IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)

JUDGMENT

Reportable / Not Reportable
Case number no: 2026-053366

In the matter between:

NU ANGLE AESTHETICS (PTY) LTD Applicant

and

LEE-ANN TAYLOR First Respondent

DERMAFRICA (PTY) LTD Second Respondent

Neutral citation	:	Nu Angle Aesthetics (Pty) Ltd v LA Taylor & another (Case no 2026-053366) [2026] ZAWCHC (15/04/2026)
Coram	:	Nziweni, J
Heard	:	20 March 2026
Delivered	:	15 April 2026
Summary	:	Interdict — Restraint of trade — Enforcement against

former employee. Direct competition must not be interpreted literally or restrictively - but inter alia, by whether products are displaceable in the same market. Reasonableness- where the respondent acknowledged the restraint was in exchange for remuneration and benefits, a plea of financial strain—without more—is insufficient to trump the principle of pacta sunt servanda.

ORDER

1. The first respondent is interdicted and restrained from being directly or indirectly concerned, engaged, interested in or employed by the second respondent (whether as employee, agent, consultant, director, shareholder, partner or otherwise) for 12 months upon the date upon which this order is granted;

2. The second respondent is interdicted and restrained from employing the first respondent or mandating her to act as agent or consultant of the second respondent for 12 months from the date upon which this order is granted;

3. The first respondent is interdicted and restrained from directly or indirectly being concerned, engaged, interested or employed in any business which directly competes with the applicant in the field of aesthetics within the Republic of South Africa for 12 months from the date upon which this order is granted;

4. The first respondent is interdicted and restrained from soliciting or attempting to induce any employee of the applicant to leave the applicant's employment or to take up employment or to take up employment with a different employer for 12 months from the date upon which this order is granted;

5. The first respondent is directed to delete and destroy all copies of any confidential information belonging to the applicant which information is in the possession of the first respondent or stored on any device in her possession;

6. The information to be deleted in accordance with this paragraph shall include any copies of the applicant's business plan, sales strategies, robot reports, marketing strategies or social media strategies;

7. The first respondent is directed to file an affidavit under oath, within 10 days of this order confirming that she has complied with paragraph 5 above;

8. The first respondent shall pay the costs on Scale C.

JUDGMENT DELIVERED ELECTRONICALLY

Nziweni, J

Introduction

[1] This dispute between the parties involves a restraint of trade agreement that was entered into between an ex-employer [the applicant] and an ex-employee ("the first respondent"). In this opposed application, the applicant seeks to enforce the restraint of trade agreement.

[2] On 05 March 2019, the first respondent was employed by the applicant ("Nu Angle Aesthetics Aesthetics") as a Sales Consultant for the Aesthetics Department for the Western Cape Region. In the founding affidavit, Nu Angle Aesthetics describes itself as an aesthetic medical supplies company. It asserts that its business involves supplying aesthetic medical products and equipment to doctors and clinics for use in aesthetic procedures.

[3] In December 2021, the first respondent was promoted to the position of Regional Manager for the Sales Territories of KwaZulu Natal, Western Cape, Eastern Cape and Mauritius.

[4] It is not disputed that on or about August 2025, the first respondent informed Nu Angle Aesthetics about an offer she received from Dermafrica. It is also not in dispute that Nu Angle Aesthetics refused to waive the restraint of trade agreement.

[5] It is also common cause between the parties that, on 28 August 2025, Nu Angle Aesthetics communicated to the first respondent that should she accept the Dermafrica's offer, it would have no choice but to enforce the restraint of trade agreement.

[6] It is further not in dispute that the first respondent, in response to Nu Angle Aesthetics' letter, the first respondent sent an email to Nu Angle Aesthetics confirming that she would not accept the Dermafrica offer and had decided to stay with Nu Angle Aesthetics.

[7] It is further undisputed in the answering affidavit that the first respondent tendered her resignation from Nu Angle Aesthetics on 30 December 2025, shortly after receiving her annual bonus.

[8] On 16 January 2026, Nu Angle Aesthetics enquired from the first respondent as to the name of the company that the first respondent would be joining.

[9] Again, on 19 January 2026, Nu Angle Aesthetics sent the first respondent an email amongst others, imploring her to provide the name of the company that she would be joining and the role she had accepted.

