REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

LIMPOPO DIVISION, POLOKWANE

CASE NUMBER: 2025 - 082002

(1)	REPORTABLE: ~~YES~~/NO
(2)	OF INTEREST TO THE JUDGES: ~~YES~~/NO
(3)	REVISED.
	....
	.... [redacted]

DATE **22 October 2025** SIGNATURE..............................

In the matter between:

GALITO'S MOBILE (PTY) LTD	**APPLICANT**
-and-	
TETZ INVESTMENT (PTY) LTD	**1ST RESPONDENT**
TETELO MOLEKANE CHOEU	**2ND RESPONDENT**
LEHUMO RISE (PTY) LTD	**3RD RESPONDENT**
X FUEL FILLING STATION	**4TH RESPONDENT**
IMPERIUM FRANCHISE HOLDINGS (PTY) LTD	**5TH RESPONDENT**

COMPANIES AND INTELLECTUAL PROPERTY COMMISSION	**6TH RESPONDENT**

Delivered	:	**22 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 **22 October 2025** at **10:00 am**.
Date heard	:	**22 September 2025**
Coram	:	**Bresler AJ**

JUDGMENT

BRESLER AJ:

[1] The Applicant applies for *inter alia* the following relief:

1.1 That the dissolution and / or deregistration of the 1st Respondent in terms of Section 82(3) be declared void in terms of Section 83(4) of the **Companies Act**, Act 71 of 2008.

1.2 Flowing from the aforesaid order, that certain ancillary relief is granted.

1.3 Interdicting and restraining the 1st, 2nd and 3rd Respondents and all parties related to them from:

1.3.1 Entering into a contract or continuing with any contract with a third party, the effect of which would be to compete directly or indirectly with the Applicant;

1.3.2 Commencing to or continuing to conduct for themselves or as members, agents, employees of any concern which directly or directly competes with the Applicant.

1.4 That the interdictory relief will apply up to 27 February 2026 and within a radius of 10 km from X Fuels filling station, R579, Ga-Moloi 187, Glencowie, Limpopo.

[2] The case was initially enrolled for hearing on 24 June 2025 on the urgent roll. The matter was struck due to non-compliance with the practice directives pertaining to the uploading of urgent matters on Caselines. The issue of urgency is consequently moot.

[3] The Applicant is a franchisor and company that runs a national chain style chicken fast-food franchising business that, from time to time, licenses and permits dealers,

persons, or entities to use its brand name and other benefits to franchisees for the purpose of running the business.

[4] The 1st Respondent was such an entity until 28 February 2025. The 1st Respondent is currently deregistered in terms of the provisions of the **Companies Act**, Act 71 2008 due to its failure to lodge annual returns.

[5] The 2nd Respondent, Mr TM Choeu, is alleged to be a related person as contemplated in Sections 2(b) and (c) of the **Companies Act**, 2008. He also acts or purports to act for the benefit of the 1st Respondent.

[6] The 3rd Respondent is Lehumo Rise (Pty) Ltd. Mr Choeu and Mr KP Mazziz are the directors of Lehumo. Lehumo is also the entity which allegedly infringes the restraint of trade provisions on the agreement forming the *crux* of the proceedings.

[7] The 4th, 5th and 6th Respondents are joined insofar as they may have an interest in the outcome of the proceedings, and no pertinent relief is consequently claimed against them.

[8] The Applicants case is premised on the franchise agreement concluded between the Applicant and the 1st Respondent (previously known as Khom Trading). The Applicant states that the relationship between the parties generally deteriorated over time due to the conduct of the 1st Respondent. This resulted in a letter being

delivered to the 1st Respondent on or about 11th of December 2024, claiming compliance with the franchise agreement failing which further legal action will result.

[9] In lieu of the 1st Respondent's failure to comply with the said letter, a termination letter was consequently delivered on the 28th of February 2025.

[10] As to the re-registration of the 1st Respondent, the Applicant submits that severe prejudice will follow if the 1st Respondent is not re-instated. As the Applicant is not in a position to lodge the said annual returns and pay the applicable fees, a court order is the only remaining remedy available to the Applicant to enable the Applicant to enforce its claim against the deregistered company. The Applicant consequently relies on the power of the court to grant declaratory relief in terms of Section 83 of the **Companies Act**, 2008.

[11] As to the contravention of the restraint clause, the Applicant states that the Barcelos franchise, now being conducted from the same premises as the 1st Respondent's previously existing Galito's outlet, is conducted through Lehumo which is a related person or entity to the 1st Respondent. Barcelos is a direct competitor of Galito's.

