

REPUBLIC OF SOUTH AFRICA



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

(1) REPORTABLE: ~~YES~~ / NO
(2) OF INTEREST TO OTHER JUDGES: ~~YES~~ / NO
(3) ~~REVISED~~.

CASE NUMBER: 2025-174184


.....
SIGNATURE

30 October 2025
.....
DATE

In the matter between:

SIWELILE FAST FOODS CC

First Applicant

T&T TAKE AWAY ENTERPRISES CC

Second Applicant

and

KFC (PTY) LTD

Respondent

Heard: 09 October 2025

Further submissions: 13 and 15 October 2025

Delivered: 30 October 2025

J U D G M E N T

YACOUB, J:

[1] The applicants are the owners and operators, each independently, of various franchise outlets, with franchise agreements with the respondent. The second respondent's earliest franchise with the respondent was entered into in December 1992, while the first respondent has been in a franchise relationship with the respondent since 2004.

[2] In terms of the standard terms of the franchise agreements, franchisees have certain standards to comply with, and are assessed regularly for their compliance. A franchisee who receives two notices of default within a year

[3] The applicants approach this court for an urgent interlocutory interdict to prevent the respondent from giving notice to cancel in respect of any of the franchise outlets owned and operated by either of the applicants, and to compel the respondent to treat the applicants and their outlets as ordinary franchisees whose agreements are not in jeopardy. The relief is interlocutory, pending the outcome of an action to be instituted by the applicants against the respondent. It is unclear exactly what the nature of the action will be.

[4] The event on which the applicants rely for urgency is a request from the respondent on 16 September 2025 that the applicants sign a termination agreement, which gives them time to sell the businesses which hold the franchises before the franchise agreements are terminated. The request was accompanied by an ultimatum, to the effect that, if the termination agreement is not signed, a notice of termination would be issued.

[5] This request for termination, according to the applicants, was preceded by a notice of default on 19 August 2025, and by “some unresolved disputes”. The applicants in their founding affidavit do not identify what these unresolved disputes are, save for the issues identified in the notice of default, and do not set out what happened between 19 August 2025 when the notice of default was issued and 16 September 2025 when they were requested to sign the termination agreement.

[6] According to the applicants, the notice of default was unfounded. It was based on a term in the franchise agreements permitting a notice of default to be issued if two

notices of non-compliance were issued within 24 months. Termination may then follow if the defaults are not remedied within the identified period.

[7] The applicants claim that the non-compliances identified in the notices of non-compliance are not material and have been remedied, and some do not have any basis.

[8] It must be noted that the franchise agreements do not require that the non-compliances continue to exist during the 24 month period, but that there were two notices within the period. However the fact that the notice of default permits the franchisee to remedy within a specified period does give the impression that the fact that non-compliance was remedied is relevant.

[9] Be that as it may, the respondent in the answering affidavit set out in detail inspections it had undertaken after the notice of default, and interactions with the applicants. Much of the content of the answering affidavit is denied. I do not deal with this because of later events.

[10] During the hearing, counsel for the applicants spent much time attempting to demonstrate why the notice of default was flawed and without basis. No emphasis was placed on any other issues identified in the answering affidavit. I indicated to the parties that if I were to grant any relief (without having made any decision whether a case was made out), it would be to interdict any termination notice which was based on the default notice of 19 August. I would not interdict a termination notice in general, for a number of reasons.

[11] The first is that there may be other reasons that support termination, in terms of the franchise agreements. The court is not omniscient, nor are the parties. An order that goes beyond what is contained in the papers would be ill-considered and incompetent.

[12] Second, the concept of contractual freedom is still one of the fundamental principles of contract in South African law. Nobody can be forced to remain in a contractual relationship, as long as their exit from that relationship is within what is envisaged by the contract.

[13] Third, as pointed out by the respondent, many of the requirements with which the applicants are alleged not to have complied are relevant to food safety and public safety. The need for compliance with such requirements obviously has a public interest component, and if there are other or more serious infractions of which the court is unaware, the applicants cannot be protected from the consequences of those.

[14] Fourth, the respondent has an interest in ensuring that the franchise agreements are properly complied with as the manner in which franchise outlets are operated and perceived by the public affects their reputation. It is worth noting that it is this reputation on which the applicants rely as franchisees for the success of their businesses.

[15] At the close of the hearing, I directed the parties to make further submissions regarding the issue of a more limited interdict based on the notice of default. The respondent then unconditionally withdrew the default notice of 19 August, and submitted that in those circumstances the appropriate order would be that the application is removed from the roll, costs reserved, as costs do not need to be

determined on an urgent basis. The respondent did, however, indicate that its rights were reserved regarding the alleged non-compliance on which the notice was based.

[16] The applicants' response was that they did not accept the withdrawal because it was unclear and did not withdraw the respondent's position that the facts on which the notice was based still exist. However, this court is not in any position to determine any factual dispute, and that is not the case with which I am seized. The applicants persist with seeking interdictory relief.

[17] Taking into account that the notice of default has been withdrawn, and that the respondent may well be entitled to terminate for any other reason, it is reasonable to conclude that the relief sought is moot on the case pleaded by the applicant, and deal with the matter in the way suggested by the respondent.

[18] However, on reflection, it is clear that the applicant has simply not made out a case for the relief sought. It is difficult to imagine what circumstances would have been entitled the applicants to the very broad interdict which they sought. Be that as it may, the case for such an interdict was not made out.

[19] It is unclear from the founding affidavit what the *prima facie* right is which the applicants seek to protect. In the replying affidavit, the right is identified as the right to continue their businesses under the franchise agreements. That right is not an unlimited one, and is contingent on them complying with their own contractual obligations. In circumstances where the applicants also do not set out clearly what the nature of the action proceedings will be, and what exactly the dispute is that the action proceedings will seek to resolve, the court is not able to conclude that the status quo ante must be preserved pending the action proceedings.

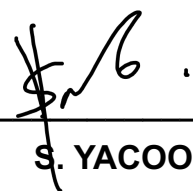
[20] In addition, it seems to me that the balance of convenience does not lie with the applicants, for the same reasons I have set out above regarding why the interdict the applicants seek is, in its original version, overbroad.

[21] Finally, by not disclosing to the court in the founding affidavit what happened between 19 August and 16 September, despite a large amount of detail for the period from September 2024 to August 2025, the applicants have not played open cards with the court. The respondent has placed its version before the court, and the applicants raise various quibbles with the version, which in my view do not provide a substantive response. This may not have redounded to the applicants' disadvantage had they been more open in their founding affidavit.

[22] On balance, I am not satisfied that the applicants have made out a case for the relief sought.

[23] In these circumstances, I make the following order:

The application is dismissed with costs, on scale C.

A handwritten signature in black ink, appearing to read 'S. YACOOB', is written over a horizontal line.

S. YACOOB
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, JOHANNESBURG

Delivered: This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the Parties/their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date for hand-down is deemed to be 30 October 2025.

APPEARANCES

For the applicants:	N Redman SC
Instructed by:	Fluxmans Inc
For the respondent:	HC Bothma SC
Instructed by:	DLA Piper South Africa (RF) Inc