

THE REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA

(WESTERN CAPE DIVISION, CAPE TOWN)

Case No: 2026-025691

In the matter between:

ALLENS MESHCO (PTY) LTD

First Applicant

MESHCO (PTY) LTD

Second Applicant

and

LOUW KRIGE

Respondent

Summary: Restraint of Trade – Limited Duration – Freely and Voluntarily Signed to Bolster the Respondent's Employment Conditions – Resignation before scheduled Disciplinary Hearing – Restraint Covenant Enforced.

Coram: Wille, J

Heard: 25 February 2026

Order: 2 March 2026

Reasons: 12 March 2026

REASONS

WILLE, J:

INTRODUCTION

[1] This matter came before me in the urgent fast lane. The respondent indicated that he wished to file a further affidavit in response to the applicants replying affidavit. Because of the nature of the application and the relief sought, I indicated that I would be inclined to allow the respondent to file a further affidavit. By agreement, I retained the matter and arranged to hear it on an urgent date suitable to both parties. The respondent subsequently filed a supplementary affidavit to which there was no objection.¹

[2] After the matter was fully ventilated (urgency was no longer an issue as the parties agreed that I should deal with the merits of the application), I considered the matter for a few days and issued an order in the following terms:

1. *The usual forms and service are hereby dispensed with, and the matter is determined to be urgent in terms of Rule 6 (12).*
2. *The respondent's further affidavit (the fourth in the set) is admitted into the record.*
3. *The respondent is interdicted and restrained from:*
 - 3.1 *being employed by, or interested or engaged in any capacity whatsoever with (whether as consultant, independent contractor or otherwise, as set out in clauses 3.1.1 and 4.1.1 of the restraint of trade agreement entered into between*

¹ The matter was heard on 25 February 2026.

the respondent and the applicants on 26 August 2024 (the “Restraint Agreement”)) the Hendok Distribution (Pty) Ltd or any associated companies (the “Hendok Group”), or any other entity which engages in an “AM” or “MES” “Competitive Activity” (as defined in the Restraint Agreement).

- 3.2 approaching, soliciting or encouraging (in terms of clauses 3.1.4 and 4.1.4 of the Restraint Agreement) any of the applicants’ customers to purchase goods or products from any entity whatsoever.*
- 3.3 furnishing to any third party, including the Hendok Group and/or any other entity or person, details of the contractual arrangements, including terms and financial details, such as credit and discount terms (all as set out in clauses 3.1.1 and 4.1.1 of the Restraint Agreement) between the applicants and their customers.*
- 3.4 the above interdicts shall be in place until 25 November 2026 across the Republic of South Africa.*
- 3.5 divulging, disclosing or utilising (in terms of clauses 9.1 and 11.1 of the Restraint Agreement) the applicants’ confidential information (as defined in clauses 1.4 and 1.12 of the Restraint Agreement) to any person or entity, and*
- 4. The respondent be directed to deliver up to the applicants or to destroy any confidential information of the applicants in his possession (if any), and to disclose to the applicants the identity of any persons to whom such confidential information has been provided by him (if any); and*
- 5. The respondent shall be liable for 50% of the costs of an incidental for the scheduled urgent hearing of this matter on 12 February 2026 on the scale as between party and party as taxed or agreed together with costs of counsel on scale B.*
- 6. In addition, the respondent shall be liable for the remaining costs of this application on the scale as between party and party as taxed or agreed together with costs of counsel on scale B.²*

² The order was handed down on 2 March 2026.

[3] Thereafter, on 4 March 2026, a letter was sent to my registrar by the respondent's attorneys via email requesting reasons from 'Judge Will'(sic). No notice in terms of Rule 49 (1) (c) was filed, and the Practice Directives of this court were ignored by the respondent's legal representatives.³

CONTEXT AND BACKGROUND

[4] The respondent admits that he signed a restraint covenant with the applicants. The restraint covenant is a comprehensive document that spans at least fifteen pages. The respondent admits that he is working for one of the applicants' direct competitors and that he has been contacting the applicants' customers in breach of the restraint covenant.⁴

[5] Thus, it is for the respondent to demonstrate that the restraint should not be enforced because it is unreasonable. Each and every matter must be determined on its own factual circumstances at the time the enforcement is sought.⁵

[6] In this matter, this is particularly important because the respondent resigned from his employment with the applicants due to his admitted fraudulent conduct and unlawful obtaining of approximately R700,000.00 in 'kickbacks' during his course and scope of employment with the applicants. The respondent signed the restraint covenant about eighteen months ago. During this time, he approached one of the applicants' competitors (for whom he now works) solely to obtain a competitive employment offer to increase his salary, benefits and position with the applicants. This he did to improve his financial position and not to leave the applicants' employment. He used this competitive offer as a bargaining tool to improve his position.⁶

³ The respondent also requested the reasons to be furnished on an "expedited basis".

