



**IN THE HIGH COURT OF SOUTH AFRICA
WESTERN CAPE DIVISION, CAPE TOWN**

Case No:2025-168949

In the matter between:

MARY JANE WALSH

First Applicant

MATTHEW PIUS WALSH

Second Applicant

MAINLINE CIVIL ENGINEERING

CONTRACTORS (PTY) LTD

Third applicant

and

KUMESHIN SINAYAN

First Respondent

TRENCHLESS TECHNOLOGIES (PTY) LTD

Second Respondent

KS CIVIL ENGINEERING (PTY) LTD

Third Respondent

Corum: LEKHULENI J

Heard: 07 October 2025

Delivered: Electronically on 07 November 2025

Summary: Restraint of trade – First respondent retrenched by the third applicant. The first and second applicants buying back 15 per cent of the first respondent's shares in the third applicant. Buying-back agreement incorporating a confidentiality and restraint of trade clause. Applicants seeking an interdict to restrain the first respondent from being employed by the second respondent. Restraint clause not triggered. Application dismissed.

JUDGMENT

LEKHULENI J:

Introduction

[1] The applicants seek final relief to enforce a contractual restraint of trade and confidentiality undertakings given by the first respondent in favour of the third applicant ('Mainline'). The applicants seek enforcement of the restraint until 22 May 2026 and throughout the Republic of South Africa. In addition, the applicants seek an order interdicting the first respondent from being employed by or otherwise associated with the second respondent until 22 May 2026. The applicants also seek a declaratory order that the first respondent, Kumeshin, is in breach of the buy-back agreement, which includes a restraint of trade clause. This agreement was entered into between Kumeshin and the directors of Mainline on 22 May 2024.

[2] In terms of the buy-back agreement, the directors of Mainline, first and second applicants, bought back 15 per cent of Kumeshin's shares in Mainline. The buy-back agreement incorporated a restraint of trade clause to the effect that Kumeshin will not directly or indirectly and whether for his own account, or as a principal, compete or associate with a company that competes with Mainline for a period of two years from 22 May 2024. The applicants contend that Kumeshin breached this agreement by being employed by the second respondent (Trenchless), a competitor of Mainline, in contravention of the buy-back agreement.

Preliminary Point

[3] At the hearing of this matter, the applicants applied for the joinder of the third respondent. The joinder application was premised on the grounds that in the answering affidavit, Kumeshin stated that he is the sole director of KS Civil

Engineering (Pty) Ltd ('KS Civil'). KS Civil entered into a service agreement with the second respondent, Trenchless in April 2025, a competitor of Mainline. The applicants asserted that the restraint provisions binding Kumeshin precluded him from directly or indirectly being associated with a competitor of Mainline. The joinder application was not opposed. The court determined that the relief requested by the applicants against KS Civil involved the same questions of law and fact as those pertaining to the relief sought against Kumeshin. Having considered the application and the pertinent issues that had to be decided, I decided to grant the applicants' application for the joinder of KS Civil as the third respondent.

Material background facts

[4] Mainline is a civil engineering business established by the first applicant in 1994. It specialises in underground trenchless water and sewer pipe rehabilitation and repair. Almost all of Mainline's work is derived from government tenders. Amongst its varied pipe rehabilitation services, Mainline offers two main types of pipe rehabilitation and repair solutions: Spirally wound pipelining ('SWP') and cure-in-place pipe lining ('CIPP'). Both systems aim to rehabilitate degraded pipes by inserting a high-density polyethylene lining or fibreglass with resin as a liner into a damaged or degraded pipe.

[5] The first respondent, Kumeshin, obtained an engineering degree at the University of Johannesburg in 2014 and became employed by Mainline as a junior site manager in May 2015. He arrived at Mainline with no prior experience. In terms of clause 14 of his employment contract, Kumeshin agreed that he would not during the currency of his employment with Mainline, or at any time after the termination thereof, directly or indirectly use or disclose to any person, firm or company any information or secrets relating to processes used or developed by Mainline, which he acquired in the course of his employment with Mainline. In 2021, 15% of the shares in Mainline were sold to Kumeshin for R270,000. This sale consisted of 8% from the first respondent and 7% from the second respondent, both of whom are directors of Mainline.

[6] The applicants asserted that, unfortunately, shortly thereafter, Kumeshin developed a substance abuse problem. He attended rehab several times and further received outpatient care. Mainline was sympathetic about Kumeshin's drug addiction and supported his attempts at recovery. However, he relapsed several times and Mainline began to be prejudiced by his inability to recover fully. After a relapse in September 2023, Mainline took the difficult decision to terminate Kumeshin's employment. During October 2023, Mainline and Kumeshin entered into a termination agreement, pursuant to which Kumeshin's employment was terminated, and he received compensation accordingly.

[7] The parties thereafter negotiated the buy-back agreement of Kumeshin's shares in Mainline. According to the applicants, the negotiations were tough, and an agreement regarding the buy-back of Kumeshin's shares in Mainline by the first and second applicants was concluded on 22 May 2024. In terms of the buy-back agreement reached by the parties, the first and second applicants purchased Kumeshin's 15 per cent shares in Mainline for R6,260,132.00. In terms of the agreement, R534 070, 00 of the purchase price would be held by Mainline's auditors as a retention to be held in trust and paid with interest to Kumeshin if Mainline did not within two years deliver a written notice to the auditors attaching a copy of a court order recording Kumeshin's breach of any of the provisions of the confidentiality and/or restraint provisions in the agreement.

[8] The agreement also stipulated that the retention amount would be paid to Mainline if it delivered a written notice to the auditors within two years, attaching a copy of a court order that recorded Kumeshini's breach of any of the confidentiality and/or restraint provisions in the buy-back agreement. In the event that the retention was not paid over to the auditors, Mainline accepted, however, that provided Kumeshin is not in breach of the confidentiality and restraint provisions of the agreement, he is entitled to payment thereof, plus interest, as of 22 May 2026.

[9] The buy-back agreement incorporated both confidentiality and a restraint of trade clause. In terms of the confidentiality clause, Kumeshin acknowledged, among other things, that by virtue of his association with Mainline he had access to commercially sensitive information and secrets not available in the ordinary course of

business to a competitor including: know-how, processes, techniques and designs, knowledge of and influence over customers and business associate of Mainline; the names of existing and prospective customers and their requirements and details of remuneration paid by Mainline to its employees and their respective duties. The applicants contended that Kumeshin expressly undertook not to directly and indirectly divulge Mainline's confidential information.

