employee 's appointment/employment with the Employer) any of the Employer's Confidential Information.

13.2.2. He shall not derive any benefit, whether directly or indirectly, from the Confidential Information, nor, without limiting the generality of the foregoing, be engaged, involved, concerned, or interested, whether directly or indirectly, in the economic exploitation, whether by marketing, promoting, advertising, or selling in any manner whatsoever, the Confidential Information.

13.2.3. He shall treat as confidential all Confidential Information which a third party has in terms of any contract made available to the Employer and which has become known to the Employee in the course of his duties under this agreement, and he shall not divulge to third parties any information regarding such Confidential Information contrary to the terms of the aforesaid contract.

13.2.4. Any documents or records (including written instructions, drawings, patients files, notes or memoranda) relating to the Confidential Information of the Employer which are created by the Employee or which come into the Employee's possession during the existence of this agreement, shall be deemed to be the property of the Employer and shall be surrendered to the Employer on demand, and in any event on the termination of the

Employee's appointment by the Employer and the Employee will not retain any copies or extracts thereof.

13.2.5. The Employee shall be precluded from being engaged with any clients of the Employer for a period of 1 year from termination of this agreement.

13.2.6. The employee is not allowed to work or open his own business in a radius of ten kilometre from Strydom Medi Centre on termination of this contract, irrespective of the reason. This provision will remain in place for a period of three years post-employment.' (sic)

[6] The Respondent resigned on 17 March 2025 with notice until 30 April 2025. On 07 April 2025, the Applicant and Respondent signed a document in terms of which the Respondent gave certain undertakings. The document reads as follows:

'Whereas the above parties agree that the services of Dr Angelique Castro's will be terminated on the 30th of April 2025. This is in respect of her handing in her resignation voluntarily and own accord on the 17th of March 2025.

Dr Angelique Castro further undertakes not to communicate her resignation to patients of Strydom Medi Centre, and agrees to abide by the restraint of trade and confidentiality clauses, as contained in the employment contract signed on the 01st of May 2021 by both parties.

No amendments shall be made to this agreement unless agreed by both parties and reduced to writing and signed before witnesses.' (sic) (Own emphasis)

[7] Upon leaving the Applicant's employ, the Respondent and another doctor opened a medical centre named Castro Smith Medical Suites, which medical centre is situated 3.8 km from Strydom Medi Centre on a straight-line radius and approximately 6.6 km when driving in a vehicle on the road.

[8] Whilst in the Applicant's employment, the Respondent attended to approximately 30 patients per day. The majority of these patients, with the exception of the Respondent's family and friends and referrals from them, were patients of the Applicant's Strydom Medi Centre, who were introduced to the Respondent by virtue of her employment at the Strydom Medi Centre.

[9] The Respondent agreed that she was provided with the requisite skills, training and resources to operate as a doctor and general practitioner under the Applicant's guidance and in pursuit and furtherance of the Applicant's medical practice.

Dispute regarding the contract

[10] There is a dispute between the parties regarding the meaning of the employment contract, specifically in relation to the clauses relevant to these proceedings.

[11] The Respondent contends that the restraint of trade provisions relate solely to the protection of the confidential information of Strydom Medi Clinic.

[12] The Applicant contends that the clauses relating to the restraint of trade are severable from the clauses regarding confidentiality.

[13] This court is faced with a classic example where a contract has been drafted with little to no cognisance of the employer's business or the employee's duties, and the circumstances within the business.

[14] The Labour Appeal Court in *Herbert v Head Education: Western Cape Education Department and Others*² summarised the position with regard to the interpretation of contracts, with reference to Constitutional Court judgments as follows:

'[13] In *University of Johannesburg v Auckland Park Theological Seminary and Another*, the Constitutional Court stated that the approach to interpretation adopted in *Endumeni* had "updated" the previous position, which was that context could be resorted to if there was ambiguity or lack of clarity in the text. In cases subsequent to *Endumeni*, the Constitutional Court noted that the Supreme Court of Appeal "has explicitly pointed out that

² (2022) 43 ILJ 1618 (LAC).

context and purpose must be taken into account as a matter of course, whether or not the words used in the contract are ambiguous.”