[10] In a reply dated 19 January 2026, the first respondent informed Nu Angle Aesthetics that she had accepted a position as a Medical Sales Representative but stated she was unable to disclose her new employer's identity at that stage. When Nu Angle Aesthetics requested reasons for this non-disclosure, the first respondent replied that she was not sure why she was not permitted to provide the company's name.

[11] On 25 February 2026, Nu Angle Aesthetics fortuitously discovered that the first respondent had been employed by Dermafrica.

[12] On 26 February 2026, Nu Angle Aesthetics received official confirmation that the first respondent was employed by Dermafrica. This confirmation then triggered the current litigation.

[13] It is not in dispute that the first respondent never revealed the name of her new employer.

[14] The fundamental reliefs sought in this application are that the first respondent be interdicted and restrained from, inter alia, doing the following:

(a) being directly or indirectly concerned, engaged, interested in or employed by the second respondent (whether as employee, agent, consultant, director shareholder, partner or otherwise) for twelve months from the date upon which this order is granted;

(b) from directly or indirectly concerned, engaged, interested or employed in any business which competes with the applicant in the field of aesthetics until for twelve months from the date upon which this order is granted.

(c) From soliciting or attempting to induce any employee of the applicant to leave the applicant's employment or take up employment with a different employer.

[15] Additionally, Nu Angle Aesthetics seeks an order interdicting Dermafrica from employing the first respondent, or otherwise engaging her as a consultant or agent, for a twelve-month period effective from the date the order is granted.

a. The issues

[16] I characterise the central issues involved in this case as follows:

(a) Whether Nu Angle Aesthetics Aesthetics and Dermafrica are in direct competition; and

(b) Whether the restraint of trade agreement is reasonable.

b. The agreement between the parties

[17] Much may depend on the terms on which the Nu Angle Aesthetics Aesthetics and the first respondent agreed upon. In the circumstances, I propose that before summarising the submissions made by the parties, reference should first be made to certain terms and provisions contained in the restraint of trade agreement between the parties.

[18] The following relevant and material clauses of the restraint of trade agreement are expressed in these following words:

1. "During the course of the Employee's employment with the Company, the Employee will:

1.1 acquire knowledge of technical information and know-how of the Company relating to its activities;

1.2 become acquainted with the needs of such customers and clients of the Company; and

1.3 become acquainted with the prospective customers and clients whose business the Company might be in the process of seeking; and

1.4 derive considerable benefit from the experience which she has obtained from the Company;

1.5 become acquainted with and exposed to the Company's sale strategies across all sale territories within the Republic of South Africa by virtue of regular sales meetings, congresses and training opportunities; and

1.6 will derive considerable knowledge and influence over the operation of the company's business and clientele and customers of the Company's business and clientele and customers of the company.

2. The employee accordingly hereby undertakes in return for renumeration and benefits she will receive arising out of this Agreement, in favour of the Company and its successors-in-title with effect from the termination date of her relationship as an Employee with the Company, that for a period referred to in paragraph 2.5 below and in the area referred to in 2.6, she shall not either as principal, agent, partner, representative, shareholder, consultant, advisor, financier, demonstrator, employer, or any other like capacity whether alone or jointly with or as agent for any other person:

2.1 be associated, engage, interested or concerned with any firm business, company, enterprise or other association of persons, in the business of which consists of any of the fields of activities referred to in 2.7 below;

2.2 in connection with any business, company, enterprise or other association of persons who or which carries on any business in the field of activity referred to in clause 2.7, for whatsoever reason directly or indirectly solicit the custom of or transact any business with or deal with any person, firm or body corporate or incorporate which was a client of the business carried on by the Company at any time during the twelve (12) months immediately preceding the termination date; and

2.3 after the termination date offer employment to or employ or cause employment to be offered to or cause to be employed by any person who is employed in connection with the business carried on by the Company at the termination date or at any time within the (12) months immediately preceding the termination date; and

2.4 ...

2.5 the period to which the restraint in 2 above relates shall apply for the duration of this Agreement and thereafter for twelve (12) months from the date of termination of the Employee's employment with the Company;

2.6 the area to which the restraint in clause 2 above applies are the sales territories in the Republic of South Africa, in which the Company conducts business as at the date of the termination of the employee's employment with the Company including but not limited to the Employee's specific sales region;

2.7 the fields of activity which the restraint in clause 2 above applies to in any business activity in direct competition t the Company in the field of Aesthetics;

2.8 . . .