[10] Furthermore, as to the restraint, Kumeshin agreed that Mainline had protectable interests that required protection. The first relates to pricing. The applicants stated that Kumeshin knows exactly how Mainline prices its work, and particularly its tenders. According to the applicant, Kumeshin knows exactly what Mainline's operating costs are, and he knows what its profit margins are. Secondly, and related to tenders, Kumeshin has developed considerable experience in SWP and CIPP work due to his eight years of employment with Mainline. This experience is rare, and in the context of tenders, it is particularly significant. By taking all the SWP and CIPP experience he has gained from Mainline to Trenchless, a competitor of Mainline and a new employer or associate of Kumeshin, the latter provides Trenchless with an unfair advantage because it is automatically more likely to submit a responsive bid and to be able to score higher than before on functionality.

[11] That advantage, according to the applicants, is unfair to Mainline because it has paid Kumeshin an enormous sum of money, in exchange, in part, for him not joining a competitor like Trenchless for a period of two years. To this end, the applicants asserted that Kumeshin undertook that he would not directly or indirectly and whether for his own account or as a principal, agent, partner, or as representative for a period of two years and anywhere in South Africa be interested or engaged in any business that is competitive with or carries on a business similar to Mainline business in particular those listed in annexure B to the buy-back agreement including Trenchless.

[12] It was agreed between the parties that should Kumeshin wish to take up employment in any capacity with any of the parties listed in annexure B to the buy-back agreement, he will seek Mainline's permission, which would not, in respect of the parties other than those marked with X, be unreasonably withheld. Mainline

would thus be entitled to refuse requests for permission in relation to the X list without providing any reasons. According to the agreement, Kumeshin was not entitled to be associated with those parties for a period of two years. The parties with an X next to their names were parties who Kumeshin and Mainline agreed would particularly benefit from the confidential information possessed by him.

The alleged breach of the buy-back agreement

[13] The applicants asserted that Kumeshin decided to breach the confidentiality and restraint provision of the buy-back agreement by taking employment with Trenchless. The applicants stated that they discovered this on 28 August 2025 when one of Mainline's employees came across a notice from the Langeberg Municipality advertising temporary traffic and pedestrian disruptions in Robertson owing to water pipeline rehabilitation work being undertaken by Trenchless. The Langeberg Municipality's Notice referred to Kumeshin as Trenchless' Contracts Manager. Trenchless is a direct competitor of Mainline, particularly in relation to tenders. According to the applicants, Trenchless is a competitor for which Mainline requires special protection, as agreed upon by both parties in annexure B of the buy-back agreement.

[14] Following the said discovery that Kumeshin is allegedly employed by Trenchless, on 08 September 2025, Mainline's attorneys addressed a letter to Kumeshin and Trenchless, calling upon Kumeshin to provide an undertaking by 9 September 2025 that he will cease his employment with Trenchless, and the letter to Trenchless served to inform it of Kumeshin's alleged breaches. Kumeshin responded to the said correspondence on 9 September 2025 in which, amongst others, he denied being employed by Trenchless. On 11 September 2025, Trenchless' attorneys addressed a letter to the applicant's attorneys denying that Trenchless employed Kumeshin.

[15] The applicants further stated that it may well be true that Trenchless does not employ Kumeshin – he may be a subcontractor, a consultant, or an agent. But he is clearly associated with Trenchless in a manner prohibited by the buy-back

agreement, and these facts entitle the applicants to the relief sought in the Notice of Motion. Moreover, the applicants submitted that, in terms of the restraint provision, Kumeshin may not be interested in, engaged in, concerned with, or associated with any business that is competitive with or carries on a business similar to the Mainline business.

[16] The applicants contended that Kumeshin is in breach of both the confidentiality provision and the restraint provision. In this regard, the applicants asserted that they are entitled to an interdict preventing Kumeshin from working for Trenchless for the time remaining on his restraint, that is, until 22 May 2026.

[17] The applicants believed that they had demonstrated a clear right to this relief, as well as the apprehended injury. In the applicants' view, they do not have a suitable alternative legal remedy. While they're entitled to keep their retention of R5 340 70, 00 referred to in paragraph above 7 in the event of Kumeshin's breach, this is a wholly insufficient remedy which does not in law serve to deprive the applicants of their interdictory relief against either Kumeshin or Trenchless. The applicants asserted that they are entitled to a declarator to the effect that Kumeshin is in breach of the confidentiality and restraint provisions of his buy-back agreement.

[18] The applicants also averred that this matter is urgent, as they only discovered Kumeshin's employment or association with Trenchless on 28 August 2025, and took immediate steps to consult with their attorneys. Letters were quickly dispatched, and this application was delivered a few days after responses were received from Kumeshin and Trenchless. The applicants believe that their rights must be protected and that the relief sought should be granted as soon as possible. According to the applicants, any delay will prejudice the applicants even further than they have already been prejudiced.

The first respondent's (Kumeshin) case

[19] Kumeshin opposed the application and challenged, among others, the urgency with which it was brought. Kumeshin submitted that the applicants lack sustainable grounds for having the matter heard on an urgent basis. First, Kumeshin

believes that the applicants' truncation of the time periods is unreasonable. He complained that the application was launched under Rule 6(12) of the Uniform Rules on 18 September 2025 and served on him later that same day. In terms of the Notice of Motion, he was directed to give notice of intention to oppose by 22 September 2025 and deliver his answering affidavit on 26 September 2025. This left him with just over a week within which to appoint and consult with his legal representatives and have them prepare his answering affidavit. Kumshin denied that this gives the respondents sufficient and proper time to prepare their papers.

[20] Secondly, Kumeshin asserted that the weakness of the applicants' case mitigates against an urgent hearing. Kumeshin contends that the applicant's claims are speculative and based on a mistaken assumption that it has not done due diligence on. On the merits of the matter, Kumeshin stated that he is a qualified civil engineer with a degree in engineering from the University of Johannesburg. He confirmed that Mainline employed him in May 2015. In August 2016, the first and second applicants offered him a 15 per cent membership interest in Mainline due to his business acumen and ability to run the business independently of them. He purchased his 15 per cent membership interest for R270 000, which was based on the fair value of such shares at a 10 per cent discount. Between 2015 and 2017, Mainline operated at a net loss. Despite Mainline running at a loss, throughout 2015 and 2017, he became responsible for running Mainline operations, as the first and second applicants were retired and not Mainline employees. Their contribution to the business was mainly financial.

[21] After 2018, Mainline began making a profit and growing its operations. According to Komeshin, the applicants have received a substantial benefit from the efforts that he made. Kumeshin acknowledged that at one stage he voluntarily attended the rehabilitation program for substance abuse; however, he denied that it impacted upon the performance of his duties with Mainline. Kumeshin believes that the applicants have exaggerated the issue into being the cause of their decision to terminate his employment. According to him, the true circumstances for his retrenchment were that there had been discussions regarding a proposed buyout of the first and second applicants' membership interests from Mainline by him and his colleague, Mr Spreckley.

