

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

Case Number: 2025-250110

- (1) REPORTABLE: ~~YES~~ / NO
(2) OF INTEREST TO OTHER JUDGES: ~~YES~~ / NO
(3) REVISED: ~~YES~~ / NO

02/04/2026
DATE


SIGNATURE

In the matter between:

EVEREST CORRUGATED (PTY) LTD

First Applicant

EVEREST PAK (PTY) LTD

Second Applicant

and

DEON ZWANEOEL

First Respondent

PACK PERM (PTY) LTD

Second Respondent

NEW ERA PACKAGING (PTY) LTD

Third Respondent

JUDGMENT

MALINDI, J

Introduction

[1] The applicants (hereinafter referred to as (“Everest”), pray in the notice of motion for, *inter alia*, the following:

“1. The ordinary rules relating to forms, service and time periods are dispensed with, and this application is heard as an urgent application;

2. The applicants are granted final orders in the following terms; alternatively, a rule nisi is issued in the following terms which is to operate as an interim order pending a return date to be allocated by the Court:

2.1 The first respondent is interdicted and restrained, until 6 August 2026, and within the Republic of South Africa, whether acting both personally and through the second respondent, directly or indirectly, and whether for his own benefit or for the benefit of the third respondent or any third party competing with the applicants, from:

2.1.1 being employed by, engaged in, associated with, concerned with, or interested in any business, which competes with the business conducted by the applicants, including, without limitation, the third respondent, whether as employee, consultant, contractor, director, shareholder or otherwise; and

2.1.2 approaching, soliciting, canvassing, dealing with, or attempting to entice away, whether directly or indirectly, any customer of the applicants with whom the first respondent dealt, or about whom he obtained confidential information, during the course of his employment, for purposes of supplying goods or services in competition with the applicants.

2.2 The first respondent is interdicted and restrained from divulging the applicants’ confidential information to the third respondent or any third party, and is directed to return all such information to the applicants, and to destroy any copies thereof in his possession (and to confirm to the applicants in writing that he has done so), within two days of the court order being issued.

3. Any respondents who oppose the application are directed to pay the costs of the application.

4. Further and /or alternative relief."

[2] The purpose of the application is stated in paragraphs 14, 15, and 17 of the founding affidavit as the following:

1. To enforce restraint of trade and confidentiality obligations on the part of Mr Zwanepoel and/or to interdict him from unlawfully competing (or assist Golden Era to unlawfully compete) with Everest.
2. To restrain Mr Zwanepoel from breach of his restraint and confidentiality obligations by performing services to Golden Era (a competitor of Everest), either personally or through PackPerm; an entity which Mr Zwanepoel incorporated and of which he is the sole director, and which he utilises as his alter ego.
3. To restrain Mr Zwanepoel from utilising and exploiting sensitive proprietary and confidential information belonging to Everest and various other entities within the Everest Group, and its customers, in performing services to Golden Era, and or enabling Golden Era to utilise such knowledge as a springboard from which to unlawfully compete with Everest.

[3] Regarding the element of urgency, the applicant states the following:

"19. I point out, by way of introduction, that the Application is manifestly urgent. Everest only obtained definitive confirmation regarding Mr Zwanepoel's breaches of the restraint on 13 December 2025 (pursuant to a meeting between Mr John Pereira, a Sales Director within the Everest group, and Mr Zwanepoel during which Mr Zwanepoel acknowledged that he is performing services for Golden Era), and Mr Zwanepoel has not heeded the calls by Everest for undertakings not to breach his restraint and confidentiality obligations.

20. To the extent that he is permitted to continue performing services to Golden Era the risk to Everest regarding its proprietary interests will continue. There is over R150 million at stake (which Everest stands to lose) if Mr Zwanepoel is permitted to persist with his conduct and diverts to Golden Era. The damage to Everest's business will be

*wide-ranging, and where it manifests itself, it may well lead to the necessity to consider retrenchments of Everest's employees (who would, in the event of a retrenchment lose their livelihoods). It will also result in losses that are practically irrecoverable."*¹

Ruling on urgency

- [4] Urgency has been established.² I do not accept the respondent's allegation that urgency was self-created.

