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**IN THE HIGH COURT OF SOUTH AFRICA
WESTERN CAPE DIVISION, CAPE TOWN**

Case No: 2025-124057

In the matter between:

INOSPACE SERVICES (PTY) LTD

Applicant

and

RYAN JAMES MORRIS

First Respondent

STACK ONE FULFILLMENT (PTY) LTD

Second Respondent

Neutral citation: *Inospace Services v Ryan James Morris and Another* (Case no124057/2025) [2025] ZAWCHC...(08 September 2025)

Coram: LEKHULENI J

Heard: 19 May 2025

Post hearing submissions: 15 and 29 August 2025

Delivered: Electronically on 08 September 2025

Summary: Restraint of trade – First respondent resigning from the applicant's employment – First respondent soliciting the applicant's clients to do business with his new employer, the second respondent. Applicant seeking interim interdict - Effect of the interdict final in effect - First and second respondents interdicted and restrained from soliciting applicant's clients.

JUDGMENT

LEKHULENI J:

1. Introduction

[1] This is an application to enforce a restraint of trade agreement. The applicant brought this application on an urgent basis seeking an order that a rule nisi be issued, calling upon the respondents and all interested parties to show cause, if any, on a date to be determined by this Court why an order should not be granted restraining and interdicting the first respondent for a period of 12 months commencing on 01 July 2025, from breaching the covenant in restraint of trade he concluded with the applicant by directly or indirectly, soliciting business in respect of fulfilment services from any person who was a client of the applicant during the first respondent's employment with the applicant or was a prospective client of the applicant at the termination of the first respondent's employment being 30 June 2025.

[2] The applicant also seeks an order that the first and second respondents be interdicted and restrained for 12 months from canvassing or soliciting business or attempting to do so in respect of fulfilment services, particularly from Ecomignite and Repcillen, who were clients or customers of the applicant during the first respondent's employment with the applicant.

2. The Parties

[3] The applicant is Inospace Services (Pty) Ltd, a private company with limited liability duly incorporated in accordance with the Company Laws of the Republic of South Africa under registration number 2017/308733/07, with its registered office situated at The Block, 5[...] W[...] Street, Cape Town, Western Cape.

[4] The first respondent is Ryan James Morris, an adult male who currently resides in Tamboerskloof, Cape Town, Western Cape. The second respondent is Stack One Fulfilment (Pty) Ltd, a private company with limited liability, duly incorporated in accordance with the Company Laws of the Republic of South Africa under registration number 2025/418438/07. The second respondent is a newly incorporated company, having been registered on 26 May 2025.

3. The applicant's case

[5] The applicant's group of companies has various business divisions operating across Southern Africa, which include providing a variety of property, logistics and business services. The applicant asserts that its fulfilment division was established in 2023, and it is the group's fastest-growing service business. The applicant states that fulfilment services encompass the end-to-end process involved in managing e-commerce customer orders on behalf of third parties, from the moment an order is placed to the final delivery of the product. This includes receiving the order, storing inventory, picking and packaging the merchandise, and arranging shipping to the customer. Fulfilment services enable small to medium-sized e-commerce retailers to outsource their warehousing and distribution needs, capabilities that were traditionally only accessible to large retailers with the capital to operate their own bulk storage and distribution facilities.

[6] The applicant asserted that it has invested in a rigorous system of employing and then training its employees. Once employed, the applicant systematically educates and nurtures its employees. Its employees learn how the industry operates and the business methods and systems that enable them to succeed. Furthermore, the applicant asserted that it cannot train and educate its employees effectively without exposing them to confidential information at the core of its business and without introducing them to its customer and supplier base, which forms part of the

goodwill of the business. For this reason, the applicant requires its employees to sign a restraint of trade agreement that is operative for a period of 12 months as a condition of their employment.

[7] The first respondent commenced his employment with the applicant on 01 February 2021. As an employee, the first respondent was trained and upskilled by the applicant. He was ultimately promoted to the head of the fulfilment division, a senior position in the applicant, with full management authority, including the authority to hire and dismiss employees. Prior to his employment with the applicant, the applicant stated that the first respondent had no exposure to fulfilment services, supply chain management, e-commerce and the logistics industry. According to the applicant, the skills and knowledge the first respondent gained were instilled during the first respondent's employment with the applicant.

[8] The restraint of trade incorporated in the first respondent's employment contract records that the first respondent would, through his employment, gain in-depth knowledge of the confidential information and protectable interest of the applicant and that he will be exposed to clients and suppliers of the applicant. He will have the opportunity to forge business links with such parties. For this reason, the applicant contended that by the first respondent's signature on his employment agreement, he agreed that if he were to take up employment with or become associated with a competitor of the applicant, the applicant's protectable interests would be prejudiced.

[9] In this regard, the first respondent's employment agreement recorded that the first respondent would be required to agree to the restraint of trade. The applicant asserts that the first respondent agreed freely, voluntarily, and recognising that such restraint would not cause him any hardship that he is not willing to bear. The restraint of trade was for a period of 12 months from the date of termination of the first respondent's employment with the applicant.

[10] Additionally, the restraint of trade agreement also provided that any threatened or actual breach thereof may result in an interdict proceeding being launched to enforce the terms of the covenant, in which event the first respondent

would be liable for costs incurred on an attorney and client scale. The relevant part of the of the restraint of trade agreement stipulated as follows:

‘Irrevocably and unconditionally agree and undertake in favour of the company that [he] shall not within the territory, during [his] employment with the company and/or during the restraint period directly or indirectly, either solely or jointly, whether as proprietor, partner, director, shareholder, employee, consultant, contractor, financial, agent, representative:

12.2.1 carry on, assist, or otherwise be employed, engaged or concerned or interested in any person, firm, company, close cooperation, or entity which is in direct competition with the company; and

12.2.2 canvas or solicit (or attempt to do any of the foregoing) business in respect of the prescribed services from prescribed clients.’

[11] On 29 May 2025, the first respondent submitted his letter of resignation to the applicant. His final day of employment was scheduled to be 30 June 2025. According to the applicant, due to the seniority of the first respondent at the applicant’s business, it was mutually agreed that the first respondent should be placed on gardening leave during his notice period, which commenced on 13 June 2025, following a small farewell celebration at the applicant’s offices. The applicant contends that although the first respondent last rendered services to the applicant on 13 June 2025, his period of employment formally ended on 30 June 2025 after his notice had come to an end.

[12] On 13 June 2025, the first respondent sent a WhatsApp message to the applicant’s Chief Executive Officer (Mr Levitt) and appreciated the opportunity he was given and thanked the applicant for learning a lot whilst employed by the applicant. On 27 June 2025, Mr Weber, a former employee of the applicant, sent Mr Levitt a WhatsApp message informing him that he had become involved in a new venture operating in the fulfilment space, which would be headed up by the first respondent.

[13] I pause to mention that Mr Weber was the former Chief Operating Officer of the applicant and had been intricately involved in setting up the applicant’s fulfilment

division before his resignation in 2023. Mr Weber had brought the first respondent to the applicant in 2021. He appointed the first respondent to work in the fulfilment business of the applicant.

