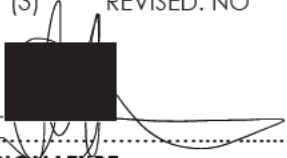


**REPUBLIC OF SOUTH AFRICA**



**IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, JOHANNESBURG**

**CASE NO: 2025-125215**

|                                                                                    |                                 |
|------------------------------------------------------------------------------------|---------------------------------|
| (1)                                                                                | REPORTABLE: NO                  |
| (2)                                                                                | OF INTEREST TO OTHER JUDGES: NO |
| (3)                                                                                | REVISED: NO                     |
|  |                                 |
| SIGNATURE                                                                          |                                 |
| DATE 11 September 2025                                                             |                                 |

In the matter between:

**MUTUALISM (PTY) LTD**

Applicant

and

**TWO CENT SOLUTIONS (PTY) LTD**

First Respondent

**RETSHEGOFETSE PRINCE MOENG**

Second Respondent

**TEKANO TLHOBELO**

Third Respondent

**DIKGANG CLINTON MANAKANE**

Fourth Respondent

**THAPELO DUNCAN CHABANE**

Fifth Respondent

**HLENGIWE ZWANE**

Sixth Respondent

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**JUDGMENT**

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*This judgment is handed down electronically by circulation to the parties' legal representatives by email and by being uploaded to CaseLines. The date and time for hand down is deemed to be 11 September 2025.*

MAHON AJ:

## **Introduction**

- [1] This is an urgent application brought by Mutualism (Pty) Ltd (“the applicant”) against Two Cent Solutions (Pty) Ltd and several of its former employees (“the respondents”). The applicant seeks to enforce contractual restraints of trade and confidentiality undertakings entered into by the second to sixth respondents during their employment, and to interdict all of the respondents from engaging in unlawful competition. The applicant contends that the respondents, having left its employ, have misappropriated its confidential information and diverted its business opportunities to establish and operate the competing enterprise, Two Cent Solutions.
- [2] The relief claimed includes final interdicts restraining the respondents from breaching their restraint and confidentiality obligations, interdicting them from competing unlawfully with the applicant, and preventing the first respondent from conducting business in the applicant’s field of activity. Ancillary relief is sought, including an order declaring the second respondent a delinquent director under section 162(5) of the Companies Act 71 of 2008. In the alternative, the applicant prays for interim relief pending the institution of proceedings for final relief.

- [3] The respondents oppose the application. They challenge its urgency and dispute that the applicant has established a clear right. They further contend that the business model of the applicant is non-compliant with the National Credit Act, and that, on this basis, the applicant cannot enforce contractual rights said to arise from such operations.
- [4] It is against this background that the Court is called upon to determine whether the requirements for the relief sought have been met, and if so, the extent to which the relief should be granted, bearing in mind the need to temper the scope of the orders to ensure they remain just and equitable.

### **Background and Chronology of Events**

- [5] The applicant, Mutualism (Pty) Ltd, is a financial services company founded in 2019 by Mr Mason Ames Wittman and Mr Dylan Mott, with a focus on developing financing solutions for small and medium-sized enterprises. The company established proprietary risk assessment systems, investment committee processes, and a network of funders and clients over several years.
- [6] In 2020, the applicant employed Mr Retshegofetse Prince Moeng, who later rose to the position of Chief Executive Officer. He, together with other senior employees, had full access to the applicant's confidential information, methodologies, systems, client pipeline, and funder connections.
- [7] The applicant contends that from 2024 onwards, Mr Moeng and the other individual respondents secretly began diverting its opportunities, clients, and resources to a competing venture under the name Two Cent Solutions (Pty) Ltd ("Two Cent"). The "Two Cent" banner first became visible in early 2024,

appearing on Mr Moeng's LinkedIn profile, at corporate events, and later at offices in Hyde Park. By 2025, the applicant alleges, Two Cent had emerged publicly as a brokerage and finance business in direct competition with Mutualism, built upon its confidential systems, client relationships, and business model.

- [8] In April 2025, the misconduct came to light when internal investigations revealed that the second to sixth respondents had, during their employment, been involved in the copying and misappropriation of Mutualism's confidential information, business processes, and client opportunities. A meeting held on 8 April 2025 exposed contradictions in Mr Moeng's explanations concerning deals concluded through Two Cent, including a transaction involving Emmia Farm.
- [9] Following their suspension and disciplinary proceedings, the respondents were dismissed. Shortly before and after their dismissal, they were instructed by one of their number, Ms Hlengiwe Zwane, to delete all material that could link them to Two Cent. This instruction, according to the applicant, was itself evidence of the respondents' knowledge of wrongdoing.
- [10] The applicant maintains that the respondents' conduct amounted to the wholesale misappropriation of its business. It alleges that Two Cent, as it now exists, was effectively constructed out of its confidential information, trade connections, and resources, and that the respondents continue to operate in direct competition in breach of their contractual restraints.
- [11] The respondents, for their part, argue that Two Cent was incorporated in 2020 and that its existence was no secret. They deny misappropriating confidential

information, assert that they deleted all such material when instructed, and contend that the applicant's operations are themselves non-compliant with the National Credit Act.