[22] When he decided against being involved with this, it led to personal issues and a falling out between them. On 5 September 2023, he was served with a section 189(3) retrenchment notice in terms of the Labour Relations Act 66 of 1995. On 11 October 2023, he signed a settlement agreement regarding the termination of his employment with Mainline based on operational requirements. At that point, he was still a member of Mainline, despite the other members trying to force him to sell his membership interest. He believed his retrenchment was a means to drive him out of Mainline cheaply, but he refused to sell his equity for less than fair value. Kumeshin maintained a 15% membership interest in Mainline until 22 May 2024, when the buy-back of his shares agreement was concluded. Up until May 2024, he made multiple requests to the first and second respondents to provide him with Mainline's most recent financial records.

[23] Although the applicants accepted that he was entitled to Mainline's accounting records, this ultimately did not happen, which prevented him from making an accurate valuation of his equity. Due to not having access to the most recent Mainline's financial records, he was unable to estimate a more updated value, nor could he dispute the value of the applicants' buy-back offer of R6,260,132. 00, which was presented as a take-it-or-leave-it offer. Due to financial constraints, he faced at the time, he had no choice but to accept the applicant's offer and, on 22 May 2024, he signed the buy-back agreement annexed to the applicant's funding affidavit.

[24] Since his retrenchment in October 2023, he received several offers of employment from Mainline's competitors, who offered him a similar salary to what he was receiving at Mainline. He did not want to breach the restraint agreement and declined such offers. After concluding the buy-back agreement, he got married in June 2024. Given that he had not been working since October 2023, he had to carefully consider his options for earning a living to sustain his family while having the restraint clause hanging over his head. He asserted that he does not come from wealth, nor does he have exorbitant amounts of money, which would enable him to sit at home and not earn a living. After some thought, he decided to use the funds from the sale of his membership interest to purchase equipment and pay off debt, so

that he could start his own independent business, of hiring out equipment and providing labour.

[25] In July 2024, he registered KS Civil, the third respondent, as a company under his directorship. KS Civil's ordinary course of business involves supplying plant, equipment, and labour to other businesses. It does not perform specialist rehabilitation services, nor does it have specialist equipment. It simply provides general plant equipment and labour. It also does not qualify for the tenders which Mainline tenders on. KS Civil employs approximately 40 staff members and owns plant and equipment, including TLBs, tipper trucks, dumpers, rollers, trailers, and a generator.

[26] Kumeshin asserted that KS Civil and Trenchless entered into a service provider agreement in April 2025 specifically for the supply of equipment and labour to its business. The agreement is a standard service provider arrangement which specifies that KS Civil will render support services, specifically the hire of plant and equipment, provision of labour, and related logistical assistance. According to Komeshin, the scope of work and responsibilities does not extend to any services provided by Mainline nor to any of its trade secrets described in the buy-back agreement. However, this agreement with Trenchless may sometimes require him to attend a site solely to manage his own staff and equipment.

[27] Kumshin drew the court's attention to clause seven of the service provider agreement with Trenchless, which states that nothing in it shall be construed as creating a partnership, joint venture, agency, or employment relationship between KS Civil and Trenchless. Kumeshin asserted that KS Civil's business is distinct from the applicants' specialist rehabilitation business. All his staff remain KS Civil employees. All plant equipment remains under KS Civil's ownership and control. The service it provides to Trenchless cannot amount to unlawful employment or association. Kumeshin denied that he had disclosed or misused any confidential information from Mainline for the advancement of Trenchless. According to him, KS Civil's work is independent. At no point in time had he ever procured tenders or projects for Trenchless. Kumeshin implored the court to dismiss the applicant's claim with costs.

The second respondent's (Trenchless) case

[28] Trenchless also opposed the applicants' application. Trenchless noted that the applicants do not seek any substantive relief against it in terms of their notice of motion. According to Trenchless, the only relief sought by the applicants against Trenchless is a prayer for costs on an attorney and client scale. However, this was disputed during argument by Mr Baguley, counsel for the applicants, who submitted that the interdictory relief sought by the applicants is against all three respondents. Trenchless asserted that Kumeshin's employment contract does not contain a restraint undertaking in favour of Mainline.

[29] Trenchless asserted that, in terms of the buy-back agreement, Kumeshin appears to have given a restraint undertaking in terms of clause eight thereof, in favour of Mainline; however, Trenchless is not a party to the buy-back agreement and accordingly did not incur any obligation towards either Mainline or the first and second applicants in terms of the buy-back agreement. Trenchless noted the applicants' assertion that Kumeshin expressly undertook not to directly or indirectly divulge Mainline's confidential information and that he would not directly or indirectly use or disclose any information or secrets relating to processes developed by Mainline.

[30] Trenchless denied the applicants' claim that Kumeshin was ever employed by them. In addition, Trenchless asserted that although it was appointed as the main contractor by the Langeberg Municipality, as alluded to by the applicants in their founding affidavit, it appointed a service provider by the name of KS Civil, the third respondent herein, to assist them. At no stage was Trenchless or its management aware of Kumeshin's confidentiality undertaking and restraint undertaking in favour of Mainline when KS Civil was appointed as a service provider.

[31] Trenchless disputed that Kumeshin shared Mainline's confidential information with it. Furthermore, Trenchless stated that the applicants failed to demonstrate an entitlement to any relief against it in terms of a delictual claim based on unlawful competition, nor are there any averments about the elements of such delictual claim

in the founding affidavit. Moreover, Trenchless stated that it is not aware of the nature and description of the third applicant's confidential information, nor can it be said that Kumeshin in any way shared such confidential information with Trenchless.

[32] Furthermore, Trenchless submitted that it is immaterial whether Kumeshin is in breach of his confidentiality undertakings and restraint undertakings towards Mainline, as far as Trenchless is concerned. According to Trenchless, the fact of the matter is that the applicants have not demonstrated entitlement to any relief, let alone an order for costs against Trenchless, whether in terms of unlawful competition or otherwise. To this end, Trenchless asserted that the conduct of the applicants is none other than vexatious and frivolous, particularly since the applicants were afforded the opportunity after it had already instituted an application to abandon the cost order sought against Trenchless. Instead, the applicants chose to persist with the application against Trenchless.

[33] Accordingly, Trenchless sought the dismissal of the applicants' application with costs on an attorney and client scale, including the costs of counsel on scale C, against the applicants jointly and severally, with the one paying the other to be absolved.

