(1) Reportable: No
(2) Of interest to other Judges: No

Signature 17 March 2026
Date

THE LABOUR COURT OF SOUTH AFRICA, CAPE TOWN

Case no: 2025-240756

In the matter between:

ACCU AIR (PTY) LTD **Applicant**

and

DYLAN DE WITT **First respondent**

LEON BRODRICK **Second Respondent**

CLIMATE CONTROL (PTY) LTD **Third Respondent**

WESTCOOLING (PTY) LTD **Fourth Respondent**

Heard: 17 March 2026

Delivered: 17 March 2026

Summary: An urgent application to enforce restraint of trade and confidentiality undertakings against two former employees, who have set up their own businesses in competition with the former employer post termination of employment. Applicant dragged its feet in approaching the Court, and substantial redress in due course is possible given the provision for liquidated damages agreed in the contract of employment.

JUDGMENT

GANDIDZE, J

Introduction

[1] The urgent application seeks to enforce against two former employees, De Witt and Brodrick, obligations agreed to in a contract of employment. The first obligation relates to an undertaking, post-termination of employment, not to compete with the applicant for a period of 12 months, calculated from 29 July 2025, in the Western Cape. De Witt and Brodrick both resigned from the applicant's employment and have since registered Climate Control (Pty) Ltd and Westcooling (Pty) Ltd, the third and fourth respondents, respectively, as competitors of the applicant.

[2] The second contractual obligation sought to be enforced is that De Witt and Brodrick do not utilise the applicant's confidential information.

[3] Reference was also made to a conflict-of-interest obligation, but it applies only while De Witt and Brodrick are employed by the applicant.

[4] When the matter was heard, no opposing papers had been filed.

[5] At the hearing of the application, Mr. Haupt of NGH Attorneys represented the applicants after filing a notice of substitution as attorneys of record. The application papers and the heads of argument were drafted by the AHI Employer's Organisation.

Background information

[6] The applicant, which has been in business since 2012, manufactures, supplies, and installs air conditioning and ventilation products, and also provides related services. It has a national presence, with seven full-time employees in the Western Cape, but utilises subcontractors in other provinces as needed.

[7] De Witt began employment with the applicant on 12 February 2025 and resigned without notice on 29 July 2025.

[8] Brodrick commenced employment with the applicant on 25 March 2025 and resigned on 29 July 2025 without providing notice.

[9] The applicant alleges that, during their employment, both De Witt and Brodrick were directly assigned to work on the premises of a client, Associated Fruit Processors Pty Ltd (AFP), located in Grabouw. Their responsibilities included diagnosing the client's needs, designing solutions, and preparing formal proposals and quotations. As technicians, they conducted routine maintenance on cooling and refrigeration systems and provided advice on equipment requirements, system upgrades, and process optimisation. Therefore, the applicant contends that they possessed detailed knowledge of AFP's projects.

[10] Another employee, Monique Botha (Botha), is also said to have resigned at the same time as De Witt and Brodrick, although her whereabouts were unknown. She was based at the applicant's office, and her role involved receiving technical information from De Witt and Brodrick, preparing the costings, and drafting formal quotations for clients.

[11] The applicant's founding affidavit states that the deponent, Mr. Luqman Khan (Khan), the sole director of the applicant, learned that De Witt and Brodrick organised a gathering attended by other employees, during which De Witt and Brodrick celebrated having taken over AFP as a client. The applicant states that it generated approximately R500 000 in revenue from AFP's business, and that, when contacted about the matter, AFP neither confirmed nor denied the reports but instead provided evasive answers. Khan states that the work quoted for AFP did not proceed, suggesting it was given to another service provider. The likely service providers are the third and fourth respondents, who were registered in July 2025 and October 2025, respectively.

<u>Applicant's case on the merits</u>

[12] The applicant asserts that both de Witt and Brodrick signed the employment contracts, which include restraint-of-trade and confidentiality provisions.