- [12] It was against this factual background that the applicant launched the present urgent application in July 2025, seeking final interdictory relief and ancillary orders.

### **Respondents' Defences**

- [13] The respondents oppose the application on a number of grounds, both in limine and on the merits.

- [14] First, they contended in their answering affidavit that the application was defective for want of proper authority, alleging that the deponent to the founding affidavit, Mr Wittman, lacked authority under Uniform Rule 7 to institute these proceedings on behalf of the applicant. However, during the hearing this issue was clarified and resolved between the parties. It is accordingly unnecessary for this judgment to address the question of authority further.

- [15] Secondly, the respondents submit that the application does not warrant urgent consideration. They maintain that the applicant became aware of the alleged misconduct in April 2025 yet delayed almost three months before launching proceedings, and thereafter set the matter down for hearing in September 2025. This delay, they say, renders any urgency "self-created" and abusive of the court process.

[16] Thirdly, they challenge the applicant's entitlement to a final interdict. Their central contention is that the applicant lacks a clear and enforceable right because its business model amounts to the provision of credit facilities without registration under the National Credit Act 34 of 2005. On this footing, the applicant is said to be operating unlawfully, and therefore cannot claim to enforce contractual restraints or seek protection from the Court.

[17] On the factual front, the respondents advance three further lines of defence. They assert that:

[17.1] Two Cent was incorporated as early as 2020 and its existence was never concealed;

[17.2] The individual respondents deleted any confidential information in their possession at the time of their suspension and dismissal, and accordingly no misuse can be inferred; and

[17.3] Two Cent does not compete directly with the applicant, being positioned as an "ecosystem builder" and advisory business rather than a lender.

[18] Lastly, the respondents argue more broadly that the contractual restraints sought to be enforced are unreasonable, unlawful, and contrary to public policy, particularly when weighed against their right to work and earn a livelihood.

[19] In sum, the respondents' defences turn upon three pillars: procedural objections (urgency), substantive objections to the existence of a protectable right, and

factual denials concerning the alleged competition and use of confidential information.

## **Urgency**

- [20] The first enquiry is whether the applicant can obtain substantial redress at a hearing in due course (see *Luna Meubel Vervaardigers (Edms) Bpk v Makin (t/a Makin's Furniture Manufacturers) 1977 (4) SA 135 (W) at 137F; East Rock Trading 7 (Pty) Ltd v Eagle Valley Granite (Pty) Ltd (unreported, GJ case no 11/33767 dated 23 September 2011)*).
- [21] On the facts here, it cannot. The restraint periods would, by the time this matter could be heard in the ordinary course, have wholly or materially expired, rendering the relief moot or largely so. That consideration alone renders the matter urgent. The harm complained of is continuing and consists in the ongoing operation of a competing enterprise alleged to trade on the applicant's confidential information and relationships. Each day that passes erodes the efficacy of the restraints the applicant seeks to enforce.
- [22] A suggestion was advanced that the urgent court should weigh the "gravity" of the consequence for the applicant and entertain urgency only where the absence of immediate relief would lead to catastrophic outcomes (such as the extinction of the business), even if rights are infringed. That is not a correct articulation of the test. Threats to commercial interests have long been recognised as capable of engaging the urgent court's protection (see *Twentieth Century Fox Film Corporation v Anthony Black Films (Pty) Ltd 1982 (3) SA 582 (W) at 586G*).

- [23] It is not the quantum of harm, per se, that determines urgency, but whether the harm cannot be prevented or arrested without recourse to the urgent court. On that footing, the applicant's case plainly qualifies: absent urgent relief, the restraints will lapse (at least in part) before any ordinary hearing, and the asserted springboard advantage and diversion of opportunities will persist in the interim.
- [24] The next enquiry is whether the urgency is "self-created". That enquiry is not undertaken in the abstract. It is not simply a question of whether the applicant might have acted with greater haste or whether the court would have done so in the applicant's shoes. The focus is on the tangible effect of the alleged delay.
- [25] Two paradigms are relevant in this regard. First, where a matter could have been brought in the ordinary course but, by reason of the applicant's delay, must now be brought urgently to avoid being too late. That is *par excellence* a case of self-created urgency. Secondly, even where the nature of the controversy justifies truncated time periods in principle, urgency may be self-created if the applicant delays so long that the respondent is unreasonably prejudiced by curtailment that could have been avoided or mitigated. It must also be remembered that *where an applicant first seeks compliance from the respondent before lodging the application it cannot be said that the applicant had been dilatory in bringing the application or that urgency was self-created* (See *Nelson Mandela Metropolitan Municipality v Greyvenouw CC* 2004 (2) SA 81 (SE) at 94C–D).