Principal submissions by the parties

[34] Mr Baguley, counsel for the applicants, submitted that this matter is urgent. Counsel submitted that the applicants only discovered Kumeshin's employment or association with Trenchless on 28 August 2025 and took immediate steps to consult with their attorneys. Counsel submitted that letters of demand were quickly dispatched, and this application was subsequently prepared and launched. In counsel's view, there is accordingly no prospect of any redress if the applicants are forced out of the urgent lane.

[35] On the merits of the application, Mr Baguley submitted that Kumeshin admitted that by virtue of his association with Mainline, he had access to commercially sensitive information and secrets not available in the ordinary course of business to a competitor. Counsel further submitted that Kumeshin agreed that

Mainline had a protectable interest and that he would not directly or indirectly or whether for his own account or as a principal or agent or other association of any nature for a period of two years and anywhere in South Africa be interested or engage in, or associated with any business that is competitive with or carries on a business similar to the Mainline business and, in particular, those listed in annexure B to the buy-back agreement which includes Trenchless.

[36] Counsel submitted that Kumeshin's detailed knowledge of Mainline's business gives rise to the prospects of unlawful competition by competitors, including Trenchless, because Kumeshin knows exactly how Mainline prices its work, and particularly its tenders. He can accurately state what Mainline's price will be in any tender. Mr Baguley submitted that this knowledge provides competitors, including Trenchless, with an obvious unfair advantage. In addition, Kumeshin has, due to his eight years of employment with Mainline, developed extensive experience in SWP and CIPP work. By leveraging the extensive knowledge, he has gained in SWP and CIPP at Mainline, Kumeshin gives Trenchless a significant unfair advantage. Counsel submitted that this experience increases the likelihood of Trenchless submitting a competitive bid and achieving higher scores in functionality than before.

[37] Mr Baguley submitted that, notwithstanding Kumeshin's very substantial compensation, he has breached the confidentiality and restraint provisions of the buy-back agreement and the confidentiality provision of his employment contract. According to Mr Baguley, even if the applicants fail on the restraint relief, the court should grant the declaratory relief against Kumeshin for breaching the restraint clause. Counsel prayed for an order sought in the notice of motion.

[38] Mr Loubser, counsel for the first and third respondents, submitted that, based on nothing more than the Langberg Municipality's notice, the applicants assumed that Trenchless had employed Kumeshin. Counsel argued that the applicants launched this application based on that mistaken assumption. Mr Loubser argued that Trenchless does not employ Kumeshin. His business, KS Civil, has a service provider agreement with Trenchless. According to counsel, this is not employment in any capacity and thus does not trigger the requirement that Kumeshin should seek Mainline's permission.

[39] Mr Loubser further submitted that Kumeshin does not deny that he gained knowledge from Mainline and that Mainline has a protectable interest. However, Kumeshin denies that the applicants' interests are at risk or being prejudiced. Furthermore, counsel submitted that there is no evidence on the papers that Kumeshin has divulged any confidential information. Even though Mainline and Trenchless are competitors, so the contentions proceeded, the scope of KS Civil's service provider agreement with Trenchless is limited to the supply of general plant equipment and labour, not specialist equipment. It does not involve the potential to share confidential information.

[40] Counsel for Kumeshin submitted that the applicants maintain that Kumeshin can state with complete accuracy what Mainline's price will be in any tender. In counsel's view, this hyperbole is hard to believe. Mr Loubser contended that two years have passed since Kumeshin was retrenched from Mainline. Any knowledge Kumeshin still has about the business is more limited than then, if not outdated and irrelevant altogether. In addition, Mr Loubser contended that the restraint is overbroad due to its geographic extent covering the whole of South Africa. In counsel's view, the applicants did not motivate for the application of the restraint in the whole of South Africa in their founding papers or otherwise. To this end, counsel implored this Court to dismiss the applicants' application with costs.

[41] On the other hand, Mr Montzinger, counsel for Trenchless, submitted that no substantive relief is sought against Trenchless by the applicants, except for an order for costs, on a punitive scale of attorney and client. Mr Montzinger submitted that there is simply no case for Trenchless to meet on the applicants' founding affidavit, whether for an order for costs or otherwise. Counsel argued that Trenchless is not a party to the restraint of trade undertakings given by Kumeshin in favour of Mainline. Trenchless is accordingly not bound thereby and is not subject to any obligation in terms thereof, whether on Mainline or otherwise.

[42] Although Trenchless indirectly enlisted the services of Kumeshin through a service provider, KS Civils (Pty) Ltd, in counsel's opinion, it did so without the knowledge of the historical relationship between Kumeshin and Mainline. It was certainly not aware of the restraint undertakings given by Kumeshin in terms of the

buy-back agreement with the first and the second applicants. Mr Montzinger further submitted that there is no suggestion whatsoever that the applicants seek to hold Trenchless liable, whether for costs or otherwise, in terms of a delictual claim premised upon unlawful competition. To this end, counsel argued that Trenchless was accordingly put to the unnecessary effort and expense of having to enter the fray only to defend itself against a claim devoid of any merit. To this end, Mr Montzinger prayed for the dismissal of the applicants' application with costs on an attorney and client scale, including the costs of counsel on scale C.

Issues to be decided

[43] From the above discussion, this Court is enjoined to decide, *first*, whether the applicants' application is urgent as envisaged in Rule 6(12) of the Uniform Rules. *Secondly*, whether the Kumeshin breached the buy-back agreement incorporating a restraint of trade agreement concluded on 22 May 2024. *Thirdly*, whether Kumeshin should be interdicted from being employed by or being otherwise associated with Trenchless until 22 May 2026. For the sake of completeness, I will discuss these disputed issues sequentially, starting with the question of urgency.

Urgency

[44] As foreshadowed above, Kumeshin impugned the truncated timeline afforded to the respondents to file their answering affidavits. Kumeshin does not contend that the matter is not urgent; he only complains that the applicants' timetable has not provided him with sufficient opportunity to answer the case. Trenchless did not place urgency in dispute at all. As correctly pointed out by Mr Baguley, Kumeshin is wrong. He had eight days to complete his affidavit. The application was served on him on 18 September 2025, and he delivered his answering affidavit on 26 September 2025.

[45] Significantly, the applicants are enforcing a restraint of trade covenant. It is trite that proceedings for the enforcement of a restraint of trade agreement are

usually, by their very nature, urgent.¹ Restraint of trade agreements invariably seek to interdict ongoing unlawful action in respect of which an applicant continues to suffer financial losses, which are notoriously difficult to quantify or to recover by way of action.² While the confidentiality provisions the applicants rely on are not limited as to time, the restraint of trade the applicants rely on comes to an end by the effluxion of time on 22 May 2026.

