Reportable:	NO
Circulate to Judges:	NO
Circulate to Magistrates:	NO
Circulate to Regional Magistrates:	NO

IN THE NORTH WEST HIGH COURT, MAHIKENG

CASE NO: 5063/2025

In the matter between:

DISPRO TECH SA (PTY) LTD	Applicant
AND	
SOOT SCIENCE (PTY) LTD	Respondent

DATE OF HEARING	:	**16 February 2026**
DATE OF JUDGMENT	:	**08 April 2026**
FOR THE APPLICANT	:	**Adv. Goosen**
FOR THE RESPONDENT	:	**Adv. Wessels**

JUDGMENT

<u>Delivered:</u> This judgment was handed down electronically by circulation to the parties' legal representatives *via* email. The date and time for hand-down is deemed to be 10h00 on 08 April 2026.

ORDER

Resultantly, the following order is made:

(i) The second and third respondents are interdicted and restrained from disclosing directly or indirectly to any person or entity, any confidential information they gained access to, by virtue of their appointment and employment with the applicant.

(ii) The first, second and third respondents (the "respondents") are interdicted and restrained from utilizing any information the second and third respondents gained access to, by virtue of the second and third respondents appointment by and employment with the applicant and which they then shared and disclosed to the first respondent, for their or its direct or indirect personal gain.

(iii) The respondents are ordered forthwith to:

(a) return all confidential information which the applicant provided to the second and third respondents during the course of their employment with the applicant and to delete and destroy all electronic copies thereof from the respondents' computers and/or electronic storage devices;

(b) return any other physical documentation of whatever nature pertaining to the applicant's client(s) and/or supplier(s) that the second and third respondents serviced and/or had contact with on behalf of the applicant (the applicant's client(s) and supplier(s)") during their terms of the employment with the applicant, from commencement thereof until the 27th of June 2025, and to delete or destroy all electronic copies thereof from the respondents' computers and or electronic storage devices.

(iv) The respondents are interdicted and restrained from unlawfully competing with the applicant for eighteen (18) months for date of this judgment.

(v) The respondents are ordered to pay the cost of this application on an attorney and client scale, jointly and severally, the one paying the other to be absolved.

JUDGMENT

Summary

‘Springboarding’ of a company to compete with the company whose resources, time, expenses were used – unfairness of the competition – restraint of trade and fiduciary duties owed by the employee in position of trust to erstwhile employer company.

HENDRICKS JP

[1] In this application, the applicant prays for an order in the following terms against the respondents:

> *“2. Interdicting and restraining the Second and Third Respondents from disclosing directly or indirectly to any person or entity, any confidential information they gained access to, by virtue of their appointment and employment with the Applicant.*
>
> *3. Interdicting and restraining the First, Second and Third Respondents (the "Respondents") from utilizing any information the Second and Third Respondents gained access to, by virtue of the Second and Third Respondents appointment by and employment with the Applicant and which they then shared and disclosed to the Third Respondent, for their or its direct or indirect personal gain.*

4. Ordering the Respondents to forthwith:

4.1 return all confidential information which the Applicant provided to the Second and Third Respondents during the course of their employment with the Applicant and to delete and destroy all electronic copies thereof from the Respondents' computers and/or electronic storage devices;

4.2 return any other physical documentation of whatever nature pertaining to the Applicant's client(s) and/or supplier(s) that the Second and Third Respondents serviced and/or had contact with on behalf of the Applicant (the Applicant's client(s) and supplier(s)") during the terms of the employment with the Applicant, from commencement thereof until the 27th of June 2025, and to delete or destroy all electronic thereof from the Respondents' computers and or electronic storage devices.

5. Interdicting and restraining the Respondents from unlawfully competing with the Applicant.

6. Ordering the Respondents to pay the cost of this application on an attorney and client scale, jointly and severally, the one paying the other to be absolved."

[2] The applicant, a private company duly registered, is doing business of emission gas testing which consists of the measurement and analysis of diesel particulate matter (DPM) produced by a diesel engine, especially in the mining industry. It was the first and only of its kind in the North West Province and also in South Africa. The methodology was invented and developed by the sole shareholder of the applicant, Mr. Deon Du Preez. In developing its business model, the applicant engaged with a German based company called Saxon, in order to acquire equipment.

