



**THE LABOUR COURT OF SOUTH AFRICA
AT CAPE TOWN**

Of interest to other judges

Case no: J143/2025

In the matter between:

HR & SKILLS MARKET

Applicant

and

First Respondent

WIKUS STRYDOM & ANOTHER.

Second Respondent

HR UNSCRIPTED

Heard: 6 August 2025

Delivered: 11 September 2025

Summary: (Restraint of trade application – Rule 38 procedure applicable – Urgency not in issue - existence of restraint and breach proven – risk of disclosure of confidential client details – Geographical scope of relief sought not justified having regard to wording of scope in restraint provision – scope of relief against competitive active reduced – Costs awarded)

JUDGMENT

LAGRANGE, JNature of the application

[1] This is an application for final relief to enforce an agreement in restraint of trade. It was launched on 25 April but had not been enrolled by 15 July 2025. Following a directive from the Honourable Judge President, responding to correspondence received from one or both of the parties on 15 July 2025. It was enrolled for hearing on 6 August 2025.

[2] The application is for final relief in the following terms:

“1. The First Respondent is ordered to comply with the following confidentiality and restraint undertakings:

1.1 The First Respondent shall not in any capacity, for a period of 12 months from the date of termination of his association with the Applicant (“company”) for any reason whatsoever, directly or indirectly, use for his own benefit, or the benefit of any other person including the second respondent, shall keep confidential and not disclose, any of the trade secrets or confidential business information of the Company and/or any client of the Company other than to those persons who by their own association with the company are required to be aware and know such secrets or possess that information.

1.2 The First Respondent shall not, directly or indirectly, use for his own benefit or the benefit of any other person including the Second Respondent, and shall keep confidential and not disclose, any trade secrets or confidential information of the Company and/or any client of the Company, other than those persons who by their association with the Company and/or client, are required to know such trade secrets or have access to such information.

1.3 For the sake of clarity, the trade secrets and confidential information of the company and/or the client shall include, but shall not be limited to the technical details, techniques, knowhow, client lists, business strategies, method of operating, fee structures, pricing and service policies, names of

customers of the Company and/or any client of the Company, including potential customers with whom the Company may not have yet contracted, but intends contracting with for purposes of doing business.

1.4 The First Respondent shall not, for a period of one (1) year from date of termination of his association with the company, for any reason whatsoever, either for his own account or as representative, agent for any third party including the second respondent, and/or through any third party, persuade, induce, encourage, procure, solicit or employ and Employee or consultant engaged by the company.

1.4.1 who has an interest directly or indirectly in any manner whatsoever in any business which is in competition with the business carried on by the company; or

1.4.2 to terminate employment or association with the Company as the case may be; or

1.4.3 to furnish any information or advise acquired by the employee or consultant as a result of association with the Company as the case may be, to any unauthorised person;

1.5 The first respondent shall not either for his own account or as a representative or agent for any third party including the Second Respondent for a period of one (1) year after termination from the date of the termination of the first respondent's association with the company for whatsoever reason, persuade, induce, encourage, procure, or solicit any licensor or supplier or client of the company to:

1.5.1 terminate its licence and/or supply and/or other agreement with the company; or

1.5.2 enter into a licence and/or supply and/or other agreement with the first respondent or any other third party or entity including the second respondent and any competitor of the applicants; or

1.5.3 require any licence and or supplier and/r the agreements with the Company to be altered to terms and conditions less advantageous to the company as the case may be; or

1.6 The first respondent shall not unless otherwise agreed to by the Company in writing for a period of one (1) year after association with the

company has terminated, be interested or engaged, whether directly or indirectly, and whether as proprietor, partner, shareholder, member, director, employer, employee, agent, consultant or otherwise, in any firm or business or undertaking which carries on any activity either solely or in conjunction with any party including the second respondent, in competition with the business carried on by the company;

1.7 The restraints as set out above in this order shall apply to every province in South Africa which the applicant conducted business at the time of the first respondent's termination of contract, alternatively to any one or more (collectively) of the Magistrate Districts comprising the Republic of South Africa.

2. That the respondents be ordered to destroy, delete, cause to become unusable and irretrievable, the contact information of the client base of the applicant in the responsibility possession.