[46] In my opinion, the applicants' application is urgent, especially considering that they are entitled to retain the sum of R534,070.00 as a retention, on condition they secure a court order by 22 May 2026, that Kumeshin breached the restraint clause. If they are removed from the urgent court, a decision on whether they should keep the amount of R534,070.00 would not be made within the required timeframe. Therefore, the argument that this matter is not urgent must fail. This leads me to the second disputed issue of whether Kumeshin breached the buy-back agreement, which incorporated a restraint of trade agreement concluded on 22 May 2024. However, before I consider this question, I deem it expedient to briefly set out the legal principles applicable in restraint of trade agreements.

Legal principles applicable to agreements in restraint of trade

[47] The landmark case on this subject is *Magna Alloys and Research (SA) (Pty) Ltd v Ellis*,³ which introduced a significant change to the courts' approach to agreements in restraint of trade by declining to follow earlier decisions based on English precedent that an agreement in restraint of trade is prima facie invalid and unenforceable. In English law, a party seeking to enforce such an agreement must show that the restraint is reasonable as between the parties, while the burden of proving that it is contrary to public policy is incumbent on the party alleging it.

[48] The *Magna Alloys* judgment reversed this approach and held that agreements in restraint of trade were valid and enforceable unless they are unreasonable and

¹ *Inospace Services (Pty) Ltd v Morris and Another* (2025/124057) [2025] ZAWCHC414 (September 2025) para 63.

² *Boomerang Trade CC t/a Border Sheet Metals v Groenewald and Another* [2012] JOL 29426 (ECG) para 36.

³ 1984 (4) SA 874 (A) at 897F– 898E.

thus contrary to public policy, which necessarily as a consequence of their common-law validity, has the effect that a party who challenges the enforceability of the agreement bears the burden of alleging and proving that it is unreasonable. The Court summarised the legal position, *inter alia*, as follows:

- 48.1 There is nothing in our common law which states that a restraint of trade agreement is invalid or unenforceable.
- 48.2 It is a principle of our law that agreements which are contrary to the public interest are unenforceable. Accordingly, an agreement in restraint of trade is unenforceable if the circumstances of the particular case are such, in the court's view, as to render enforcement of the restraint prejudicial to the public interest.
- 48.3 It is in the public interest that agreements entered into freely should be honoured and that everyone should, as far as possible, be able to operate freely in the commercial and professional world.
- 48.4 In our law the enforceability of a restraint should be determined by asking whether enforcement will prejudice the public interest.
- 48.5 When someone alleges that he is not bound by a restraint to which he had assented in a contract, he bears the onus of proving that enforcement of the restraint is contrary to the public interest.⁴

[49] As foreshadowed above, the principle laid down in *Magna Alloys* is that a restraint of trade clause is enforceable unless it is shown to be unreasonable, which necessarily casts an onus on the person who seeks to escape it. In the present matter, if the facts disclosed in the affidavits, as I have described in the material background facts above, disclose that the restraint is reasonable, then Mainline must succeed in its relief; if, on the other hand, those facts disclose that the restraint is unreasonable, then Kumeshin must succeed. These two dichotomous questions call for a value judgment.⁵

⁴ Saner J *Agreements in Restraint of Trade in South African Law* issue 13 (October 2011) at 3-5 and 3-6.

⁵ *Reddy v Siemens Telecommunications (Pty) Ltd* 2007 (2) SA 486 (SCA) para 14.

[50] In *Reddy v Siemens Telecommunications (Pty) Ltd*,⁶ the Supreme Court of Appeal held that the Court must make a value judgment with two principal policy considerations in mind in determining the reasonableness of a restraint.⁷ The first is that the public interest⁸ requires parties to comply with their contractual obligations, a notion expressed by the maxim *pacta servanda sunt*.⁹ The second is that all persons should, in the interests of society, be productive and be permitted to engage in trade and commerce or the professions. Both considerations reflect not only common-law but also constitutional values.¹⁰

[51] A restraint would be unenforceable if it prevents a party after termination of his or her employment from partaking in trade or commerce without a corresponding interest of the other party deserving of protection. Such a restraint is not in the public interest.¹¹ Simply put, when considering the enforceability of a covenant in restraint of trade, the most important question is whether the covenant protects a legitimate proprietary interest on the part of the covenantee. Our law adopts the view that it will be contrary to the public interest to enforce a 'naked' restraint of trade that fails to protect any legitimate proprietary interest on the part of the covenantee but seeks merely to exclude competition by the covenantor.¹²

[52] In *Basson v Chilwan and Others*,¹³ the court identified four questions that should be asked when considering the reasonableness of a restraint: (a) Does the one party have an interest that deserves protection after termination of the agreement? (b) If so, is that interest threatened by the other party? (c) In that case, does such interest weigh qualitatively and quantitatively against the interest of the other party not to be economically inactive and unproductive? (d) Is there an aspect of public policy having nothing to do with the relationship between the parties that requires that the restraint be maintained or rejected? Where the interest of the party sought to be restrained weighs more than the interest to be protected, the restraint is unreasonable and consequently unenforceable. The enquiry undertaken at the time

⁶ *Reddy v Siemens Telecommunications (Pty) Ltd* fn 5 above, para 14.

⁷ *Reddy v Siemens Telecommunications (Pty) Ltd* fn 5 above, para 15.

⁸ *Du Plessis v Road Accident Fund* 2004 (1) SA 359 (SCA) paras 18 - 21.

⁹ *Brisley v Drotzky* 2002 (4) SA (SCA) para 23.

¹⁰ *Reddy v Siemens Telecommunications (Pty) Ltd* fn 5 above, para 15.

¹¹ *Townsend Productions (Pty) Ltd v Leech and Others* 2001 (4) SA 33 (C) at 50J - 51B.

¹² *Amalgamated Retail Ltd v Spark* 1991 2 SA 143 (SEC) 150FH.

¹³ 1993 (3) SA 742 (A) at 776H - 777B.

of enforcement covers a wide field. It includes the nature, extent, and duration of the restraint, as well as factors peculiar to the parties and their respective bargaining powers and interests.¹⁴

[53] Having set the applicable legal principles in this matter, I turn to consider the remaining disputed issues between the parties. However, as a point of departure, I must emphasise that the restraint agreement entered between the applicants and Kumeshin, in my view, stands on a different footing. It must be stressed that the employment contract of Kumeshin did not have a restraint of trade clause. As correctly pointed out by Mr Loubser, the restraint agreement was concluded seven months after Kumeshin's retrenchment in terms of a termination agreement that contained no restraint clause. The seven-month period represented a clean break between Kumeshin's time as a Mainline employee and thereafter, when he was only a Mainline shareholder.