Merits

- [5] Mr Deon Zwanepoel's employment commenced on 10 January 2020, and his knowledge of the applicant's business is set out in paragraphs 33-44 of the founding affidavit.
- [6] Clauses 16 and 20 of Mr Zwanepoel's employment agreement provide for the confidentiality obligations in favour of Everest. He is obliged to hold the confidential information in strict confidence and to not use such information and knowledge to his benefit or of any other person or future employer, should his employment with Everest terminate.
- [7] The restraint is for 12 months within the prescribed area, that is, each province within the Republic of South Africa (RSA) in which Everest has rendered its services to a prescribed client. In other words, Mr Zwanepoel may or can render his services and use knowledge gained at Everest in respect of *non*-Everest clients during this period and to non-prescribed clients of Everest.
- [8] Zwanepoel resigned with effect from 7 August 2025.

¹ CaseLines section 002-5 paragraphs 19 and 20.

² Caselines 002-30 to 002-35.

- [9] Having set out the alleged breaches of the restraint by Mr Zwanepoel, Everest alleges that it sought undertakings from that he will not breach or continue to breach the restraint undertakings, but he continues to deny such breaches.³
- [10] Mr. Zwanepoel has made undertakings which Everest finds inadequate.⁴
- [11] In view of this undertaking, the issue revolves around whether Mr. Zwanepoel is restrained from rendering services outside the RSA, and to non-Everest clients anywhere. Furthermore, whether Mr. Zwanepoel is not restrained from rendering services to Everest's clients operating outside the RSA, that is, outside the prescribed area.
- [12] Mr. Zwanepoel contends that the undertakings are adequate and allay all of Everest's fears.⁵ He contends that Everest's customers who operate in neighbouring countries do not source services from South Africa-based Everest but from local suppliers. In this regard, Mr. Zwanepoel submits that the second respondent (PackPerm) is lawfully entitled to offer services to them, even if they are services offered by Everest in the prescribed area.⁶
- [13] In its replying affidavit, Everest persists that the undertakings are inadequate.⁷
- [14] It falls on this Court, therefore, to determine and resolve this dispute between the parties. *Natal Joint Municipal Pension Fund v Endumeni Municipality*⁸ provides as follows:

“[18] Over the last century there have been significant developments in the law relating to the interpretation of documents, both in this country and in others that follow similar rules to our own. It is unnecessary to add unduly to the burden of annotations by trawling through the case law on the construction of documents in order to trace those developments. The relevant authorities are collected and summarised in Bastian

³ (Caselines 002-28, paragraphs 98 and 99, read with paragraphs 104 and 105).

⁴ See paragraph 4 of FA11: Caselines 002-87.

⁵ See Caselines 006-18, paragraphs 25, 27, 28, 29 and 30.

⁶ See Caselines 006-23, paragraphs 48 and 50.

⁷ See Caselines 007-31, paragraph 97.

⁸ 2012 (4) SA at [18].

Financial Services (Pty) Ltd v General Hendrik Schoeman Primary School. The present state of the law can be expressed as follows. Interpretation is the process of attributing meaning to the words used in a document, be it legislation, some other statutory instrument, or contract, having regard to the context provided by reading the particular provision or provisions in the light of the document as a whole and the circumstances attendant upon its coming into existence. Whatever the nature of the document, consideration must be given to the language used in the light of the ordinary rules of grammar and syntax; the context in which the provision appears; the apparent purpose to which it is directed and the material known to those responsible for its production. Where more than one meaning is possible each possibility must be weighed in the light of all these factors. The process is objective not subjective. A sensible meaning is to be preferred to one that leads to insensible or unbusinesslike results or undermines the apparent purpose of the document. Judges must be alert to, and guard against, the temptation to substitute what they regard as reasonable, sensible or businesslike for the words actually used. To do so in regard to a statute or statutory instrument is to cross the divide between interpretation and legislation. In a contractual context it is to make a contract for the parties other than the one they in fact made. The ‘inevitable point of departure is the language of the provision itself’, read in context and having regard to the purpose of the provision and the background to the preparation and production of the document.”

- [15] Everest would like the restraint clause to be interpreted taking into account the following:

“The commercial reality of these entities is that they are not independently ring-fenced offshore business (nor has Mr Zwanepoel put up any evidence to corroborate that each of them is), and decisions are made in South Africa. This is further evidenced by annexure “EA2” to Mr Pereira’s explanatory affidavit, showing that its products are destined for the South African market. For example, even though Lanbob has been conveniently labeled as a “Foreign entity”, its decision makers of whom Everest have historically engaged with is in South Africa. Similarly, Crookes Brothers are part of an integrated commercial structure who operates in South Africa, and who Mr Zwanepoel has approached.”⁹

⁹ See CaseLines 007-32 at paragraph 99.