[14] Mr Venske the Group Operations Manager of the applicant who deposed to the founding affidavit asserted that upon receiving the message from Mr Weber, he learned for the first time that the first respondent intended to pursue employment in the fulfilment industry, thereby directly competing with the applicant. Additionally, the first respondent had not previously communicated his intention to participate in a rival business venture upon his resignation. On 30 June 2025, Mr Levitt, applicant's CEO and the first respondent, met to discuss the effect of the restraint of trade agreement in the first respondent's employment contract. At that meeting, the first respondent requested that the applicant relax the restraint of trade so that a competitor could employ him.

[15] In addition, the first respondent explained that he had no intention of soliciting the applicant's staff and clients. The applicant contends that Mr Levitt, in good faith and because he genuinely took an interest in advancing the first respondent's career, indicated to the first respondent that, in principle, the applicant would be willing to agree to relax the terms of the restraint of trade subject to certain conditions. Those conditions were subsequently communicated to the applicant through a WhatsApp message. The first condition was that the first respondent or any business with which he is associated, whether directly or indirectly, is prohibited from employing, attempting to employ, or engaging with current employees of the applicant during the restraint period, regardless of who initiates the contact.

[16] The second condition was that the first respondent or any associated entity is not permitted to solicit or provide services to any existing clients of the applicant, leads or prospects that were in the applicant's pipeline during the first respondent's employment. The third condition was that the first respondent or any associated entity may not engage, contract or utilise the applicant's suppliers that hold proprietary or strategic value, specifically Mintsoft, the applicant's warehouse management system provider.

[17] In response, the first respondent confirmed that he will not approach or solicit any of the applicant's current clients known to him from his time at the applicant's employment. However, the first respondent added that if a former client independently approaches him more than four months after ending their relationship with the applicant during the period of 12 months from 1 July 2025, he proposed that they be free to consider working with such a client, as he did not believe that would result in any prejudice to the applicant. The first respondent further assured the applicant that he has no intention of replicating or exploiting any proprietary or strategic arrangements unique to the applicant. Mr Levitt accepted the counterproposal and promised to formalise it in a letter.

[18] After that, on 8 July 2025, the applicant's head of human resources sent a written draft agreement to the first respondent encapsulating the agreement reached between the parties foreshadowed above. Amongst others, the proposed agreement recorded that the applicant was prepared to relax the restraint of trade agreement and that with effect from 1 November 2025, the first respondent may engage with prior clients of the applicant who approached the first respondent independently within the 12-month window period provided that there is no direct or indirect solicitation of the clients. This entitlement would take effect from 1 November 2025. The agreement also stipulated that a breach of the agreement would result in the full restraint outlined in the first respondent's employment contract becoming binding.

[19] In response to the formal written agreement, the first respondent did not agree with the suggestion that a breach of the new agreement would trigger the full restraint enclosed in his employment contract. The first respondent also proposed that he could engage with prior clients from 1 November 2025, in the absence of any solicitation. Notwithstanding, the applicant asserted that on Friday, 18 July 2025, while considering the first respondent's counterproposal, the applicant learned that its second-largest fulfilment client, Ecomignite, was using the fulfilment services of the second respondent instead of the applicant.

[20] It also came to the applicant's knowledge that at least one other existing customer of the applicant, Repcillen, was now using the fulfilment services of the

second respondent instead of the applicant. This change occurred after the second respondent, the first respondent's new employer, approached the customer.

[21] The applicant also explained an incident involving one of its business clients, Ecomignite. According to the applicant, this company has been doing business with the applicant almost since the inception of its fulfilment division. The applicant explains that on 7 May 2025, the head of Ecomignite, Mr Rayne Roselt, sent an email to the first respondent, who was still employed by the applicant, and to Mr Levitt, pointing out that another competitor in the fulfilment industry had offered his business better rates. Mr Roselt concluded the email by requesting a review of the rates that the applicant was offering him.

[22] The applicant further asserted that at that time, the first respondent convinced Mr Levitt to let him manage Mr Roselt because of his close working relationship with the latter. The first respondent scheduled a meeting with Roselt for 9 May 2025. According to the applicant, the first respondent indicated to Mr Levitt that it will be better if Mr Levitt does not attend the meeting. The first respondent promised to handle Mr Roselt on his own and advised Mr Levitt that he (first respondent) felt a face-to-face meeting between him and Mr Roselt would likely yield the best results. The first respondent attended the meeting with Mr Roselt and later reported to Mr Levitt that the meeting had been a success and that Mr Roselt would remain a client of the applicant.

[23] Shortly thereafter, on 2 June 2025, days after the first respondent had resigned, Mr Roselt emailed the first respondent and Mr Levitt to inform them that Ecomignite would be terminating its business dealings with the applicant, effective from the end of June 2025. The applicant contends that at that time, it had no reason to suspect that the first respondent had anything to do with Mr Roselt's decision to take the business of Ecomignite to a competitor. However, on 17 July 2025, Mr Venske of the applicant arranged for a package to be purchased from Ecomignite online. This purchase reflected that the second respondent was the fulfilment service provider for the order. After that, the applicant discovered that the second respondent, Stack One, employed the first respondent.

[24] The applicant further contended that, due to the close relationship between the first respondent and Mr Roselt and based on the meeting that took place on 7 May 2025, it was an unavoidable conclusion that the first respondent had engineered for Mr Roselt and Ecomignite to move their business to Stack One his new employer. In addition, the applicant asserted that it is undoubtedly so that the first respondent had been negotiating with Mr Levitt in bad faith when he made an undertaking not to solicit the applicant's clients and suppliers. The applicant stated that it has also since learned that another of its clients, Repcillen, has commenced using Stack One instead of the applicant.

[25] The applicant asserts that Mr Weber and one Jon Goodman are the directors of Stack One, which was registered on 26 May 2026, three days before the first respondent resigned from the applicant. The applicant further postulated that these facts lead to the conclusion that the first respondent must have been complicit with Mr Weber in the incorporation of the second respondent before he resigned from the applicant and that Mr Goodman's directorship of Stack One (second respondent) was designed to conceal the first respondent's involvement in Stack One to avoid scrutiny. In the applicant's view, the second respondent is essentially a special-purpose tool being used by the first respondent and Mr Weber to establish a business that competes with the applicant.

[26] The applicant submitted that competition is healthy, but it must be lawful. What the first respondent, Mr Weber and the second respondent have done is unlawful. The applicant's version is further that Mr Weber signed an almost identical restraint of trade when employed with the applicant and employed the first respondent as his reporting manager when he was still with the applicant. The applicant also noted that Mr Weber and the first respondent are good friends. In the applicant's view, Mr Weber and the first respondent have conspired to mask the first respondent's involvement in second respondent and schemed to undermine and prejudice the applicant's business.

[27] In the applicant's opinion, the second respondent is not an innocent employer whose new employee concealed the fact that he was subject to a restraint of trade. Instead, the second respondent is the tool that was established by Mr Weber and the

first respondent to try to circumvent the restraint of trade. The applicant opined that the second respondent is clearly complicit in the first respondent's unlawful conduct, in breach of their restraint of trade, and is benefiting from the first respondent's unlawful solicitation of the applicant's client. The applicant prayed that an order be granted as prayed in the notice of motion, as the applicant is at risk of losing further clients through the first respondent's unlawful conduct if an interdict is not granted.