[12] Through their related relationship, it is perceived that the terms of the franchise agreement, with specific reference to the restraint of trade is, or will be, breached. In this regard, clause 15.3.4 of the agreement specifically mentions involvement as members, agents or employees of any other concern. Likewise, clause 15.5 of the

franchise agreement contemplates persons related by blood or marriage or entities with whom the 1st Respondent or its sureties are associated.

[13] On the aforesaid basis, the Applicant thus surmises that it is entitled to the interdictory relief against the 1st, 2nd and 3rd Respondents.

[14] The Application was opposed by the 2nd and 3rd Respondents only. From the onset, the 2nd and 3rd Respondents took the view that they are not bound by the provisions of the franchise agreement as they were not parties thereto. As such, they can therefore not be bound by the provisions of the said franchise agreement.

[15] It is however admitted that the Lehumo concluded a franchise agreement with Barcelos. This franchise business commenced on the 17th of May 2025. The 2nd and 3rd Respondents furthermore submit that Barcelos has been in existence in excess of 30 years and thus utilizes its own material, products and training. Lehumo does not conduct the Barcelos franchise anywhere near a Galito's franchise.

[16] The 2nd and 3rd Respondent also pertinently states that the 2nd Respondent did not sign as a surety, nor did the previous director of 1st Respondent sign as a surety. The said franchise agreement is thus not binding on either the 2nd or the 3rd Respondent.

[17] It stands to be noted that the Applicant, in reply, mentioned that there is in fact another Galito's within approximately 6 km (thus less than 10 km) from where the 3rd Respondent is now conducting the Barcelos franchise.

[18] This Court is called upon to determine:

18.1 Whether the Applicant has a protectable interest susceptible to final interdictory relief;

18.2 Whether the 2nd and 3rd Respondents are related persons / entities and thus bound by the provisions of the agreement;

18.3 Whether the 1st Respondent should be re-instated.

The law on re-registration:

[19] The provisions pertaining to the re-registration of companies are trite.

[20] Once the 1st Respondent has been re-registered, the 1st Respondent will require an opportunity to respond to the proceedings. It is thus evident that no final relief can be granted against the 1st Respondent at this stage.

[21] As will appear from what has been stated herein after, there is no need to ascertain if a case has been made out as the Applicant is not endeavouring the enforce the

restraint of trade against the 1st Respondent. The relief is aimed at the conduct of the 2nd and 3rd Respondent.

Is the 2nd and 3rd Respondent bound by the provisions of the franchise agreement?

[22] It is common cause that the 2nd and 3rd Respondents are not parties to the franchise agreement. The Applicant submitted that the provisions of the restraint of trade agreement cannot simply be circumvented by registering a new company.

[23] To explicate that position of the parties, one must have due regard to the franchise agreement and terms thereof. Was it intended by the terms of the agreement that unknown and unidentified third parties automatically be bound by the provisions of a written agreement?

[24] Clause 15.5 of the agreement reads as follows:

> *'If any person to whom the franchisee or any of the sureties is related, whether by blood or by marriage, or any entity or other business concern with whom the franchisee or any of the sureties is directly or indirectly associated by common or substantially similar ownership, management or directorship or where the ownership, management of directorship are substantially controlled by the same group of companies or relatives, conducts any acts described in clause 15.3, such act shall be deemed to have been committed by the franchisee and / or sureties directly.'*

[25] The Court has the following concerns with this clause: it is evident from the said clause that the intention was to specifically prohibit the 'franchisee' and its 'sureties' from conducting business in competition with the Applicant. The franchisee and the sureties cannot be involved directly or indirectly in any such competing business. *In casu,* this is not the case. The 2nd and 3rd Respondents are neither the erstwhile franchisee nor did they bind themselves as sureties.

[26] It is evident that there is no contractual relationship between the Applicant and the 2nd and 3rd Respondent. In this Court's view, a person that is not a party to a contract cannot be deemed to be bound thereby unless such a person displayed a manifest consent or, by his conduct, an intention to abide by the terms of the agreement. This will constitute a form of silent or implied contract. This is not the case of the Applicant on the papers before court and needs not further examination.

[27] In the absence of any factual synopsis intimating a silent or implied contract, a person cannot be bound to the terms of an agreement concluded between other parties.

[28] The approach of the Applicant in electing the contractual route (as opposed to a delictual approach) is thus fatally flawed. The fact that the 2nd and 3rd Respondents might be related as contemplated in the **Companies Act**, 2008 is insufficient in its own to create contractual liability.

