



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

DELETE WHICHEVER IS NOT APPLICABLE	
(1)	REPORTABLE: YES/NO
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
	REVISED
24 November 2025	
DATE	SIGNATURE

Case No: **2025/207104**

In the matter between:

MAX LAW GAUTENG NORTH (PTY) LTD

First Applicant

MAX GROUP (PTY) LTD

Second Applicant

MAX LAW GROUP (PTY) LTD

Third Applicant

and

QOURA HOLDINGS (PTY) LTD

First Respondent

MBALI KUNENE

Second Respondent

PREMIER MALULEKE

Third Respondent

SIMANGALISO MTEMBU

Fourth Respondent

BUNTO MBLASHWA

Fifth Respondent

ORATILE MMADIRA

Sixth Respondent

ABDUL KOLA

Seventh Respondent

THOMAS MATLEBJANE

Eighth Respondent

STHANDWA SHWALA

Ninth Respondent

LINDIWE NGUSE

Tenth Respondent

TINY MALOPE

Eleventh Respondent

KOKETSO MATLABJANE

Twelfth Respondent

VUSI MAHLANGU	Thirteenth Respondent
BONGIWE SIBIYA	Fourteenth Respondent
SIPHO SESANA	Fifteenth Respondent
JACQUELINE MATHE	Sixteenth Respondent
ADAH MATSHIKA	Seventeenth Respondent
NOZIPHO MTSWENI	Eighteenth Respondent
LESEGO MASANGO	Nineteenth Respondent
NKELE MALULEKE	Twentieth Respondent
GCINILE HLOPHE	Twenty First Respondent
RITO MATHONSI	Twenty Second Respondent
JULIET MAKGOBA	Twenty Third Respondent
KELEBOGILE MATOBOSANE	Twenty Fourth Respondent
PORTHIA LETSUMA	Twenty Fifth Respondent

JUDGMENT

VAN DER MERWE AJ

INTRODUCTION

1. The Applicants approached this Court on a very urgent basis to enforce a restraint of trade and confidentiality undertakings as contained in various contracts of employment entered into between the Applicants and the Second to Twenty Fifth Respondents.
2. The matter was enrolled for hearing on the 18th November 2025 and was heard on 19 November 2025. The matter was only opposed by the First Respondent. The application was not properly served on the Second to the Twenty Fifth Respondents. I will address this issue later in the judgment.
3. The Applicants also filed a joinder application on 15 November 2025, wherein

Applicants seek to join Quora Finance (Pty) Ltd with registration number 2022/589812/07 as Twenty Sixth Respondent.

RELIEF SOUGHT

4. The Applicants approached the Court for relief to enforce the restraint-of-trade provisions against twenty-five former employees, together with an interim interdict against the First Respondent to prevent it from recruiting or attempting to recruit any of the Applicants' current employees or any individuals employed by the Applicants within the 18 months preceding the offers of employment, and from utilising any proprietary or confidential information, business practices, client-engagement methods, training techniques, standard operating procedures, client lists or leads belonging to the Applicants. The Applicants further seek to restrain the First Respondent from approaching or incentivising the Applicants' employees in any manner to terminate their employment. In Part B of the application, the Applicants seek a final interdict enforcing the restraint of trade against the Second to Twenty-Fifth Respondents, preventing them from being employed or engaged by the First Respondent or any competitor operating within the same industry as the Applicants for the periods specified in the notice of motion. The Applicants additionally seek to prevent the former employees from utilising, disseminating or sharing any confidential information or proprietary techniques of the Applicants or their clients or potential clients for their own benefit or that of any third party, including the First Respondent, and to restrain all Respondents from recruiting, enticing, employing, offering to employ, causing to employ or soliciting any of the Applicants' employees, or otherwise inducing them to terminate their employment with the Applicants.
5. The Respondents opposed the application, challenging it on the basis of urgency,

and further raised a point of misjoinder on the grounds that they do not employ any of the Respondents cited in the application.

6. Since the matter has been placed on the urgent roll, the Applicants must satisfy the Court that the matter is urgent before the merits of the matter is entertained.