4. The first respondent's case

[28] The first and second respondents opposed the applicant's application and raised some preliminary points. The first respondent disputed that he approached or solicited the applicant's clients. The first respondent pointed out that two clients, Ecomignite and Repcillin, are mentioned in the applicant's application to the effect that that the first and second respondents may not deal with these clients. The first respondent postulated that these clients have a direct and substantial interest in the grant or refusal of the relief sought by the applicant. Yet, they have not been cited in these proceedings. The two respondents take the view that this is a material non-joinder of Ecomignite and Repcillin, and the relief sought by the applicant is accordingly incompetent.

[29] The first respondent asserted that the applicant complains volubly about the loss of clients, namely Ecomignite and Repcillin, who are properly regarded as former clients of the applicant and who will not return to the applicant, regardless of the circumstances. In the first respondent's view, the applicant has no protectable interest in these former clients and no legitimate basis for the interdict sought. The first respondent points out that the nature of the fulfilment business that the applicant seeks to protect is straightforward, and there are no trade secrets or confidential information involved in setting up such a business. The first respondent contends that the generalised and unsubstantiated assertions made in support of the application are either misleading or simply false, as underscored by the fact that many companies offer fulfilment services on an identical or substantially similar basis to the applicant.

[30] In addition, the first respondent pointed out that, in terms of Rule 41A of the Uniform Rules of Court, there is a peremptory requirement that an applicant serve a notice in which it is given a binary choice: it must indicate whether it agrees to or opposes the referral of the dispute to mediation. No such notice was served at the time the application was served on the respondents on 28 July 2025. The first respondent contends that it would not be appropriate to dispense with the filing of a Rule 41A notice in this matter, as the parties are not far apart from settling.

[31] In filing the notice to oppose, the respondents delivered a Rule 41A notice in terms of which they agreed to formal mediations of the matter. At the request of the respondents' legal representatives, the applicant filed a Rule 41A notice with a proviso that the applicant does not object to referring the matter to mediation, subject to the interim relief sought by the applicant pending the commencement and outcome of any mediation. The respondents objected to the applicant's request as they opined that there will be no real incentive for the applicant to participate meaningfully in a mediation process if the interim relief is granted before mediation.

[32] Furthermore, the respondents challenged the urgency with which this application was brought. They contended that the application was launched on 28 July 2025 and set down for hearing on 1 August 2025. The respondents were required to file their opposition to the application by 10h00 on Tuesday, 29 January 2025. The respondents aver that they were required to file their answering affidavits by 12h00 on Thursday, 31 July 2025, two days after entering their notices to oppose the application and less than one day before the matter is set down for hearing.

[33] According to the respondents, the applicant has contemplated this application since 18 July 2025 and instructed its legal representatives to draft the application over the 8 days period between 20 July and 27 July 2025. Despite this, it has afforded the respondent less than three days to file answering papers. The respondents asserted that this matter is not urgent and must be struck from the roll.

[34] On the merits of the application, the first respondent asserted that he joined the applicant's property division in 2021, where he worked directly under the supervision of Mr Weber, who was the applicant's regional operations director at the

time. The first respondent contends that at the time he entered into the employment agreement with the applicant, which contained a restraint of trade, the applicant had no fulfilment division and could not foresee that the first respondent would have any involvement in fulfilment generally. During 2023, the first respondent was transferred from the applicant's property division to its new fulfilment division, which had been largely created by Mr Weber.

[35] According to the first respondent, Mr Weber resigned from the applicant in early 2024. In the wake of Mr Weber's departure, the first respondent points out that he noticed an increasing sense of hostility towards Mr Weber, by both Mr Levitt and Venske of the applicant, who attributed many of the difficulties that the applicant's business was then experiencing to him despite his departure. First respondent's attempts to address the problems faced by the applicant were unsuccessful, and it was during this time that he realised that his position at the applicant had become untenable and that he would need to explore other opportunities.

[36] The first respondent further asserted that he maintained a good relationship with Weber after the latter left the applicant. During April 2025, Mr Weber informed the first respondent that he intended to start his own fulfilment business following the expiration of his restraint of trade with the applicant on 1 March 2025. The company in question became the second respondent owned by Mr Weber and Mr Goodman. In that company, the first respondent was offered an equal share of the business alongside Mr Weber and Goodman. Accordingly, he resigned from the applicant on 29 May 2025.

[37] From the day following the date of his resignation and until June 2025, he called the applicant's clients to notify them of his departure and to facilitate a smooth handover to his successor, one Conry Orange. The applicant's Group Operations Manager, Mr Venske, initially opposed the idea of the applicant informing clients of his departure, expressing concern that such news might unsettle the applicant's client base. Despite Mr Venske's objection, the first respondent proceeded to notify clients, as he believed it was both appropriate and professionally necessary to do so.

[38] The first respondent explained that it would have created an impossible situation for Mr Orange if the customer base discovered that he was no longer there and that this fact had been concealed from them, as he had been the applicant's point of contact with the applicant's clients. He proceeded to contact the applicant's clients to facilitate a proper handover of his duties to Mr Orange. Most of the clients expressed regret at seeing him leave. A handful asked him what he was going to do, and in response, he told them that he was going to be in a similar business. Some clients indicated to him that they were unhappy with the applicant services and did not wish to continue using such services in the event of the first respondent's departure.

[39] Three clients inquired about following him to his new business venture. These clients were Ecomignite, Repcellin and Habit. He informed these three entities that his restraint of trade prevented him from soliciting or engaging them in respect of any new venture. Repcellin and Ecomignite were fundamentally unhappy with the applicant. They would not stay with the applicant after the first respondent's departure. The first respondent also explained the genesis of the applicant's relationship with Repcellin and Ecomignite. According to him, he personally identified and contacted Repcellin with a view to signing them on as a client for the applicant in January 2024.

[40] After his resignation and upon calling Ms Emma Sweet, who managed the day-to-day operations of Repcellin, advising her of his imminent departure from the applicant, Ms Sweet advised the first respondent that she under no circumstances wanted to continue with the applicant in the first respondent's absence and insisted that she would terminate her agreement with the applicant. The first respondent stated that Repcellin became a client of the second respondent (his new employer) without any intervention from him. When she came to know of this litigation, Ms Sweet of Repcellin wrote a letter and a confirmatory affidavit, which were attached to the applicant's answering affidavit.

[41] In that letter, Ms Sweet indicated that at no point did the first respondent solicit or ask them to move their business. They had built a strong working relationship with the first respondent during his time at applicant's employ, and they

experienced consistently good service. Their decision to engage the second respondent was solely based on their need for reliable fulfilment services and was not the result of any inducement or solicitation on the first respondent's part.

[42] Concerning Ecomignite, the first respondent stated that he was introduced to its sole director, Mr Roselt, by Mr Venske. The first respondent contended that Mr Roselt was constantly complaining about the applicant's prices during the period June 2024 to May 2025. That ultimately culminated in Mr Venske requesting that he meet with Mr Roselt to smooth things over and retain his business for the applicant. He met with Mr Roselt on 9 May 2025. At that meeting, while Roselt confirmed that he would stay with the applicant. However, it was clear to him that this was a short-term commitment and that Mr Roselt was on the lookout for a different fulfilment solution if his price requirements were not met.