2.9 . . .

2.10 the Employee agrees that:

2.10.1 the restraint set out above are reasonable as to the subject matter, are and duration and are absolutely necessary to protect the Company's proprietary interests:

2.10.2 They have been provided for in return for the renumeration and benefits to the Employee's employment with the Company; and

2.10.3 She enters into the restraints herein provided freely and voluntarily.

3. . . ."

c. Nu Angle Aesthetics [applicant's] further submissions

[19] According to the Nu Angle Aesthetics, the method of conducting business is typical in the industry. Nu Angle Aesthetics further asserts that Dermafrica conducts its business in the same way. Nu Angle Aesthetics further maintains that Dermafrica is also a supplier of aesthetics medical products. According to Nu Angle Aesthetics, Dermafrica supplies the same type of products as them. It is important, however, to recognise that Nu Agle Aesthetics admits that Dermafrica does not supply the same brands as them but supplies competing brands.

[20] To the extent Nu Angle Aesthetics further argues that prior to the first respondent becoming employed by the applicant, she did not have any experience in the aesthetic medical industry and the applicant trained the first respondent and taught her everything she knows about the industry. Nu Angle Aesthetics further contends that it trained the first respondent so that she can be an expert in the aesthetic medical products they offer. According to Nu Angle Aesthetics, the first respondent received ongoing and regular training in respect of Nu Angle Aesthetics' products and was required to master what she learnt so that she could train her sales team and the applicant's customers.

[21] The founding affidavit outlined the first respondent's duties as Sales Consultant as follows:

(a) Developing and maintaining relationships with the applicant's customers for the purposes of making sales;

(b) Making regular visits to Nu Angle Aesthetics customers' aesthetic medical practices;

(c) Manage, mentor and lead the sales team in the field;

(d) Was directly responsible for Nu Angle Aesthetics' relationships with customers referred to as Key Opinion Leaders, who have influence in the market and highest value client;

(e) Intimately involved in business and marketing strategy, as a result, she had access to confidential information in the form of Nu Angle Aesthetics' business plan, sales strategies, marketing strategies, and social media strategies;

(f) Required to attend Nu Angle Aesthetics' monthly management meeting, at which all matters pertaining to the strategic development of Nu Angle Aesthetics' business are discussed;

(g) She assisted the aesthetic medical practitioner to identify product gaps at their clinics and provided advice in relation to suitable product offerings the clinic could provide to patients to fill the gap; and

(h) Identifying high-potential team members and to provide them with mentorship for growth.

[22] Nu Angle Aesthetics asserts that on or about August 2025, the first respondent informed an employee of Nu Angle Aesthetics that she [the first respondent] had received an offer from Dermafrica. According to Nu Angle Aesthetics, when they realised that Dermafrica are their direct competitor they refused to waive the restraint of trade. Nu Angle Aesthetics communicated to the first respondent that if the first respondent were to accept the offer from Dermafrica, Nu Angle Aesthetics would have no choice but to enforce the restraint of trade agreement.

[23] Nu Angle Aesthetics contends that the first respondent deliberately concealed her new employer's identity to keep them in the dark. They argue this is evidenced by her false claims that she would be a Medical Sales Representative and that her new employer was not a competitor.

[24] Nu Angle Aesthetics further alleges that, beyond breaching the restraint of trade, the first respondent is actively seeking to induce its staff to take up employment at Dermafrica.

d. First respondent's submissions

[25] The first respondent maintains that the specific reasons for her resignation need not be canvassed, save to say that her financial situation left her with little choice but to terminate her employment with Nu Angle Aesthetics.

[26] The first respondent further contends that her reluctance to reveal her new employer was not prompted by a fear of breaching the restraint agreement, but rather

by a fear of the applicant's potential reaction, as evinced by the treatment of other colleagues who had resigned to join entities in the broader aesthetic industry. According to the first respondent, the applicant set out to ruin those who resigned, either financially or by destroying their careers through litigation. It is her contention that she had heard through the grapevine that the applicant intended to make an example of her; a rumour she claims justified her unwillingness to reveal her future employment.

