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**REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
LIMPOPO DIVISION, POLOKWANE**

CASE NUMBER: 2025-181554

(1) REPORTABLE: YES/NO

(2) OF INTEREST TO THE JUDGES: YES/NO

(3) REVISED.

DATE: 21 October 2025

SIGNATURE:

In the matter between:

**TAPATI INVESTMENTS (PTY) LTD T/A
TOSHIBA LIMPOPO
(REGISTRATION NUMBER: 2013/065304/07**

APPLICANT

-and-

**DIAMOND REKHEKGILWE MALATJI
IDENTITY NUMBER: 9[...]**

RESPONDENT

Delivered 21 October 2025

This judgment was handed down electronically by circulation to the parties' legal representatives by e-mail. The date and time for hand down of the judgment is deemed to be **21 October 2025 at 10:00 am.**

Date heard 15 October 2025

Coram Bresler AJ

JUDGMENT

BRESLER AJ:

Introduction:

[1] The Applicant applied on an urgent basis for an order interdicting and restraining the Respondent for a period of six months from 1 October 2025 and within 100km from the Applicant's place of business from:

1.1 Carrying on any business which sells, lets or in any manner whatsoever supplies office products, corporate gifts, clothing and / or branding (printing, embroidering, engraving);

1.2 Directly or indirectly, be associated or concerned with or involved, interested or engaged in any such business as principal agent, proprietor, partner, shareholder, member, director, consultant, advisor, financier, guarantor, demonstrator or any capacity whatsoever be employed in or by any such business in any capacity whatsoever;

1.3 Canvas or solicit any orders for office products, corporate gifts, clothing or branding from any person, firm business, association or any other entity, whether incorporated or not, which had been a customer of the Applicant or not, at any time during the currency of his or her employment with the Applicant;

1.4 Contacting any of the clients of the Applicant as at date of termination of the Respondents employ with the Applicant on 1 October 2025;

[2] The Applicant's case is premised on the following facts:

2.1 The Applicant is a company that primarily specialises in inter a/ia the sale, servicing and repairs of multifunctional copiers and printers, the sale, servicing and repairs of duplicators and the sale of stationary, cleaning materials, IT products and accessories, safety and security products, inks, masters and toners and the sale of school and office furniture.

2.2 One of the direct competitors of the Applicant in Polokwane is Think Ink.

2.3 The Respondent commenced employment with the Applicant on the 1st of November 2016 as a copier technician. On or about the 15th of February 2018, the Respondent was offered a trial period as technician team leader that resulted in his continued employment in this capacity until his resignation.

2.4 The Applicant set out the duties and responsibilities of the Respondent during the course of his employment which included *inter alia* building strong relationships with key industry partners such as Toshiba South Africa, RISO and Canon. As argued during the hearing, of particular importance to the Applicant is the access that the Respondent had to clients, the task of reviewing service contracts and agreements and reviewing service rates and calculated Cost per Copy (CPC) pricing.

2.5 During the course of his employment, the Respondent also had access to the BPO systems and information (through C03 Technology). BPO is the system that the Applicant runs its business in.

2.6 The Respondent concluded a written employment agreement containing certain clauses contemplating a restraint of trade and confidentiality clauses. By accepting employment at Think Ink, the Respondent is in breach of these respective clauses.

[3] The Application is opposed by the Respondent. In essence the defence raised by the Respondent is the fact that the agreement is unreasonable, having regard to the circumstances of the matter, and should therefore not be enforced.

[4] The Respondent also raises the following issues:

4.1 The unequal bargaining power at the time of signature of the agreement;

4.2 The lack of protectable interest - according to the Respondent his roll in the Applicant did not provide him with an opportunity to liaise with clients to the extent necessary to anticipate a potential infringement of the alleged protectable interest that the Applicant aims to preserve;

4.3 The interest of the Respondent to achieve economical effectiveness and productiveness - the Respondent submits that his interest in being gainfully employed outweighs the interest of the Applicant in preserving the

alleged protectable interest. In this regard, the Respondent specifically submits that the relief claimed is excessively wide and is open to such an undefined interpretation that it is unfair and unreasonable even without having regard to the personal circumstances of the Respondent;

4.4 The public policy considerations - according to the Respondent the restraint is unreasonable and only aimed at a vindictive endeavour from the Applicant to prohibit the Respondent from furthering his career;

4.5 The restraint is wider than what is needed to protect the Applicant - the Applicant should have abided by the undertaking that addresses any concerns that the Applicant might have held;

4.6 The Applicant failed to meet the requirements for the granting of a final interdict insofar as the Applicant failed to prove a clear right.