[43] Upon calling Mr Roselt during the week of 26 May 2025 to advise him of his imminent departure from the applicant, Mr Roselt advised him that he would not continue with the applicant in the absence of the first respondent and further stated that he would terminate his agreement with the applicant. Observing the provisions of his restraint of trade, the first respondent stated that he did not suggest to Mr Roselt that he should follow him to the new business.

[44] The first respondent attached a supporting affidavit and a letter from Mr Roselt, wherein the latter stated that from early 2025, Aramex had actively sought his business, seeking to replace the applicant as Ecomignite's fulfilment partner. Mr Roselt confirmed the meeting of 9 May 2025 with the first respondent, who was in the applicant's employ at the time. Mr Roselt stated that at that meeting, the applicant offered him improved pricing, and he advised the applicant that this was sufficient for the time being to prevent him from moving to Aramex.

[45] Aramex continued to solicit his business, and they ultimately made an offer which he found acceptable. This prompted him to write a letter to the applicant, informing them that June 2025 would be the last month of doing business with them. Mr Roselt stated that neither the first nor the second respondent was the cause of this termination. Notwithstanding, he did not move his business to Aramex.

Subsequently, he had discussions with the second respondent, and an improved offer was made to him, which he accepted. Mr Roselt also impugned the non-joinder of Ecomignite in the application. He submitted that the preclusion of Ecomignite from doing business with the second respondent would cause material prejudice to Ecomignite and its ongoing operations.

[46] The first respondent also explained the discussion that took place between him and the group's operations manager relating to the relaxation of the restraint of trade agreement. First respondent contends that the agreement that was reached after his meeting with Mr Venske and subsequent email correspondence amounted to a variation of the terms of the restraint agreement. The first respondent further opined that it cannot be disputed that both Ecomignite and Reccillin are former clients of the applicant who have no intention of returning. In the first respondent's view, the applicant has no protectable interest, and the first respondent contends that, as a matter of law, the applicant cannot restrain them from dealing with the two entities.

[47] The first respondent disputed that he was dishonest when he negotiated with the applicant regarding his restraint of trade agreement. He implored the court to dismiss the applicant's application with costs.

5. The second respondent's case

[48] Mr Weber deposed to an affidavit on behalf of the second respondent. He stated that he was the Chief Operating Officer of the second respondent and had been an integral part of establishing the applicant's fulfilment business. Mr Weber submitted that the applicant's fulfilment business officially commenced on 3 July 2023. He oversaw the business from its conception and development in April 2023 until the termination of his employment with the applicant in March 2024, following a two-month notice period. In terms of his contract of employment with the applicant, he stated that he was restrained from, among other things, competing with the applicant for 12 months from the date of termination of his employment until 1 March 2025.

[49] According to him, following his resignation, he had already begun conceptualising his own fulfilment business as he was entitled to do in early July 2024. He was, however, mindful that he had to wait out the expiry of his restraint which he did. He attached WhatsApp correspondences to corroborate his averment. On 14 May 2025, he caused the second respondent (Stack One Fulfilment.co.za) to be registered. Mr Weber asserted that the second respondent was incorporated on 26 May 2025, and Mr Goodman is the sole director and owns all the shares. He declined to be a director as he is already a director of five companies. Mr Weber contended that the second respondent's fulfilment business was initially envisaged and conceptualised a month before the first respondent's resignation on 29 May 2025.

[50] Mr Weber contended that this application has been motivated by the hostility that Mr Levitt, the CEO of the applicant, developed towards him following his departure from the applicant. Whilst he departed on relatively good terms, one of the reasons for his resignation was that Mr Levitt and he had disagreements regarding his remuneration, particularly as regards the bonus model, which placed a strain on their relationship. Furthermore, their relationship deteriorated later that year following the termination of the commercial relationship between the applicant and Watch Tower Group (Pty) Ltd, a company of which Mr Weber is a director. This company provided off-site monitoring services to the applicant from September 2019 to October 2024.

[51] Mr Weber also impugned the urgency with which this application was brought. He shared the same sentiments with the first respondent that the relief sought by the applicant is incompetent in that Ecomignite and Rapcillin were not joined in these proceedings. Mr Weber sought an order that the applicant's application be struck from the roll with a punitive cost order.

6. Principal submissions by the parties

[52] Mr Goldberg SC, counsel for the applicant, submitted that this matter is urgent. Counsel argued that if this matter were to be heard in the normal course, the applicant would be prejudiced as the restraint of trade between the applicant, and

the first respondent is for a year. Counsel submitted that the first respondent has canvassed or solicited business from the prescribed clients of the applicant and from the entities trading as Ecomignite and Repcellin in breach of his restraint of trade agreement with the applicant. Mr Goldberg asserted that the second respondent is clearly complicit in the first respondent's unlawful conduct in breach of his restraint of trade and that the second respondent is also complicit in benefiting from the first respondent's unlawful solicitation of the applicant's clients.

[53] According to Mr Goldberg, a CIPC search in respect of the second respondent reveals, inter alia, that this entity was registered shortly before the first respondent's resignation on 26 May 2025 from the applicant. The first respondent resigned on 29 May 2025. Counsel emphasised that the invaluable springboard into the applicant's market share is not one that the second respondent would ordinarily have, were it not for their employment of the first respondent. Counsel argued that a restraint of trade enforcement claim arises against a third party, such as the second respondent, who, with full knowledge of the restraint of trade agreement, employs the concerned employee.

[54] Mr Goldberg submitted that the first respondent was the general manager of the applicant's fulfilment business and played a critical role in the day-to-day operation of its fulfilment division, serving as the primary point of contact for all clients. He developed a deep understanding of each client's business model delivery requirements, fulfilment challenges and pricing sensitivities. These relationships were highly personal, and trust based. Counsel submitted that the conduct of the respondents to solicit the applicant's clients constitutes a direct threat to these legitimate business interests. He implored the court to grant the relief sought in the notice of motion.

[55] On the other hand, Mr Kirk-Cohen SC, counsel for the respondents, submitted that the relief sought by the applicant is legally incompetent. Counsel submitted that the applicant is barking at the wrong tree. In counsel' view, this case should centre around Mr Weber and not the first respondent. Counsel submitted that the applicant employed Mr Weber, and, after his resignation, Mr Weber served the 12 months and honoured his restraint of trade with the applicant. Mr Kirk-Cohen argued that Mr

Weber's restraint clause has expired, and it is within his right to solicit clients, including that of the applicant. Counsel also submitted that the matter is not urgent. According to Mr Kirk-Cohen, the applicant had knowledge of the alleged breach of the restraint of trade agreement on 18 July 2025 but failed to bring such application timely.

[56] Mr Kirk-Cohen argued that the affidavit of Mr Roselt, the sole director of Ecomignite, filed on 13 August 2025, brings into sharp focus three issues: one of fact and two of law. On a factual level, Mr Roselt's affidavit removes any suggestion that his business Ecomignite was solicited away from the applicant by either respondent. In fact, so the contentions proceeded, the cause for the termination of his contract with the applicant was an attractive offer made to him by Aramex. Counsel submitted that Mr Roselt's decision to take his business to the second respondent was after this termination had already been communicated. There was no solicitation of business by the first respondents. Counsel submitted that the applicant relies on inferential reasoning that the respondents 'poached' the applicant's client, particularly Ecomignite.