[3] The second and third respondents, who were in the employ of the applicant and that time, signed an agreement with Saxon on behalf of the applicant. They were fully aware of the exclusive distribution rights acquired in terms of this agreement. As a result of their employment with the applicant, they became well-acquainted with the products and service offered by Saxon, as well as the employees at Saxon. They also underwent training at Saxon in Germany. This was at the expense of the applicant and to the exclusive benefit of the applicant.

[4] In order to optimize the use of the Saxon equipment, the applicant developed special software in conjunction with the information technology (IT) specialist, Kopasa. This was custom-made software that was developed for the applicant. The core intellectual property and value of the software lies in the applicants' propriety method of enabling communication with the Saxon equipment, which was an industry first. The unique value of the software is independent derived protocols that allows communication with the Saxon equipment which was achieved only after significant investment of resources and technical expertise. Although Saxon supply standardized software with the selling of equipment, its software is not the same as that developed by the applicant.

[5] The second and third respondents have left the employ of the applicant and are part of the first respondent and offers the same unique product and service as the applicant. This within days after they left their employment with the applicant. The applicant states that because of the access to information the second and third respondent had when employed by the applicant, they used it to 'springboard' the business of

the first respondent, without the first respondent investing any resources, time and also without incurring any expenses. It provides the first respondent as competitor an opportunity to compete with the applicant and to 'springboard' its business without the need to make the necessary investment in time and resources.

[6] The second respondent signed an employment contract with the applicant on 01 August 2020 and was employed as a Technician Supervisor/Technician. In terms of the contract, the second respondent undertook to refrain from disclosing any confidential information to any third party. He left the employ of the applicant on 27 July 2025. Whilst occupying this position, the second respondent had full, detailed access to all the applicants businesses, including its unique business model, the cliental base, employees and software specifically developed for the applicants' operational needs.

[7] On 01 January 2023 the applicant employed the third respondent as a senior engine and data analysis specialist. No written contract of employment was concluded between the applicant and the third respondent. Like the second respondent, the third respondent also had access to the applicants' unique business model, the applicants clients, employees and specifically developed software for operation of the Saxon equipment. The applicant alleged that both the second and third respondents had a fiduciary duty towards the applicant which stems from their employment with the applicant, to act in the interests of the applicant and not to act in any manner that would be prejudicial to the applicant.

[8] Furthermore, to not further their own or anybody else's interest at the expense of the applicant. This includes not to utilize the applicants' confidential information in competition and at the expense of the applicant. This, so the applicant content, were not only applicable whilst the second and third respondent were in the employ of the applicant, but also after they had left their employment with the applicant. The third respondent also resigned from his employment with the applicant on 27 June 2025. To reiterate, both the second and third respondents had intimate knowledge of the applicants' business and customer/client connections, which they build up over the period of their employment with the applicant.

[9] There were some turbulence experienced in the employment relationship between the third respondent and the applicants' sole director. On 03 March 2025, due to concerns around the possible abuse of the confidential information of the applicant, the third respondent was suspended. It was alleged that he was attempting to use the applicant as a 'springboard'. This was as a result of him *inter alia* asking Kopasa to make certain changes to the applicants' software, which fell outside the applicants' business model. An investigation was conducted and on his laptop was found a document which was saved on 15 October 2024. It appears that this document was a budget seemingly for a new company and it included purchase of Saxon equipment. This document was titled "Dispro 2 O Budget", which refers to the name of the applicant. Following on the investigations, meetings were held with the second and third respondents, who vehemently denied that they were planning to start a competitor company to the applicant. As a result of the assurance given, the third respondents' suspension was lifted.

[10] However, on 15 May 2025 the third respondent emailed to himself a copy of the applicants' unique software, although he was not authorized to access the software and had no reason to possess same. They both tendered their resignations on 02 June 2025 but remained in the employ of the applicant until 27 June 2025. Applicants' attorney sent a letter to them stating amongst others that they should not meddle in the contractual relationship which the applicant has with its clients and employees; and they were prohibited from making use of the applicants' confidential information and/or intellectual property including the software and programming.