- [16] Clause 20 of the employment agreement defines "*prescribed area*" as each province within the RSA, and "*prescribed client*" as a client within the RSA. "*Prescribed services*" are those offered or rendered within the RSA. In context, therefore, the respondents are *not* restrained from providing services identical to those of Everest and from using information and knowledge covered by clause 16 (confidential information) *outside* the RSA. The respondents are also not restrained from providing same or doing same with Everest's clients, as long as they source such services from outside the RSA for use outside the RSA. The proviso is that such services or products obtained through the respondents should not be used by Everest's clients in the RSA.
- [17] In argument, it became clear that Lanbob, a client of Everest, who also operates outside the RSA, has procured services or products directly with the first and second respondents, and that the first respondent has solicited business for Golden Era, a competitor of Everest. To the extent that such services were previously sought from Everest, Everest contends that this will result in it being undercut by the respondents' prices, something that the restraint seeks to prevent.
- [18] In context, therefore, the "*being undercut*" fear will not apply where Everest's clients in the neighbouring countries have not previously sought such services from Everest for use outside South Africa.
- [19] The respondents have demonstrated that their business with LanBob in Mozambique is not affected by the restraint, as LanBob is a Mozambican company which exports Mozambican bananas to South Africa. Mr. Zwanepoel filed a confirmatory affidavit of Mr. Spear, who confirms that LanBob is a Mozambican company which previously obtained services from the third applicant (New Era/Gen Era), but have since moved their business from the third applicant after being approached by Mr. Zwanepoel.
- [20] I hold, therefore, that there is no breach of the restraint clause where the respondents do business with Lanbob.

[21] Furthermore, the respondents are under no restraint in utilising information covered under clause 16 if it is used *outside* the RSA, except with Everest's *clients* who operate outside the Republic and are using Everest's services contracted in the Republic.

Conclusion

[22] In the circumstances, the following order is made:

1. The ordinary rules relating to forms, service and time periods are dispensed with, and this application is heard as an urgent application.
2. The first and second respondents' answering affidavit is admitted.
3. The applicants' replying affidavit is admitted.
4. A final order is granted in the following terms:
 - 4.1. The first respondent is interdicted and restrained, until 6 August 2026, and within the Republic of South Africa (the prescribed area), whether acting both personally and through the second respondent, directly or indirectly, and whether for his own benefit or for the benefit of the third respondent or any third party competing with the applicants, from:
 - 4.1.1. being employed by, engaged in, associated with, concerned with, or interested in, whether as employee, consultant, contractor, director, shareholder or otherwise, any business, which competes with the business conducted by the applicants, including, without limitation, the third respondent within the

prescribed area as defined in his employment agreement; and

4.1.2. approaching, soliciting, canvassing, dealing with, or attempting to entice away, whether directly or indirectly, any customer of the applicants with whom the first respondent dealt, or about whom he obtained confidential information, during the course of his employment, for purposes of rendering goods or services in competition with the applicants within the prescribed area as defined in his employment contract.

4.2. The first respondent is interdicted and restrained from divulging the applicants' confidential information to the third respondent or any third party, and is directed to return all such information to the applicants, and to destroy any copies thereof in his possession (and to confirm to the applicants in writing that he has done so), within five days of the court order being issued.

5. The restraints in Paragraph 2 above do not apply to the employment engagement (as envisaged in clauses 16 and 20 of his employment agreement) of the first and second respondents with Lanbob Agro-Industry (Pty) Ltd in Mozambique and/or any other third party that operates outside the prescribed area.
6. The first and second respondents are ordered to pay 75% of the applicants' costs, including costs of Senior and Junior Counsel on Scale

C.

G MALINDI

Judge of the High Court,
Johannesburg

Appearances

For the Applicants':

Adv C Puckrin SC

Adv R Itzkin

Instructed by:

Edward Nathan Sonnenbergs Inc

For the Respondents':

Adv N Cassim SC

Adv M van As

Instructed by:

Cliffe Dekker Hofmeyr Incorporated

Date of Hearing:

6 January 2026

Date of order:

6 January 2026

Date of reasons:

2 April 2026