[54] Simply put, at the time when the buy-back agreement was concluded, incorporating a restraint clause, Kumeshin was no longer an employee of Mainline for a period of seven months. Furthermore, the termination agreement did not incorporate the restraint clause. Clearly, the buy-back agreement, which incorporated the restraint clause, was concluded in the context of Kumeshin being a shareholder of Mainline, rather than in an employment context. Notwithstanding, it remains to be determined whether the restraint is reasonable and can thus be enforced.

Did Kumeshin breach the restraint clause?

[55] In determining this question, it is important to consider the four questions postulated by Nienaber JA, as he then was, in *Basson v Chilwan and Others*, discussed in paragraph 52 above. The first question is whether Mainline has a protectable interest that deserves protection. In brief, it is common cause that Kumeshin gained knowledge from Mainline and that Mainline, the third applicant

¹⁴ *Reeves and Another v Marfield Insurance Brokers CC and Another* 1996 (3) SA 766 (A) at 776A - F; *Basson v Chilwan* fn 13 above, at 786B - C.

herein has a protectable interest. Kumeshin has admitted this, and it is not in dispute. The question that follows is whether Kumeshin's association with Trenchless threatens that protectable interest. I turn to consider that question in the discussion that follows.

Is Mainline's protectable interest threatened by Kumeshin's association with Trenchless?

[56] To determine this question, it is necessary to examine the restraint of trade clause closely. The restraint clause is contained in paragraph 8 of the buy-back agreement under the heading 'Restraint'. The relevant part of that clause provides as follows:

8.3 "Kumeshin shall not directly or indirectly, and whether for his own account, or as a principal, agent, partner, representative, shareholder, director, executive, consultant, contractor, financier, assistant, administrator, adviser, officer or holding any other capacity whatever in relation to any person, syndicate, partnership, joint venture, company, business undertaking, concern or other association of any nature for a period of two years after the signature date and anywhere in the RSA-

8.3.1 be interested or engaged in, concerned or associated with any business that is competitive with or carries on a business similar to the Mainline business.

8.3.2 canvas, solicit or entice, or endeavour to entice in respect of any business that is competitive with the Mainline business, any person who is at the signature date and the closing date or, during a period of two years prior to the signature date was a customer, supplier or distributor of the Mainline business or is or was accustomed to dealing with Mainline, specifically including (without limitation) those parties listed on Annexure B. Should Kumeshin wish to take up employment in any capacity with any of the parties listed on Annexure B, he shall seek permission from Mainline which, other than those parties marked with an 'X' shall not be unreasonably withheld."

[57] The restraint agreement targets business activities which is competitive with or similar to the Mainline business. Evidently, clause 8.3 prohibits being associated with any business that is competitive with or carries on a business similar to the Mainline business. The restraint agreement does not apply to employment with

entities which do not themselves compete with Mainline. The applicants referred the court to three aspects of its protectable interests, namely Kumeshin's knowledge of pricing, his experience in SWP and CIPP work-related tenders, and his knowledge of Mainline's operations.

[58] Kumeshin has denied being employed by Trenchless, a competitor of Mainline. In this regard, he has denied that the applicants' protectable interests are at risk or threatened. In my view, there is no evidence on the papers that Kumeshin has divulged any confidential information to Trenchless. Kumeshin registered KS Civil as a company whose ordinary course of business entails the supply of plant, equipment, and labour to other businesses. KS Civil does not provide specialist rehabilitation services, such as SWP or CIPP, nor does it possess specialised equipment. It also does not qualify for the tenders which Mainline tenders on.

[59] From the affidavits filed, the nature of Kumeshin's current work with KS Civil differs from Mainline. It purely concerns the supply of general plant equipment and labour. It does not involve specialist equipment or knowledge that poses a risk of sharing or exploring Mainline's confidential information. In my view, there is nothing in the papers suggesting that Trenchless employs Kumeshin. I am mindful of the notice dated 23 July 2025 from Langeberg Municipality, which identifies Kumeshin as a Contracts Manager which underpins the applicants' application. Kumeshin denied that he is a Contracts Manager of Trenchless. Trenchless has also corroborated this version. Kumeshin asserted that he only manages KS Civil employees and equipment on site. Trenchless as well denied that Kumeshin is an employee of theirs.

[60] It is crucial to approach the interpretation of the notice from the Langeberg Municipality with precision and care. To suggest that the reference to the Contracts Manager in the notice intrinsically implies that Kumeshin is working for Trenchless, the primary contractor, would be an overly broad assumption. Kumeshin has clearly indicated that he is involved in the project on-site, collaborating with his team to supply both labour and essential plant equipment. Even though Mainline and Trenchless are competitors, the scope of KS Civil's service provider agreement with Trenchless is limited to the supply of general plant equipment and labour, not

specialist equipment. It does not involve the potential to share confidential information. Furthermore, given that KS Civil operates as a service provider to other entities, the possibility that KS Civil will divulge Mainline's confidential information to Trenchless is not a reasonable or probable one.

[61] It has been argued that in establishing KS Civil and entering into a service provider agreement with Trenchless, Kumeshin has clearly breached the buy-back agreement. This argument is predicated on the premise that the buy-back agreement prohibits Kumeshin from engaging in any direct or indirect association with a competitor of Mainline for a duration of two years. To the extent that the buy-back agreement prevents Kumeshin from having any direct or indirect association with a competitor of Mainline, I consider that the restraint clause is overly broad, legally incompetent, and unenforceable. It suggests that, for the sake of argument, Kumeshin cannot to perform tasks necessary for him to earn a living, such as keeping books of accounts for companies that are in competition with the applicant. Such an association has no connection to the applicant's protected interests. In my opinion, this limitation is inconsistent with public policy and should not be enforced. I will shortly provide an evaluation in the discussion below, demonstrating that this restraint clause is excessively broad, contravenes public policy, and is, consequently, unenforceable. In my view, there is no legitimate threat or harm to the applicants' protectable interests.

Does the applicants' protectable interest outweigh, qualitatively and quantitatively, Kumeshin's interest to be economically active and productive?

[62] The applicant avers that Kumeshin's restraint of trade agreement does not preclude him from working. Mr Baguley submitted that if Kumeshin wanted to work or associate with entities in annexure B, he had to seek permission from Mainline, whose consent shall not be unreasonably withheld. It must be borne in mind that Kumeshin's employment with Mainline was not terminated of his own account, but he was retrenched following a consultation process in terms of section 189 of the Labour Relations Act 66 of 1995.

