



- (1) Reportable: No
(2) Of interest to other Judges: Yes
(3) Revised

Signature

Date

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Case No: 2026-008002

In the matter between:

TFZ PROJECTS (PTY) LTD

Applicant

and

FREDDERIK G.J. KALSEN

First Respondent

ESI SOLUTIONS (PTY) LTD

Second Respondent

Heard: 11 March 2026

Delivered: 18 March 2026

Restraint of Trade - Labour Broking - Protectable Proprietary Interest - Confidential Information - Trade Connections – Reasonableness - Final Interdict – Nature of business unrelated to employee's trade – Unreasonable and unenforceable - Application dismissed.

JUDGMENT

MAKHURA, J

Introduction

- [1] This urgent opposed application concerns an alleged breach by the first respondent of the restraint of trade and confidentiality undertakings contained in a fixed-term employment contract concluded on 6 May 2025. The applicant seeks final declaratory and interdictory relief to enforce those undertakings and to restrain the first respondent from further contraventions until 28 November 2026.
- [2] The principal issue is whether the applicant, as it describes itself, is indeed a labour broker (or temporary employment services provider) and therefore a competitor of the second respondent and if so, to what extent, a labour broker possesses a protectable proprietary interest in circumstances where its former employee, the first respondent in these proceedings, was placed at a client's site and solely performs work that is integral to the client's operations rather than to the labour broker's core business.
- [3] In this matter, the applicant employed the first respondent as an electrician and immediately deployed him to its client, AfriSam, at Dudfield mine to render electrical and related services. The question is whether the applicant can legitimately assert proprietary protection over the knowledge and relationships acquired by the first respondent within the client's operational environment.

Material facts

Employment contract and restraint undertakings

- [4] The first respondent entered into a written fixed-term contract of employment with the applicant on 6 May 2025. He had commenced employment on 22 April 2025 and was deployed as an electrician to AfriSam's Dudfield mine. The duration of his employment was tethered to the continuation or cancellation of the applicant's *service contract* with AfriSam.
- [5] His duties included the installation, inspection, maintenance and repair of electrical systems and equipment, addressing electrical faults and breakdowns to ensure operational continuity, and ensuring adherence to applicable mine safety

standards and client requirements. In addition, he performed certain millwright-related functions such as mechanical fault-finding and maintenance of compressors, pumps and related mining equipment. Through these duties, the first respondent engaged regularly with site supervisors and AfriSam representatives and became familiar with the mine's operational environment and service expectations.

- [6] The fixed-term contract incorporates restraint and confidentiality undertakings, including a 12-month post-employment restraint against participation in, or association with, any business providing goods or services similar to those of the applicant. The contract recorded that the restraints are reasonable as to subject matter, geographic scope¹ and duration, and that they are necessary to preserve the applicant's goodwill and other business interests.
- [7] The confidentiality clause stipulated that the first respondent would become privy to the applicant's and/or its clients' confidential information and trade secrets, including customer relationships, contractual arrangements, financial details, pricing structures, prospective customers, the applicant's financial structure, employee remuneration, and other information not publicly available in the ordinary course of business. It further prohibited the post-employment use or disclosure of such information, required the return of all documents containing confidential material, and barred the solicitation of the applicant's or its clients' employees for the benefit of a competing business.

The nature of business and competition

- [8] The applicant, a private company established in 2022, describes itself in the founding affidavit as a temporary employment services (TES) provider or labour broking and integrated services provider to the mining and related industrial sectors. It allegedly supplies skilled personnel to client sites as operational needs arise and, where applicable, products, equipment and operational solutions directly or through affiliates to the mining and industrial sectors. It asserts that it

¹ The restraint clause does not however set out the geographical area where it would be enforceable.

is not merely a labour broker placing employees at client sites, but a *turn-key* service provider that retains operational oversight over employees deployed to client operations.