[11] The first respondent was incorporated on 08 July 2025, some eleven (11) days after the second and third respondents left the employ of the applicant. On 28 August 2025 the applicant presented at Impala Platinum its 'Service and Supply Proposal'. The second and third respondents were also present, presenting an emission test demonstration.

[12] It was subsequently established that the second and third respondents contacted Valterra Platinum, one of the applicants' clients and delivered a proposal to them for emission gas testing. The proposal was that of the first respondent. A copy of the proposal was obtained. It was established that the first respondent employs the applicants' business model; methodology; equipment and software. It is evident that the first respondent has duplicated the applicant's business model and the second and third respondents are using the applicants' confidential information to 'springboard' the first respondent. Comparing the first respondents' proposal to Impala with that of the applicant, the similarities were

abundantly clear. It was virtually impossible for the respondents to develop their own independent software within a matter of weeks. This much is clear. It is quite obvious that the respondents are in possession of the applicants' software. The ineluctable deduction is that the first respondent came to be in possession of the applicants' unique software as a result of the third respondent who emailed same to himself on 15 May 2025.

[13] It is irrefutable from the first respondent's presentation that it is using Saxon equipment under circumstances where the applicant has the sole distribution rights of Saxon equipment in Africa. The second and third respondents are aware of this fact because they signed and entered into the agreement with Saxon on behalf of the applicant, and they were fully aware of the terms of the said agreement. The respondents purchased equipment from Saxon well-knowing that they are in breach of the agreement between Saxon and the applicant. They breach their confidentiality obligations and fiduciary duty[1] towards the applicant. The second and third respondents have also started to contact the applicants' clients. The applicants sought an undertaking from the respondents that they must desist in utilizing the confidential information obtained unlawfully from the applicant and refrain from approaching the applicants' clients. This was however to no avail. On the contrary, they stated in a letter that it is unlikely that they will take any fiduciary claims serious.

[14] Of crucial importance, the first respondent does not deny in the letter that the respondents are 'springboarding' the business of the first respondent,

[1] See: Meter Products Holdings Ltd v Venter and Another 1993 (1) SA 409 (W).

by using confidential information and the unique software of the applicant; are meddling with the client relationship of the applicant; and purchase Saxon equipment.

[15] 'Springboarding' entails not starting at the beginning at developing a technique, process, piece of equipment or product, but using as a starting point the fruits of someone else's labour. Although the springboard concept applies in regard to confidential information, the misuse of the fruits of someone else's labour may be regarded in a suitable case as unlawful even where the information copied is not confidential. This was the case in **Schultz v Butt**[2] where the boat hull designed by the plaintiff and copied by the defendant was found not to be confidential, because it was in public domain. But the copying of it, as a 'springboard', was regarded as unlawful[3].

[16] The applicant seeks an interdict against the second and third respondents not to 'springboard' the first respondent into unlawful competition against the applicant by using confidential information they gained from the applicant. It is undeniable that the second and third respondents had intimate knowledge of the operations of the applicant. They were in senior managerial positions. They entered into contracts for and on behalf of the applicant with amongst others Saxon, in Germany. Due to the positions they held in the applicant, they had intimate knowledge of the client base of the applicant. They approached Impala Platinum and Valterra Platinum who are clients of the applicant. The second and third respondents

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[2] 1986 (3) SA 667 (A)
[3] Waste Products Utilisation (Pty) Ltd v Wilkes and Another 2023 (2) SA 515 (WLD) par G-I.

created the first respondents' business in direct competition with the applicant, no more than eleven (11) days after they left their employment with the applicant. This is not simply a case of restraint of trade, it is more.

[17] The stance adopted by the second and third respondents that the first respondent is not in unlawful competition with the applicant is incorrect. This contention misses the very point of 'springboarding'. Whilst it may not be that the competition by a competitor company is *per se* unlawful, the 'springboarding' of the competitor at the expense of the applicant cannot be condoned. The usage of confidential material of the applicant to start-off a competitive opponent company is unlawful. Whilst the third respondent may use his skills and expertise that he gained or acquired even before his employment with the applicant, to the advantage of the first respondent, it is not as simple as that. This case concern the usage of confidential information, methodology, and client base unlawfully obtained to the advantage of the first respondent and to the detriment of the applicant.