3. That the second respondent not be allowed to employ the first respondent in competition with the first applicant for a period of 12 months from the date of termination of the first respondent's employment with the applicants, alternatively not be allowed to sell the same or similar products as the applicants, nor render the same or similar services, nor supply services to the clients of the applicant who were clients directly before, during, or directly after the employment term of the first respondent.

4. That the first respondent shall pay the costs of this application on attorney and client scale, save in the instance where the application is also opposed by the second respondent in which case the respondents shall be jointly and severally liable for the costs of this application."

(sic)

Rule 38 procedure

[3] As mentioned above the application was only enrolled on 15 July 2025 having been launched at the end of April. Pleadings had closed by 15 May. The applicant filed its heads only on 6 June and the respondents only filed their heads by 27 June.

On 24 July the application was enrolled on the ordinary opposed motion roll for hearing on 6 August 2025. Urgency was not specifically pleaded, nor did the respondents raise any objection to the timing of the application being launched nor to the timing of its enrolment. In the absence of urgency being an issue, the time periods applicable to restraint applications in Rule 38 of the Labour Court Rules are assumed to apply to this application, which provides a *sui generis* procedure for restraint applications, “... *unless circumstances warrant a more urgent hearing.*”

[4] The respondents did not file a fourth set of affidavits, even though this is permissible under Rule 38. Further, neither party raised any objection to any failure to comply strictly with the provisions of Rule 38, even though it seems the filing of heads might not have been strictly in compliance with the rule. Accordingly, it is unnecessary for any preliminary rulings to be made in this regard.

[5] The application was heard virtually on the Microsoft Teams platform.

Factual background

[6] The applicant, HR Skills Market ('HRS'), is a 25-year-old company providing HR services to other businesses and conducting disciplinary inquiries on behalf of its clients. It has been in business for 25 years.

[7] Strydom started working for the company as an HR consultant on 1 October 2024. He has two business diplomas, a diploma in Labour Relations and Dispute Resolution and a BA (Hons) in Business Studies.

[8] Between 2011 and January 2023, he worked for several businesses. Until February 2018, he occupied various managerial positions in those businesses, aside from one early short stint in the capacity of a human resources consultant. After February 2018, his appointments were almost exclusively in human resources consultant roles. In January 2023, following the end of his last appointment as a human resources business partner, which ended in November 2022, he set up his

own HR services business, HR Unscripted ('HRU'), the second respondent. Strydom was the sole director and employee of HRU.

[9] Strydom explains that he struggled to make ends meet in his new startup company and was under pressure to provide for his young family. Although he does not say so expressly, it is apparent this prompted him to start looking for other income earning opportunities. On 16 September 2024, he was contacted by a recruitment agent on behalf of HRS. Following communications with the agent and two interviews with representatives of HRS, including its owner director, Ms C Hannan ('Hannan'), who deposed to the HRS's founding affidavit, he was offered a job as an HR consultant.

[10] He did not conceal his involvement with HRU and claims this was discussed at length during his interview with the agent. He did not dispute that it was stated in an email from the agent to HRS, dated 17 September 2024, she recorded that he had advised her HRU only had a few clients, whom he was willing to approach to bring them over to HRS. Further, it was discussed with him during his first interview with Hannan and the general manager of HRS. He claims at no time was he asked to end his involvement with HRU. However, he was contacted by the agent on 23 September, with a request that he cede and transfer HRU's client base to the HRS. He explained that it was not his decision, but that of his clients. Nothing further transpired and the same day he received a written offer of employment as HR consultant from HRS at a monthly salary of R 36,000, which he accepted.

[11] Strydom also claimed that in his interview with HRS he also advised them of HRU's limited client base and that the work only arose at roughly quarterly intervals, which he would render after his working hours for the HRS. HRS denies this and claims that, on the contrary, it was made clear it the job it was offering him was a full time position and there was no discussion of afterhours work.

[12] The employment contract he signed made no reference to his involvement in HRU, but contains a comprehensive restraint of trade provision, the content of which is mirrored in the relief sought by HRS in this application. The first term of the

restraint prohibited him from engaging in any business competing with HRS within a radius of 100 kilometres from any location where HRS conducted business. It is common cause that the principal places of business of HRS and HRU are situated in Benoni and Kempton Park respectively, plainly bringing Strydom's business premises within 100 kilometres of HRS's main business operation.

