



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case No. 2025-111178

In the matter between:

RAP TECHNOLOGIES (PTY) LTD

Applicant

and

PIETERSE, ROBIE ONLY

First Respondent

AXFLOW AQS LIQUID TRANSFER

Second Respondent

Heard: 22 August 2025

Order: 22 August 2025

Reasons: 4 September 2025

REASONS

MAKHURA, J

[1] At the end of the hearing of this restraint of trade application on 22 August 2025, this Court granted an order in favour of the applicant, the terms of which were contained in the draft order. The respondents have now requested reasons for the order.

[2] The proceedings commenced with Mr Bishop, who appeared for both respondents, requesting the postponement of the matter *sine die*. The main reason for the request was that the respondents only received the applicant's signed replying affidavit in the morning, and they had the right to file a fourth affidavit in terms of the rules¹ of this Court. Therefore, they wanted to exercise this right to file the fourth affidavit, which accords with their constitutional right to access courts in terms of section 34 of the Constitution.² They submitted that the applicant would not suffer prejudice if the application is postponed. The applicant, so they submitted, could approach the High Court for urgent relief. This submission was informed by the fact that the earliest date for this matter to be enrolled is in October 2025, according to the Registrar. The respondents tendered the wasted costs of the postponement.

[3] In response, Mr Snyman, for the applicant, argued that the applicant has the right to choose the forum to adjudicate its application, that the respondents were served with the application on 14 July 2025 but only chose to file their answering affidavit on 20 August 2025, more than 5 weeks later, in breach of the terms of the notice of motion and the rules of this Court that they sought to rely on to file their fourth affidavit, that the respondents may not directly rely on the Constitution as this offends the principle of subsidiarity and that the tender of costs would not mitigate against the prejudice that the applicant would suffer considering that the restraint period is of a limited duration of 6 months, which expires at the beginning of November 2025.

[4] Having considered the arguments from both parties, in particular the fact that the respondents only elected to answer to the applicant's founding affidavit two days before the hearing, the limited restraint period which expires in less than 3 months, and that it

¹ Rules regulating the conduct of the proceedings of the Labour Court, GG 50608, GN 4775 of 3 May 2024.

² The Constitution of the Republic of South Africa, 1996.

was irrelevant that the applicant could have and could still approach the High Court as this Court is clothed with the necessary jurisdiction to determine the application, I dismissed the application for postponement.

[5] The second preliminary issue I had to determine was whether to condone the non-compliance with the time period set out in the notice of motion and admit the respondents' answering affidavit. The respondents applied for condonation in their answering affidavit. They dealt with this request in paragraphs 136 to 144 of their answering affidavit. The respondents emphasised their right to be heard and attributed the delay in filing their answer to the first respondent's initial decision to deal with the matter on his own without legal representation, and his alleged subsequent realisation that the issues required legal representation. The second respondent agreed to cover part of his legal fees.

[6] The explanation is not only wholly inadequate for this unreasonably long delay of 4 weeks. The first respondent's allegation that he initially intended to deal with the matter on his own is contradictory and borders on deception because, as early as 14 July 2025, he had already appointed his current attorneys of record. It is common cause that by 25 July 2025, the respondents' attorneys of record had signed the notice of opposition, even though they filed it on 1 August 2025. The opposition was entered on behalf of both respondents. Having considered the application, I found the first respondent's explanation unsatisfactory and the conduct of the respondents disrespectful to the rules of the Court. I therefore rejected their explanation and their answering affidavit, and dismissed their application. The application proceeded on that basis, without the respondents' answering affidavit.

[7] The material facts of this matter are that the first respondent was employed as a senior sales representative for the Limpopo Province or region, effective 9 June 2014. He was allocated specific customers to attend to and service. On 6 September 2019, the first respondent signed an updated contract of employment, which contained the

restraint of trade and confidentiality undertakings. The restraint agreement was to continue for six months after the termination of employment between the parties.

[8] On 8 April 2025, the first respondent resigned from the applicant. The applicant elected to enforce the 4 weeks' notice period in terms of the contract, and his resignation was effective on 7 May 2025. Although the first respondent cited ill-health as the reason for his resignation, the applicant's evidence shows that the first respondent had joined the second respondent as a sales representative. The second respondent is the applicant's competitor and had opened a branch in Mokopane, Limpopo, where some of the applicant's customers are based. They supply the same product or service to their customers. The first respondent was seen visiting one of the applicant's customers, wearing his new employment uniform. The applicant also solicited orders from four of the applicant's customers.

[9] The applicant argues that the second respondent would have a competitive advantage over the applicant due to the fact that during his employment, the first respondent accessed or had access to information about the applicant, its pricing, operations and customers. Finally, the applicant submits that:

'The particular knowledge of the pricing and specifications of the services/products supplied by the applicant, as well as the particulars of the applicant's customers and their requirements, held by the first respondent, was obtained through his employment and association with the business of the applicant and which, in turn, gave rise to the restraint of trade agreement.'

[10] Based on the above and there being no contrary version, the applicant submitted that it is entitled to the relief sought, which, in terms of the draft order, the applicant limited the geographical area to the Limpopo Province.