[57] Mr Kirk-Cohen further pointed out that from early 2025, Aramex, another fulfilment service provider in the industry, had actively sought Ecomignite's business, seeking to replace the applicant as its fulfilment partner. This assertion aligns with the first respondent's evidence that Ecomignite had long been complaining about the applicant's pricing since June 2024, and that there was a waning of confidence on the part of Mr Roselt about the competitiveness of the applicant's pricing.

[58] Counsel submitted that Aramex continued to solicit Ecomignite's business and made an offer which Mr Roselt found to be acceptable. It caused him to give notice to the applicant on 2 June 2025 that Ecomignite's contractual relationship with the applicant was terminated, effective from the end of June 2025. Mr Roselt intended to take his business to Aramex. Self-evidently, so the argument went, neither the first nor the second respondent was the cause of this termination. Furthermore, from the subsequent discussion between Mr Roselt and Mr Venske, the Group Operations Manager of the applicant, there is no suggestion in Venske's communication to Mr

Roselt that the circumstances of the termination are somehow attributable to the conduct of the respondents.

[59] Mr Kirk-Cohen also impugned the non-joinder of Ecomignite and Repcillin in this application. Counsel argued that the two entities have a substantial and direct interest in the matter and would be affected by any order the court granted against them. Furthermore, in counsel's view, Ecomignite is currently a client of the second respondent. The second respondent is lawfully entitled to trade and is at liberty to solicit and canvass clients without restriction. Counsel prayed the court to dismiss the applicant's application with costs.

7. Issues

[60] From the above discussion, the parties raised several issues on the papers that this Court must consider. First, the respondents impugned the urgency with which this application was brought. According to the respondents, this matter is not urgent and must be struck from the roll. Secondly, the respondents take issue with the applicant's failure to serve a notice in terms of Rule 41A. The question is whether such a failure to serve the Rule 41A notice warrants this Court to dismiss the applicant's application. Thirdly, whether the non-joinder of Ecomignite and Repecllin is fatal to the applicant's application. Fourthly, whether the applicant has made out a case for an interdict against both respondents as prayed for in the Notice of Motion.

8. Relevant legal principles and discussion

[61] As stated above, this is an urgent application for an interim interdict against the first and second respondents, specifically the first respondent, to prevent him from breaching his restraint of trade covenant with the applicant. The applicant also seeks an interdict against the second respondent from competing unlawfully with the applicant. As will be discussed later in this judgment, the effect of the order sought by the applicant is final in effect. For convenience, I will discuss the disputed issues raised above sequentially.

Urgency

[62] As foreshadowed above, the respondents impugned the urgency with which this application was brought and the truncated timeline that the applicant afforded them to file their answering affidavits. The respondents argued that this matter is not urgent. Rule 6(12) of the Uniform Rules of court confers courts with a wide discretion to decide whether an application justifies enrolment on the urgent court roll based on the facts and circumstances of each case.¹ When an applicant has departed from the normal time periods and has stipulated truncated time limits in its notice of motion, it must set out circumstances justifying the extent of the departure from the normal time limits, and why it claims that it could not obtain substantial redress at a hearing in due course.² The degree of departure from the modes of service and time frame in the Uniform Rules must be commensurate with the urgency in each case.³

[63] The applicant in this matter is enforcing a restraint of trade agreement. It is now trite that proceedings for the enforcement of a restraint of trade agreement are usually, by their very nature, urgent. They invariably seek to interdict ongoing unlawful action in respect of which an applicant continues to suffer financial losses which are notoriously difficult to quantify, or to recover by way of action.⁴ As it will be demonstrated hereunder, there is overwhelming evidence that the first respondent is soliciting the applicant's clients for the benefit of the second respondent.

[64] Significantly, the restraint period is of a limited duration and is being eroded daily. If the applicant were required to wait for a hearing in the ordinary course, the restraint period might have expired or be of very limited duration by the time the matter is heard. As Mr Goldberg submitted, given the conduct of the respondents, the apprehension of further imminent harm to the applicant's legitimate interest is palpable. Within the allotted timeframe, the respondents successfully filed their

¹ *Mogalakwena Local Municipality v Provincial Executive Council, Limpopo* [2014] 4 All 67 (GP) at para 63; *Caledon Street Restaurants CC v D'Aviera* 1998 JDR 0116 (SE) at 8.

² *Luna Meubel Vervaardigers (EDMS) BPK v Makin and another (t/a Makin's Furniture Manufactures)* 1977 (4) SA 135 (W) at 137F-G).

³ *Republikeinse Publikasie (edms) Bpk v Afrikaanse Pers Publikasie (edms) Bpk* 1972 (1) SA 773 (A) at 782A-G.

⁴ *Boomerang Trade CC t/a Border Sheet Metals v Groenewald and Another* [2012] JOL 29426 (ECG) para 36; *Mozart Ice Cream Franchises (Pty) Ltd v Davidoff and Another* 2009 (3) SA 78 (C) at 88J.

answering affidavit and sourced information from third parties to support their case. In my view, this matter is urgent and deserves the immediate attention of this Court.

Rule 41A Notice

[65] The respondent contended that, in terms of Rule 41A of the Uniform Rules of Court, there is a peremptory requirement that applicants shall serve a notice in which it is given a binary choice: It must indicate whether they agree to or oppose the referral of the dispute to mediation. No such notice at the time the application was served on the respondents on 28 July 2025 was attached. Rule 41A envisages a speedy resolution of disputes through mediation. The purpose of the rule is to require the parties to consider and inform the court of their perspectives on whether the matter is capable of alternative resolution processes.

[66] In this case, the respondents contended that the parties were very close to settling and that a via media could be found through mediation, bridging the gaps that separate them and the applicant. It is common cause that the parties exchanged correspondence after the application was served, and the applicant subsequently delivered a notice in terms of Rule 41A. The respondents did not accede to the applicant's request for mediation, as the applicant had made a conditional offer to participate in mediation. The applicant stated that it does not object to the referral of the matter to mediation, subject to the interim relief sought by the applicant pending the commencement and outcome of any mediation. The respondents rejected this proposal because they believed that such mediation would take place with them over a barrel, with the interim relief against them a *fait accompli*.

[67] However, at the hearing of this matter, the applicant's counsel informed the court that the applicant was willing to go for mediation unconditionally with a view to settling the matter. The applicant's counsel further informed the court that the applicant was amenable to a short postponement of the matter so that it could be referred to mediation. The offer was rejected outright by the respondents' counsel on the grounds that the applicant's offer arrived too late and that they would only agree to a postponement on the condition that the applicant pay the wasted costs of the day. This was unacceptable to the applicant, and the matter was argued on its merits.

[68] I appreciate that Rule 41A plays a critical role in resolving disputes. This rule not only establishes a framework for addressing dispute, but it also serves as a stamp of approval by the Uniform Rules for alternative dispute resolution mechanisms. However, upon reading the respective affidavits of the parties, I am of the view that the parties are poles apart, and that this is a quintessential case where the court must dispense with the rule and consider the matter on its merits. This conclusion is also fortified by the fact that before this application was launched, the parties had discussed at length the relaxation of the restraint agreement contained in the applicant's employment agreement. The parties could not reach consensus on all the issues discussed.