[5] The Respondent furthermore highlighted the events leading up to the issuing of the current proceedings, inclusive of his attorney's endeavours to alleviate any concerns regarding his intended employment with Think Ink. According to the Respondent's version, the Applicant did not raise the concern that the Respondent's conduct will cause a potential infringement of their protected interest, but rather a loss of an individual that is able to transfer his skills to other employees.

The restraint and confidentiality clauses:

[6] It is common cause between the parties that the Respondent concluded an employment agreement containing the following clauses:

6.1 The employee undertakes that, during the course of his / her employment and also for a period of six months from the date of termination of his / her employment for any reason whatsoever, he/ she shall not:-

6.1.1 carry on any business which sells, lets or in any manner whatsoever supplies office products, corporate gifts, clothing and logo branding (printing, embroidering, engraving);

6.1.2 directly or indirectly, be associated or concerned with or, involved, interested or engaged in any such business as principal agent, proprietor, partner, shareholder, member, director, consultant,

advisor, financier, guarantor, demonstrator or any capacity whatsoever be employed in or by any such business in any capacity whatsoever;

6.1.3 Canvass or solicit any orders for office products, corporate gifts, clothing or branding from any person, firm, business, association or any other entity, whether incorporated or not, which had been a customer of the employer and irrespective of whether he is still a customer of the employer or not, at any time during the currency of his or her employment with the employer.

6.2 The restraint, or restraints, imposed in terms of the above shall apply to a radius of 100 km of Polokwane and I or the branch at which the employee is based, in which the employer carries on business in, or trades with office automation products, corporate gifts or branding.

6.3 The employee agrees that:

6.3.1 the market for office products, corporate gifts, clothing and / or branding office automotive products (copier, printer, fax and scan) is highly competitive, each of the following namely:

6.3.1.1 the employer's customer list;

6.3.1.2 his pricing structures;

6.3.1.3 his contractual commitments, present and future;

6.3.1.4 any prospective agreement(s) which the employer is endeavouring to conclude, whether it is probable that any such agreement(s) will be concluded or not; and

6.3.1.5 any other facet of the employer's marketing techniques in connection with office products, corporate gifts, clothing and / or branding, constitute part of the employer's interests which reasonably require protection by, and under, the restraints imposed in terms of the above, in respect of those geographical area contemplated above.

6.3.2 The restraints imposed above are in all respects reasonable as to duration, subject matter and geographical area for the proper protection of all the employer's interests in connection with his business in, or with, office products, corporate gifts, clothing and branding.

6.4 Notwithstanding the manner in which the restraints above have been grounded together or linked grammatically, each of them constitutes a separate and independent restraint, separately from each of the other

restraints, in regard to all aspects thereof including, but not by any limitation thereof, each month, each capacity and each activity referred to in the said clause.

6.5 For purposes of this agreement, office products, corporate gifts, clothing and/ or branding shall mean any one of the following items, namely:-

6.5.1 office desk equipment and stationary;

6.5.2 paper;

6.5.3 toners and cartridges;

6.5.4 office furniture;

6.5.5 any corporate gift, with or without branding;

6.5.6 any type of leisure wear, corporate clothing, uniform, safety clothing and / or equipment, footwear and headgear;

6.5.7 any type of branding (i.e. printing, embroidering, engraving) on any type of surface, or type of signage (signboards, stickers, flags, banners etc.);

6.5.8 office automation equipment such as printers, copiers, faxes and duplicators.

6.6 The service and maintenance of any of the aforementioned items or any component used therein or used in connection therewith.

6.7 Any other item, of whatsoever nature of which the employer during the currency of the employee's employment commences to sell, let, supply or otherwise trading in the aforesaid business.