[27] The first respondent further contends that Nu Angle Aesthetics is pursuing this litigation solely based on concerns about several resignations and as such, the senior management of Nu Angle Aesthetics wants to use the first respondent as an example.

[28] The first respondent asserts that it would have been unwise for her to sign a restraint of trade which would prevent her from being in aesthetic industry as this would have meant that she would forever be beholden to Nu Angle Aesthetics. she took comfort in signing the restraint given the words 'direct competition'.

[29] The first respondent vehemently submits that the phrase 'in direct competition with the Company in the field of Aesthetics', as found in clause 2.7 of the restraint agreement must be distinguished from the broader term 'in competition'. It was strongly asserted on her behalf that the facts of this matter are distinguishable from *Truworths Limited v Nxasana, Mr Price Group Limited and Another* (2025/176724) [2025] ZAWCHC 580 (10 December 2025), a matter previously decided by this Court.

[30] It is the first respondent's contention that there is a material difference in the threshold requirements between being 'in direct competition' as opposed to merely being 'in competition'.

[31] According to the first respondent, the founding affidavit fails to establish a direct rivalry between the two entities. So, the argument ran, at most, Nu Angle Aesthetics and Dermafrica are participants in a similar market; however, being competitors in a broad sense does not equate to the direct competition as contemplated by the restraint of trade agreement.

[32] Quite apart, however, from any technical distinction [between direct competition and competition], drawing on her firsthand experience with both entities, the first respondent asserts that they operate in distinct, non-competitive spheres. According to the first respondent, the fact that the two entities do not sell the same products supports her assertion that they are not direct competitors.

c. Did the first respondent have justification in her not revealing the identity of her prospective employer?

[33] This issue inevitably involves a degree of judgment. First and foremost, the first respondent as an employee who entered a restraint of trade agreement, she had a legal obligation to reveal her prospective employer. Conversely, Nu Angle Aesthetics [the employer] had a reciprocal contractual right to be informed. By that I mean, of course, that these duties arise from the implied obligation of good faith inherent in such agreements [restraint of trade agreement]. The first respondent asserts, however, that under the specific circumstances of her employment with Nu Angle Aesthetics, her non-disclosure was a justifiable measure to protect herself against the Nu Angle Aesthetics' alleged abuse of power. The reasons the first respondent puts forward are rather subjective.

[34] It is however significant to note that this version of events is not in line with the first respondent's earlier correspondence. When Nu Angle Aesthetics requested the details of her new employer through an email, she failed to provide the company's name, stating instead that she was not allowed to disclose that information.

[35] To elucidate the contents of the email exchange further, it is necessary to recite them.

[36] On 16 January 2026, the national manager of Nu Angle wrote the following to the first respondent:

> ". . . to ensure that all contractual obligations and business interests are appropriately protected, could you please confirm the name of the company you will be joining?

We assure you that this information will be treated confidentially."

[37] In response to the email, addressed to her, the first respondent wrote the following email on 19 January 2026:

> ". . . Thank you very much, I will be a Medical Sales Representative. As discussed with Jackie. I am unable to disclose the company, at this time, as soon as I am aloud (sic) to, I will let you know."

[38] On the same day, the director of Nu Angle respondent as follows to the first respondent's communique:

> ". . . **Why are you not allowed to tell us**?"

[39] In response to later letter from Nu Angle, the first respondent, stated the following:

> "**I'm not sure**. It was request that was given to me.
> Please note I am not selling ANYTHING that nuangle distributes.
> Please understand that this decision has not been an easy one from me. I am still Lee Ann, the same woman who has proudly called NuAngle home for the past nine years. This company has shaped me both personally and professionally, and I carry with me the values of loyalty, integrity, and my strong work ethic . . . I would never do anything that could jeopardise the relationships, trust or respect built over the years between myself and NuAngle."

[40] There are several significant difficulties with the first respondent's shifting explanations for her failure to disclose her new employer's identity. These inconsistent versions suggest a deliberate attempt to evade her contractual obligations.

[41] It is crucial to understand at the outset that in order to justify a breach of contract or a failure to disclose, a party must prove a reasonable apprehension of harm based on verifiable facts. Subjective fears fuelled by the grapevine are typically dismissed by the courts as speculative, especially when weighed against a clear, written contractual obligation of good faith.