- [26] Measured against those standards, the record does not establish self-created urgency. The applicant explains the steps taken after the April 2025 discovery, including restoring management control, instituting disciplinary proceedings, retrieving and reviewing two years of communications, and assembling an evidentiary record against multiple respondents—steps that consumed time but were reasonably necessary given the breadth of the allegations. The explanation is detailed and comprehensive.
- [27] The respondents' contrary case relies on the interval between April 2025 and the launch of proceedings in late July 2025, and on the fact that the matter was enrolled for September 2025. Those facts, viewed in isolation, do not show either paradigm of self-created urgency which I have articulated above. This is not a situation where a dispute suited for the ordinary roll became urgent only because the applicant tarried. To the contrary, the very nature of restraint and confidential-information relief, especially where the impugned conduct is ongoing, typically necessitates curtailment. Nor is there demonstrated prejudice of the second kind: the applicant afforded the respondents a generous answering period of approximately 15 days, which ameliorates any curtailment-related prejudice and points away from self-creation.
- [28] The respondents further invoke an exchange of correspondence at the end of May 2025 to suggest that, if urgency existed, the application ought to have been launched then. That contention does not grapple with the central point: urgency in this matter is driven by continuing competitive harm and the imminently expiring restraints, not by a single demand-and-response event. The May correspondence does not alter that analysis.

[29] In the result, I am satisfied that the applicant cannot obtain substantial redress in due course, that the matter is appropriately enrolled in the urgent court, and that the urgency is not self-created.

### **Requirements for Final Interdictory Relief**

[30] The requirements for a final interdict are settled: the applicant must establish (i) a clear right, (ii) an injury actually committed or reasonably apprehended, and (iii) the absence of an adequate alternative remedy. I deal with each in turn.

#### **(i) Clear right**

[31] The applicant relies for its clear right both on contract and at common law. Contractually, the second to sixth respondents each signed written restraint and confidentiality undertakings in favour of the applicant, recorded in their employment contracts and in standalone agreements. Those undertakings were valid and binding, and their existence is not disputed. At common law, the applicant enjoys protectable proprietary interests in its confidential information, systems, trade connections, goodwill, and corporate opportunities.

[32] The respondents resist this by contending that the applicant has no enforceable right because it is not registered as a national credit provider under the National Credit Act 34 of 2005. During argument it became clear that the point was framed specifically with reference to section 40 of the NCA, and the alleged failure to register. Leaving aside that this defence was not properly pleaded, it is misconceived. Whether the NCA applies to any given transaction is a matter of fact, to be determined case by case by reference to the statutory prerequisites. It cannot be assumed, as the respondents would have it, that

every transaction concluded by the applicant necessarily fell within the NCA. Some may have done so; others may not. Even if particular transactions were tainted by non-compliance, that would not infect the totality of the applicant's operations, still less extinguish the applicant's contractual rights against its employees. On the papers before me, no factual basis has been advanced to sustain the sweeping conclusion contended for. The respondents have elected to advance only bald allegations, not specific facts.

[33] Moreover, the respondents themselves were integrally involved in the company's compliance trajectory. They advised on partnership structures designed to ensure regulatory cover, and they participated in drafting materials which referenced NCR registration as part of the scale-up plan. Their present reliance on the issue is therefore self-serving.

[34] On the uncontested facts, the applicant's proprietary interests fall squarely within the categories long recognised by authority as warranting protection: trade secrets (its scoring system, portal, and processes) and trade connections (its funders, clients, and goodwill). The evidence shows that those interests were both accessible to and exploited by the respondents.

[35] In the circumstances, I am satisfied that the applicant has demonstrated a clear right, both in contract and at common law.

**(ii) Injury actually committed or reasonably apprehended**

[36] The applicant has demonstrated not only a reasonable apprehension of harm, but that unlawful injury has already been committed.