Issues that require determination:

[7] This Court is only called upon to determine if the Applicant is entitled to the interdictor relief on an urgent basis.

The Applicable Legal Principles:

Urgency

[8] The courts have held the view that restraints of trade are inherently urgent in nature. In the case of **Helukable SA (Pty) Ltd v O'Toole and Another**¹ the restraint was operative for one year. Regarding urgency the Court stated:

'When a restraint is of such limited duration, and it is clear that substantial redress will not be afforded to the applicant if the matter is only heard in the normal course, then such a matter should be treated as a matter of urgency.'

[9] In this Court's view, a restraint of trade dispute will always hold an element of urgency, especially where the restraint of trade is of limited duration and a referral of the matter to the normal roll will invalidate the period of protection requested in the relief sought.

[10] Whilst due notice is taken of the Respondent's objection against the Applicant's failure to comply with the requirements of urgency, the dictates of the interest of justice require that the matter be treated as urgent. It is also in the parties' interest that the dispute between them be finalized at this stage.

Merits

[11] In applications for final relief, the applicant must satisfy the following requirements:

- 11.1 a clear right needs to be established;
- 11.2 the injury complained of must be actually committed (and not apprehended);
- 11.3 the absence of any other satisfactory remedy.

[12] The decision in **Magna Alloys and Research (SA) (Pty) Ltd v Ellis**² is a landmark decision on the enforceability of contracts in restraint of trade in South Africa. This decision denotes a marked deviation from the influence of English law

¹ (42861/2017) [2017 ZAGPJHC 411 (15 December 2017)

² 1984 (4) SA 874 (A)

which held that contracts in restraint of trade were contrary to public policy and therefore invalid.

[13] The Court stated that covenants in restraint of trade were generally enforceable, unless their enforcement would be unreasonable and therefore against public policy.

[14] Subsequent hereto Didcott J succinctly set out the effect of the ***Magna Alloys judgment in J Louw & Co (Pty) Ltd v Richter & Others***³ as follows:

'Covenants in restraint of trade are valid. Like all other contractual stipulations, however, they are unenforceable when, and to the extent that, their enforcement would be contrary to public policy. It is against public policy to enforce a covenant which is unreasonable, one which unreasonably restricts the covenantor's freedom to trade or to work. In so far as it has that effect the covenant will not therefore be enforced. Whether it is indeed unreasonable must be determined with reference to the circumstances of the case. Such circumstances are not limited to those that existed when the parties entered into the covenant. Account must also be taken of what has happened since then and, in particular, of the situation prevailing at the time enforcement is sought. Therefore, a party who seeks to enforce a contract in restraint of trade must invoke the contract and prove the breach thereof. Thereafter, a respondent who seeks to avoid the restraint bears an onus to demonstrate, on a balance of probabilities, that the restraint agreement is unenforceable because it is unreasonable.'

[15] To determine whether the restraint of trade is reasonable or not, the court in the case of ***Basson v Chilwan and Others***⁴ enunciated four principles that must be applied:

³ 1987 (2) SA 237 (N) at 2438.

⁴ 1993 (3) SA 742 (A).

15.1 Does the one party have an interest that deserves protection after termination of the agreement?

15.2 If so, is that interest threatened by the other party?

15.3 In that case, does such interest weigh qualitatively and quantitatively against the interest of the other party not to be economically inactive and unproductive?

15.4 Is there an aspect of public policy having nothing to do with the relationship between the parties that requires the restraint be maintained or rejected?

[16] In some instances, a fifth principle has also been recognized namely: 'Is the restriction necessary to protect the interests, or does it go further than is necessary?'⁵

[17] In ***Basson v Chilwan and Others*** *supra* it was stated:

'The incidence of the onus in a case concerning the enforceability of a contractual provision in restraint of trade does not appear to me in principle to entail any greater or more significant consequences than in any other civil case in general. The effect of it in practical terms is this: the covenantee seeking to enforce the restraint need do no more than to invoke the provisions of the contract and prove the breach; the covenantor seeking to avert enforcement is required to prove on a preponderance of probability that in all the circumstances of the particular case it will be unreasonable to enforce the restraint; if the Court is unable to make up its mind on the point, the restraint will be enforced. The covenantor is burdened with the onus because public policy requires that people should be bound by their contractual undertakings. The covenantor is not so bound, however, if the restraint is unreasonable, because public policy discountenances unreasonable restrictions on people's freedom of trade...'