[13] The protectable interests are confidential information and trade secrets, such as knowledge of business opportunities, information shared in confidence, and technical or operational know-how developed through skill and kept confidential. These provide a competitor with a commercial advantage and encompass what is technically available in the public domain.

[14] The applicant states that it also aims to protect customer and supplier relationships that De Witt and Brodrick built through regular contact with the applicant's clients; otherwise, these clients might follow De Witt and Brodrick to a competing business. The submission is further that both De Witt and Brodrick were given access to AFP, a client with whom it had taken a long time to establish a relationship. The applicant had to undergo an extensive vetting process to secure AFP's business, and De Witt and Brodrick were introduced to AFP through their employment with the applicant. They were granted access to the client's needs, specifications, and technical information necessary for preparing quotations and proposals, and they possess knowledge of ongoing and upcoming projects, including submitted costings and quotations. The submission asserts that De Witt and Brodrick used their brief period of employment with the applicant to acquire knowledge of its business operations — including its client base, supplier relationships, operational methodology, pricing structures, and commercial strategy — for purposes entirely inconsistent with their contractual and fiduciary obligations.

[15] It was also the applicant's case that the contractual undertakings were enforceable unless they were shown to be unreasonable and contrary to public policy. This is because only competition is prohibited, limited to the Western Cape, and De Witt and Brodrick can operate their businesses elsewhere in the Republic. The submission was also that the applicant aims to protect its customers.

[16] A twelve-month duration was deemed reasonable, as it is modest and comparable to restraint periods routinely enforced by the Court.

[17] Further context was provided regarding De Witt and Brodrick's careers. De Witt is only 24 years old, and it is alleged that his limited experience was gained while working for the applicant. Initially, he was employed to drive technicians to clients and was later utilised to liaise with clients because of his professionalism and communication skills. As for Brodrick, he is said to have built his career primarily in the Northern Cape before relocating to the Western Cape, where he worked for the applicant until his resignation in July 2025.

[18] As it sought a final interdict, the applicant also addressed the requirements for final relief. It submitted that it had a clear right to the relief sought, given the contractual undertakings, and that the competition it was being subjected to was unlawful. An injury had been committed against it, as it suffered commercial harm from the cancellation of substantial purchase orders and the exploitation of its information. It had no suitable alternative remedy because damages would be extremely difficult to prove due to the numerous variables involved—including lost business opportunities, erosion of goodwill, and the misuse of confidential information. It was also submitted that the monetary quantum can be determined in due course, but the restraint is sought to be enforced to prevent further harm.

Discussion

Are the Respondents aware of the proceedings of 17 March 2026?

[19] The application, dated 8 December 2025, was filed with the Court on 9 December 2025. The notice of motion states as follows:

> 'KINDLY TAKE NOTICE that in terms of Rule 39 application will be made on behalf of the abovenamed Applicant to the above Honourable Court on a date and time to be determined by the Registrar of the above court, for an order in the following terms:…'

[20] The affidavit of service states that on 9 December 2025, the Applicant's Notices of Application, along with the founding affidavit, were served on the respondents.

[21] Rule 38(3) of the Labour Court Rules[1] requires a party submitting an urgent application to sign it. The Rule then continues as follows:

> '(4) The registrar must fix a date, time and place for the hearing of the application, having regard to the degree of urgency for which the applicant contends.
>
> (5) Except in the case of an *ex parte* application, as soon as the registrar has allocated a date, time and place for the hearing, the party bringing the application must serve a copy of the application, together with the information obtained from the registrar, on the respondent.
>
> (6) Except in the case of an *ex parte* application, the party bringing the application must satisfy the court when the application is heard that a copy of the application has been served on the respondent or that sufficient and adequate notice of the content of the application was brought to that party's attention by other means.

[22] Rule 39 dealing with restraint of trade applications also provide as follows:

> '(4) At the time of launching the application, the applicant must apply to the registrar to allocate a provisional date for the hearing of the application, such date having been calculated so as to take into account the mandatory time periods prescribed above and the filing of heads of argument as contemplated below. The applicant must also insert a date, not less than 7 calendar days after launching the application, on which the application will be heard if it is unopposed.'