- [37] The evidence shows that the respondents diverted pipeline opportunities that had been originated, vetted, and presented within the applicant's structures, including the Investong transaction (valued at approximately R100 million) and the Emmia Farm deal. Both were introduced to the applicant's board as Mutualism transactions and later carried across to Two Cent. The Investong diversion alone deprived the applicant of a potential R1.5–2 million fee. Such diversions are not speculative: they are evidenced by board minutes, correspondence, and transactional documents.
- [38] The respondents also misappropriated the applicant's confidential systems. Its online application portal, credit scoring methodology, and backend workflows — developed at cost and over years — have been replicated in Two Cent's platform. Once replicated and embedded in a competitor's offering, those advantages cannot be “unlearned”. They confer a continuing springboard benefit to the respondents and an ongoing competitive disadvantage to the applicant.
- [39] In addition, the respondents solicited the applicant's existing funders and clients, including investors cultivated over years of relationship-building. Goodwill, once diverted, cannot be restored by subsequent legal process. It is incorporeal property which, once eroded, is gone. The respondents further passed themselves off by using the applicant's branding at public events to promote Two Cent. That conduct compounds market confusion and risks permanent reputational damage.

- [40] The respondents' denials in this regard are unconvincing. They do not dispute their access to the applicant's confidential information while in its employ, nor their active involvement in Two Cent during the same period. The suggestion that the subsequent deletion of materials somehow cures the breach misunderstands the law. The protection afforded by restraint and confidentiality obligations is designed precisely to avoid reliance on an employee's bona fides after confidential information has been exposed. As the Supreme Court of Appeal emphasised in *Reddy v Siemens Telecommunications (Pty) Ltd 2007 (2) SA 406 (SCA)*, once access to trade secrets is established, the objective risk of disclosure to a competitor suffices to ground relief.
- [41] The third to sixth respondents, moreover, have failed to put up any clear or credible version regarding their present involvement in Two Cent, despite overwhelming evidence of their association with its operations. The evasive and bare denials offered do not raise genuine disputes of fact. At the very least, the facts support a robust inference that they remain associated with Two Cent and that the unlawful conduct continues.
- [42] On this evidence, the applicant has shown that the respondents' breaches are not historic or isolated. The injury is ongoing, in the form of continuing competition entrenched through the use of confidential systems, diverted clients, and reputational appropriation. Even if certain aspects of the conduct were now paused, the reasonable apprehension of future harm would persist, given the respondents' possession of the applicant's know-how and their embedded involvement in a rival business.

[43] Accordingly, the requirement of actual or reasonably apprehended injury is amply satisfied.

**(iii) Absence of adequate alternative remedy**

[44] The final requirement is that the applicant must demonstrate that no satisfactory alternative remedy is available. In my view, this requirement is met.

[45] The respondents argue that the applicant's alleged losses are financial in nature and can be compensated in damages. That submission is unsustainable. The harm established in this matter is not merely pecuniary; it goes to the heart of the applicant's business model and market position. Once confidential systems are replicated and deployed in a competitor's operations, they cannot be clawed back. The competitive springboard advantage obtained cannot be undone by a damages award. Similarly, once goodwill has been diverted, it cannot be restored by monetary compensation.

[46] The Investong and Emmia Farm transactions illustrate the point. The lost fees, though quantifiable, are but the surface manifestation of a deeper harm: the erosion of client confidence and the establishment of Two Cent as a competitor in the very space occupied by the applicant. The competitive foothold gained by the respondents will continue to yield benefits long after any damages action is concluded.

[47] Moreover, restraint undertakings exist precisely because damages are recognised as inadequate. The very object of a restraint is to prevent misuse of confidential information and relationships before they occur, because it is

impossible to measure or to reverse the prejudice once the information is used and the relationships diverted.

[48] The respondents' further reliance on their purported deletion of confidential information does not supply an alternative remedy. As the case law makes plain, the law does not require an employer to "cross its fingers" and hope that confidential material committed to memory will not be deployed. The purpose of an interdict is to give meaningful effect to contractual undertakings and to avoid reliance on the respondents' assurances.

[49] In the result, I am satisfied that there is no adequate alternative remedy available to the applicant. Only interdictory relief can arrest the ongoing use of its confidential material, restrain the unlawful competition, and protect its proprietary interests.

### **Disputes of Fact and the Evidentiary Burden**

[50] The respondents have sought to suggest that the application gives rise to disputes of fact, which would preclude the grant of final relief. I do not agree.

[51] It is settled law that a final interdict may be granted in motion proceedings where the facts as stated by the respondents, together with those admitted by the applicant, justify such an order. Bare denials, evasions, or vague assertions do not suffice to create genuine disputes. As the Supreme Court of Appeal explained in *Wightman t/a JW Construction v Headfour (Pty) Ltd and Another* 2008 (3) SA 371 (SCA), a dispute of fact exists only where the opposing party seriously and unambiguously engages with the material facts. Where a party who has direct knowledge of the facts advances only bald or ambiguous

denials, a court is entitled to adopt a robust approach and to proceed on the applicant's version.