URGENCY

The applicable legal principles

7. The provisions of Rule 6(12) of the Uniform Rules of Court accordingly apply, and it is well established that an applicant who approaches the Court on an urgent basis seeks an indulgence and requests preferential allocation on the Court's roll in order to avert prejudice or irreparable harm that may arise or persist if the impugned conduct continues. The Court's primary enquiry in assessing urgency is whether the applicant has, in the founding affidavit, explicitly set out the circumstances giving rise to the urgency and demonstrated why substantial relief cannot be obtained at a hearing in the ordinary course. It is therefore incumbent upon the applicant to articulate fully and satisfactorily the grounds upon which urgency is invoked and to provide cogent reasons for the necessity of immediate relief. Although a delay in instituting proceedings is not, in itself, determinative of the question of urgency, the Court must consider such delay in the context of the explanation furnished and the broader circumstances of the matter. Ultimately, the decisive issue is whether the applicant would be deprived of substantial redress at a hearing in due course, and while a delay may indicate that the matter is not as inherently urgent as alleged, it is the totality of the circumstances that

guides the Court's discretion.¹

8. Conversely, a delay may be justified where the applicant has made bona fide attempts to resolve the dispute amicably or has required additional time to gather and verify the relevant facts underpinning the relief sought.²
9. The principles governing urgency have been extensively developed and consistently applied by the Courts, which have held that urgency of the applicant's own making self-created urgency will not be entertained, as the Court will not afford preference to matters rendered urgent by the applicant's own actions.
10. In **National Union of Metal Workers of South Africa v Bumatech Calcium Aluminates**³ the Court held that:

"Urgency must not be self-created by an applicant, as a consequence of the applicant not having brought the application at the first available opportunity in other words, the more immediate a reaction by the litigant to remedy the situation by way of instituting litigation the better it is for establishing urgency. But the longer it takes from the date of the event giving rise to the proceedings, the more urgency is diminished. In short the applicant must come to Court immediately, or risk the lack of urgency". In *Collins t/a Waterkloof Farm v Bernickow N.O. & Another* the Court held that:

"If the applicants seek this Court to come to its assistance it must come to the Court at the very first opportunity. It cannot stand back and do nothing and some days later seek the Court's assistance as a matter of urgency."

11. In **National Police Services Union & Others v First National Negotiating**

¹ See **East Rock Trading 7 (Pty) Ltd and Another v Eagle Valley Granite (Pty) Ltd and Others** (11/33767) [2011] ZAGPJHC 196 (23 September 2011)

² See **Nelson Mandela Metropolitan Municipality v Greyvenouw** 2004 (2) SA 81(SE) 94C-D; **Stock v Minister of Housing** 2007 (2) SA 9 (C12U-13 A); **Eastrock Trading 7 (Pty) Ltd v Eagle Valley Granite (Pty) Ltd and Others** (JR 315-13) 2013 [ZALCJAB 34] (12 March 2013) at para 12

³ (2016) 37 ILJ 2862 (LC)

Forum & Others⁴ The Court held that the latitude ordinarily afforded to parties to dispense with the Rules of Court in circumstances of urgency is not available to those who are so dilatory that their own inactivity gives rise to the very harm upon which they seek to rely for relief.

12. The requirements for urgency in restraint of trade applications are no different from those in other urgent applications and have been consistently confirmed in numerous authorities.

13. In **Vumatel (Pty) Ltd v Majra and Others**⁵ the Court confirmed that:

“I accept that the restraints of trade have an inherent quality of urgency. This position comes from following dictum in Mozart Ice Cream Classic Franchises (Pty) Ltd v Davidoff and Another where Court held :

‘I accept that breaches of restraint of trade have an inherent quality of urgency.’ ”

14. This inherent quality of urgency is often abused as a basis for jumping the queue, so to speak, without satisfying the ordinary requirements of urgency. To adopt this kind of approach is ill-conceived. An urgent restraint of trade application is still nothing but an urgent application, just like any other urgent application where final relief is sought. The ordinary requirements applicable to such urgent applications must find application. The fact that one is dealing with a restraint of trade is not some kind of licence that in itself establishes urgency, to the exclusion of all other considerations. This was recognized by the Court in **Ecolab (Pty) Ltd v Thoabola & Another**⁶ where the Court said the following, with which I agree:

“To summarise then, parties alleging breaches of restraint of trade agreements are not indemnified from satisfying the requirements in terms of rule 8. Thus, a mere

⁴ (1999) 20 ILJ 1081 (LC)

⁵ (2018) 39 ILJ 2771 (LC) at paras 4 and 5

⁶⁶ (2017) 38 ILJ 2741(LC)

contention that the enforcement of a restraint of trade is inherently urgent and therefore must be treated as such by this court without any further consideration cannot by all accounts be sustainable. The fact that these disputes may have an inherent quality of urgency cannot be equated to a free pass to urgent relief on the already overburdened urgent roll in this court. Like all other urgent matters more than a mere allegation that a matter is urgent is required. This therefore implies inter alia that the court must be placed in a position where it must appreciate that indeed a matter is urgent, and also that an applicant in the face of a threat to it or its interest had acted with the necessary haste to mitigate the effects of that threat.”