[13] When he started work with HRS on 1 October 2024, Strydom was issued with a company laptop computer. HRS stated that he gained access to its entire client base and their contact details through its 'Maximizer' CRM system. Strydom admits being exposed to the client information of HRS but denies he currently has any of their client information. He points out that he only had access to HRS client details by being able to access them through the laptop which was returned when he left HRS. He admits being instructed to download the client list but could only "*execute the instruction*" with the assistance of another staff member who assisted him in "*filtering through all details pursuant identifying my allocated clients*". In answer to his allegation that he no longer has access to HRS's clients details, it points out that he had contacted clients on his cell phone *inter alia* using WhasApp, so he would still have the details of those clients on his phone anyway.

[14] HRS contends that during his employment with it he was already in breach of clause 12 of his employment contract by being a director of HRU and it never gave him permission to retain his directorship HRU. Further, it alleges that Strydom had confirmed that he had no intention of continuing his employment with HRU because it did not provide him with a stable income.

[15] The company claims that he represented it in dealings with many clients in Limpopo, KwaZulu Natal and the Western Cape in his HR consultant capacity. It claims that he quickly forged ties with the applicant's clients, particularly those in the provinces he frequently visited in view of his job profile. Strydom qualifies these claims, stating he only had two Limpopo clients, one of whom he had obtained for HRS on his own. He states he had at least ten clients in KwaZulu Natal, whom he only saw on two occasions mainly to provide employment equity and skills development services which entailed meetings every three to four months and never

exceeded 20 minutes in duration. In the Western Cape he had three clients assigned to him whom he never met and had only engaged with them on a few occasions, by remote means. Besides, most services he provided were performed “electronically” and as such he did not form any bond with the clients. Such relationship he had with them was limited to performing services for them

[16] HRS claims that Strydom is using its proprietary knowledge in the form of contact details, fee structures, and know-how as a “springboard” for HRU’s business. While conceding that HRU competes in the same HR consultancy market with HRS, he denies this is evidence of him using HRS’s business as a springboard for his own and points out that HRU also provides services to individual clients who are not corporate, which HRS does not do. Moreover, the industry related knowledge and experience he has acquired over time is not sensitive or confidential information requiring protection. In any event, his current lack of access to the client information of HRS means he can secure no advantage by virtue of his previous employment there which he can utilize to the benefit of HRU.

[17] It claims he rendered services to clients and when he did so he provided them with his business card for HRU, which indicated that he was employed by it. Strydom denies ever handing a business card of HRU to any client or colleague whilst he was employed by HRS and suggests that the card was impermissibly obtained from his personal belongings. The company provided emails allegedly from two of its clients in the second half of March 2025 alerting it to the fact that he had left his HRU business card with them and intimating that he could perform certain services for them under the auspices of his firm. There were no affidavits from the clients confirming what was stated in the emails.

[18] On 24 February 2025, Strydom provided a quotation to one of HRS’s clients, in the name of his own business. It appears that he was suspended on the same day by HRS. Strydom implied that the solicitation of the quote from him by the third party was an entrapment exercise engineered by HRS. However, he nevertheless responded to the enquiry by providing a quote in the name of the second respondent. HRS alleges that the quotation and service level agreement used by

Strydom was very similar to its own documents and was priced to slightly undercut its own pricing. Strydom's answer to this was that he had drawn up HRU's service level agreement at the end of 2022, before he had even registered HRU.

[19] A disciplinary inquiry was held on 28 February, arising from his engagement with this prospective client. He was dismissed on 5 March 2025. HRS further alleged that on 12 March, one of HRS's clients contacted Strydom telephonically requesting his services, to which Strydom agreed, without explaining that he was no longer working for HRS. While Strydom admits receiving the call, he denies that he offered the services of HRU. Rather, he expressly directed the inquirer to raise its concerns with HRS.

[20] HRS claimed that it lost two clients in Durban and surmises that was because they had been offered the same services at a lower rate by a new supplier, that this must have been Strydom's doing. Strydom specifically denies the clients became clients of HRU and mentioned the clients he was aware of which had terminated their services with HRS during November December 2024.