[69] Additionally, notwithstanding that the Rule 41A notice was not served on the respondent simultaneously with the application, the notice was delivered shortly after the applicant's application was launched and long before the answering affidavit was prepared. In my view, this matter is urgent. A delay in resolving the matter would prejudice the applicant, particularly in circumstances where the first respondent freely and voluntarily signed an agreement of non-compete against the applicant. The respondents were indeed served with the Rule 41A notice. The fact that it was not served together with the application is inconsequential. It does not warrant the dismissal of the applicant's application.

The non-joinder of Ecomignite and Repcillin

[70] The respondents challenged the applicant's application for the non-joinder of Ecomignite and Repcillin. The respondents contended that the applicant seeks an order prohibiting these two entities from contracting with the second respondent. According to the respondents, the relief sought by the applicant provides the two entities with a real and substantial interest in the outcome of the litigation; therefore, these two entities should have been joined in these proceedings.

[71] The general rule is that, if a party has an interest of such a nature that it is likely to be prejudiced by a judgment given in the proceedings, such a party ought to

be joined.⁵ The test is whether or not a party has a 'direct and substantial interest' in the subject matter of the action, that is, a legal interest in the subject matter of the litigation which may be affected prejudicially by the judgment of the court.⁶ A 'direct and substantial interest' has been held to be an interest in the right which is the subject-matter of the litigation and not merely a financial interest which is only an indirect interest in such litigation.⁷ A mere financial interest is an indirect interest and may not require joinder of a person having such interest.⁸

[72] The Appellate Division, as it then was, in *Amalgamated Engineering Union v Minister of Labour*,⁹ sets out two tests to determine whether a third party has a direct and substantial interest in a matter: the one is whether the third party would have locus standi to claim relief concerning the same subject-matter (the locus standi test), and the other is whether the third party who has not been joined can successfully raise the defence of res judicata concerning the same subject-matter in a subsequent case and obtain a conflicting decision to that made in the first instance (the res judicata test).

[73] In the present matter, I am of the view that Ecomignite and Repcillin have an indirect financial interest in the matter as opposed to a direct and substantial interest. This matter involves the enforcement of a restraint of trade against the first and second respondents. As I see it, the two entities have no locus standi to the applicant's enforcement of the restraint agreement against the respondents. Likewise, the two entities cannot successfully raise the defence of *res judicata* in any subsequent case and, in the process, obtain a conflicting decision to the one made in this matter, because they were not parties to this case.

[74] In the circumstances, I conclude that the two entities fail the test enunciated above. However, even if I am wrong in my interpretation, I must stress that the two entities were aware of the proceedings between the applicant and the respondents.

⁵ *Standard Bank of South Africa Ltd v Swartland Municipality and Others* 2010 (5) SA 479 at 482F.

⁶ *Zingwazi Contractors CC v Eastern Cape Department of Human Settlements* 2021 (6) SA 557 (ECG) para 62.

⁷ *Bohlokong Black Taxi Association v Interstate Bus Lines (Edms) Bpk* 1997 (4) SA 635 (O) at 644A-B.

⁸ *Hartland Implemente (Edms) Bpk v Enal Eiendomme BK* 2002 (3) SA 653 at 663E-H.

⁹ 1949 (3) SA 637 (A) at 660-661.

The two entities chose to file supporting affidavits in support of the respondents. From their affidavits and letters of support filed, it can be reasonably inferred that they read the applicant's notice of motion and the founding affidavit. The two entities had an opportunity to intervene in these proceedings if indeed they felt that their interests would be prejudiced.

[75] They consciously opted not to intervene. Moreover, the respondents could have pursued an application to join these entities in the matter if they deemed their involvement to be indispensable. Consequently, I conclude that the respondents' preliminary point of non-joinder must ultimately be dismissed.

Has the applicant made out a case for the restraint of trade?

[76] From the outset, I must stress that the applicant cannot enforce the alleged restraint of trade against the respondents if such enforcement would be unreasonable. The following four factors determine reasonableness:¹⁰

76.1 Does the applicant establish a protectable interest?

76.2 If so, is such interest threatened by the first respondent's employment with the second respondent?

76.3 If yes, does the applicant's protectable interest outweigh, qualitatively and quantitatively, the first respondent's interest to be economically active and productive?

76.4 If yes, is there another aspect of public policy having nothing to do with the relationship between the parties that requires the restraint of trade not to be enforced?

76.5 Does the restraint go further than necessary to protect the interest of the applicant?

¹⁰ *Basson v Chilwan* 1993 (3) SA (A) 742 at 767G-I.

[77] If the answer is no to any of the first three questions, the restraint of trade cannot be enforced. Furthermore, an employer cannot prevent an erstwhile employee from applying their skills, knowledge, and experience in their new employment. I, in turn, deal with these factors *ad seriatim*.¹¹

Did the applicant establish a legitimate protectable interest?

[78] There are two types of proprietary interests generally recognised as deserving of protection, although there is no fixed list. The first kind consists of the relationships with customers, potential customers, and suppliers that make up what is compendiously referred to as the 'trade connection' of the business, being an essential aspect of its incorporeal property known as goodwill.¹²

[79] The second kind consists of all confidential matters which are useful for the carrying on of the business and which could therefore be used by a competitor, if disclosed to him, to gain a relative competitive advantage. Such confidential material is sometimes compendiously referred to as 'trade secrets'.¹³

[80] If I understand the applicant's application correctly, the applicant's application does not concern trade secrets or confidential information, but rather client connections or trade connections that impact the goodwill of the applicant. After carefully evaluating the conspectus of all the evidence provided, I am of the view that the applicant demonstrated a significant and compelling protectable interest. The following objective facts support this conclusion: It is common cause that the first respondent was the General Manager of the applicant's fulfilment business. The first respondent was the main point of contact with the applicant's fulfilment clients. This was particularly true for the applicant's larger clients, such as Ecomignite. The first respondent was responsible for maintaining the client relationship and ensuring their satisfaction.

¹¹ *Northern Offices Computers (Pty) Ltd v Rosenstein* 1981 (4) SA 123 (C) at 136B-D.

¹² *Sibex Engineering Services (Pty) Ltd v Van Wyk* 1991 (2) SA 482 at 502D-F.

¹³ *Sibex Engineering Services (Pty) Ltd v Van Wyk* fn 12 above at 502D-F.

[81] The first respondent was entrusted with managing these relationships and serving them in the applicant's interests. The first respondent had a close connection with the applicant's clients. He had full responsibility for dealing with clients and direct oversight of daily client communication, service delivery and issue resolution. He was responsible for preparing and submitting all pricing proposals. If there was dissatisfaction, it was the first respondent who was charged with resolving it. The applicant stressed that the first respondent repeatedly and publicly praised the fulfilment division under his tutelage, especially on social media.

[82] The applicant's assertion in this regard is corroborated by the respondent's averments in the answering affidavit wherein the first respondent asserted that he personally identified and contacted Repcillin with a view to signing them on as a client for the applicant during January 2024. The first respondent further asserts that his point of contact at Repcillin was Ms Emma Sweet, who is the daughter of the co-members of Repcillin and who he understood was involved in Repcillin's day-to-day operations.