BACKGROUND FACTS AND GROUNDS FOR URGENCY

15. The Applicants aver that the matter is brought on an urgent basis in accordance with the grounds of urgency set out in their founding affidavit and amplified in their replying affidavit.
16. The Applicants request reprieve in terms of service against the former employees of which they only served by means of WhatsApp messenger. It is to be mentioned that they did instruct the sheriff to serve at the First Respondent's premises, but it proved to be unsuccessful.
17. The Applicants aver that, within a period of seven months, the First Respondent has employed twenty-five of the Applicants' former employees, all of whom voluntarily terminated their employment with the Applicants shortly before accepting positions with the First Respondent. It is further averred that all twenty-five employees are in breach of the restraint of trade provisions contained in their employment contracts and had access to the Applicants' confidential, protected, and proprietary information. The proprietary information in question comprises the following, and constitutes a protectable interest in terms of established legal authority on the basis that restraint of trade provisions serve to protect such legitimate business interests, being:

- 17.1 Industry specific knowledge of where and how the Applicants acquire the leads on which they rely for on the business; and
 - 17.2 The specific detail of the said leads as have already been provided to them in the scope of their employment; and
 - 17.3 The information inherent in the leads themselves, constituting personal and specific details of individuals and pertaining to their credit and financial information; and
 - 17.4 The proprietary techniques and methods utilized by the Applicants in engaging with prospective clients in securing their business (the so-called soft) skills as taught to the employees during their mandatory training with the Applicants.
18. The Applicants seek urgent relief to enforce restraint-of-trade undertakings against twenty-five former employees who, within the past seven months, have taken up employment with the First Respondent, a direct competitor. These individuals enjoyed access to the Applicants' confidential and proprietary information, and the Applicants reasonably apprehend that such information will be disclosed to, or utilised by, the First Respondent to secure an unlawful competitive advantage. It is claimed that the risk of such disclosure increases with each passing day, and once confidential information is compromised, the resultant harm is irreversible and incapable of adequate redress in due course. The Applicants aver that the urgency of this matter is not self-created but arises from the operational realities facing the Applicants, including multiple branch operations, high staff turnover, informal and irregular resignations, and the time reasonably required to detect and investigate the emerging pattern of

coordinated departures. It is claimed that the prejudice the Applicants stand to suffer in the absence of immediate relief outweighs any potential prejudice to the Respondents, particularly given that the Respondents have been afforded sufficient opportunity to respond. The Applicants accordingly contend that, in light of the direct and ongoing threat to their legitimate business interests, the matter warrants the Court's urgent intervention.

19. The Applicants confirm that, during the period between April 2025 and October 2025, all of the employees in question voluntarily resigned from their employment with the Applicants and, shortly thereafter, took up employment with the First Respondent. However, aside from attributing the delay to the high staff turnover inherent in a call-centre environment, the Applicants provide no clear or detailed account of the steps taken during the intervening seven-month period to investigate, monitor, or address the employees' departures.
20. What is conspicuously absent from the founding affidavit is any indication of the date on which the Applicants became aware that the employees had taken up employment with the First Respondent. In the absence of such averments, the Court is constrained to infer that the Applicants only became alert to this fact on or about October 2025, when letters of demand were addressed to the Second to Twenty-Fifth Respondents, placing them on terms in respect of their restraint-of-trade obligations. In those letters, the employees were requested to resign from the First Respondent and were offered reinstatement with the Applicants.
21. On 8 October 2025 the Applicants informed the First Respondent that several of its employees were still bound by 18-month restraint-of-trade agreements, which prohibited them from working for a competitor, using confidential information, or recruiting the Applicants' staff. The Applicants stated that these individuals had

been recruited directly from their employment and were therefore in breach of their restraints, and that the First Respondent was participating in these breaches. The Applicants offered to verify whether any of the First Respondent's current or future employees were subject to restraints. They demanded that all restrained employees cease their employment with the First Respondent by 10 October 2025, failing which legal action would follow. They also drew attention to an escape clause allowing the First Respondent to pay 300% of an employee's annualised salary to release them from the restraint (excluding confidentiality). The Applicants warned that non-compliance would result in High Court proceedings and possible cost and damages orders. No responses were received from the Respondents and no undertakings were forthcoming. This letter of demand was peculiarly not attached to the founding affidavit, but only in reply. Steps to launch this application were only seemingly taken on the 3rd November 2025 when the application was launched. The delay is not explained.