- [9] The applicant alleges that the second respondent is its “*direct competitor*” providing “*labour-broking services*” in terms of which both companies place highly skilled personnel at mines and other industrial and mining operations. It is not in dispute that the second respondent is a labour broker. The applicant contends that the competition between them is direct and immediate, particularly because both operate at the same AfriSam site, supplying employees who perform identical functions under the same operational requirements and client supervision.
- [10] It alleges that the first respondent breached the restraint undertakings by taking up employment with the second respondent and performing the same duties at the same site, thereby applying expertise, knowledge and operational exposure he gained during his employment with the applicant to the benefit of the direct competitor. The applicant alleges that it invested significant time, effort and resources in the first respondent’s development, including obtaining the necessary qualifications, operational exposure and certifications such as licensing relevant to crane operation, overhead cranes and cherry pickers.
- [11] It is common cause that the first respondent resigned with immediate effect from the applicant’s employment on 28 November 2025 and subsequently took up employment with the second respondent, which deployed him at AfriSam’s Dudfield mine, performing the same or similar functions as he performed when he was employed by the applicant. The applicant maintains that this poses a substantial risk that its confidential and proprietary information, which includes client requirements and operational methodologies, may be disclosed or utilised to its detriment, given the first respondent’s continued proximity to the applicant’s personnel and to AfriSam’s representatives.

The parties' respective case

The applicant's case

- [12] The applicant's case is that the risk of disclosure of its confidential information and trade connections is inherent and unavoidable where a former employee, armed with knowledge and relationships acquired through its deployment, is immediately absorbed into a direct competitor's operations at the same site. It argues that this creates an environment in which the second respondent may unfairly benefit from the applicant's operational practices, client interfaces and established working relationships, resulting in ongoing commercial prejudice that is difficult to measure or prevent.
- [13] The applicant contends that it seeks to protect its confidential information and specifically to prevent the first and second respondents from using that information to unlawfully gain a competitive advantage. It avers that, to perform effectively at each site, it develops (i) site-specific service methods, (ii) scopes of work, (iii) reporting lines, (iv) safety procedures and (v) deployment practices aligned to the client's operational and compliance requirements, which are developed and refined through experience and not generally available to outsiders. It says it invests substantially in recruiting, placing and training employees to operate within highly regulated mining environments.
- [14] Therefore, through his deployment, the first respondent allegedly became familiar with site-specific scopes of work, practices, reporting requirements, safety and compliance procedures, and the applicant's manner of interfacing with client supervisors and personnel at AfriSam. Notably, the applicant does not allege that the first respondent negotiated client contracts or determined pricing. Rather, it asserts that he acquired site-specific operational know-how and trade connections at the mine by virtue of his placement and that his immediate employment by a direct competitor (second respondent) at the same site creates an inevitable and unpoliceable risk of unfair competitive use of that knowledge and those relationships.

[15] The applicant submits that its trade connections exist:

‘... within a closed, site-based environment where multiple service providers operate alongside one another, and where relationships, reputation, responsiveness and familiarity with the client’s processes materially influence which provider’s personnel are utilised and retained.

In this environment, the Applicant’s deployed employees necessarily engage not only with client representatives, but also with personnel and representatives of other service providers operating at the mine, including the Second Respondent, whether in the coordination of work, access control, daily operations, breakdown response, shift planning, safety compliance or handover processes.’

[16] By virtue of his placement at AfriSam, the applicant argues, the first respondent:

‘developed direct working relationships and trade connections with the Applicant’s client representatives, site supervisors and operational personnel, as well as with representatives of alternative service providers operating at the mine, including the Second Respondent. These relationships and trade connections were developed solely as a consequence of the First Respondent’s employment with the Applicant and his placement at the mine and would not have existed but for such employment.’

[17] Therefore, his employment by the second respondent at the same site:

‘... arose directly from the trade connections and operational familiarity he acquired while in the employ of the Applicant. In the absence of those trade connections and site-specific exposure obtained through the Applicant, the First Respondent would not have been placed at, nor rendered services to, the same mining operation on behalf of the Second Respondent.

In the absence of the Applicant’s deployment of the First Respondent to Dudfield Mine, he would not have been embedded in the client’s operational environment, would not have developed the trade connections with the client’s key personnel, and would not have formed the site-based familiarity and relationships with the

Second Respondent's representatives now enabling his immediate absorption into the Second Respondent's operations at the same site.'