[63] The restraint clause is significantly detrimental to Kumeshin. It is crucial to note that the relationship between the parties has deteriorated irreparably, which led to the retrenchment of Kumeshin. Moreover, the discussions and negotiations concerning the buy-back agreement have been quite vigorous. It is unlikely that the applicants would consent to Kumeshin being employed by their competitors, as the primary purpose of the restraint agreement was to prevent such employment. Given these circumstances, it is unreasonable for Kumeshin's employment prospects to be contingent upon the discretion of the applicants.

[64] Furthermore, it is not in dispute that after he was retrenched, Kumeshin remained unemployed for several months. Kumeshin stated that he received several offers of employment from Mainline's competitors, who offered him a similar salary to what he received at Mainline. However, he did not want to breach his restraint and declined such offers. Since the buy-back agreement was concluded, his freedom to earn a living that uses his skills and expertise in the engineering industry has been restricted. He had to consider his options carefully to make a living that would sustain his family without breaking the restraint clause.

[65] After some thought, he decided to use the funds from the sale of his membership interest to purchase equipment and pay off debt, so that he could start his own independent business, hiring out equipment and providing labour. This was not a service that Mainline provides, nor was it in violation of the restraint agreement. In starting KS Civil, he opted to focus on a narrow scope of work, hiring out of general equipment and labour. In my opinion, it would be unfairly prejudicial to Kumeshin to enforce the restraint and further limit his ability to earn a living, especially since he is already operating within a narrow scope and not practising the profession for which he studied for.

[66] Kumeshin is a civil engineer. From the documents submitted, Kumeshin is 33 years old. KS Civil is currently his sole source of income and the only way he can be economically productive. The applicants seek to interdict Kumeshin until 26 May 2026 from practising his profession, the only trade in which he is qualified and from doing business through KS Civil. The work of KS Civil has no connection to the protectable interest of the applicants. In my view, enforcing the restraint of trade in these circumstances would cause significant harm to Kumeshin and would no doubt

render him destitute. This will not only harm him but also the thirty employees and their families who work for his company – KS Civil.

[67] Moreover, the applicants' allegations that Kumeshin is employed by Trenchless or is a subcontractor or a consultant of Trenchless is based on speculation and conjecture. Both Kumeshin and Trenchless have denied that Kumeshin is employed by the second respondent. The notice from Langeberg Municipality does not on its own, without more, prove that Kumeshin is employed by Trenchless. The applicants did not submit any document from the Langeberg Municipality to indicate on what basis they referred to Kumeshin as the Contracts Manager of the Trenchless.

[68] It is my firm view that Kumeshin's right, protected in section 22 of the Constitution of the Republic of South Africa, to choose his trade, occupation, and profession freely would be severely affected if the restraint is enforced. The freedom to choose a vocation is intrinsic to the nature of a society based on human dignity, as contemplated by the Constitution. One's work is part of one's identity and is constitutive of one's dignity.¹⁵ Every individual has a right to take up any activity which he or she believes himself or herself prepared to undertake as a profession and to make that activity the very basis of his or her life.

[69] In the founding and replying affidavits, the applicants stated that, notwithstanding Kumeshin's staggering compensation of R7.5 million he received when he left Mainline, he decided to breach the confidentiality and restraint provisions of the buy-back agreement. The applicants created an impression that part of the buy-back agreement amount was compensation for the prejudice the restraint may cause him. This, with respect, is not correct. There is no mention in the restraint agreement that the buy-back amount was allocated partly for the purpose of the restraint agreement. The agreement clearly indicates that R6.26 million is the agreed market value of Kumeshin's 15 per cent equity in Mainline. The R6.26 million is an amount due to him as a member of Mainline for the value of his shares and has nothing to do with the restraint agreement.

¹⁵ *Affordable Medicines Trust and Other v Minister of Health and Others* 2006 (3) SA247 (CC0 para 59

[70] Notably, the assertion by the applicants in paragraph 87 of the replying affidavit is concerning. The applicants assert that for the limited period of the restraint, the 7.5 million compensation Kumeshin received means that he does not have to work. The applicants suggest that the size of the payment mitigates any prejudice that the restraint may cause Kumeshin. As correctly pointed out by Mr Louser, it is crucial to note that the R7.5 million is actually two separate amounts, and that the only compensation payable was R1.27 million in terms of the termination of the employment agreement. R6.26 million was for the purchase of shares in Mainline. Moreover, from this amount, a loan claim of R919,428 due by Kumeshin to Mainline, as stipulated in the buy-back agreement, should also be deducted.

[71] In his deposition, Kumeshin indicated that he does not come from a wealthy background, nor does he have exorbitant amounts of money, which would enable him to sit at home and not earn a living. He further stated that his parents did not finish their high school qualifications due to economic distress in their families. Throughout his life, he had to study hard and work tirelessly to provide not only for himself but also for his parents, sister, nephew, his wife and now his newborn son. The applicants do not know the financial commitments of Kumeshin. The suggestion that he need not work for the duration of the restraint is fallacious and unsustainable.

[72] Kumeshin is utilising his skills and training in a limited capacity in KS Civil to practice his profession. This has no connection to the applicants' protectable interest. In my view, Kumeshin should not be prevented from using his stock of general knowledge, skill, and experience to earn a living.¹⁶ Significantly, no person can be unreasonably prevented from earning a living in the public domain. The right to trade and practice a profession is highly prized.¹⁷ In my view, restraining the Kumeshin from practising his profession under these limited circumstances would conflict with section 22 of the Constitution, which guarantees his right to freedom of trade, occupation, and profession.

¹⁶ *Bonnet v Schofield* 1989 (2) SA 156 AD at 160A.

¹⁷ *Strike Productions (Pty) Ltd v Bon View Trading (Pty) Ltd and Others* [2011] JOL 26664 (GSJ) para 1.

[73] Additionally, it is incontestable that Kumeshin, who was no longer an employee at the time the buy-back agreement was concluded, was in a weaker bargaining position in relation to the applicants. While I accept that attorneys of repute represented him during the negotiations leading to the conclusion of the buy-back agreement, he did not have the same bargaining power enjoyed by the applicants during the negotiation of the buy-back agreement. Kumeshin was in the minority, and the other members were in the majority. In the replying affidavit, Mr Spreckley, the consultant of Mainline, who also deposed to the founding and replying affidavits, denied that Kumeshin was told that he had no right to question payments made by Mainline.