[42] Nu Angle Aesthetics alleges that the failure on the part of the first respondent to disclose was an attempt to avoid the enforceability and the consequences of the restraint of trade agreement.

[43] From the afore going, it is clearly an abuse of power assertion must be supported by concrete evidence showing that the restraint is being used punitively rather than to protect a legitimate proprietary interest. Unfortunately, for the first respondent, rumours and gossip do not meet the evidentiary threshold of objective reasonableness. Obviously, it would be a slippery slope to base court decisions on office rumours and gossip. It would certainly create bad precedent.

[44] In the context of this matter, the first respondent's failure to disclose her prospective employer cannot be viewed as innocent. Particularly, as this omission persisted despite a formal request for such disclosure. Moreover, in terms of the Labour Relations Act, an employer is required to treat its employees fairly. An employer's failure to do so does not entitle an employee to remedy the situation by simply breaching the duty of good faith inherent in a restraint of trade agreement. An employee bound by such an agreement, who feels aggrieved by the unfair conduct of an employer, must instead seek recourse through the mechanisms provided by the Labour Relations Act.

[45] Consequently, this Court is not persuaded by the first respondent's assertion that the Nu Angle Aesthetics's litigation is not a bona fide attempt to address a breach of contract or protect a legitimate interest. Furthermore, there is no evidence to support the claim that the Nu Angle Aesthetics is primarily driven by a desire to intimidate current employees into remaining with the firm.

d. Is Dermafrica a direct competitor of Nu Angle Aesthetics?

[46] The first respondent argues that a lack of product synergy and a minimal overlap in specific brands proves that the entities operate in distinct market segments. On this basis, she contends it is inaccurate to label the businesses as direct rivals.

[47] As a manager rather than a junior employee, the first respondent, as correctly asserted by Nu Angle Aesthetics, acquired deep insight into the company's supplier relationships, key clients, and proprietary trade terms. Her strong association with the brand, coupled with this specific expertise, creates a risk that customers would naturally follow her to a new employer, thereby compromising the Nu Angle Aesthetics' protectable interests.

[48] Competition is a normal business risk. The law does not protect an employer's monopoly; it only protects their proprietary assets. However, the restraint of trade agreement serves to protect the company's most sensitive assets, eliminating the risk of them being handed directly to a rival.

[49] An employer's protectable interests extend to both intellectual property and goodwill. This includes the right to safeguard secret trading or manufacturing methods from exploitation and the right to ensure that former employees do not systematically divert the company's established clientele.

[50] The first respondent argues that the lack of product synergy serves as evidence that the entities operate in distinct market segments, thereby falling outside the scope of direct competition.

[51] Both Nu Angle Aesthetics and Dermafrica supply aesthetics medical products involved in the same kind of business. Nu Angle Aesthetics and Dermafriaca are indeed in direct competition despite not sharing the same product brands. Surely it is not too farfetched to imagine a scenario wherein a doctor or clinic struggling to obtain a specific brand from Nu Angle Aesthetics, they can satisfy the same clinical need by then sourcing a competing brand from Dermafrica to satisfy the same clinical need.

[52] As previously mentioned, that in paragraph 24 of the founding affidavit, the deponent to the founding affidavit concedes that the two entities do not supply the same brands.

[53] I cannot rid myself of the feeling that Nu Angle Aesthetics' admission regarding different brands is actually an acknowledgement that their products are functional

substitutes. In essence, they target the same customer needs and perform the same therapeutic functions, albeit through different brand names or formulation.

[54] The first respondent failed to meaningfully dispute this, offering only a general denial of the founding affidavit except where it aligned with her own answering affidavit. This type of blanket denial, absent any specific facts to the contrary, fails to create a genuine dispute of fact regarding the competitive nature of the two entities.

[55] The first respondent argues that the product ranges barely overlap, as such, it is inaccurate to label these two businesses as direct rivals. So, the argument continues, the similarities are too minor to support a claim of direct competition.