[52] That is the position here. The respondents have not seriously engaged with the detail of the applicant's allegations. They do not dispute the existence or validity of the restraint and confidentiality undertakings. They do not deny their access to the applicant's confidential systems and client connections. Their repeated assertions that such material was "deleted" after dismissal is no answer in law; the risk lies precisely in the knowledge already acquired and in its potential use in a rival enterprise. Likewise, their attempt to describe Two Cent as an "ecosystem builder" is contradicted by uncontroverted evidence of diverted opportunities (Investong, Emmia Farm, Selele), solicitations of funders, and replication of the applicant's portal and branding. Such responses do not create genuine disputes of fact.

[53] In restraint matters, the evidentiary burden is particularly clear. As set out in *Magna Alloys and Research (SA) (Pty) Ltd v Ellis* 1984 (4) SA 874 (A) and followed in *Basson v Chilwan & Others* 1993 SA 742 (A) and *Reddy v Siemens Telecommunications (Pty) Ltd* 2007 (2) SA 406 (SCA), once the applicant proves the existence of a valid restraint and a breach thereof, the onus shifts to the respondent to show that enforcement would be unreasonable and contrary to public policy. That onus is not discharged by platitudes or bald denials; it requires cogent factual material demonstrating why, in the particular circumstances, the restraint should not be enforced.

- [54] The applicant has, as it was required to, established the existence of binding restraint agreements and their breach. It has further shown the respondents' access to and use of its confidential information, the diversion of corporate opportunities, and their participation in a competing business. The applicant correctly emphasised that it bore the burden of proving the restraints and the breach thereof, which it has done. It pointed out that there is no dispute that Mr Moeng is a director of Two Cent, that he has promoted its interests in direct competition, that deals were diverted, and that the other respondents worked for Two Cent while still employed by the applicant. Those facts remain substantially uncontested.
- [55] Against that evidentiary background, it fell to the respondents to show that enforcement of the restraints would be unreasonable. They have not done so. Their case rests on vague assertions of non-involvement, bare denials of competition, and reliance on alleged illegality under the NCA which is both opportunistic and inadequately pleaded. They have not provided a candid account of their present relationship with Two Cent. They have not explained why the restraints should be considered unreasonable, nor how their enforcement would unduly infringe their right to work.
- [56] When measured against the three requirements of an interdict, their failure is plain. On the element of a *clear right*, they were required to demonstrate unreasonableness in the restraints but offered none. On *injury*, they were required to give a coherent account countering the evidence of ongoing unlawful competition, but they responded only with conclusory denials. On *absence of*

*an alternative remedy*, they were required to show that damages would suffice, but they advanced no factual foundation for that contention.

- [57] Accordingly, no genuine disputes of fact arise on the material issues, and the respondents have not discharged the evidentiary burden placed upon them. The Court is entitled to proceed on the applicant's evidence, reinforced where appropriate by robust inferences from the respondents' evasions.

### **Conclusion on the Interdict Requirements**

- [58] The applicant has satisfied all three requirements for final interdictory relief.

- [59] First, it has demonstrated a clear right, both in contract and at common law. The existence and validity of the restraint and confidentiality undertakings are undisputed, as is the applicant's protectable interest in its confidential information, systems, and client relationships. The respondents' reliance on alleged non-compliance with the National Credit Act is ill-founded and inadequately pleaded. Even if accepted at its highest, it would not extinguish the applicant's rights as a whole.

- [60] Secondly, the applicant has established both actual and reasonably apprehended injury. The evidence of diverted opportunities, replication of proprietary systems, solicitation of clients and funders, and use of the applicant's branding demonstrates ongoing unlawful competition. The respondents' bare denials and self-serving assertions do not dislodge that evidence. As set out in the preceding section, those denials do not give rise to genuine disputes of fact, and the Court is entitled to adopt a robust approach.

- [61] Thirdly, the applicant has shown that there is no adequate alternative remedy. Damages cannot restore lost goodwill, erase the competitive springboard advantage, or neutralise the unlawful use of confidential information. The very rationale for the contractual restraints is to provide protection which damages could never achieve.
- [62] The respondents have failed to discharge the evidentiary burden that rests on them in restraint matters. Having proved the contracts and their breach, the applicant shifted the onus to the respondents to demonstrate that enforcement would be unreasonable. They have not done so. Their evasive and unsubstantiated denials leave the applicant's case intact.
- [63] In these circumstances, the requirements for a final interdict are satisfied. What remains is to consider the scope of the relief to be granted, and to ensure that the orders made are tempered to protect only the applicant's legitimate proprietary interests without unduly impairing the respondents' right to work.