[74] Mr Spreckley stated that it is a legitimate incident of company law that a holder of 15 per cent of shares can be outvoted on important shareholder's decision by the majority. That is the very foundation of Company law. Mr Spreckley is correct in his observation; however, our Company law also recognises that a minority shareholder must be paid the fair value of his shares.¹⁸

[75] In *Roffey v Catteral Edwards, & Goudre (Pty) Ltd*,¹⁹ the court noted that 'once it emerges that the covenantor was the weaker party during negotiations, the Court will doubtless be aware of the possibility that his impotence was exploited, that he was induced to say in the contract what he did not really mean, and that he was prevailed upon to accept publicly as fair that which he rejected privately as oppressive. In my view, in these circumstances, it would be disproportionate to enforce the restraint.

Is the restraint clause wider than is necessary to protect Mainline's protectable interest?

[76] The restraint clause is so overbroad, couched in wide terms and is legally incompetent. As it is worded, the clause is clearly intended to prohibit all competition by the Kumeshin in all fields of activity of the applicants throughout the entire

¹⁸ See section 164(15)(c)(ii) read with section 164(16) of the Companies Act 71 of 2008.

¹⁹ 1977 (4) SA (N) at 499G.

Republic of South Africa. It has not been disputed that the applicant operates in the Western Cape, rather than countrywide. An applicant should be astute to motivate, in the founding papers, precisely why the area of the restraint is reasonable in the circumstances, and a failure to do so could be harmful to the application. The applicant did not assert that Mainline operates and or has offices in the whole of South Africa.

[77] Furthermore, the applicants do not motivate for the operation of the restraint in the whole of South Africa in their founding papers or otherwise. The applicants also do not deny that the majority of Mainline's contracts are for the City of Cape Town. Notwithstanding this, the applicants seek to enforce the restraint against Kumeshin for the whole of South Africa, despite Mainline only operating in the Western Cape. In my view, this, on its own, renders the restraint unreasonable in that it exceeds what is necessary to protect the applicants' interests.²⁰ The overbroad description of the clause supports Kumeshin's assertion that the clause is contrary to the public policy and therefore unenforceable.

[78] The clause is also overly broad because of its scope, as it prohibits Kumeshin directly or indirectly from being in any association of any nature with any competitor of Mainline. It is not necessary for the protection of the applicants' interests that the restraint be cast in such wide-ranging terms. As correctly pointed out by Kumeshin's counsel, if the restraint clause is interpreted to encompass KS Civil's service provider agreement with Trenchless, which concerns the supply of general plant equipment and labour, and a narrow scope of work that does not create a reasonable or probable risk of divulging Mainline's confidential information, then it is unfair in its ambit.

[79] In *MacPhail (Pty) Ltd v Janse van Rensburg*,²¹ the court stated that as a matter of principle, a covenantee can never have a legitimate interest in restraining a covenantor from working in a totally innocent or neutral capacity for a competitor. If a restraint purports to prescribe that, it is unreasonable. Conversely restraint process should be interpreted restrictively so as only to affect activities such as employment with a competitor which infringes a legitimate proprietary interest. The supply of

²⁰ *Baroque Medical (Pty) Ltd v Medtronic Africa (Pty) Ltd* 2014 JDR 0758 para 42.

²¹ 1996 (1) SA 594 (T) at 600D.

equipment, labour and machinery does not infringe the protectable interest of the applicants. Consequently, the restraint clause is so wide-ranging that it is legally incompetent.

[80] In conclusion, the applicants have not satisfied all the requirements to obtain a final interdict against Kumeshin, nor have they established a case for a declaratory order against Kumeshin. On the objective facts, there is no evidence to suggest that Kumeshin breached the restraint agreement. It is noted that Kumeshin is associated with Trenchless in a service that does not infringe the protectable interest of the applicants. The applicant's case is clearly based on suspicion and speculation that Kumeshin is divulging its confidential information to Trenchless. There is nothing of substance to negate the respondent's version.

[81] On a conspectus of all the facts, it cannot be said that the respondents' version is so far-fetched or untenable that the court is justified in rejecting it on the papers. To the extent that the applicants seek a final interdict and there is a dispute of facts on the versions of the parties, a final interdict may only be granted if the respondent's factual version, together with the admitted facts in the applicants' affidavits, justify such an order.²² In my view, the respondents' version must be accepted. As foreshadowed above, it cannot be said that it is so far-fetched or untenable that it must be rejected on the papers. The version of the respondents is plausible.

[82] Finally, the affidavits submitted by the applicants do not provide any evidence to support the assertion that Trenchless is engaging in unlawful competition with Mainline. Furthermore, no allegations are presented regarding the elements necessary for such a delictual claim. It is important to note that Trenchless is not a party to the buy-back agreement and has not assumed any obligations under that agreement toward either of the applicants. Trenchless also denied employing Kumeshin, as alleged by the applicants. In addition, at no stage was Trenchless or its management aware of Kumeshin's confidentiality undertakings and restraint

²² *Plascon-Evans Paints (Tvl) Ltd v Van Riebeeck Paints (Pty) Ltd* 1984 (3) SA 623 (A) at 634H-I.

undertakings in favour of Mainline when KS Civil was appointed as a service provider.

[83] Consequently, the applicants have not demonstrated entitlement to any relief against Kumeshin and Trenchless whether in terms of unlawful competition or otherwise. In operating KS Civil to hiring out equipment, Kumeshin is not breaching his restraint of trade agreement. I am therefore satisfied that the only effect of the restraint sought would be to inhibit or prevent Kumeshin from using his 'stock of general knowledge, skill and experience' to earn a living.

Costs

[84] It is trite that the question of costs is a matter in the court's discretion. It is equally trite that, as a rule, costs follow the result, and successful parties should be awarded their costs.²³ This rule should be departed from only where good grounds for doing so exist.²⁴ There is nothing in this case that warrants a departure from this well-established principle.

Order

[85] In the result, the following order is granted:

85.1 The applicants' application is hereby dismissed. The applicants are ordered to pay the respondents' costs on a party and party scale, including the costs of the respondents' counsels on scale C.

LEKHULENI JD
JUDGE OF THE HIGH COURT

²³ *Union Government v Gass* 1959 (4) SA 401 (A) 413.

²⁴ *Gamlan Investments (Pty) Ltd v Trillion Cape (Pty) Ltd* 1996 3 SA 692 (C).

Appearances:

For the Applicants: Adv Baguley

Instructed by: Slabbert Venter Yanoutsos Inc

For the First Respondent: Adv Loubser

Instructed by: Allie and Naidoo Attorneys Inc

For the Third Respondent: Adv Montzinger

Instructed by: PMV Attorneys & Notaries