[18] It is for the above reason that the applicant alleges that it takes extensive measures to protect confidential information, pricing models, operational methodologies and client relationships, requiring employees to accept restraint and confidentiality undertakings to safeguard these interests in a highly competitive market. If site-specific practices and established client interfaces are exploited by a competitor via a former employee at the same site, the competitor, it is said, gains an unfair advantage, and the applicant suffers continuing commercial prejudice that is difficult to quantify.

[19] In conclusion, the applicant submits that:

'The risk is exacerbated because the First Respondent is performing the same functions at the same operation, which creates an unavoidable and unpoliceable risk that the Applicant's confidential operational practices and site relationships will be utilised in the course of service delivery for a direct competitor.

The trade connections referred to in this application are inherently relational and site-embedded, and cannot be separated from the individual who holds them once that individual is employed by a competitor at the same operation...

The infringement of the Applicant's trade connections arises not only from overt acts of solicitation, but from the ongoing and inevitable use of relationships, familiarity and trust developed at the operation, which provides the Second Respondent with an unfair competitive advantage at the same client site.'

The respondents' case

[20] The respondents contend that the applicant has failed to establish any legitimate proprietary interests capable of protection. They assert that the applicant has no trade secrets nor confidential information worthy of protection. In addition, the respondents argued that nothing confidential or unique occurs at AfriSam's Dudfield mine, where numerous electricians, fitters, turners and other tradesmen

supplied by various labour brokers, work side-by-side performing identical tasks. As a qualified electrician, the respondents argue, the first respondent performed his duties entirely under the instruction of AfriSam's personnel, who issued job cards for every task and strictly in accordance with AfriSam's policies and procedures, and not those of the applicant.

- [21] The respondents emphasise that the applicant's involvement was limited to deploying the first respondent to the site and processing his hours for the purpose of his remuneration. They contend that all of the site orientation and induction requirements were handled by AfriSam's representatives and that approximately ten labour brokers operate at the Dudfield site, each deploying artisans who follow the same processes and perform the same work. They deny that the applicant provided any training or invested in the first respondent's development, noting that he was already a qualified electrician long before joining the applicant and that certain certifications, such as crane operation, were arranged and paid for by AfriSam's own service provider.
- [22] The second respondent has been operating at the site for more than twelve years as a labour broker. The respondents challenged the applicant's assertion that it operates as a labour broker. They contend that the applicant is not a genuine labour broker but is effectively a one-person operation without systems, resources or a base of clients. The first respondent states that no other artisans were deployed by the applicant at AfriSam, and that van Niekerk, the applicant's sole director, appeared to use the company merely to contract him (first respondent) out for profit. The first respondent explains this as follows:

'I quickly learnt that Mr Van Niekerk and the applicant were not an established or serious labour brokerage which made sense given the manner in which Mr Van Niekerk dealt with me and his utter lack of professionalism. It was clear that I had just been deployed at the site for him and/or the applicant to profit off. There were also no other electricians or tradesmen that had been deployed at the AfriSam site by the applicant. I quickly realised that I was being taken advantage of and that there were a number of alternative and long standing labour

brokerages that already had long standing relationships with AfriSam and that were willing to employ me at a much higher hourly rate and afford me the basic respect that I deserved...

The reality of the situation is that neither Mr Van Niekerk nor the applicant run a serious labour brokerage. The applicant has not been around or established itself as a labour brokerage by any stretch of the imagination and it is clear from what I know and from what I have come to know since the institution of this application that Mr Van Niekerk uses the applicant to independently contract himself out to whatever employer it is that he is doing work for. In addition it appears that Mr Van Niekerk and his wife are running a printing and embroidery business as well as a sport's bar through the applicant...' (Own emphasis)

- [23] The respondents further discovered that the applicant does not publicly present itself as a labour broker and that van Niekerk's social-media presence, including a LinkedIn profile indicating he was "*open for work*", undermines the assertion that the applicant runs a genuine labour-broking business.
- [24] The respondents therefore submit that the applicant is not a competitor of the second respondent, which they describe as a long-standing and established labour-broking business having operated at the site for more than twelve years. They add that the applicant's alleged confidential information, trade secrets and site-specific methods do not exist. They label the applicant's claims—particularly the assertion that it developed site-specific service methods, work scopes, reporting lines, safety procedures and deployment practices as "*blatant lies*", reiterating that all such processes are designed, controlled and implemented solely by AfriSam and followed uniformly by all labour brokers operating at the site.