DISCUSSION

22. The Applicants contend that they launched the application as soon as they became aware that the employees who had resigned over the preceding seven-month period had taken up employment with the First Respondent, and that no undertaking to comply with the restraint obligations would be forthcoming. This argument, in support of urgency, cannot be accepted. In ***Ecolab (Pty) Ltd v Thoabala and Another***⁷ (Ecolab):

'In consideration of these factors, inclusive of the fact that at the hearing of the matter Thoabala would have been in the employ of the second respondent for just over three months. I am satisfied that the urgency claim in this case is clearly self-created and this is even more so based on the applicant's assertions that it did not

⁷ 2017 (38) ILJ 2741 LC at par 28

matter how long the breach had taken place and that it was not obliged to proffer a substantial explanation for its dilatoriness. Of course, it matters how long the breach went on and that the breach is the very essence of this urgent application. Furthermore, an applicant is obliged to place substantive reasons before this court as to why its matter deserves urgent attention.’ ”

23. The same principles set out in **Ecolab** apply in this matter.
24. It was already apparent by early October 2025 that no undertaking would be forthcoming from the First Respondent. Once it becomes evident that the Applicants’ interests are under threat, it is incumbent upon them to take immediate and proactive steps to protect those interests.⁸
25. Subsequent to receipt of the Answering Affidavit, the Applicants conducted further investigations into the precise identity of the employer of the Second to Twenty-Fifth Respondents. These investigations revealed that the First Respondent employed at least some of the former employees and the Applicants also identified a second entity, Quora Finance (Pty) Ltd, which shares directors, registered address, and business premises with the First Respondent, and may be the actual employer of certain of the respondents. The Applicants’ original investigation had been prompted by a poster displayed at the First Respondent’s premises identifying the employer as Quora Holdings (Pty) Ltd and salary payments referencing Qfinance, supporting their initial assumption that Qfinance was a trading name of the First Respondent. The Applicants are silent on when this poster was obtained or discovered.
26. It was stated by the Applicants that confirmatory affidavits from former employees, who initially identified the First Respondent as their employer, would

⁸ **Red Sun Hortitech (Pty) Ltd v de Villiers and Others (J 577/2021) [2021] ZALCJHB 138 (2 July 2021) at par 74**

be provided to the Court. However, these affidavits were not furnished, and no dates were provided as to when the employees allegedly conveyed this information. The Applicants now seek to supplement their case substantially in the replying affidavit by specifically attaching the letters of demand and the poster setting out employment conditions. The Applicants aver that the documents were omitted as it was not deemed relevant at the time. Such supplementation further undermines the Applicants' argument regarding urgency, as it demonstrates that critical information relied upon to justify immediate relief was not included in the founding papers.

27. In view of the Applicants' inaction, despite being, at the very least, acutely suspicious or alternatively aware of the Respondents' conduct and business activities, I am unable to accept their assertion that they suffered harm, or reasonably apprehended harm, on a daily basis and that such prejudice would persist absent urgent relief. The Applicants appeared content to tolerate the alleged harm and the departure of more than twenty-five employees, remaining disengaged from what was occurring within their own business for several months. A considerable period of time passed before they elected to take any steps, which significantly undermines their claim of urgency and ongoing prejudice. Their explanation for failing to act earlier is inadequate, as no clear evidence is provided as to when they became aware of the alleged breaches. Consequently, the Court must draw its own inferences, particularly from the letters of demand dated October 2025, which appear to be the first documented indication that the Applicants appreciated the extent of the alleged contraventions. Once it became, or reasonably should have become apparent that the Applicants' interests were threatened, it was incumbent upon them to act promptly. Their prolonged inaction over the seven-month period during which the

employees resigned and commenced employment with the First Respondent undermines the contention that they faced ongoing or imminent harm necessitating urgent intervention. This conduct suggests complacency or indifference, which substantially weakens their claim to urgency.