The law on Restraint of trade and unlawful competition:

[29] The conclusion of the franchise agreement and the specific provisions relevant to the restraint of trade is not in dispute. Nor did the Respondents dispute the clauses on the basis that same is unreasonable or against public policy. Their defence is mainly premised on the basis that they were not contracting parties and thus not bound thereby. As stated herein before, this defence finds favour with this Court for the evident reason that there is no contractual relationship between the Applicant and the 2nd and 3rd Respondents.

[30] The question remains if the Applicant has disclosed sufficient information to deduce that the 2nd and / or 3rd Respondent is unlawfully competing with the Applicant.

[31] In South African law, there is a broad category of conduct that is generally described as 'unlawful competition' which falls under the category of 'delict'. The activities complained of must be 'unlawful' in some way. In commerce, free trade and competition are fundamental. However, certain types of conduct go beyond the bounds of free trade and competition, usually with the intention of gaining an advantage over a competitor in an unfair or unlawful manner.[1]

[32] The general principles of unlawful competition have been stated in ***The Concept Factory v Heyl***[2] *supra* and includes *inter alia* the following:

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[1] Von Seidel, **Intellectual Property**, Johnathan Ball Publishers on 61 – 62
[2] ***The Concept Factory v Heyl*** 1994 (2) SA 105 (T)

i. As a general rule, every person is entitled to carry on his trade or business in competition with his rivals. However, such competition must remain within lawful bounds.

ii. To succeed, the Applicant must establish all the requisites of Aquilian liability, including proof that the defendant has committed an unlawful act;

iii. The lawfulness or unlawfulness of an act of competition may be determined by the application of certain criteria which includes fairness and honesty in competition (which requires that regard be had to bona mores and the general sense of justice in the community) and questions of public policy which may be of importance in a particular case, such as the importance of free market and of competition in our economic system).

[33] In the case of ***Glenwest Batteries (Pty) Ltd v Van der Heyden and Others***[3] the Court held that a related person, not being a party to the restraint agreement, can be held to the provisions of the said restraint agreement. The justification for this finding is that the competition will amount to intentionally assisting in breaching the undertaking. Such assistance is wrongful and can thus be interdicted.[4]

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[3] 1991 (1) SA 727 (T)

[4] See p 729 with reference to ***Isaacman v Miller*** 1922 TPD 56 at 61 and ***Atlas Organic Fertilizers (Pty) Ltd v Pikkewyn Ghwano (Pty) Ltd and Others*** 1981 (2) SA 173 (T) at 202E – H.

[34] The *crux* of this decision however refers to an intentional and unlawful interference in a contractual relationship that constitutes a delict. This is not the basis of the case of the Applicant against the 2^{nd} and 3^{rd} Respondents. Moreover, the issue of infringing an exclusive trading rights was again confirmed not to be part of the general principles of Aquilian law in the decision rendered by the Constitutional court in ***Masstores (Pty) Ltd v Pick N Pay Retailers (Pty) Ltd.***[5] More specifically, the Court remarked as follows:

> *'[33] The protection of the general right to goodwill is recognised by our law, but it is not this general right that Pick n Pay seeks to protect; it is its exclusive right to trade in terms of its lease with Hyprop that it seeks protection for. Our law does not usually recognise this kind of exclusive right as worthy of general protection. The reason lies in the fact that the underlying purpose of the law of unlawful competition is to protect free competition, not to undermine it by making it less free. Our courts have often acknowledged the need for protection of free competition as an important policy consideration when assessing the unlawfulness of competitive conduct by confirming the need for free and active competition or by taking into account that by prohibiting competition an unlimited monopoly will be bestowed upon the complainant.'*

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[5] 2017 (1) SA 613 (CC)

[35] In this Court's view, the Applicant has presented insufficient evidence to make out a case premised on Aquilian liability. The Applicant wants to protect an exclusive right to trade which is generally not permissible in South African law. No case is made out to deviate from the generally accepted norm.

[36] On this basis the application must fail. There is not reason why the cost order should not follow the outcome of the proceedings. Having regard to *inter alia* the nature of the proceedings, the complexity of the matter and the importance thereof to the parties, costs to counsel are warranted on Scale C.

<u>Order:</u>

[37] **In the result the following order is made:**

37.1 The application is dismissed.

37.2 The Applicant is ordered to pay the 2^{nd} and 3^{rd} Respondents' costs inclusive of costs to counsel on Scale C.

[redacted]

M BRESLER AJ

ACTING JUDGE OF THE HIGH COURT,

LIMPOPO DIVISION, POLOKWANE

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