The applicant's reply

- [25] In reply, the applicant largely offers bare denials to many of the respondents' allegations and does not meaningfully rebut several key factual assertions. It failed to adequately rebut the specific assertions that (i) it is not an established or

serious labour brokerage; (ii) that it appointed the first respondent solely to contract him out; (iii) that it had no other artisans or tradesmen deployed at AfriSam or elsewhere; (iv) that all site-specific training, induction and orientation were provided exclusively by AfriSam; (v) that multiple labour brokers operate at the site each following AfriSam-prescribed processes and procedures; and (vi) that it invested nothing in the first respondent.

[26] Concerning the challenge to its status as a labour broker, the applicant simply reiterates that it conducts business as described in its founding affidavit, asserting that the first respondent's observations arising from online content and social-media profiles are speculative and inadmissible. It insists that such material cannot displace the sworn allegations in the founding papers and that the enforceability of the restraint does not turn on "*collateral commentary*" about unrelated entities or online profiles.

[27] Further, the applicant submits that:

'The First Respondent's reliance on alleged pre-existing relationships between the Second Respondent and representatives of AfriSam is misplaced and irrelevant.'

The First Respondent's introduction to the Dudfield Mine site, to AfriSam's representatives, and to the operational environment at the site occurred solely by virtue of his employment with and deployment by the Applicant. The Applicant's client relationship and site-specific access cannot lawfully be utilised as a springboard for the First Respondent's migration to a competitor.' (Own emphasis)

Analysis

[28] The legal principles governing the enforcement of restraint of trade undertakings are well established. An applicant seeking to enforce a restraint of trade undertaking must prove the existence of the undertaking and that its terms have been breached. Upon proof of the restraint undertaking and a breach thereof, the

evidentiary burden shifts to the respondent resisting the enforcement of the restraint undertaking to prove that the restraint undertaking is unreasonable and therefore unenforceable.²

- [29] The applicant seeks a final interdict. It must therefore satisfy the requirements for a final interdict - the existence of a clear right, an actual or reasonably apprehended infringement of that right, and the absence of an adequate alternative remedy.³ As it was held in *Reddy*⁴:

‘A final order can be granted in motion proceedings if the facts stated by the respondent together with the admitted facts in the applicant’s affidavits justify the order, and this applies irrespective of where the onus lies.’⁵

- [30] In *casu*, the existence of the restraint undertakings is common cause. It is also undisputed that the first respondent has taken up employment with the second respondent, whom the applicant alleges is its competitor. The respondents, however, deny that the applicant has any protectable proprietary interest and argue that the second respondent is not in competition with the applicant. On this basis, they contend that the restraint is unreasonable and should not be enforced.

- [31] Following *Basson v Chilwan and Others*⁶, the Supreme Court of Appeal (SCA) in *Reddy* reaffirmed four questions relevant to determining the reasonableness of a restraint as follows:

‘(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

² *Magna Alloys and Research (SA) (Pty) Ltd v Ellis* 1984 (4) SA 874 (A); [1984] 2 All SA 583 (A); *Reddy v Siemens Telecommunications (Pty) Ltd (Reddy)* 2007 (2) SA 486 (SCA); (2007) 28 ILJ 317 (SCA) at paras 10 and 16; *Automotive Tooling Systems (Pty) Ltd v Wilkens and others* 2007 (2) SA 271 (SCA); (2007) 28 ILJ 145 (SCA) at para 8; *New Justfun Group (Pty) Ltd v Turner and Others (New Justfun)* [2014] ZALCJHB 177; (2018) 39 ILJ 2721 (LC) at paras 9 and 10; *Labournet (Pty) Ltd v Jankielsohn & another* (2017) 38 ILJ 1302 (LAC); [2017] 5 BLLR 466 (LAC) at paras 41 – 43.

³ *Setlogelo v Setlogelo* 1914 AD 221 at p227.

⁴ *Reddy* (fn 2).

⁵ *Reddy* at para 4.