28. In my view, the Applicants should have had sufficient evidence to approach this Court earlier and should have conducted their investigations sooner if they genuinely considered the matter urgent and harm would ensue.
29. While the Court has recognized that breaches of restraint of trade may, by their very nature, possess an inherent quality of urgency⁹, given their limited duration and the fundamental rights at stake, requiring prompt determination, there are nonetheless limits beyond which such urgency becomes self-created.¹⁰
30. The question of urgency is determined by the specific facts and circumstances of each case. A matter cannot be deemed urgent solely because the Applicants assert it to be so, or the contention that all restraint-of-trade matters carry an inherent urgency. It is expected that in order for any arguments on urgency to be sustained is that the Applicants must have acted with due haste when knowledge of the Respondents' prejudicial behaviour or actions are gained. They are silent on when these actions came to the fore.
31. Having regard to the facts, I am not persuaded that the Applicants have shown that their application merits preferential treatment. They have failed to comply with the requirements of Rule 6(12) of the Rules of Court and the well-established principles in case law.

⁹ ***Mozart Ice Cream Classic Franchises (Pty) Ltd v Davidoff & Another* 2009 (3) SA 78 (C) (1 December 2008)**

¹⁰ ***Red Sun Hortitech* *ibid* at par 78**

32. It is clear from the events that the Applicants were slow in asserting their rights. Over a period of seven months, during which twenty-five Respondents resigned and took up employment with the First Respondent, the Applicants took no immediate steps to enforce the restraint of trade, despite presumably being aware of the alleged breaches, the precise timing of which remains unspecified.
33. It is not enough for a party seeking urgent relief to rely solely on the assertion that it is entitled to priority or that it would suffer prejudice if the application is not granted. An applicant must show that it acted diligently and with the promptness warranted by the circumstances. In this case, the Applicants have, in my view, materially failed to meet that standard.
34. The matter is further complicated by the fact that, only after receiving the Answering Affidavit, the Applicants appear to have discovered that some of the former employees may have been employed not by the First Respondent but by a separate entity, Quora Finance (Pty) Ltd, which they now seek to join in the proceedings. This revelation further undermines the basis for claiming urgency.
35. Although a breach of a restraint-of-trade agreement may have serious consequences, it was the Applicants' duty to take swift and diligent action to mitigate any potential harm. They failed to do so, instead delaying unreasonably before instituting proceedings. The prejudice or harm the Applicants claim to have suffered, or may suffer, is therefore largely self-inflicted, and a delayed attempt to enforce their rights does not render the application urgent. Even assuming some measure of urgency exists, it is of the Applicants' own making, and self-created urgency should not be entertained. Therefore, I conclude that the matter is not urgent. I have not considered the merits of the application.

SERVICE OF THE APPLICATION

36. The matter is further compounded by the Applicants' failure to properly serve the Second to Twenty-Fifth Respondents. Service was attempted only via WhatsApp, which the Court does not regard as sufficient given the contractual relief sought. The return of service shows a single attempt, yet the Applicants considered this method adequate to enforce the restraint-of-trade obligations, a position the Court finds unacceptable.

37. This approach overlooks the procedural requirement that a party must be properly served to ensure it is given a fair opportunity to respond. The Applicants, in their service affidavit regarding the joinder application, assert that the steps taken are sufficient to support substantive relief in the main application against a party that has not yet been formally joined in these proceedings. The following is stated in the service affidavit:

“(e) Fortunately, in casu the First and Twenty Sixth Respondents share a director and principal place of business;

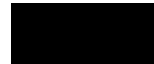
(f) As such, service of the main application would have resulted in also being served on the Twenty Sixth Respondent. “

40. This averment is entirely without merit and demonstrates a fundamental misunderstanding of the procedural requirements of service. It is untenable, as substantive relief cannot be granted against a party that has not been properly joined before the Court. To suggest otherwise is not only baseless but borders on being absurd, as it disregards the essential principles of service and joinder that ensure a party's right to be heard is respected.

41. The possibility of an order for substituted service was discussed in Court and the Applicant provided an order providing for alternative means of service on the other Respondents. The Court does not deem such an order appropriate, and therefore the Applicants need to effect service of the application and the application for joinder in terms of the provisions of Rule 4 of the Uniform Rules of Court.

In the premises I make the following order:

1. The application is struck from the roll for lack of urgency;
2. The costs are reserved.



VAN DER MERWE AJ

Acting Judge High Court

Gauteng Division, Pretoria

Appearances:

On behalf of Applicants: Adv L Hennop

Instructed by: Frik van Schalwyk Attorneys Incorporated

On behalf of Respondents: Adv A Mabensela

Instructed by: ES Kgaka Attorneys.

HEARD ON: 19 November 2025.

DELIVERED: 21 November 2025.