[18] The submission by the second and third respondents that the first respondent uses its own software which they themselves developed is highly improbable, especially given the very short space of time of merely eleven (11) days. The evidence proves the contrary. The first respondent acquired Saxon equipment in direct conflict of the agreement reached between the applicant and Saxon which they themselves signed, giving the applicant the exclusive distribution rights of Saxon equipment in Africa. Furthermore, the Saxon equipment and accompanying software on its own is insufficient for the needs of the emission gas testing. This, the

second and third respondent knows very well. That is why the third respondent emailed the software to himself on 15 May 2025, shortly before he left the employ of the applicant. This coupled with the fact that they approached the applicant's clients Impala Platinum and Valterra Platinum[4] uncontravertedly proves that they ‘springboarded’ the first respondent with the confidential information and software which they obtained unlawfully from the applicant[5]. This amounts to unlawful competition and it justify the granting of an interdict[6]; a so-called ‘springboard’ interdict.

[19] I am fortified in my view that the second and third respondents could not have incorporated the first respondent within eleven (11) days after they have resigned from the applicant, as a competitor to the applicant, without using the confidential information of the applicant, in direct competition with the applicant. They even approach clients of the applicant in an attempt to poach them from the applicant. Furthermore, they even bought Saxon equipment well-knowing that only the applicant has sole distribution rights of Saxon equipment in Africa. The conduct of the respondents must be interdicted.

[20] Insofar as costs are concerned, it should follow the result and be awarded in favour of the successful litigant, the applicant. The applicant also prayed for a punitive costs order on an attorney-and-client scale. It is quite apparent that the conduct of the respondents are reprehensible. They

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[4] See: Van Castricum v Theunissen and Another 1993 (2) SA 726 (SCA).
[5] See: Pextmart CC and Others v H Mocke Construction (Pty) Ltd and Another 2019 (3) SA 117 (SCA).
[6] See: Technoserve Medium Voltage (Pty) Ltd vs Technical Reticulation Services (Pty) Ltd and Others [2025] ZAWCHC 165 (15 April 2025).

acted unlawfully. Furthermore, when they were asked to desist with their unlawful conduct, they stated that they are not taking any fiduciary duties serious, which is a total disregard for lawful conduct. This cannot be condoned. This Court will mark its disquiet by awarding costs on a punitive scale, which is justified. Having regard to the exceptional circumstances of this case, a costs order on the scale as between attorney-and-client is justified. There is no reason why the applicant should be out of pocket for the unlawful conduct of the respondents.

Order

[21] Resultantly, the following order is made:

(i) The second and third respondents are interdicted and restrained from disclosing directly or indirectly to any person or entity, any confidential information they gained access to, by virtue of their appointment and employment with the applicant.

(ii) The first, second and third respondents (the "respondents") are interdicted and restrained from utilizing any information the second and third respondents gained access to, by virtue of the second and third respondents appointment by and employment with the applicant and which they then shared and disclosed to the first respondent, for their or its direct or indirect personal gain.

(iii) The respondents are ordered forthwith to:

(a) return all confidential information which the applicant provided to the second and third respondents during the course of their employment with the applicant and to delete and destroy all electronic copies thereof from the respondents' computers and/or electronic storage devices;

(b) return any other physical documentation of whatever nature pertaining to the applicant's client(s) and/or supplier(s) that the second and third respondents serviced and/or had contact with on behalf of the applicant (the applicant's client(s) and supplier(s)") during their terms of the employment with the applicant, from commencement thereof until the 27th of June 2025, and to delete or destroy all electronic copies thereof from the respondents' computers and or electronic storage devices.

(vi) The respondents are interdicted and restrained from unlawfully competing with the applicant for eighteen (18) months for date of this judgment.

(vii) The respondents are ordered to pay the cost of this application on an attorney and client scale, jointly and severally, the one paying the other to be absolved.

[redacted]

R D HENDRICKS
JUDGE PRESIDENT OF THE HIGH COURT,
NORTH WEST DIVISION, MAHIKENG