⁶ [1984] ZASCA 51; 1993 (3) SA 742 (A) at 541C and D - I.

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?’⁷

[32] In *Automotive Tooling Systems (Pty) Ltd v Wilkens and others*⁸, the SCA held that:

‘At issue in this case, therefore, is whether the appellant does have a proprietary interest worthy of protection. An agreement in restraint of trade is enforceable unless it is unreasonable. It is generally accepted that a restraint will be considered to be unreasonable, and thus contrary to public policy, and therefore unenforceable, if it does not protect some legally recognisable interest of the employer but merely seeks to exclude or eliminate competition.’

[33] The central issue, accordingly, is whether the applicant has demonstrated a proprietary interest in the form of confidential information (trade secrets) and/or trade connections (customer relationships) sufficient to justify the enforcement of the restraint and confidentiality undertakings against the first respondent. If a protectable interest exists, the Court must determine whether the restraint is reasonable in duration, geography and scope, and whether its enforcement accords with public policy.

[34] The first respondent’s employment with the second respondent is not disputed. The applicant maintains that the second respondent operates as its competitor. The respondents challenged this, contending that the applicant does not operate a genuine labour-broking business and therefore has no protectable interests. As I observed above, the applicant has not meaningfully addressed or rebutted the respondents’ challenge to the nature of its business, nor produced documentary proof of its alleged labour-broking operations. The respondents’ evidence indicates that the applicant has no other employees placed at AfriSam or elsewhere, that its sole director is personally seeking employment, and that

⁷ Reddy at para 16.

⁸ 2007 (2) SA 271 (SCA); (2007) 28 ILJ 145 (SCA) at para 8.

nothing in the public domain reflects that the applicant is an established labour broker. The only explanation offered by the applicant in reply is that the Court must believe what he says in the affidavit. The applicant has not provided any record to suggest that it is indeed in the labour broking business. Applying the *Plascon-Evans* principle⁹, the respondents' version must be preferred as more probable, and I find that the applicant is not a labour broker.

[35] Even if the applicant is regarded as a labour broker, it describes itself as more than a simple provider of personnel. It claims to be a turnkey service provider offering broader operational solutions. The first respondent, however, was not employed to perform any of the functions associated with such a business model. He was engaged solely to render electrical maintenance services at AfriSam's mine. The applicant has not alleged that it conducts the business of electrical maintenance, nor that such a function forms part of its operational structure. The provision of electrical services is not the applicant's business, and the applicant cannot assert proprietary interests in an industry in which it does not operate. Deploying an electrician to a client site does not convert the applicant's business into one that offers electrical services.

[36] On the applicant's own version, the first respondent was employed only for the purpose of being placed at AfriSam to perform technical work under AfriSam's direction. He was not engaged to build the applicant's customer base or to recruit candidates, nor to develop systems, pricing models, or operational methods for the applicant. In these circumstances, a restraint that seeks to prevent an electrician from practising his trade, where the applicant does not itself render such services, cannot be reasonable or enforceable. A labour broker cannot claim trade secrets or trade connections in a field in which it is not substantively involved. This marks the end of the inquiry, and the application stands to be dismissed.

⁹ *Plascon-Evans Paints v Van Riebeck Paints (Pty) Ltd* [1984] ZASCA 51; 1984 (3) SA 620 (A) at 634E – 635D.

- [37] In its founding affidavit, the applicant characterises its confidential information as comprising site-specific service methods, scopes of work, reporting lines, safety procedures and deployment practices aligned to AfriSam's operational and compliance requirements. The confidentiality undertakings in the employment contract encompass a broad range of information, including customer relationships, contractual arrangements, financial details, prospective customer information, the applicant's financial structure, and employee remuneration. However, the first respondent's working environment was confined exclusively to AfriSam's Dudfield mine. His work was directed entirely by AfriSam through job cards, safety systems and operational procedures. Multiple labour brokers operated at the site, and artisans performed identical tasks under AfriSam's supervision. These facts undermine the applicant's assertion that it has unique or proprietary methods or information capable of protection.
- [38] The respondents have comprehensively rebutted the claim that the applicant developed any site-specific practices or operational processes. Indeed, it would be illogical for each labour broker to introduce its own distinct practices at a client-controlled site, where the client prescribes the uniform processes and procedures to be followed by all service providers. The evidence, therefore, shows that the first respondent's knowledge was inherently site-specific and derived from AfriSam's operations rather than from any system or process created by the applicant. The first respondent's familiarity with AfriSam's requirements, routines and supervisory staff cannot, in these circumstances, amount to the applicant's trade secrets or confidential information. In any event, multiple labour brokers would have had access to this so-called trade secrets and trade connections, undermining any alleged secretive nature of the information.
- [39] The applicant further contends that the relevant trade connections are relational and embedded in the site, and that once the first respondent moved to a competitor, these connections inevitably benefit the competitor. Notably, the applicant does not dispute that it had only one employee, namely, the first