### **Tempering and Tailoring of Relief**

- [64] It is trite that a restraint of trade is enforceable unless it is shown to be unreasonable, and the enquiry into reasonableness involves the now-classic *Basson v Chilwan & Others* 1993 (3) SA 742 (A) test: (i) whether the applicant has a legitimate proprietary interest deserving of protection; (ii) whether that interest is threatened by the respondent; (iii) if so, whether such interest weighs up qualitatively and quantitatively against the respondent's interest in being economically active and productive; and (iv) whether there are

any broader public policy considerations that require the restraint to be enforced or rejected.

[65] On the first two questions, the applicant has established legitimate proprietary interests (its confidential systems, client connections and goodwill) and has shown that these have been misused and diverted by the respondents. The balance of the enquiry therefore concerns proportionality.

[66] The respondents contend that the first respondent's business is not a "carbon copy" of the applicant's operations and that it encompasses a broader range of service offerings. That may be so. But the fact that Two Cent may engage in activities beyond the scope of the applicant's own business does not detract from the applicant's right to protection against those aspects of the respondents' conduct which are in direct competition with it and which involve the misuse of its confidential information, trade connections, and goodwill.

[67] The law does not require that the parties' businesses be identical before interdictory relief can issue. It is sufficient that they overlap in material respects, such that the risk of unlawful competition is real. At the same time, the interdict must be carefully tailored so that it does not extend to non-competing elements of the first respondent's business. The applicant is entitled to restrain only those activities which compete with its financing model and which exploit its confidential systems and diverted opportunities. It is not entitled to prevent the respondents from engaging in lines of work which are wholly distinct from its operations.

- [68] This principle of proportionality is consistent with the jurisprudence on restraints of trade, which requires that enforcement go no further than is reasonably necessary to protect the proprietary interests in question. A restraint that prevents the respondents from working altogether, or from engaging in activities which do not encroach on the applicant's business, would be overbroad and contrary to public policy.
- [69] In the course of argument, Mr Whitcutt SC, for the applicant, quite properly acknowledged that certain elements of the relief originally sought were overbroad and could be tempered to ensure that a more effective balance of competing rights is struck. He volunteered a number of revisions to the notice of motion which would operate to the respondents' benefit.
- [70] First, he directed attention to prayer 10 of the notice of motion and proposed amendments curtailing the scope of the interdict in three respects: its duration, the nature of the work to which it applies, and the sector in which it operates. These revisions were advanced in recognition of the principle that enforcement of restraints should go no further than reasonably necessary to protect the applicant's legitimate proprietary interests.
- [71] Secondly, he candidly abandoned the relief sought in prayer 11.3 of the notice of motion, accepting that the applicant had not established an entitlement to that relief.
- [72] Thirdly, he proposed an amendment to the relief sought against the first respondent in paragraph 11.12 of the notice of motion, limiting its operation to a period of two years. That concession accords with established authority that

restraints must be proportionate in duration, and I have adopted it in the order that follows.

[73] I have given effect to these recommendations in the framing of my order. In addition, however, I am not persuaded that a total prohibition on the first respondent's use of "any online application and scoring portal" is justified. Such an order would extend beyond the protection of the applicant's legitimate interests and unduly inhibit the first respondent in carrying out activities that are not shown to compete unfairly. The balance of the relief sought — particularly the restraints directed at the use of the applicant's confidential systems, diverted opportunities, and client relationships — is sufficient to meet the applicant's concerns without imposing an unnecessarily broad prohibition.

[74] In sum, the relief is to be confined to those aspects of the respondents' conduct which amount to direct and unlawful competition with the applicant, for a period that is proportionate, and in a manner that leaves unaffected those activities of the first respondent which fall outside the applicant's domain.

## **Conclusion**

[75] The applicant has established the requirements for final interdictory relief. The contractual undertakings given by the second to sixth respondents, together with the common-law protections available to the applicant, entitle it to protection against the diversion of its opportunities, the misuse of its confidential systems and information, and the unlawful competition that has ensued. The respondents' defences have not withstood scrutiny, and their denials fall short

of creating genuine disputes of fact or of discharging the onus that rests upon them in resisting the enforcement of restraints.

[76] At the same time, the relief sought has been appropriately tempered, both by the concessions properly made on behalf of the applicant and by further adjustments I consider necessary, to ensure that the orders granted go no further than is reasonably required to protect the applicant's legitimate proprietary interests. The relief is thus carefully calibrated to strike a fair balance between the applicant's entitlement to protection and the respondents' right to pursue livelihoods in fields not shown to be in competition with the applicant.