[23] When the file was presented to the Court ahead of the hearing, neither Rule 38 nor Rule 39 was complied with, as an application with no set-down date was served on the respondents. That would have been a basis to strike the matter from the roll.

[24] At the hearing of the matter, Mr Haupt informed the Court that a Notice of Motion with a set-down date was served on the respondents on 16 February 2026. That notice of Motion was uploaded to Caselines after the Court stood the matter down for that purpose, among other reasons. The matter could

[1] Rules Regulating the Conduct of the Proceedings of the Labour Court, GN 4775, G.50608 of 3 May 2024.

also have been struck from the roll on the grounds that not all the relevant papers were placed before the Court timeously.

[25] Be that as it may, the application will, in any event, be struck from the roll for lack of urgency, an issue I turn to next.

Urgency

[26] Since the application was made on an urgent basis, the applicant must comply with Rule 38 of the Labour Court Rules. Rule 38(2) specifically requires the affidavit in the urgent application to state the reasons for urgency and why urgent relief is necessary. It is well established that Rule 38 is not to be invoked lightly. An applicant requesting the Court's assistance on an urgent basis must demonstrate why the matter is urgent and that they cannot obtain substantial redress through normal procedures.

[27] The above-stated principles were succinctly set out in *East Rock Trading 7 (Pty) Ltd v Eagle Valley Granite (Pty) Ltd*[2]**,** where the Court stated the following**:**

> [6] The import thereof is that the procedure set out in rule 6(12) is not there for taking. An applicant has to set forth explicitly the circumstances which he avers render the matter urgent. More importantly, the Applicant must state the reasons why he claims that he cannot be afforded substantial redress at a hearing in due course. The question of whether a matter is sufficiently urgent to be enrolled and heard as an urgent application is underpinned by the issue of absence of substantial redress in an application in due course. The rules allow the court to come to the assistance of a litigant because if the latter were to wait for the normal course laid down by the rules it will not obtain substantial redress.
>
> [7] ….

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[2] 2011 JDR 1832 (GSJ).

> [8] In my view the delay in instituting proceedings is not, on its own a ground, for refusing to regard the matter as urgent. A court is obliged to consider the circumstances of the case and the explanation given. The important issue is whether, despite the delay, the applicant can or cannot be afforded substantial redress at a hearing in due course. A delay might be an indication that the matter is not as urgent as the applicant would want the Court to believe. On the other hand a delay may have been caused by the fact that the Applicant was attempting to settle the matter or collect more facts with regard thereto.
>
> '[9] It means that if there is some delay in instituting the proceedings an Applicant has to explain the reasons for the delay and why despite the delay he claims that he cannot be afforded substantial redress at a hearing in due course. I must also mention that the fact the Applicant wants to have the matter resolved urgently does not render the matter urgent. The correct and the crucial test is whether, if the matter were to follow its normal course as laid down by the rules, an Applicant will be afforded substantial redress. If he cannot be afforded substantial redress at a hearing in due course then the matter qualifies to be enrolled and heard as an urgent application. If however despite the anxiety of an Applicant he can be afforded a substantial redress in an application in due course the application does not qualify to be enrolled and heard as an urgent application.'

[28] The initial question is whether the applicant has outlined the reasons why the matter is urgent and why urgent relief is required.

[29] The founding affidavit states that restraint applications are inherently urgent because the prejudice an employer suffers cannot be remedied in due course. The applicant further states that the restraint period runs from 30 July 2025 to 29 July 2026, and that unless the matter is heard urgently, a significant part of the restraint period will have passed, rendering any relief largely academic and defeating the original purpose of the restraint.

[30] The answer to the above question is that, when the application was launched in December 2025, a significant part of the restraint period had already elapsed. Five months of the restraint period had already expired, and, as I will

demonstrate below, that period was not explained at all, other than through broad statements about what allegedly occurred after De Witt and Brodrick resigned from the applicant's employment, without mentioning any specific dates so that the Court is able to decide whether to exercise its jurisdiction to hear the matter as one of urgency.