⁵ ***Tor Industries (Pty) Ltd v Gee-Six Superweld CC and Others*** 2001 (2) SA 146 (W) at 161J to 162A; ***Kwik Copy (SA) (Pty) Ltd v Van Haarlem*** 1999 (1) SA 472 (W).

[18] In an employment relationship, the objective of a restraint of trade clause is to protect an employer's economic interest after the termination of the employment contract. A party that resists enforcement of a restraint of trade agreement must show that the restraint is not enforceable on a balance of probabilities because it is unreasonable.

[19] *In casu*, the Applicant's restraint of trade clause and the consequential relief claimed in the Notice of Motion are extremely wide and encompassing. The wording of the restraint of trade is couched in such wide terms, that it effectively prohibits the Respondent not only from pursuing his trade and/ or occupation, but also alternative employment opportunities that has nothing to do with the alleged protectable interest raised by the Applicant. Provision is for instance made that no occupation can be taken up with any alternative competitor that sells branded merchandise. This is excessive and unnecessary. It will infringe the Respondents constitutional right to freedom of trade and occupation as entrenched in Section 23 of the **Constitution**, 1996.

[20] This renders the restraint of trade and confidentiality terms against public policy and therefore unenforceable given the prevailing circumstances.

[21] As to the protectable interest, this Court is not convinced that the Applicant has shown, on a balance of probabilities, that it holds any protectable interest and that such interest was infringed by the Respondent. These are, after all, two of the requirements to be met in order to succeed with final interdictory relief.

[22] In justification of the aforesaid conclusion, one needs to appreciate the nature of a 'protectable interest'. Although there is no closed list of proprietary interests, there exist two main categorises which can be protected by a restraint of trade, namely trade connections (e.g. customers) and trade secrets (e.g. confidential information).⁶

⁶ ***Basson v Chilwan and Others* supra; *Dickinson Holdings Group (pty) Ltd and Others v Du Plessis and Another* 2008 (4) SA 214 (N)**

[23] As to confidential information (trade secrets), the following was stated in ***Automotive Tooling Systems (Pty) Ltd v Wilkens and Others***:⁷

'[19] Finally, there is no evidence that the processes and methods that were used in the instant matter were, in fact, treated as confidential by the appellant. It appears that all employees, clients and sub-contractors freely had access to the processes and methods of the appellant. It was not restricted to a limited class of employees on a confidential basis to render it protectable. As Parker, who deposed to the answering affidavit on behalf of the third to fifth respondents, pointed out, in December 2004 members of his family and himself were able to customise marking machines that the appellant had undertaken to do for Advanced Marking Systems at the appellant's premises. This would hardly have been possible had the know-how been unique or confidential.'

'[20] In my view the facts establish that the know-how for which the appellant seeks protection is nothing other than skills in manufacturing machines, albeit it that they are specialised skills. These skills have been acquired by the first and second respondents in the course of developing their trade and do not belong to the employer - they do not constitute a proprietary interest vesting in the employer - but accrue to the first and second respondents as part of their general stock of skill and knowledge which they may not be prevented from exploiting. As such, the appellant has no proprietary interest that might legitimately be protected. The restraint is therefore inimical to public policy and unenforceable.'

[24] No case was made out by the Applicant that the skills acquired by the Respondent in the course of his employment with the Applicant constitutes a protectable interest. This 'know-how' can hardly be deemed to be unique or confidential.