[14] In *Capitec Bank Holdings Limited and Another v Coral Lagoon Investments 194 (Pty) Ltd and Others*, the Supreme Court of Appeal stated that:

‘...*Endumeni* has become a ritualised incantation in many submissions before the courts. It is often used as an open-ended permission to pursue undisciplined and self-serving interpretations. Neither *Endumeni*, nor its reception in the Constitutional Court, most recently in *University of Johannesburg*, evince skepticism that the words and terms used in a contract have meaning.’

[15] The Court noted that what *Endumeni* does is that it –

‘... simply gives expression to the view that the words and concepts used in a contract and their relationship to the external world are not self-defining. The case and its progeny emphasise that the meaning of a contested term of a contract (or provision in a statute) is properly understood not simply by selecting standard definitions of particular words, often taken from dictionaries, but by understanding the words and sentences that comprise the contested term as they fit into the larger structure of the agreement, its context and purpose. Meaning is ultimately the most compelling and coherent account the interpreter can provide, making use of these sources of interpretation. It is not a partial selection of interpretational materials directed at a predetermined result.’

[16] In interpreting the collective agreement in this matter, the arbitrator was required to have regard to the aim and purpose of the collective agreement, the words and language used in it, having regard to ordinary rules of grammar and syntax, and the context in which the disputed terms appear in the agreement.’ (Footnotes omitted)

[15] This Court in *Sedumedi v Sefako Makgatho Health Sciences University*³ held as follows:

³ (2025) 46 ILJ 2015 (LC) at para 16.

‘Indeed, as pointed out by Unterhalter AJA in *Capitec*, “interpretation begins with the text and its structure. They have a gravitational pull that is important. The proposition that context is everything is not a licence to contend for meanings unmoored in the text and its structure. Rather, context and purpose may be used to elucidate the text.”’ (Own emphasis).’

[16] The wording in the impugned clauses 13.2.5. and 13.2.6 before Court is clear. It states that the Respondent shall be precluded from being engaged with any clients of the Employer for a period of one year from termination of the agreement and that she is not allowed to work or open her own business in a radius of ten kilometres from Strydom Medi Centre on termination of the employment contract, irrespective of the reason and that the latter provision will remain in place for a period of three years post-employment.

[17] The Respondent, however, contends that the context shows a different meaning, more particular, that they relate solely to the protection of confidentiality.

[18] Although the structure may at first glance support the Respondent’s contention, of importance to note is, amongst others, the heading to the relevant clauses which refers not only to confidentiality, but to “Confidentiality and Conflict of Interest”. (Own emphasis)

[19] Furthermore, clause 13.2 provides that the Respondent gives certain undertakings and that those undertakings are given not only in the interests of protecting and maintaining the Applicant’s confidential information, but also in consideration of the benefits accruing to the Respondent in terms of the agreement. The first four sub-clauses of clause 13.2 deal with the confidential information, with the fifth sub-clause setting out the preclusion from engaging the clients for one year, and the sixth sub-clause dealing with the prohibition to work within or open a business within a 10 km radius.

[20] The context, therefore, does not support the Respondent’s contention.

[21] The Respondent was not exposed to significant confidential information, but was allowed, over a period of four years of employment, to form customer relations with the Applicant's customers to the extent that she attended to approximately 30 patients per day.

[22] Furthermore, upon her resignation, the Respondent provided the Applicant with undertakings which she signed, agreeing to abide by the restraint of trade and confidentiality clauses, as contained in the employment contract. This document clearly acknowledges, after having spent four years in the Applicant's employ, that there are two sets of clauses that she agrees to abide by, namely confidentiality clauses and restraint of trade clauses.