[31] De Witt and Brodrick resigned from their employment with the applicant on 29 July 2025 without notice. The fact that these employees resigned without the necessary notice is, in itself, a warning sign that should have raised the applicant’s suspicions. The applicant states that it was not concerned about these departures because De Hewitt had very limited experience and Brodrick had most of his connections in the Northern Cape, rather than the Western Cape. Did the applicant forget that De Witt and Brodrick had worked from AFP’s premises?

[32] It is then alleged that the applicant received formal cancellations of two significant purchase orders from AFP. It remains unclear when and how the applicant was informed of these cancellations, as the relevant correspondence has not been attached to the application papers. The annexed documents are the two purchase orders placed in February 2025, with delivery scheduled for March 2025. This occurred well before both De Witt and Brodrick started employment with the applicant, and even before they resigned from the applicant’s employment, as conceded by Mr Haupt in oral argument. He, however, submitted that there were purchase orders which were cancelled, but these orders were not attached to the application papers. Therefore, it is unknown when the cancelled purchase orders were issued.

[33] Then it was stated that the smaller, routine jobs that had been quoted were no longer materialising, which was unusual. Still, no steps were taken to establish what was happening.

[34] The applicant claims that its concerns were confirmed when several employees informed it that they had attended a gathering organised by De Witt and Brodrick, where the two openly celebrated having taken AFP from the applicant. What the applicant's concerns were, and when they arose, are

not specified. It is unclear when the applicant was informed about the gathering, as this too is not stated.

[35] More concerning is why the applicant would not have acted on information provided by several of its employees, who attended the gathering called by De Witt and Brodrick and shared that they had just taken over AFP as a client.

[36] An expanded explanation for the delay, offered in the heads of argument, is that after De Witt and Brodrick left the applicant, reports began to emerge among the workforce suggesting they were soliciting and diverting the applicant's clients. Whether this refers to before the gathering mentioned in the founding affidavit or something entirely different remains unclear.

[37] The heads of argument also record that these reports were unsubstantiated workplace rumours and were therefore dismissed. It is difficult to understand how an employer can disregard reports from its own employees that former staff are soliciting and diverting clients.

[38] Thereafter, the applicant alleges that it followed up with the contact person at AFP, whose evasive and non-committal responses reinforced suspicions that De Witt and Brodrick had taken over AFP as a client. Once again, the Court is not informed of when contact was made with the AFP contact person, despite this being important information for explaining the delay.

[39] Be that as it may, the version proffered in the founding affidavit was that after contact with the AFP contact person did not yield the desired result, an investigation was conducted, and it was discovered that De Witt, Brodrick, and Botha had compiled the quotations for the smaller orders for AFP that had not materialised. This prompted searches of the CIPC database, which revealed that the third and fourth respondent corporate entities were registered in July and October 2025, respectively. Again, the Court is not told when the CIPC searches were conducted relative to the launch of the urgent application on 8 December 2025.

[40] It is also unknown when the applicant instructed its current representatives to file the application and whether this was done swiftly, given that a priority hearing date was being sought.

[41] On the facts, there is no escaping the conclusion that the explanation for the delay is very poor. The Court is left with no option but to conclude that the applicant sat idle for months and chose to initiate the current application five months into the restraint period, content that it will simply argue that restraint applications are inherently urgent. This is not the correct approach. If an applicant delays in approaching the Court, then the urgency is self-created, as happened in this case.

[42] Further evidence that the matter was never truly urgent is that, although the applicant submitted the application as urgent, it still expected the *dies non* to apply. This is why it states that the respondents had until 20 January 2026 to file opposing papers. *Dies non* cannot and should not be applied in urgent matters. In any event, it is for a respondent to raise the issue of *dies non*, not for an applicant who has approached the Court seeking a priority hearing date. A matter is never truly urgent if nothing has been done for more than a month to advance the urgent application. The applicant's belief that *dies non* was applicable proves that the matter was not genuinely urgent.