[56] The first respondent in her assertion, maintains that she did not sign a non-compete for the entire aesthetics industry. According to her, she only agreed not to work for a direct rival. The authorities are clear that the term direct competition is not to be interpreted literally and restrictively. If both Nu Angle Aesthetics and the second respondent [the new employer] provide aesthetic treatments (even if one is "luxury" and the other "standard"), it is not difficult to find them in direct competition because a client would choose one over the other for the same fundamental need.

[57] On this point, observations of direct competition in the matter of *Nxasana*, supra, this Court in the determination of direct competitor looked past the physical products to see if the business models or target customers are the same. Surely, as mentioned previously, if the products are different but the problem they solve for the customer is the same, it is not difficult for the court to still find them to be direct competitors.

[58] At the outset it should be pointed out that it is plain that the first respondent seeks to restrict the meaning of direct competitors, with the hope to prove that her new employer falls outside that circle, even if they are in the same general industry. The fist respondent's counsel forcefully argued the present case is readily distinguishable from *Nxasana's* case in two important ways. Firstly, he firmly argued that the facts of this matter are readily different for the *Nxasana's* case, as Nu Angle Aesthetics and Dermafrica are not targeting the same thing. Secondly, unlike in the *Nxasana's* case,

the CEO of Dermafrica deposed to a confirmatory affidavit wherein she specifically mentions that Dermafrica is not in direct competition with Nu Angle Aesthetics.

[59] As held, in the *Nxasana's* case, substance prevails over form. And as one would expect, in competition law, this principle ensures that the court looks at the economic reality of the market rather than the technical labels or branding used by the parties. It is undisputed that both Nu Angle Aesthetics and Dermafrica provide aesthetic services to the same client pool. The first respondent's failure to dispute this demonstrates that, in this context, the word 'direct' is a distinction without a difference.

[60] It is, I think, worthwhile pausing at this point in order to examine the *Nxasana* case. It seems to me that in *Nxasana*, this Court shed considerable light, when it stated the following: from paragraph 58-63:

> "[58] Truworths and Mr Price have maintained operations within the retail industry for a significant period. Both companies are well-established entities in the merchandising sector, demonstrating long-standing engagement in the business of selling goods directly to consumers. The argument presented by the first respondent is unsustainable. It depends on an unduly narrow interpretation of "competitors" that is completely unsupportable when considering the core business activities of both companies. Both operate in the same market, offering wearing apparel, household equipment, and accessories and competing for consumers.
>
> [59] I do not understand the averment made by the first respondent, when he says that the differentiation in target market, product offering and store design philosophy, means that the two companies are not direct competitors. Surely, this averment is incorrect. Differentiation strategies (target market, product, design) do not eliminate competition; they are simply different ways of competing within the same general market landscape. These are simply strategies to gain competitive edge.
>
> [60] Companies employ various strategies such as focusing on specific customer groups or creating unique products, as methods to compete within the same market and achieve a leading position. These approaches are not ways to avoid competition; rather, they are the very tactics used to actively fight against direct competitors. Surely, companies will always use different approaches, like targeting unique demographics or developing specialised products, to strive for dominance.

> [61] This makes sense, particularly given the fact that both companies are powerful, rapidly expanding retail companies that have enjoyed significant success, making them aggressive competitors. Although Truworths and Mr Price may target slightly different customer segments, this does not mean they are not competitors. In fact, for the majority of their products, they compete directly for the same customers.
>
> [62] Thus, it is not correct to contend in the context of Truworths and Mr Price, that differences in target demographics, design philosophy, and brand strategy mean that the two companies are not direct competitors in the strict sense.
>
> [63] Furthermore, the fact that one company may be larger or pricier than the other does not negate their competitive relationship. A consumer might be deciding whether to spend R1000 on a high-end item from a pricey retailer (Truworths) or buy several essential items for the same total price at a value retailer (Mr Price). However, both companies are competing for that consumer's discretionary income. Businesses compete for a customer's discretionary income regardless of their vastly different price points or market segments. As long as they are targeting the same pool of optional spending money, they are direct rivals."

[61] In paragraph 17 of the founding affidavit the Nu Angle Aesthetics as an aesthetic medical supplies company. Nu Angle Aesthetics further asserts that its business is in the supply of aesthetic medical products and equipment to doctors and clinics for use in aesthetic medical procedures. On the other hand, the founding affidavit describes Dermafrica as supplier of aesthetics medical products and that it supplies these products to doctors and clinics for use in aesthetic medical procedures described as an entity that conducts its business through sales representatives who maintain relationships with the applicant's customers. The founding affidavit then goes further to explain that though Dermafrica supplies the same or similar products produced by a different manufacturer (and marketed under a different brand) which products compete with the products of the applicant for market share.