[77] On the question of costs, there is no reason to depart from the general principle that costs follow the result. The applicant has been substantially successful in vindicating its rights, and the respondents must bear the costs of the application, including the costs of two counsel where so employed.

[78] In the circumstances, the following order is made:

1. It is declared that the second to sixth respondents respectively are in breach of their Restraint Agreements concluded with the applicant (annexures MAW2, MAW6, MAW7, MAW8 and MAW9 to the founding affidavit) ("the Restraint Agreements");
2. It is declared that the third, fourth and fifth respondents are in breach of their respective Confidentiality and Non-Disclosure Agreements concluded with the applicant (annexures MAW3, MAW4, and MAW5 to the founding affidavit) ("the Confidentiality Agreements");

3. The second respondent is ordered indefinitely to keep confidential and not to disclose any of the applicant's trade secrets, confidential documentation, technical know-how and data, drawings, system, methods, software, processes, client lists, programs, marketing and / or financial information to any person other than to persons employed and / or authorized by the applicant or associated company and who are required to know such secrets or information for their employment and / or association with the applicant, the applicant's trade secrets, confidential documentation, technical know-how and data, drawings, system, methods, software, processes, client lists, programs, marketing and / or financial information where applicable and which represent a substantial monetary value to the company, both during his/her employment hereunder or thereafter;
4. The second respondent is interdicted and restrained until 22 October 2025 and throughout the South African Development Community ("SADC") from directly or indirectly, in any capacity whatsoever:
  - 4.1. being interested in any business in the territory which carries on business, manufactures, sells or supplies any commodity or goods, brokers or acts as an agent in the sale or supply of any commodity or goods and / or performs or renders any service in competition with or identical or similar or comparative to that carried on, sold, supplied, brokered or performed by the applicant during the period of the employment of the second respondent up to and including the last day of his employment (22 April 2025).

- 4.2. soliciting the custom of or dealing with or in any way transacting with, in competition with the applicant, any business, company, firm, undertaking, association or person which during the period of six (6) months preceding the date of termination of the employment of the second respondent has been a customer or supplier of the applicant in the SADC territory; and
  - 4.3. directly or indirectly offering employment to or in any way causing to be employed any person who was employed by the applicant as at the termination of the employment of the second respondent with the applicant or at any time within six (6) months immediately preceding such termination.
- 5. The third and fourth respondents are interdicted and restrained until 22 April 2026, within a radius of 100 kilometres from any of the applicant's offices office:
  - 5.1. from being interested in or concerned with, in any capacity whatsoever, any person, company or association, organisation or concern which competes directly or indirectly with the applicant or any of its associated companies;
  - 5.2. either solely or jointly with or as employee, manager or agent for any other person, firm or company, directly or indirectly:
    - 5.2.1. in connection with any business similar to or in-competition with that carried on by the applicant, solicit the customers of or sell to or attempt to sell to or deal with:

5.2.1.1. any customer of the applicant from whom they obtained or attempted to obtain orders for the applicant's products at any time during their employment with the applicant; or

5.2.1.2. offer employment to or employ, or cause employment to be offered to or cause to be employed or solicit any employee of the applicant who was then employed by the applicant or who was employed by the applicant at the date of the termination of their employment or at any time during the 1- year period preceding such termination.

6. The third, fourth and fifth respondents are directed to keep confidential indefinitely any confidential information disclosed during their employment.

7. The fifth respondent is interdicted and restrained until 22 October 2025 and throughout the SADC region from directly or indirectly, in any capacity whatsoever:

7.1. being interested in any business which carries on business, manufactures, sells or supplies any commodity or goods, brokers or acts as an agent in the sale or supply of any commodity or goods and/ or performs or renders any service in competition with or identical or similar or comparative to that carried on, sold, supplied,

brokered or performed by the applicant during the period of the employment of the fifth respondent up to and including the last day of the employment of the fifth respondent;

7.2. soliciting the custom of or deal with or in any way transact with, in competition with the applicant, any business, company, firm, undertaking, association or person which during the period of six (6) months preceding the date of termination of the employment of the fifth respondent has been a customer or supplier of the applicant in the SADC territory; and

7.3. directly or indirectly offering employment to or in any way cause to be employed any person who was employed by the applicant as at the termination of the employment of the fifth respondent with the applicant or at any time within six (6) months immediately preceding such termination.