⁴ This is common cause between the parties.

⁵ This was also not the subject of any legal challenge,

⁶ The respondent never intended to take up employment with the competitor who provided the competitive offer.

[7] As far as the restraint covenant was concerned, the respondent initially advanced the position that he was forced to sign it. This shield has now been abandoned with no explanation why it was advanced in the first place. Simply put, instead of accepting alternative employment with a new employer when he was free to do so and was under no restraint, the respondent used the new employment offer simply as a tool to obtain better terms and remuneration from the applicants who then required him to sign a restraint covenant.⁷

[8] Thereafter, the respondent then resigned from his employment with the applicants the day before his disciplinary hearing was scheduled to consider his alleged fraudulent conduct. After the respondent resigned, the applicants discovered that the respondent had, for years, been running a 'kickback' scheme, which the respondent referred to as:

*'...referral fees or spotters commissions...'*⁸

[9] When the applicants raised these questionable payments received by the respondent, they were met with the response that these allegations must be struck out. Yet there is no application to strike out. The thumb of evidence against the respondent regarding his highly questionable conduct simply cannot be ignored.⁹

[10] The core shields raised by the respondent are that: (a) the applicants had no legitimate proprietary interests worthy of protection; (b) the restraint's scope was overbroad; (c) there were no trade secrets or trade connections worthy of protection. Further, initially, the respondent disputed that he was guilty of any unlawful or fraudulent conduct as alleged. Belatedly, the applicants' allegations of the respondent's unlawful conduct were admitted.¹⁰

⁷ This is not disputed.

⁸ This formulation is difficult to understand.

⁹ This undisputed evidence simply cannot be ignored.

¹⁰ This was done when the shoe pinched.

[11] In one last desperate attempt to defeat the applicants' claims, the respondent contended that his new employer was not in competition with the applicant's business. This was very challenging to understand, given the arguments raised on his behalf during the hearing.¹¹

THE RESTRAINT COVENANT

[12] This is a comprehensive document comprising at least fifteen pages. It defines, *inter alia*, the following: (a) the confidential information; (b) the competitive activity; (c) the prescribed clients; (d) the prescribed principals; (e) the prescribed supplier; (f) the competitive activity, and (g) the applicant's business activities. Most importantly, the covenant records the following:

*'...AM works in a competitive environment, and the employee, as a consequence of his/her employment with AM, has acquired or will acquire knowledge of the AM Business and, in particular, of the AM Confidential Information and/or the AM Trade Connection, which constitute protectable proprietary interests of AM. AM wishes to maintain and protect its proprietary interests in and to the AM Confidential Information, and the AM Trade Connection, and as a consequence, the Employee hereby agrees to enter into this Agreement in favour of AM...'*¹²

CONSIDERATION

[13] The applicants set out in detail the confidential information to which the respondent enjoyed access, and this formulation aligns completely with the terms of the restraint covenant. This included customer lists, contact details, buying preferences, rebate and discounting structures, price lists, profit margins, buying history and marketing strategies. All of this is protectable, of economic value to the applicants, and clearly very useful to a competitor.¹³

¹¹ This was conceded during the hearing.

¹² Clause 2.1 of the Agreement.

¹³ This was not seriously engaged with by the respondent.

[14] The respondent's raised shield is that he did not use this information because he did not know how to access it. This is challenging to understand. I say this because he was the applicants' most senior sales representative.¹⁴

[15] Ultimately, the respondent was then left with a single defence. He contended that he only worked with customers in the Western Cape and that the ambit of the restraint was too wide, unreasonable, and unenforceable. It is so that in matters of this nature, a court may partially enforce a restraint of trade agreement by narrowing the geographical scope of the restraint. Notably, the respondent has not made a case for such a partial enforcement.¹⁵

[16] The founding affidavit makes abundantly clear that the respondent had access to the applicants' confidential information. The respondent also conceded that his new employer and the applicants compete for the same business. The material before me also demonstrated that the respondent was interfering with and competing with the applicant's business.¹⁶

THE FOURTH AFFIDAVIT

[17] It is not what the respondent said in the fourth affidavit that is important. Rather, what he did not say is much more important. The respondent does not deny the 'theft' of R700,000.00 and does not deny his untruthful expense claim from the applicants under the camouflage of a client's entertainment. The respondent does not deal with his conduct at all. Instead, the respondent advances that his conduct is irrelevant and was raised by the applicants only because they are vexatious. The respondent's case is that the applicants' application is not to protect legitimate business interests but rather to get back at the respondent.¹⁷

¹⁴ The respondent even had sales representatives working under his control and supervision.