respondent (maybe van Niekerk as well) and only one client, AfriSam. There is therefore no risk of employee solicitation. Moreover, any relationships formed at the site arose within AfriSam's operational environment and were shared among personnel from multiple labour brokers. These relationships were not exclusive to the applicant. The first respondent simply continued rendering services at the same site under a different labour broker that remunerates him better and offers him better terms and conditions of employment than the applicant. This is fair competition.

[40] Any claim to a protectable proprietary interest is further fundamentally undermined by the fact that the applicant neither owns nor controls the site. It lacks exclusive access to the operational environment and does not enjoy privileged knowledge of AfriSam's internal processes. Accordingly, even if such information existed, it would not constitute a trade secret or confidential proprietary knowledge belonging to the applicant

[41] Having considered the matter, I am not persuaded that the applicant has demonstrated a proprietary interest capable of protection through a restraint.

[42] Another significant obstacle for the applicant is that the restraint undertakings do not define a geographical area. The applicant has also failed to plead any factual basis from which a reasonable geographic scope could be determined. Although a court may, in appropriate circumstances, limit a restraint to a reasonable area, such an exercise must be grounded in evidence and cannot be undertaken in the abstract. In the absence of facts establishing an appropriate territorial limit, the Court cannot cure this deficiency.

[43] For the reasons set out above, the application stands to fail.

Costs

[44] Both parties sought costs on the attorney and own client scale in their papers. During argument, however, the applicant, perhaps realising its shortcomings in its case, shifted its position, submitting instead that each party should bear its

own costs. The respondents, represented by Mr Malherbe, persisted in seeking punitive costs as originally prayed for in their papers. Mr Malherbe argued that the applicant was repeatedly warned, on at least two occasions, that it lacked any protectable proprietary interest and that the enforcement of the restraint would be unreasonable. Despite these warnings, the applicant elected to proceed with the application. The respondents submit that this conduct justifies a punitive costs order.

[45] Further, Mr Malherbe submitted that the record reflects that the applicant made several unsubstantiated allegations in its founding affidavit. When those allegations were challenged, the applicant either ignored the challenges or effectively capitulated and conceded them. For example, the applicant claimed to have invested in the first respondent's development, a claim shown to be incorrect. When confronted with evidence undermining its status as a labour broker, the applicant dismissed the allegations as speculative without offering any substantive rebuttal. Furthermore, despite pleading reliance on trade secrets, the applicant was unable to identify any when pressed, and only at the hearing did its legal representative attempt to reposition the case as one concerning trade connections only.

[46] Considering these factors and given the parties' mutual request that costs be awarded on the higher scale against the unsuccessful party in their papers, a punitive costs order is warranted. The applicant's case is fundamentally flawed, both factually and legally, and is without merit and stands to be dismissed. Given the parties' respective requests for costs on a punitive scale against the unsuccessful party, and in light of the manner in which the applicant pursued the matter despite clear warnings and significant factual deficiencies, a costs order on the scale sought by both parties is warranted.

[47] In the premises, the following order is made:

Order

1. The application is dismissed with costs on an attorney and own client's scale.

M. Makhura

Judge of the Labour Court of South Africa

Appearances:

For the Applicant: Mr C. Higgs of Higgs Attorneys

Instructed by: Seton Smith & Associates

For the Respondents: Mr E.G. Malherbe

Instructed by: Machobane Kriel Inc.