[21] HRS alleges that given his knowledge of its fee structure he is able to undercut it. Strydom admits he was aware of the hourly rate for services rendered but retainer clients will build on a sliding scale. He had no knowledge how that scale was applied. He merely issued quotations and cost estimates for clients. HRS disputed this, asserting that his access to its system allowed him to determine the billing structure. However, Strydom also averred that the fees recorded in the second respondent's service level agreement were based on market research conducted during 2022 which was not proprietary information. HRS did not dispute this.

[22] Despite a letter of demand on 18 March, Strydom made it clear that he had no intention of complying with the restraint.

Existence of the restraint and breach of the agreement

[23] It is common cause that Strydom signed the contract of employment containing the restraint agreement, even though he disclosed his interest in HRU and even though he did not 'transfer' any of HRU's client's to HRS. The terms of the restraint made no provision for any exceptions that would have permitted him to continue to be interested in HRU or provide any service to HRU's clients. Moreover, clause 16.1 of the contract stated:

"16.1 No additions to, variations or agreed cancellations of this agreement shall be of any force and effect unless in writing and signed by or on behalf of both parties."

Accordingly, any departure from the terms of the restraint in clause 11 of the contract would only have been enforceable if recorded in a written amendment signed by both parties.

[24] There is no dispute that HRS and HRU are competitors. It follows that by retaining his interest in HRU and because HRU retained its clients, Strydom was in breach of the first paragraph of the restraint provision, which prohibited him during his employment and for twelve months thereafter from engaging in a business that competed with HRS.

[25] In addition, whatever the source of the enquiry directed to Strydom which resulted in his dismissal, his response to it was to provide a quote on behalf of HRU, which is a clear indication he would take an opportunity to benefit his own business at the expense of HRS, if it arose. This too was a clear breach of the restraint, involving as it did, acting in direct competition with HRS, quite apart from being a breach of his common law duty not act contrary to the best interest of his employer.

The reasonableness of enforcing the restraint

[26] Having established the existence of the restraint and its breach, the next question is whether it would be unreasonable to enforce it. The framework for

evaluating whether a restraint is enforceable or not has been reaffirmed by the Labour Court in *Venter and Others v Twenty Four Motors CC ta Ford Ermelo*¹:

“[9] As stated in Basson v Chilwan and Others, the test for determining the reasonableness of a restraint of trade agreement turns on the following: (a) whether one party has an interest that deserves protection after termination of the agreement; (b) whether that interest is threatened or being prejudiced by the other party; (c) if so, whether that interest weighs qualitatively and quantitatively against the interest of the other party not to be economically inactive and unproductive; and (d) whether there is an aspect of public policy having nothing to do with the relationship between the parties that requires that the restraint be maintained or rejected. A fifth consideration, identified in Reddy v Siemens Telecommunications (Pty) Ltd, is whether the restraint goes further than necessary to protect that interest. This consideration has been found to correspond with s 36(1)(e) of the Constitution. It requires that it be considered whether less restrictive measures exist which can achieve the purpose of the limitation by determining whether the restraint or limitation is “reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom”.

Existence of a protectible interest

[27] Despite Strydom’s claim not to have any current access to the client details of HRS, he never unequivocally stated he was unable to access, the full client database and the information it contained, even if he had initially needed assistance in how to obtain the details of the clients assigned to him.

[28] The details of HRS’ clients, which are confidential, are plainly an asset to it and would therefore be an asset to any competitor. So too are any details about the fee structure and the like which were obtainable from the database. It is true that information about fee structures might become less valuable with the elapse of time as they will change, but it is clearly an advantage to have knowledge of the most

¹ (JA34/2024) [2024] ZALAC 32 (28 June 2024)

recent fees payable by a client. This information is of commercial value and HRS has every reason to maintain the integrity of that information and prevent its dissemination.

[29] Consequently, HRS has a protectible interest in that information, apart from the interest it has in not allowing Strydom to benefit from the his knowledge of the clients he became familiar with, once he left HRS.

Whether Strydom threatens HRS's protectible interests

[30] Strydom demonstrated that he was willing to pursue the interest of HRU even when he was still employed by Strydom, which indicates he was not concerned to honour the restraint, if it suited him.