[62] I venture to say that, in the context of the aesthetics industry, it is not far-fetched to say that Nu Angle Aesthetics and Dermafrica compete for the discretionary income of a shared consumer base. Because these treatments are typically elective and non-

essential, both companies are effectively vying for the same luxury spend within the same market sector, targeting the same practitioners, medical spas, and clinics.

[63] This bolsters the view that the two entities are in competition. Remarkably, Nu Angle Aesthetics identifies Dermafrica as a fellow supplier of similar products, a submission that the first respondent has not specifically denied. Consequently, both entities are prominent distributors operating within the same competitive space, rendering any distinction between them effectively meaningless.

[64] It is not difficult to infer from the facts that the competition [between the two entities] extends beyond services rendered to the specialised labour pool. As evidenced by the confirmatory affidavit of Antonette Snyman, that the first respondent has actively sought to recruit a former colleague to join her at Dermafrica. This solicitation demonstrates that the entities rely on the same specialised skills; it is a clear attempt to gain a market advantage by leveraging Nu Angle Aesthetics's human capital. It bears commenting upon that if the employees' skills are transferable and valuable to both companies, it confirms they operate in the same competitive space.

[65] In restraint of trade matters, courts often view competition not just as doing the exact same task, but as any business activity that directly or indirectly targets the same market or protects the same proprietary interests. By vying for the same discretionary spend and the same professional talent, these companies are inextricably linked as rivals. To hold otherwise, it would be inconsistent with what is stated in *Nxasana's* case, as it [*Nxasana* case] is a strikingly similar case to the present one. As such, it is not difficult to see how such a case could not be authority here.

[66] It seems hardly consistent to hold that there is no direct competition merely because the wording of the restraint of trade provision in *Nxasana* differs from the present matter. Mr Steenkamp argued that because the agreement in *Nxasana* used the phrase direct competitor; it was formulated in a broader term than the current provision, viz any competitor. However, even if the *Nxasana's* wording were wider, the legal principle it established [that you look at what is actually happening in the market, not just the labels] still applies. I thus, do not accept the argument proffered on first

respondent's behalf; and I am unconvinced that this matter can be successfully distinguished from *Nxasana*.

[67] On the facts of the instant case, however, I am in no doubt whatsoever that the submissions of Mr Bruinders, counsel for the Nu Angle Aesthetics are to be preferred.

[68] Accordingly, the narrow distinction the first respondent seeks to draw between competition and direct competition is a distinction without a difference. The difficulty with the first respondent's argument is twofold. First, it amounts to splitting of hairs, and as such it is legally artificial that fails to account for the commercial reality of the aesthetics industry.

[69] Having established that Nu Angle Aesthetics and Dermafrica are direct rivals in a specialised market, the first respondent's access to the Nu Angle Aesthetics' trade secrets makes her employment at Dermafrica an inherent risk. The law does not require the applicant to wait for actual prejudice to occur; the potential for the first respondent to exploit her knowledge of the applicant's business models and client connections to the benefit of a competitor is sufficient to justify the enforcement of the restraint. Both entities provide services and products that are similar, serve as viable alternatives to one another, or are capable of displacing each other in a common target market. It is to my mind legally impossible not to interweave these above-mentioned factors so as to see the complete picture of 'direct' competition.

[70] In the result this Court finds, on the basis of all the evidence, that the two entities are in direct competition with each other.

e. Restraint unreasonable

[71] I am not convinced that it can be successfully argued in this case that the restraint agreement is unreasonable. An important consideration which the court should have in mind when determining as to whether the restraint of trade agreement is reasonable is to look at the terms of the agreement.

[72] Interestingly, the first respondent asserts that the restraint is unreasonable. However, in terms of the agreement, she expressly agreed that the terms were reasonable regarding subject matter, geographical area, and duration, and were essential for the protection of the company's proprietary interests.