[23] The Court is therefore satisfied that clauses 13.2.5. and 13.2.6 are capable of being read separately from the confidentiality clauses and constitute restraint of trade provisions in their own right, not only in respect of confidentiality.

Restraint of trade

[24] In *Reddy v Siemens Telecommunications (Pty) Ltd*⁴, the Supreme Court of Appeal held that:

'[15] 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*. 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. Both considerations reflect not only common-law but also constitutional values. Contractual autonomy 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 s 22. Section 22 of the Constitution guarantees '[e]very citizen ... the right to choose their trade,

⁴ 2007 (2) SA 486 (SCA).

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 s 25 protects the acquisition, use, enjoyment and exploitation of property, and of the fundamental rights in respect of freedom of association (s 18), labour relations (s 23) and cultural, religious and linguistic communities (s 31).

[16] In applying these two principal considerations, the particular interests must be examined. A restraint would be unenforceable if it prevents a party after termination of his or her employment from partaking in trade or commerce without a corresponding interest of the other party deserving of protection. Such a restraint is not in the public interest.'

[25] In *Basson v Chilwan and Others*⁵, Nienaber JA identified four questions that should be asked when considering the reasonableness of a restraint: (a) Does the one party have an interest that deserves protection after termination of the agreement? (b) If so, is that interest threatened by the other party? (c) In that case, does such interest weigh qualitatively and quantitatively against the interest of the other party not to be economically inactive and unproductive? (d) Is there an aspect of public policy having nothing to do with the relationship between the parties that requires that the restraint be maintained or rejected? Where the interest of the party sought to be restrained weighs more than the interest to be protected, the restraint is unreasonable and consequently unenforceable.

[26] In *Kwik Kopy (SA) (Pty) Ltd v van Haarlem and Another*⁶, a further consideration was added, namely, whether the restraint goes further than is necessary to protect the interest.

[27] It is by now trite that the party seeking to enforce a restraint need only invoke the restraint agreement and prove a breach of the agreement.

⁵ 1993 (3) SA 742 (A) at 767G-H.

⁶ 1999 (1) SA 472 (W) at 484E.

[28] It is common cause that the Applicant and Respondent entered into the employment contract and that the Respondent gave the additional undertakings after resigning.

[29] It is also common cause that the Respondent and another doctor opened a medical centre named Castro Smith Medical Suites which medical centre is situated 3.8 km from Strydom Medi Centre on a straight-line radius and approximately 6.6 km when driving in a vehicle on the road, thereby in breach of the provision that prohibits her from doing so within a 10 km radius.

[30] The Applicant only claims customer relations as a protectable interest in seeking to enforce the restraint of trade provisions. In *New Justfun Group (Pty) Limited v Turner and Others*⁷ the Court held, with reference to customer connections, that “*it is sufficient for the applicant to show that the customer contacts exist and that they can be exploited by the former employee*” and that it “*remains ultimately for [the respondent] to establish that [he or] she had no access to confidential information and that [he or] she never acquired any significant personal knowledge of, or influence over, the applicant’s customers.*”

[31] It was not in dispute that the Respondent treated about 30 patients (clients) per day and that the Respondent was exposed to these clients and placed in a position to forge relations with these clients by virtue of being exposed to them as a result of being in the employ of the Applicant for four years. The Applicant also confirmed that most clients do not generally change their regular general practitioner and have remained with his practice for years. The Respondent did not demonstrate that she did not have influence over the Applicant’s customers or that they would not follow her to her new practice, a mere 6.6km down the road, where her new practice was situated within a 3.8km radius from the Applicant, which clearly constitutes a threat to the Applicant’s business.