[31] It is true that Strydom no longer has access to the system containing that information, but the important issue is that he had such access and could have copied some of it. The risk of him utilising such information for the benefit of a competitor, in this case HRU, is a risk the restraint is designed to protect HRS against and it is not necessary to prove Strydom has or is likely to do so². In circumstances where he already displayed disloyalty whilst still employed by HRS, there is more reason to infer the risk not just hypothetical, but palpable.

Weighing the parties' respective interests

[32] Strydom argues the restraint unfairly restricts competition in the market and prevents him from earning a living for a significant amount of time throughout the country whereas he contends HRS has failed to establish a protectible interest worthy of protection. HRS asserts that Strydom's prior work history is not confined to HR consultancy work, but also entailed him occupying management posts, so he is not confined to earning a living by competing with it. I am not persuaded that Strydom has shown that his interests outweigh those of HRS in preventing its proprietary information being used to promote the competing business of HRU.

² *Reddy v Siemens Telecommunications (Pty) Ltd* 2007 (2) SA 486 (SCA) at paragraph [20].

Whether the scope of the restraint is broader than necessary to protect HRS's interests

[33] A restraint must not be broader in its duration, nature and scope than is necessary to protect its legitimate interest in enforcing the restraint³. The first provision of the restraint clause in the contract of employment states:

“Fundamental to your employment by HR and Skills Market, is a restraint of trade agreement. During the term of this agreement and for a period of 12 months following the termination of this agreement for any reason, the Consultant agrees not to directly or indirectly engage in, participate in, or assist any business that competes with the Employer within a radius of 100 kilometres from any location where the Employer conducts its business.”

(emphasis added)

[34] In prayer 1.7 of the relief sought, the applicant seeks an order that the restraint must be enforced in every province in which it conducted business when Strydom's services terminated. On the face of it, this relief is expressed in broader terms than the ambit of the restraint set out in the contract. To obtain the relief sought, HRS needed to set out facts, which would demonstrate clearly that the provincially defined scope of the relief sought is derived directly by applying the formulation in the contract to those facts.

[35] In the replying affidavit, HRS makes a broad allegation that each one of its clients is within 100kilometres of another of its clients and its clients are all over the entire country. Based on this, it asserts that the relief it seeks would prevent Strydom from competing with it throughout the entire country. This averment is really a factual conclusion based on HRS's own undisclosed information about all of the locations of its clients' businesses.

[36] Even if it true that every one of its clients is within 100kilometres of another, it does not logically follow that every conceivable location in the country falls within

³ *Kwik Kopy (SA) (Pty) Ltd v van Haarlem and Another* 1999 (1) SA 472 (W) at 484E

100kilometres of at least one of its clients. For example, a number of HRS's clients might be clustered in urban areas, as a result of which several are within 100kilometres of each other, whereas there may be areas more than 100 kilometres from those urban concentrations of clients where it has none. Consequently, HRS cannot just assert that the geographical scope of the restraint covers the entire country *because* none of its clients is more than 100 kilometres from another. Therefore, if the court granted the relief sought in prayer 1.7, it follows that it would exceed the geographical ambit of the contractual restraint provision.

[37] There are certain averments which do identify places where HRS does business. What is not in dispute is the existence of fifteen of HRS's clients, which Strydom serviced in KwaZulu-Natal (approximately ten clients), Limpopo (two clients) and Cape Town (three clients). If Strydom were to compete with HRS within a 100kilometres radius of any of those clients that would plainly be a breach of the restraint. Further, operating a competing business from the 2R's address in Kempton Park, is within 100 kilometres of HRS's main office, and therefore falls within the scope of the restraint.

[38] However, without more detail about other locations where HRS conducts its business the court cannot grant the wide relief sought by it. Consequently, the court may only justifiably make an order which covers the ambit of identifiable areas falling within the scope of the restraint.

Conclusions

[39] I am satisfied that HRS has a clear right to enforce the provisions of the restraint both in respect of limiting where the respondents may conduct their business and in respect of the confidentiality obligations Strydom undertook. As discussed, Strydom breached the restraint provision in his contract by continuing to have an interest in HRU while he was employed by HRS and by acting the interests of HRU during and after his employment with HRS. There is every reason to suppose that he will continue to breach the restraint, unless restrained, given his past conduct.