[73] First and foremost, the first respondent, having freely signed the restraint of trade agreement, she cannot now seek to renege on its terms. Her current attempt to distance herself from her own contractual undertakings, specifically her agreement not to compete or solicit, is belied by her recent actions. I bear very much in mind that the fact that she had already attempted to solicit a Nu Angle Aesthetics employee provides clear evidence of a breach in progress. For that matter, this conduct directly contradicts her assertion that her new role does not compete with the applicant's business and confirms that she is actively leveraging her insider knowledge to gain a market advantage for a rival.

[74] In an apparent last-ditch argument, the first respondent argues that her financial ruin far outweighs Nu Angle Aesthetics protectable interest. There is also a flipside point to the first respondent's financial ruin argument. Surely, it is commercially and legally unsound to suggest that Nu Angle Aesthetics' legitimate protectable interests are limited or far outweighed by the first respondent's claims of financial ruin. I do not say that this factor is necessarily determinative, but it is a relevant consideration.

[75] The irony is that the whole context necessarily includes the fact that the first respondent entered into this agreement with full knowledge of its implications. Consequently, the potential for irreparable harm to the applicant's proprietary interests, specifically through the exploitation of trade secrets and the solicitation of its workforce, is a concrete risk that justifies enforcement. It is, of course, the position that the law does not require an employer to sacrifice its established goodwill and confidential assets simply because an employee seeks to join a direct competitor in breach of their contractual undertakings.

[76] Unfortunately, it follows as a matter of logic that a party who commits a breach of a restraint agreement must bear the legal and commercial consequences of that breach. To that end, a court cannot countenance a breach of contract based on mere

sympathy for an employee. To do so would undermine the sanctity of contract and render legitimate restraint agreements unenforceable whenever a respondent claims personal hardship. If it were, otherwise, a party could effectively nullify any restraint of trade agreement simply by pleading financial inconvenience. And the protection afforded by such agreements would be illusory.

[77] Notably, the agreement records that the first respondent accepted these restrictions as a condition of and in return for the remuneration and benefits provided to her throughout her tenure. The first respondent cannot now seek to escape the contractual obligations she voluntarily undertook in exchange for those very benefits. Moreover, her plea of financial hardship does not override the principle of *pacta sunt servanda*, particularly where she has already received the 'price' for her agreement to be restrained.

[78] In conclusion, having regard to the expressed terms of the restraint of trade agreement, I am not persuaded that the restrictions manifest any unreasonableness. To the contrary, they appear to be a proportionate means of protecting the applicant's proprietary interests.

[79] Lastly, another potential significant issue is that of costs. I simply cannot see why the costs should not follow the results. Scale C is warranted for this matter.

[80] In the result, I make the following order:

80.1 The first respondent is interdicted and restrained from being directly or indirectly concerned, engaged, interested in or employed by the second respondent (whether as employee, agent, consultant, director, shareholder, partner or otherwise) for 12 months upon the date upon which this order is granted;

80.2 The second respondent is interdicted and restrained from employing the first respondent or mandating her to act as agent or consultant of the second respondent for 12 months from the date upon which this order is granted;

80.3 The first respondent is interdicted and restrained from directly or indirectly being concerned, engaged, interested or employed in any business which directly competes with the applicant in the field of aesthetics within the Republic of South Africa for 12 months from the date upon which this order is granted;

80.4 The first respondent is interdicted and restrained from soliciting or attempting to induce any employee of the applicant to leave the applicant's employment or to take up employment or to take up employment with a different employer for 12 months from the date upon which this order is granted;

80.5 The first respondent is directed to delete and destroy all copies of any confidential information belonging to the applicant which information is in the possession of the first respondent or stored on any device in her possession;

80.6 The information to be deleted in accordance with this paragraph shall include any copies of the applicant's business plan, sales strategies, robot reports, marketing strategies or social media strategies;

80.7 The first respondent is directed to file an affidavit under oath, within 10 days of this order confirming that she has complied with paragraph 80.5 above;

80.8 The first respondent shall pay the costs on Scale C.

[redacted]

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JUDGE OF THE HIGH COURT

Appearances:

Counsel for Applicant	:	Advocate V Bruinders
Instructed by	:	Telfer Incorporated J Weinberg
Counsel for First Respondent	:	Advocate Steenkamp
Instructed by	:	BDP Attorneys GD de Beer