8. The sixth respondent is interdicted and restrained until 25 April 2026, within a radius of 100 kilometres from any office of the applicant:

8.1. from being interested in or concerned with, in any capacity whatsoever, any person, company or association, organisation or concern which competes directly or indirectly with the applicant or any of its associated companies;

8.2. from either solely or jointly with or as employee, manager or agent for any other person, firm or company, directly or indirectly, for any cause whatsoever:

8.2.1. in connection with any business similar to or in-competition with that carried on by the applicant, soliciting the customers of or selling to or attempting to sell to or deal with:

8.2.1.1. any customer of the applicant from whom the sixth respondent obtained or attempted to obtain orders for the applicant's products at any time during the sixth respondent's employment with the applicant; or

8.2.1.2. offering employment to or employing, or causing employment to be offered to or causing to be employed or soliciting any employee of the applicant who was then employed by the applicant or who was employed by the applicant at the date of the termination of the sixth respondent's employment or at any time during the 1 year preceding such termination.

9. The first respondent is interdicted and restrained for a period of twenty four months from the date of judgment, from conducting any business in the field of activities conducted by the applicant in the SME Financing sector as at 24 April 2025 namely –

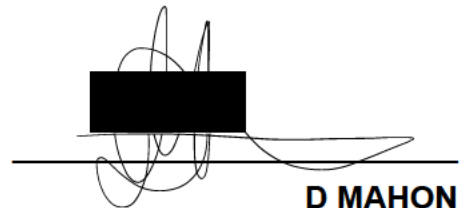
9.1. asset-backed financing;

9.2. contract financing;

- 9.3. invoice discounting financing;
  - 9.4. purchase-order financing; and
  - 9.5. origination and brokerage: preparing SME's, packaging their applications, and introducing them to licensed funders.
10. The first respondent and the second to sixth respondents are interdicted and restrained from competing unfairly and unlawfully against the applicant, including by:
- 10.1. Misappropriating, utilising and disclosing the applicant's confidential information and trade secrets obtained through their employment with the applicant, including but not limited to the applicant's customer, supplier and funder information, its marketing strategies, pricing and profit structures, application methodology and process, online portal or scoring process, and any information of the applicant which would be of assistance to a competitor to enable it to compete against the applicant and which would not ordinarily, but for the knowledge of the respondents, be known to such competitor ("the applicant's confidential information");
  - 10.2. using their knowledge of the applicant's confidential information and trade secrets, or disclosing such confidential information to third parties, for their own benefit to springboard the business of the first respondent (or any other competitive entity);

- 10.3. passing off the business of the first respondent as being associated with that of the applicant or otherwise falsely representing to any third party that the applicant and the first respondent are associated, affiliated, or that the first respondent is in any way endorsed by or linked to the applicant;
- 10.4. diverting corporate opportunities from the applicant to the first respondent and continuing to utilise any corporate opportunities already so diverted;
- 10.5. utilising the applicant's systems and platforms for the advancement of the first respondent's business;
- 10.6. improperly interfering with the applicant's contractual (whether written, oral or tacit) relationships with its customers and service providers;
- 10.7. directly or indirectly soliciting the applicant's customers, partners and service providers, including by soliciting customers, partners and service providers on the basis that the first respondent's offerings are the same and/or associated with the applicant;
- 10.8. utilising the first respondent's email or branding to promote, advertise or undertake any of the services conducted by the applicant including but not limited to asset-backed financing, contract financing, invoice discounting financing and purchase order financing;

- 10.9. utilising any architectural digital infrastructure developed and maintained by the applicant or contractors on behalf of the applicant;
- 10.10. utilising or copying any materials that were produced by the applicant or with the resources of the applicant in any way to conduct activities or to promote the first respondent or any other entity's businesses including Youtube videos, documents, brochures or any other promotional matter on any platform whether print, media, digital or social;
11. The first respondent and each of the remaining respondents are interdicted and restrained from utilising or operating (in relation to the SME finance sector) any of the following internal operating models and internal systems for a period of 24 months from the date of judgment:
  - 11.1. the applicant's internal financial models,
  - 11.2. the applicant's pricing strategies,
  - 11.3. the applicant's investment committee templates and
  - 11.4. the applicant's application workflows.
12. The relief sought in prayer 12 of the notice of motion is postponed *sine die*;
13. The respondents shall pay the applicant's costs of the application, including the costs of senior and junior counsel, on Scale C.



**D MAHON**  
Acting Judge of the High Court  
Johannesburg

Date of hearing: 2 September 2025

Date of judgment: 11 September 2025

**APPEARANCES:**

For the Applicant: Adv C Whitcutt SC  
Elisna Tolmay

Instructed by: Webber Wentzel Attorneys

For the Respondent: Adv N Rolivhuwa

Instructed by: R Baloyi Inc