[32] In weighing the interests of the parties, one cannot escape the reality that the Respondent left the Applicant’s employ, where she earned an attractive salary, for

⁷ (2018) 39 ILJ 2721 (LC) at paras 13 and 20.

the purposes of opening her own business. The Applicant is an established medical centre in the area for about 28 years, which employed the Respondent after her practical years, providing her with the requisite skills, training and resources to operate as a doctor and general practitioner. The Applicant's wife and eleven other staff members earn a living from the Applicant's practice. The restraint provisions do not prevent the Respondent from earning a living. She merely has to do so outside of the 10 km radius.

[33] Although the Respondent contends that she caters for a less affluent area and population, one cannot escape the reality of this new business' proximity to that of the Applicant's. And although she attempts to demonstrate that she charges lower fees to accommodate the neighbourhood which she seeks to serve, the reality is once again that she is undercutting the Applicant's prices after having forged relations with his clients and being based in close proximity to the Applicant's practice.

[34] The 10 km radius agreed to by the parties is not such that it prevents the Respondent from being economically active. Although she explained that she was not able to afford to launch her own business at an affordable price outside of the radius, she did not provide convincing details in substantiation. She did not contend or demonstrate that she could not be gainfully employed (as opposed to opening her own practice) outside of the 10 km radius. Although the Respondent indicated her place of residence and the special scholastic needs and location of her children, she again failed to demonstrate why taking up employment or opening her own practice just outside the 10 km radius would not have enabled her to remain in her residence and for her children to remain in their current school, especially considering that the Respondent alleged that she intended catering for the lower-income market.

[35] The Respondent agreed in her affidavit not to engage the Applicant's clients for a period of one year. She contended, however, that she should not be restrained for a 10 km radius, considering that there are four other general practitioners in close proximity to the Applicant, as well as a hospital which houses even more general practitioners. If anything, this makes it even more important to restrain the Respondent to enable the Applicant to pick up ties with the clients, rather than have

them follow the Respondent to her new practice, which is now also situated in close proximity to all the practices and operates in competition with them, at lower fees.

[36] No consideration of public policy was demonstrated to the extent that it should prevent the enforcement of the restraint.

[37] This leaves the Court with the question of whether the restraint provisions go further than required to protect the interest. In terms of her contract of employment, the Respondent may not engage with the Applicant's clients for a period of one year, and these clients are the only protectable interest being claimed by the Applicant. Yet, the Applicant seeks to prevent the Respondent from working or opening a practice in the area for a period of three years. In the absence of any cogent explanation from the Applicant, this appears to simply be for purposes of stifling the competition, which cannot be obtained by means of a restraint. It clearly goes further than what is required to protect the Applicant's interests. In this regard, the one-year period, in respect of engaging the Applicant's clients, is more in line with the Applicant's interests.

Costs

[38] Both parties are seeking to enforce constitutional rights. As a result, the Court deems it just and equitable that no order should be made against either party.

Order

1. The Respondent is interdicted and restrained for a period of one (1) year from 1 May 2025 to 1 May 2026 from working for or owning a business, more specifically, a medical practice within a 10 (ten) kilometre radius of the Strydom Medi Centre, situated at 4 True North Road, Mulbarton, Johannesburg South, 2091.
2. The Respondent is interdicted and restrained for a period of one (1) year from 1 May 2025 to 1 May 2026 from operating a medical practice known as the Castro Smith Medical Suites, currently situated at Shop 4, Mayfield Park Shopping Centre, 38 Silver Avenue, Mayfield Park, Johannesburg

South, 2091, within a 10 (ten) kilometre radius of the Strydom Medi Centre, situated at 4 True North Road, Mulbarton, Johannesburg South, 2091.

3. The Respondent is interdicted and restrained for a period of one (1) year from 1 May 2025 to 1 May 2026, from engaging with any of the Applicant's clients.

4. Each party is to pay their own costs.

L. Erasmus

Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicant: Adv K Mitchell

Instructed by: VZLR Attorneys

For the Respondent: Mr B Williams of Brandon B Williams Attorneys Inc