



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not reportable

Case No: 2025-186217

In the matter between:

LABOURNET (PTY) LTD

Applicant

And

ELSA THUTUKA MOHALE

First

Respondent

V3 CONSULTING ENGINEERS (PTY) LTD

Second Respondent

Heard: In chambers

Delivered: 19 January 2026

JUDGMENT: APPLICATION FOR LEAVE TO APPEAL

RAMJI, AJ

[1] This is an urgent application for leave to appeal, filed on 7 January 2026, against two orders:

- 1.1 An order dismissing the application to enforce a restraint of trade against the first respondent, Ms Mohale (the main order)

1.2 A limited costs order (the costs order).

[2] I received written submissions from both parties.

Leave to appeal the main order

[3] The primary appeal ground in the application for leave to appeal the main order is that I erred in that, after striking out the answering affidavit for lateness, I incorrectly applied the legal principles relating to onus in restraints of trade.

[4] Labournet's case is that once it had proved that a restraint of trade existed and had been breached, the onus shifted to the respondents to justify non-compliance with the restraint. Because I had struck out the answering affidavit, there was no justification before me.

[5] Labournet submits the following:

'2.6. Any restraint of trade application starts off with the employer party in the application having to first discharge a particular onus, which was articulated in *A J Charnaud & Co (Pty) Ltd v van der Merwe and Others*¹ as follows:

'In short, the logical sequence that applies in the case of an employer (the applicant) seeking to enforce a restraint against an employee, is firstly to prove the existence of a restraint obligation that applies to the employee. Secondly, and if a restraint obligation is shown to exist, the employer must prove that the employee acted in breach of the restraint obligation imposed by the restraint. ...'

2.7. Once the above onus is discharged by the employer party, the enquiry and determination then turn to whether the facts, considered as a whole, show that the enforcement of the restraint would be reasonable in the circumstances. In this respect, a shift of the onus then takes place, and the onus is then on the employee party to prove that enforcement of the restraint would be unreasonable' (footnotes omitted, original emphasis).

¹ (2020) 41 ILJ 1661 (LC) at para 56.

- [6] I took the position based on several other cases that the complete shifting of the onus to the former employee oversimplifies the approach adopted in recent years by the courts.
- [7] Labournet appears to argue for a strict approach to onus, or, if it accepts the complexities of the inquiry, argues I could not follow the approach that I followed in the absence of a competing version from the respondents.
- [8] Labournet has put forward authority for its position, most of which pre-dates *Jankielson LAC* which was handed down in January 2017. It referred to three following decisions handed down after *Jankielson*.² These judgments concern a failure by the respondent to show that a restraint of trade is unreasonable after the applicant, in the courts' views, established an interest worthy of protection.
- [9] In this case, the finding was that Labournet failed to establish an interest worthy of protection.
- [10] Labournet's case, stated in its written submissions, is at odds with the recent authorities. Labournet argues:

'2.10. Once the evidence in the founding affidavit is undisputed, it had to follow that the restraint of trade be enforced.'

- [11] I consider the law, particularly from *Jankielson LAC*, to be quite clear that a court is obliged to interrogate an applicant's papers before enforcing a restraint of trade and that the dicta from the cases are not limited only to cases where there is an opposing version before the court. To repeat from *Jankielson LAC*, if the facts disclosed in the founding affidavit '*do not disclose protectable interests, the next stage, namely, to weigh up the interest of the parties qualitatively and quantitatively, falls away.*'³ The accords with the judgment of the SCA in *Reddy v Siemens Telecommunications (Pty) Ltd*

² *Service Parts Logistics (Pty) Ltd v Mshengu* (2020) 41 ILJ 1762 (LC) at para 13; *Sadan and Another v Workforce Staffing (Pty) Ltd* (2023) 44 ILJ 2506 (LAC) at para 19; *Beedle v Slo-Jo Innovations Hub (Pty) Ltd* (2023) 44 ILJ 2493 (LAC) at para 20.

³ *Jankielson LAC* para 63.

years before and Labournet has not shown that I erred in applying the SCA's approach to onus, made explicit in paragraph 4 of the judgment.

- [12] This approach was recently affirmed in the Western Cape Division of the High Court, where the court held:

'The mere existence of the restraint of trade agreement does not necessarily mean there is a protectable interest. The applicant must prove that the interest exists. The court will only enforce the contract if interest is proven.'⁴

- [13] The requirement that the applicant proves that a protectable commercial interests exists also accords with the general position that an applicant must make out a case for the relief that it seeks, and that a court's role is not to rubberstamp the relief sought where a motion is unopposed. In the context of an application for default judgment, this position was expressed in the Gauteng Division of the High Court:

'[B]efore any court order is granted, the court has the duty to investigate the matter and ascertain whether the relief sought is in accordance with the law and should be made an order of the court. I am of the view that a court is duty-bound to approach the evidence with an inquiring mind...'⁵

- [14] The court was concerned with an eviction application. The situations are comparable. Both applications involve a clash between private law and public policy principles. The approach argued for by Labournet appears to me to therefore be untenable.

- [15] Labournet has not shown that a different court would come to a different conclusion. There is no other compelling reason to grant leave to appeal.

Leave to appeal the costs order

⁴ *Truworths Limited v Nxasana, Mr Price Group Limited and Another* (2025/176724) [2025] ZAWCHC 580 (10 December 2025) at para 23.

⁵ *Sunset Ridge Estate Home-Owners Association v Van Deventer and Others* (035234/2022) [2024] ZAGPPHC 220 (5 February 2024) unreported at para 18.

[16] A costs order is an exercise in discretion. The reasons for decision to award costs, and to limit the costs, are canvassed in the judgment. The costs order cannot be an error in the exercise of judicial discretion simply because no costs order was made in *Jankielson LAC*. Discretionary exercises cannot be governed by drawing straight lines between one case and another. This eliminates the discretion.

Costs

[17] The respondents sought but did not motivate for a punitive costs order in the application for leave to appeal.

[18] For the above reasons, I make the following order:

Order

1. The application for leave to appeal is dismissed.
2. There is no order as to costs.

B. Ramji

Acting Judge of the Labour Court of South Africa