¹⁵ The respondent has not asked for a paring down of the geographical area of the restraint.

¹⁶ Again, this factual material was not engaged with by the respondent.

¹⁷ I suppose, this is the only avenue of escape left for the respondent.

CONCLUSION

[18] Self-evidently, the restraint covenant that the respondent signed clearly defined the geographical area that he agreed to. Also, in the restraint covenant, the respondent acknowledges that he received independent legal advice before signing the restraint covenant and that the terms thereof were negotiated between the parties.¹⁸

[19] The respondent agreed in writing that the terms of the restraint covenant were both fair and reasonable in all respects.¹⁹

[20] Thus, what we are left with is a debate about the permissibility of the infringement of the respondent's constitutional rights. The proper inquiry in this case is the ordinary one undertaken by our courts when determining whether a clause in a contract or its enforcement is consistent with public policy. The applicable principles are the following:

*'...On the one hand, public policy, as informed by the Constitution, requires in general that parties should comply with contractual obligations that have been freely and voluntarily undertaken. This consideration is expressed in the maxim pacta sunt servanda, which, as the Supreme Court of Appeal has repeatedly noted, gives effect to the central constitutional values of freedom and dignity. Self-autonomy, or the ability to regulate one's own affairs, even to one's own detriment, is the very essence of freedom and a vital part of dignity. The extent to which the contract was freely and voluntarily concluded is clearly a vital factor, as it will determine the weight that should be afforded to the values of freedom and dignity. The other consideration is that all persons have a right to seek judicial redress...'*²⁰.

¹⁸ Clause 17.1 and 17.2.

¹⁹ Clause 7.

²⁰ *Barkhuizen v Napier* 2007 (5) SA 323 (CC) at [57].

[21] In determining whether to enforce a contractual clause, the court must consider whether the clause was concluded between parties with equal bargaining power, whether the party in breach understood what they were agreeing to, and the reason why the party in breach has not complied with the clause. The onus is upon the party seeking to avoid the enforcement of the clause to demonstrate good reasons for failing to comply with it.²¹

[22] Self-evidently, the power to invalidate, or refuse to enforce, contractual terms should only be exercised in worthy cases. The degree of restraint to be exercised must be balanced against the backdrop of our constitutional rights and values. This principle of 'perceptive restraint' will not shield contracts that undermine the goals that our Constitution is designed to achieve.²²

[23] It cannot be said that in this case, the restraint imposed upon the respondent is so unreasonable that it goes further than to validly protect the applicants' interests. I say so because the restraint is only for another nine months, at most. The respondent continued to argue that his conduct was irrelevant. I disagree. The respondent obtained an employment opportunity from a competitor. He used this offer to elevate his position with the applicants. The applicants obliged, and the respondent then signed the restraint covenant. For the respondent to submit now that the restraint covenant is unenforceable is extremely difficult to understand. I say so because the respondent acknowledged receiving independent legal advice before signing the restraint. Thus, the extent to which the contract was freely and voluntarily concluded is clearly a vital factor for consideration because it determines the weight that should be afforded to the values of freedom and dignity.²³

²¹ *Barkhuizen v Napier* 2007 (5) SA 323 (CC) at [58].

²² *Beadica* 231 CC and *Others v Trustees for the time being of the Oregon Trust and Others* 2020 (5) SA 247 (CC) [89]-[90].

²³ *Barkhuizen v Napier* 2007 (5) SA 323 (CC) at [57].

[24] Self-evidently, the restraint covenant was freely and voluntarily signed because the respondent sought to elevate (and did) his position and benefits with the applicants. The respondent then engaged in misconduct toward the applicants. The applicants scheduled a disciplinary hearing for this alleged conduct. The respondent resigned and took up employment with one of the applicant's main competitors. The respondent then advanced a claim of a violation of his constitutional rights, which is untenable and unsustainable.²⁴

[25] Finally, I did consider an order for attorney and client costs against the respondent. This is because of his conduct and because the restraint covenant provided for such a costs order. In view of the respondent's personal circumstances as set out in the papers, no such punitive costs order was granted.²⁵

[26] These are then the reasons for the orders granted.

WILLE, J
(Cape Town)

²⁴ This case does not engage a violation of the respondent's constitutional rights.

²⁵ The respondent has five dependents to support.