[83] Moreover, Mr Roselt of Ecomignite also corroborated the applicant's version in his affidavit. Mr Roselt stated that Ecomignite has used the applicant as a fulfilment contractor for several years. Mr Roselt further asserted that initially, his relationship was with Mr Dean Venske. However, he later met the first respondent at the applicant's warehouse, following which he became his primary and regular point of contact. Over time, they developed an excellent professional relationship, and he came to regard the first respondent as a trusted business associate.

[84] Additionally, when Ecomignite sent an email to the applicant's Group Operations Manager (Mr Venske) and the first respondent pointing out that another competitor in the fulfilment industry had offered his business better rates, Mr Venske and the first respondent analysed the rates that Ecomignite was complaining about and concluded that he was in fact not being offered a better deal compared to the applicant's pricing structure. The first respondent, as the point of contact with clients, convinced Mr Venske to let him manage Mr Roselt of Ecomignite because of their close working relationship. This resulted in a meeting which took place on 9 May

2025, where the first respondent represented the applicant in discussing the impasse between the applicant and Ecomignite.

[85] From the foregoing, it is abundantly clear that the first respondent was the point of contact of the applicant's clients. His relationship with the applicant's clients characterises a compelling protectable interest in client connections. The first respondent played a critical role in the day-to-day operations of the applicant's fulfilment division and was the primary point of contact for all clients. He managed all ongoing communications, coordinated daily service delivery, and established himself as the trusted operational liaison for clients.

[86] Intelligibly, the first respondent held direct correspondence with clients. He developed a deep understanding of each client's business model, delivery requirements, fulfilment challenges and pricing sensitivities. These relationships were highly personal and trust-based, particularly within the Small and Medium Enterprise client base, where businesses rely heavily on service continuity and personal support. Therefore, the applicant succeeded in establishing a compelling protectable interest.

Is the applicant's protectable interest threatened by the first respondent's employment with the second respondent?

[87] Having found that the applicant has a protectable interest, the question is whether such interest is threatened by the first respondent's employment with the second respondent. This question, in my view, must be considered from the well-established principle that a restraint of trade clause with the sole aim of stifling competition is against public policy and unenforceable.¹⁴ It is common cause that the first respondent is subject to a restraint of trade in favour of the applicant for a period of 12 months after the termination of his employment. From the first respondent's own affidavit, it is without a doubt revealed that the first respondent solicited the applicant's clients.

¹⁴ *Ice Cream Francise (Pty) Ltd v Davidoff and Another* 2009 (3) SA 78 (C) at 82H-83C.

[88] It bears emphasis that the need of an employer to protect his trade connections arises where the employee has access to customers and is in a position to build up a particular relationship with the customers so that when he leaves the employer's service, he could easily induce the customers to follow him to a new business.¹⁵ The employee, by contact with the customer, 'gets the customer so strongly attached to him that when the employee quits and joins a rival he automatically carries the customer with him in his pocket'.¹⁶

[89] *In casu*, Mr Venske of the applicant opposed the first respondent's idea of informing clients of his departure from the applicant. Mr Venske expressed concern that such news might unsettle the applicant's client base. Notwithstanding the applicant's opposition to the first respondent informing clients, the first respondent proceeded to notify them, knowing very well of his trade connection with the applicant's client. He called the applicant's clients and told them that he was leaving. Importantly, when he called the applicant's clients, he was still employed by the applicant and was aware that he was joining a competitor of the applicant. Incontestably, the first respondent had formed an attachment with the applicant's clients and acquired an influence over them which he never had before.

[90] The suggestion by the first respondent that he notified the applicant's clients of his departure to facilitate a smooth handover to his successor is a sheer contrivance. The first respondent understood that he had a close working relationship with the applicant's clients. As Mr Roselt points out, the first respondent knew over time that he had developed an excellent professional relationship with the applicant's clients and that they regarded him as a trusted business associate. From the objective facts, the only reasonable inference to be drawn in the first respondent's conduct was that he was soliciting the applicant's clients to follow him to the second respondent in breach of the restraint of trade covenant.

[91] Demonstrably, the applicant's protectable interest is threatened by the first respondent's employment with the second respondent. The first respondent has already caused two of the applicant's clients to leave the applicant and to use the

¹⁵ *Rawlings and Another v Caravantruck (Pty) Ltd* 1993 (1) SA 537 (A) at 541.

¹⁶ *Rawlings and Another v Caravantruck (Pty) Ltd* fn 15 above at 541.

second respondent in the applicant's stead. In my view, the applicant must be protected against the respondents in that if the relief in the notice of motion is not granted, there's a likelihood that the first respondent will continue to solicit other clients of the applicant to the applicant's prejudice.

[92] Ecomignite and Repcillin were the clients of the applicant before the applicant resigned. Surprisingly, immediately upon his resignation, the two entities followed the first respondent to the second respondent. In my view, it is inescapable not to conclude that the first respondent clearly solicited the two entities to follow him when he started with the second respondent. The second respondent, on the other hand, is enjoying the benefits of the first respondent's breach of the restrained agreement.

[93] I am mindful of the supporting affidavits submitted by Mr Roselt and Ms Sweet, which indicate that they were not solicited. However, a thorough examination of the facts in this case unequivocally refutes their assertion. This conclusion is underscored by the affidavit of Mr Roselt. In his deposition, Mr Roselt asserts that the first respondent informed him that he was going to be employed by a similar business and disclosed the identity of his employer. Mr Roselt asked the first respondent if he could follow him to his new employer. On 2 June 2025, shortly after the first respondent had contacted Roselt, Ecognignite gave notice to the applicant that it was moving its business to Aramex. After the first respondent resigned, Ecomignite moved its business directly to Stack One (the first respondent's new employer) and it never used Aramex.

[94] Consequently, the applicant's protectable interest is being prejudiced by the first respondent's soliciting of the applicant's clients for the benefit of the second respondent. The second respondent is complicit in that it is benefiting from the first respondent's unlawful solicitation of the applicant's clients. Moreso, Mr Weber knows that there is a restraint agreement that binds the first respondent not to compete with the applicant. The second respondent is thus unlawfully competing with the applicant.

Does the applicant's protectable interest outweigh, qualitatively and quantitatively the first respondent's interest to be economically active and productive?

[95] The applicant avers that although the first respondent's employment with the second respondent constitutes a breach of the restraint of trade, the applicant does not seek to prevent the first respondent from continuing to work with that company. The applicant does not seek to impede the first respondent's ability to work and earn a living, even if it means competing with the applicant. However, the applicant contends that the first respondent has unlawfully solicited its existing clients, thereby breaching the restraint of trade.

[96] The second respondent is a direct competitor of the applicant. I believe that the impact on the applicant should the relief be denied is significantly more consequential than any potential repercussions that the respondents may encounter. To my mind, while competition is beneficial, it is imperative that such competition remains within the confines of legality to ensure fairness and justice.