[43] As if that was not enough, on the applicant's version, the opposing affidavits were due on 20 January 2026. However, it was only on 16 February 2026, nearly a month after the *dies non* had expired, that a Notice of Motion with a set down date was served on the respondents. The reason for the delay in setting down for a hearing what was evidently an unopposed matter is not explained. This further indicates that the matter was never urgent.

[44] To conclude, the applicant failed to explain its delay in launching the application and subsequently failed to take the necessary steps to ensure the application was treated as an urgent one. Therefore, any urgency was self-created.

Substantial redress

[45] The other factor in assessing urgency is whether a party can secure substantial redress in due course. In *East Rock Trading*, the Court explained the requirement as follows:

> [7] It is important to note that the rules require absence of substantial redress. This is not equivalent to the irreparable harm that is required before the granting of an interim relief. It is something less. He may still obtain redress in an application in due course but it may not be substantial. Whether an applicant will not be able obtain substantial redress in an application in due course will be determined by the facts of each case. An applicant must make out his case in that regard.

[46] It will be remembered that the applicant's case was that it had no suitable alternative remedy but to approach the Court with an urgent application, as damages would be extremely difficult to prove due to the numerous variables involved—including lost business opportunities, erosion of goodwill, and misuse of confidential information. At the same time, it was also submitted that the monetary quantum can be determined in due course, but the restraint is sought to be enforced to prevent further harm.

[47] The initial submission concerning the challenge of establishing damages must pertain to the breach of the confidentiality clause, which states as follows:

> '24. **CONFIDENTIALITY**
>
> 24.1 The employee shall refrain from disclosing any confidential information to any third party or entity during the operation of this agreement or after its termination unless the employer specifically agrees thereto. Breach of this clause may lead to disciplinary action against the employee.
>
> 24.2 The employee is hereby restrained from and will not, without the Employer's written consent, and except in the normal course of his/ her duties, disclose, use or make available to any person, or use for personal gain any information disclosed by or acquired from the Employer, (and including, without limitation, all and any details and information about or relating to the client) which information is regarded by the Employer or can be reasonably regarded as

> confidential. The Employee indemnifies the Employer against all and any loss that may be sustained as a result of the employee's breach of this clause. This clause will endure into perpetuity and will survive termination of this agreement for whatever reason. This clause in no way supersedes or amends any of the secrecy undertaking in place, and in the event of conflict, the more restrictive provision will prevail.' (Own emphasis)

[48] However, regarding breach of the restraint of trade undertaking, the employment contract states the following:

> '26.3 Without prejudice to any other rights which the employer may have in law, the employee alleges that the agreed damages due to his/her employer will be an amount of R5 000-00 in respect of each calendar month during which any breach of the awful state restraint continues, and that the employer shall be entitled to recover such.'

[49] Therefore, in relation to any loss suffered by the applicant due to a breach of the restraint of trade undertakings, the applicant can claim from De Witt and Brodrick the agreed amount of R5 000 for each month they breached the restraint of trade undertakings. This is the substantial redress that the applicant can obtain in due course concerning the restraint undertakings, making it unnecessary for the Court to hear the matter as an urgent one.

[50] Returning to the alleged breach of the confidentiality provision, even though there is some merit to the applicant's contention that proving damages in due course will be a difficult task, I have already determined that the applicant delayed in approaching this Court for the relief it sought. It knew for months of a possible breach of the contractual undertaking but did nothing to protect its rights. If the matter is struck from the roll, it can bring an application in the ordinary course to enforce the confidentiality undertaking, or it can simply sue De Witt and Brodrick for any damages it claims to have suffered, and which it can prove.

[51] The above findings render it unnecessary to assess the merits of the application.

[52] In the result, the following order is made:

Order

1. The application is struck from the roll as the urgency was self-created.

T. Gandidze

Judge of the Labour Court of South Africa

Appearances:

For the Applicant:	Mr Haupt (Attorney)
Instructed by	NGH Attorneys
For the Respondents:	No appearance