[25] As to confidentiality, it is a factual issue; the fact that the party seeking enforcement states that information is confidential does not make it confidential. It is

⁷ 2007 (2) SA 271 (SCA) at [19] and [20]

further recognised that employees inevitably retain some knowledge and experience of the manner in which a business generally operates, and that not every aspect of its affairs is necessarily confidential. Former employers should therefore not be able to prevent departing employees from applying this knowledge, even if they invested in imparting these skills.⁸

[26] Likewise, this Court is not satisfied that any information that the Respondent was privy to, warrants such extreme protection as to prohibit the Respondent from being employed. *In casu* the Applicant has not shown, on a balance of probabilities, that the alleged information (trade secrets) did not form part of the public arena. It follows, as a logical deduction, that all the technicians had access to the technical information. As to the servicing of the machines, this cannot be deemed to be trade secrets. It is a skill that was acquired during the course of the Respondent's employment with the Applicant.

[27] As to trade connections, a sufficiently strong connection should exist between the departing party and the clients before the party seeking to exercise the prohibition could legitimately argue that its interest in maintaining the trade connections is worthy of protection⁹.

[28] In ***Rawlins and Another v Caravantruck (Pty) Ltd***¹⁰ the Supreme Court of Appeal remarked:

'The need of an employer to protect his trade connections arises where the employee has access to customers and is in a position to build up a particular relationship with the customers so that when he leaves the employer's service he could easily induce the customers to follow him to a new business. (Joubert: *General Principles of the Law of Contract* at 149). Heyden: *The Restraint of Trade Doctrine* (1971) at 108, quoting an American case, says that the 'customer contract' doctrine depends on the notion that

⁸ See **Contract - General Principles**, JUTA on page 242

⁹ See **Contract - General Principles**, JUTA on page 242

¹⁰ 1993 (1) SA 537 (A) at 541 G - H

'the employee, by contract with the customer, gets the customer so strongly attached to him that when the employee quits and joins a rival, he automatically carries a customer with him in his pocket'.

In Morris (Herbet) Ltd v Saxelby [1916] 1 AC 688 (HL) at 709 it was said that the relationship must be such that the employee acquires

"such personal knowledge of and influence over the customers of his employer... as would enable him (the servant or apprentice), if competition were allowed, to take advantage of his employer's trade connection..."

This statement has been applied in our Courts (for example, by Eksteen J in Recycling Industries (Pty) Ltd v Mohammed and Another 1981 (3) SA 250 (E) G at 256C-F). Whether the criteria referred to are satisfied is essentially a question of fact in each case, and in many, one of degree. Much will depend on the duties of the employee; his personality; the frequency and duration of contact between him and the customers; where such contact takes place; what knowledge he gains of their requirements and business; the general nature of their relationship (including whether an attachment is formed between them, the extent to which customers rely on the employee and how personal their association is); how competitive the rival businesses are; in the case of a salesman, the type of product being sold; and whether there is evidence that customers were lost after the employee left (Heydon (op cit at 108-120); and see also Drewtons (Pty) Ltd v Carlie 1981 (4) SA 305 (C) at 307G-H and 314G and G).'

(own underlining)

[29] The Respondent did have limited contact with the clients, but it has not been shown, on a balance of probabilities, that the relationship between the Respondent and such clients were of such a close nature that there is a potential interest worth protecting. One would rather accept that an employee involved in the sales of the business, would be in a position to have influence over the clients. In this instance, the Applicant fails to allege that any customer is anticipated to follow the Respondent to his new employment. On this basis, the customer details to which the Respondent might (or might not) have been privy, does not constitute a 'protectable interest' that suffices to warrant the enforcement of the proposed restraint of trade.

[30] The application therefore stands to be dismissed. Having come to the aforesaid conclusion on the lack of protectable interest, there is no need to consider a partial enforcement of the restraint of trade. Insofar as the Respondent has repeatedly provided undertakings specifically not to make contact with or solicit the clientele of Applicant for the duration of the term of his employment, the Applicant is in a position to claim damages, if any, should the undertaking be breached.

Costs:

[31] There is no reason why the cost order should not follow the outcome of the proceedings. Having regard to the urgency of the matter, the level of complexity and the importance of the matter to the parties, costs to counsel on scale B is warranted.

Order:

[32] In the result the following order is made:

32.1 The application is dismissed.

32.2 The Applicant is ordered to pay the costs of the Respondent including costs to counsel on scale B.

**M BRESLER AJ
ACTING JUDGE OF THE HIGH COURT,
LIMPOPO DIVISION, POLOKWANE**

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