9. Interim or final interdict?

[97] As discussed above, the applicant sought an interim interdict in this application to restrain the respondents from soliciting its clients. However, after perusing the respective affidavits, it became clear to me that the effect of the relief sought by the applicant is final in nature. I also noted that once the order requested by the applicant is granted, the Court will not revisit any matters on the return date, as all issues will have already been addressed. To this end, I invited the parties to submit a post-hearing note to the Court to address this point.

[98] Mr Goldberg noted that the order sought by the applicant at this stage is self-evidently of an interim nature. Furthermore, the respondents have at no stage contended that the relief sought was final in effect. However, counsel submitted that if the Court holds that the relief sought is final in nature, the applicant respectfully contends that it has met and exceeded the threshold for final relief. Mr Kirk-Cohen, on the other hand, agreed that all things considered, if this Court grants any form of interdict, it will be final in effect. No other court will ever consider the substance of the matter. Counsel argued that the matter would be moot by the time it is heard.

[99] It bears emphasis that an interim interdict is a temporary measure designed to protect rights before a final determination can be made. An interim interdict does not involve a final determination of the rights of the parties and does not affect their final determination.¹⁷ In other words, it does not finally dispose of the rights between the parties. The *lis* between them remains to be disposed of in the pending proceedings. As soon as the court makes a final determination, the interim interdict is discharged. However, in my view, regard should be had to the substance of the relief sought rather than the form of the relief sought.

[100] As mentioned above, the substance of the relief sought by the applicant is final in effect. This view is bolstered by the fact that no other court will ever consider the substance of the matter, even if the return date of this matter is within the 12-month restraint period. The parties have filed all their affidavits and heads of argument addressing all the issues raised in the respective affidavits. The parties have argued the substances (merits) of the issues raised in the affidavits. Ostensibly, there is no quest by any party to put further facts before this Court. As noted by Mr Kirk-Cohen, the papers must be regarded as finalised, and a final decision can be made without prejudice to any party. I agree with that proposition. A hearing on the return date will rehash issues that have already been addressed and decided upon. This may lead to an inefficient use of judicial resources and result in the incurrence of unnecessary costs.

[101] In my view, the substance of the order sought by the applicant, although it was cast in the form of an interlocutory interdict, it was in effect an application for a final interdict. The consequence of the order sought by the applicant will be final in effect. It has been consistently held that 'final in effect' means that an issue in the suit has been affected by the order such that the issue cannot be revisited either by the Court of first instance or that hearing the action'.¹⁸ I will therefore thoughtfully consider this interdict application from the premise that the applicant is seeking a final order.

10. Did the applicant establish the requirements of a final interdict?

¹⁷ *Rudkurum (Pty) Ltd v Weider Gym Athlone (Pty) Ltd* 1996 (4) All SA 29 (C) at 33.

¹⁸ *Cipla Agrimed (Pty) Ltd v Merck Sharp Dohme Corporation*, 2018 (6) SA 440 (SCA) para 47.

[102] The law regarding the grant of a final interdict is trite. The test, for the granting of a final interdict, requires an applicant to establish:

- (a) a clear right.
- (b) a reasonable apprehension of irreparable harm and imminent harm to the right.
- (c) no other satisfactory remedy available to the applicant.

[103] Once the applicant has established the three requisite elements for the grant of an interdict, the scope, if any, for refusing relief is limited.¹⁹ There is no general discretion to refuse relief. To withhold an interdict where a case for such has been made, would deny the injured party a remedy for its injury, and that would be inconsistent with the constitutionally protected right of access to courts for the resolution of disputes.

Did the applicant establish a clear right?

[104] In this case, the first respondent was employed by the applicant with a restraint of trade agreement in his employment contract. The applicant asserts that the first respondent breached the restraint of trade agreement. The first respondent resigned from the applicant's employ on 29 May 2025. Before his resignation, the first respondent was offered an equal share in the second respondent (Stack One), a competitor of the applicant in breach of the restraint of trade agreement. Contrary to the applicant's direct instructions, the first respondent immediately contacted the applicant's clients.

[105] Despite the restraint of trade in his employment agreement, the first respondent informed the applicant's clients that he was leaving the applicant and was going to be employed in a similar business. Pursuant thereto, the first respondent caused two of the applicant's clients to leave the applicant and to use the second respondent as their fulfilment partner. In my view, the applicant has

¹⁹ *Hotz and Others v University of Cape Town* 20171 (2) SA 485 (SCA) para 29.

established a clear right and has demonstrated the irreparable harm that would result if the interdict were not granted. There can be no doubt that the actions taken by the respondents to solicit the clients of the applicant constituted a violation of the applicant's rights and resulted in damages that are inherently difficult to quantify.

Alternative remedy.

[106] In this case, I believe that the applicant does not have an alternative remedy. As foreshadowed above, it would be objectively impossible, in my view, for the applicant to quantify its damages. The applicant has invested considerably in establishing its fulfilment division and its fulfilment client base. I accept that an interdict is meant to protect future conduct and not decisions already made; however, as discussed above, the first respondent has already secured the business of two of the applicant's clients. This conduct breached the applicant's protectable interest. The risk that others would be induced to follow him if not interdicted is manifest. Furthermore, the applicant cannot be allowed to infringe the applicant's protectable interest.

[107] Given all these considerations, I believe the applicant's application for an interdict must succeed.

11. Order

[108] In the result, the following order is granted.

[108.1] The first respondent is hereby restrained and interdicted for a period of 12 (twelve) months, commencing on 1 July 2025, from breaching the covenant in restraint of trade he concluded with the applicant by (directly or indirectly, solely or jointly, whether as a proprietor, partner, director, shareholder, employee, consultant, contractor, financier, agent and/or representative) canvassing or soliciting business (or attempting to do so) in respect of fulfilment services from any person who was a client or a prescribed client of the applicant during the first respondent's employment with the applicant and/or any person to whom or on whose behalf the

applicant rendered or currently renders any services during any part of the first respondent's employment with the applicant and/or any person who or which is or was a prospective client of the applicant at the termination date of the first respondent's employment with the applicant being 30 June 2025 (the termination date), or whom the applicant approached to do business with within 1 (one) year preceding the termination date and/or any person to whom fulfilment services were rendered by the applicant within a period of 1 (one) year preceding the termination date, and in particular, the first respondent is interdicted and restrained for the said 12 (twelve) months period from canvassing or soliciting business (or attempting to do so) in respect of fulfilment services from the following persons who were clients/customers of the applicant during the first respondent's period of employment with the applicant, namely; the business trading as Ecomignite and the business trading as Repcillen.

[108.2] The second respondent is hereby restrained and interdicted for a period of 12 (Twelve) months, commencing on 1 July 2025, from canvassing or soliciting business (or attempting to do so) from the clients who comprise the prescribed clients of the applicant, and in particular the entities referred to in subparagraph 108.1 above in respect of fulfilment services.

[108.3] The first and second respondents are ordered to pay the costs of this application on a party and party scale, jointly and severally, with the one paying the other to be absolved, including the costs of two counsels where so employed, on scale B.

LEKHULENI JD
JUDGE OF THE HIGH COURT

APPEARANCES

For the Applicant:	Adv D Goldberg SC
	Adv J Ord
Instructed by:	Smiedt & Associates Attorneys
For the Respondents:	Adv Kirk-Cohen SC
Instructed by:	Nirenstein Attorneys Inc