[40] HRS is entitled to enforce the restraint provisions in Strydom's contract of employment, but not for the wide geographical scope it claims. Accordingly, only limited relief can be granted in this regard. On the question of the use of confidential information, the impermissible use of that information is not limited to specific locations and does not require similar qualification.

[41] Enforcing the restraint is the only way in which it can adequately protect itself from the utilization of its proprietary knowledge by a competitor. Damages would be very difficult to compute in the circumstances of the industry in which the parties compete. Further, there is no reason to believe that if damages could be computed there is a prospect of recovering them from Strydom, given his claims that HRU had few existing clients.

[42] On the question of costs, this is an ordinary matter of enforcing a contract and there is no reason why the normal principles applicable to costs in contractual disputes should not apply. HRS has been largely successful and is entitled to a cost award in its favour.

Order

1. The First Respondent is ordered to comply with the following confidentiality and restraint undertakings:

- a. The First Respondent shall not, directly or indirectly, use for his own benefit or the benefit of any other person including the Second Respondent, and shall keep confidential and not disclose, any trade secrets or confidential information of the Applicant and/or any client of the Applicant, other than those persons who by their association with the Applicant and/or client, are required to know such trade secrets or have access to such information.
- b. For the sake of clarity, the trade secrets and confidential information of the company and/or the client shall include, but shall not be limited to the client lists, business strategies, method of operating, fee structures, pricing

and service policies, names of customers of the Applicant and/or any client of the Applicant.

2. The First Respondent shall not, for a period of one (1) year from date of termination of his association with the company, for any reason whatsoever, either for his own account or as representative, agent for any third party including the Second Respondent, and/or through any third party, persuade, induce, encourage, procure, solicit or employ and employee or consultant engaged by the company,

a. who has an interest directly or indirectly in any manner whatsoever in any business which is in competition with the business carried on by the company; or

b. to terminate employment or association with the Applicant as the case may be; or

c. to furnish any information or advice acquired by the employee or consultant as a result of association with the Applicant as the case may be, to any unauthorised person.

3. The First Respondent shall not either for his own account or as a representative or agent for any third party including the Second Respondent for a period of one (1) year after termination from the date of the termination of the first respondent's association with the company for whatsoever reason, persuade, induce, encourage, procure, or solicit any licensor or supplier or client of the company, to

a. terminate its licence and/or supply and/or other agreement with the company, or

b. enter into a licence and/or supply and/or other agreement with the First Respondent or any other third party or entity including the second respondent and any competitor of the Applicant; or

c. require any licence and or supply and/or other the agreements with the Applicant to be altered to terms and conditions less advantageous to the company as the case may be; or

4. The First Respondent shall not, unless otherwise agreed to by the Applicant in writing, for a period of one (1) year after association with the company has terminated, be interested or engaged, whether directly or

indirectly, and whether as proprietor, partner, shareholder, member, director, employer, employee, agent, consultant or otherwise, in any firm or business or undertaking which carries on any activity either solely or in conjunction with any party including the Second Respondent, in competition with the business carried on by the company;

5. The restraints as set out paragraphs 2, 3 and 4 of this order shall apply in the following areas:

- a. an area within a one hundred (100) kilometer radius of the Applicant's business situated at Block B, [...] D[...] Street, R[...], Benoni, Gauteng;
- b. an area within 100 kilometres of any of:
 - i. the three clients of the Applicant in Cape Town, serviced by the First Respondent whilst employed by the Applicant;
 - ii. the ten clients of the Applicant in KwaZulu-Natal Province serviced by the First Respondent whilst employed by the Applicant, and
 - iii. the two clients of the Applicant in Limpopo Province serviced by the First Respondent whilst employed by the Applicant.

6. In so far as the Respondents have any contact information of the clients of the Applicant in their possession, they must destroy, delete, cause to become unusable and irretrievable, such information, without delay.

7. The First and Second Respondent are jointly and severally liable for the costs of the Applicant, the one paying the other to be absolved.

R Lagrange

Judge of the Labour Court of South Africa

Appearances

For the Applicant:

X Van Niekerk instructed
by LDV Attorneys

For the Respondents:

E Rood of Edrich Rood &
Associates