[11] Mr Bishop opposed the application from the bar. He submitted that the applicant's notice of motion refers to the founding affidavit of A Rodriques being used in support of the application, but the applicant used the affidavit of Carl Houwer (Houwer).

This, so Mr Bishop submitted, is a material defect warranting the dismissal of the application. The applicant has placed evidence before this Court through the deponent who is duly authorised to depose to the affidavit. The incorrect reference of the name in the notice of motion is not fatal to the application. This point is meritless and constitutes a nuisance, and is therefore rejected outright.

[12] Secondly, Mr Bishop submitted that although the contract, which contains a restraint clause, was signed by the first respondent, it was not signed by the applicant. The deponent to the founding affidavit, so Mr Bishop submitted, was not employed by the applicant at the time of the conclusion of the contract and cannot testify to the contract. And, because the applicant did not plead that the contract was partly in writing and partly oral, the applicant has not established the existence of the contract. Mr Bishop could not obviously testify from the bar. He could not address the Court on matters that required evidence and expect the Court to accept the submission. The first respondent signed the employment contract. The applicant's evidence is that the contract was concluded between the parties. There is no evidence to dispute that the first respondent rendered his services in accordance with the terms of the contract, which also contained the restraint agreement. This argument is dismissed.

[13] Thirdly, Mr Bishop submitted, with reference to the amendment of the geographical area, that the applicant cannot whittle down the restraint agreement without a proper motivation in its founding papers. In other words, the first respondent complains that it is unfair for the applicant to limit the geographical area from national to provincial without pleading the reason therefor. It is inexplicable that the first respondent effectively argued for a nationwide application of the restraint agreement, despite the applicant stating that it was prepared to limit it to the province. Mr Bishop's submission that the terms of the restraint agreement may not be amended at all without a proper case being made out in the papers is untenable and unsound. There is nothing wrong or unlawful with an order that departs from the terms of the restraint agreement, because ultimately, the enforcement of the restraint must be reasonable. This Court has the

power to determine the reasonableness or otherwise of enforcing the restraint agreement and may limit the terms of the restraint agreement.³

[14] Finally, Mr Bishop submitted that the duration of 6 months is unreasonable. However, there are no facts before this Court to demonstrate why 6 months is unreasonable. The submission was also rejected.

[15] As it is clear from the above, the respondents raised technical points and arguments that only served to waste the court's time. It was unacceptable that they disregarded the Court's rules by filing their answering affidavit 2 days prior to the hearing and requesting a postponement, actions that, in my opinion, were clearly meant to delay and frustrate the matter.

[16] Having considered the submissions and applying the trite legal principles⁴, I was satisfied that the applicant had established the contract, the breach and that it has a protectable interest in the form of customer connections and confidential information. Further, I was satisfied with the reasonableness of the restraint agreement, the duration and the geographical area to which the applicant limited it to the Limpopo Province. Enforcing the restraint agreement would not deprive the first respondent of the opportunity to earn a living. He may practise his trade and profession and utilise his skills and expertise in all other 8 provinces, including the Gauteng Province where the second respondent is also based. He is free to return to Limpopo Province at the expiry of the period.

[17] For the above reasons, I granted the application and the draft order was made an order of this court. The terms of the order read as follows:

Order:

³ *Sadan and Another v Workforce Staffing (Pty) Ltd* [2023] ZALAC 18.

⁴ *Reddy v Siemens Telecommunications (Pty) Ltd* 2007 (2) SA 486 (SCA); (2007) 28 ILJ 317 (SCA) at paras 10 - 16; *Automotive Tooling Systems (Pty) Ltd v Wilkens and others* 2007 (2) SA 271 (SCA); (2007) 28 ILJ 145 (SCA) at para 8; *Labournet (Pty) Ltd v Jankielsohn & another* (2017) 38 ILJ 1302 (LAC); [2017] 5 BLLR 466 (LAC) at paras 41 – 43.

1 The forms and service provided for in the Rules of Court are dispensed with and the matter is heard as one of urgency as contemplated by Rules 38 and 39 of the Rules of the Labour Court.

2 The First Respondent is interdicted and restrained from directly or indirectly:

2.1 Being in any manner interested in any business in the Province of Limpopo, that competes with the business of the applicant, for a period of 6 (six) months calculated from 7 May 2025.

2.2 Soliciting, transacting and/ or accepting any business or custom from any existing customers or clients of the applicant for a period of 6 (six) months, calculated from 7 May 2025;

2.3 Being employed with any business or entity or person in the Province of Limpopo, which conducts business which is similar to or competes with that of the applicant, and in particular the business of the second respondent, for a period of 6 (six) months calculated from 7 May 2025.

3 The Second Respondent be interdicted and restrained from employing the first respondent, or in any way being associated with the first respondent, in breach of the restraint of trade covenant of the first respondent.

4 There is no order as to costs.

M. Makhura

Judge of the Labour Court of South Africa

Appearances:

For the Applicant:

Mr S. Snyman of Snyman Attorneys

For the Respondents:

Mr A. Bishop

Instructed by:

Dewey Mclean Levy Inc