Reportable:	~~YES~~/ NO
Circulate to Judges:	~~YES~~/ NO
Circulate to Magistrates:	~~YES~~/ NO
Circulate to Regional Magistrates:	~~YES~~/ NO

IN THE HIGH COURT OF SOUTH AFRICA
NORTHWEST DIVISION - MAHIKENG

Case No.: 6532/2024

In the matter between:

ISIKO MALT (PTY) LTD Applicant

-and-

CFAM TECHNOLOGIES (PTY) LTD First Respondent

RAY J LUND CONSULTING (PTY) LTD Second Respondent

Coram: Maree AJ

Date of hearing: 27 November 2025

Delivered: The judgment was handed down electronically by circulation to the parties' representatives via email. The date and time for hand-down is deemed to be 21 April 2026 at 12h00.

ORDER

1. The application is dismissed with costs, including costs of counsel on scale C.

JUDGMENT

MAREE AJ

[1]. The matter before this Court concerns an application by the applicant for an interim interdict, pending the finalisation of an action to be instituted against the first respondent, that (a) the first respondent be restrained and interdicted from directly, or indirectly, engaging into business, and/or any business relationship, with Kgalagadi Breweries (Pty) Ltd. ('KBL') and/or the South African Breweries Limited ('SAB'), or any of their subsidiaries, including the rendering of services and delivery of products, and (b) against the second respondent that the second respondent be restrained and interdicted from directly, or indirectly, engaging into business, and/or any business

relationship, with KBL or SAB, including the rendering of services or delivery of products, with any assistance, advise or input from the first respondent.

[2]. During July 2016, the applicant was awarded a contract by Kgalagadi Breweries (Pty) Ltd ('KBL') to construct and commission a Beer Powder Plant.

[3]. The applicant approached the first respondent to assist with the design and supply of products to be utilised in the commissioning and construction of the Beer Powder Plant.

[4]. To regulate their arrangement, the applicant and the first respondent entered into several agreements; of relevance hereto is the Service Agreement dated 15 April 2016 ('the service agreement')[1] and the Nondisclosure and Non-circumvention Agreement dated 25 July 2017 ('the nondisclosure agreement')[2].

[5]. In terms of the service agreement, the parties agreed inter alia that the first respondent "shall refrain from engaging into business and/or any business relationship with the Clients and/or to circumvent the Principal [the applicant] in this regard for purposes of rendering Services and/or delivering Products to the Clients

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1 Service Agreement, Annexure "FA5"

2 Nondisclosure agreement annexure "FA6"

without the intervention of the Principal [the applicant] as contemplated in this Agreement"[3]. The service agreement defined the "Clients" as "such persons secured by the Principal [the applicant] and with whom the Principal [the applicant] enters into a relationship for purposes of the delivery of certain products and/or the rendering of certain services being, at the Signature Date, KBL Breweries an affiliate or subsidiary of the South Africa Breweries Group of Companies as per the Initial Contract" and "Services" as "the services rendered by the Supplier [the first respondent] in relation to the manufacturing, supply, distribution, maintenance and commissioning of the Products".

[6]. Under the nondisclosure agreement, the first respondent was to hold and maintain the applicant's confidential information in strict confidence for the sole and exclusive benefit of the applicant. In this regard, the first respondent was contractually obligated to carefully restrict access to the confidential information to employees, contractors and third parties as is reasonably required and shall require those persons to sign nondisclosure restrictions at least as protective as the provisions contained in the said nondisclosure agreement. In addition, the first respondent was not allowed, without written approval from the applicant, to use for its own benefit, publish, copy, or otherwise disclose to others, or permit the use by others for their benefit or to the detriment of the applicant, any confidential information[4].

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3 Service Agreement, Annexure "FA5" para 17.5 p. 326

4 Annexure "FA6" clause 3 p. 330

The term confidential information is defined in the nondisclosure agreement as "...all information or material that has been originated by the Disclosing Party [the applicant] and not generally known to others, being its business activities, discoveries, client names and the like and which was disclosed to the Receiving Party [first respondent] as a result of the disclosing purpose as contemplated in paragraph 4 [*sic*]"[5]. Clause 4 of the said nondisclosure agreement records that the applicant disclosed to the first respondent the confidential information for the purposes of enabling the first respondent to execute its mandate, constructing and commissioning the Beer Powder Plant[6]. In terms of clause 8 of the nondisclosure agreement, the first respondent undertook not to use the confidential information for any commercial purpose, not to circumvent the applicant, not to enter the premises where the plant was erected without the applicant's consent, and not to enter into any business dealings with clients of the applicant[7].

[7]. It is not disputed that the South African Breweries ('SAB') is an affiliate of Anheuser-Busch InBev ('AB InBev'). It was argued on behalf of the applicant that both the SAB and AB InBev are clients of the applicant and are included under the definition of "client" in both the service and nondisclosure agreements. This argument is premised on the conclusion of an agreement between the applicant and SAB in 2024 titled the Short Form Framework

5 p.329
6 p. 330
7 p. 331

Agreement for Deliverables,[8] whereby the SAB (and by necessary implication AB InBev) became a client of the applicant.

[8]. Following the conclusion of the business relationship between the applicant and the first respondent, the project commenced. However, before the project was completed, KBL suspended it in August 2016.

[9]. In April 2024, the applicant received information that the second respondent was contracted by KBL to complete the construction and commissioning of the Beer Powder Plant, being the same plant initially commissioned by the applicant with the assistance of the first respondent in 2016. After obtaining such information, the applicant entered into negotiations with KBL, a subsidiary of AB InBev. The exact details of the negotiations are not disclosed by the applicant; however, the outcome of the said negotiations was that, in November 2024, the applicant was appointed by AB InBev to attend to the "product commissioning" of the Beer Powder Plant. As per the applicant's papers, the "product commissioning" of the plant concerned the commissioning and implementation of the plant that had already been mechanically commissioned; the mechanical commissioning being awarded to the second respondent. The applicant was required to attend the product commissioning of the plant with the second respondent.

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8 SAB Agreement, Annexure FA16 pp. 364 - 367

[10]. It is contended by the applicant that the second respondent could not have attended to the commissioning of the Beer Powder Plant without direct input from it or the first respondent[9]. The applicant's case is that it "believes that the second respondent is assisted by the first respondent in order to engage in a business relationship with KBL, by rendering goods and services to KBL"[10]. To put it differently, the applicant alleges that the first respondent contravened the service and nondisclosure agreement by supplying its service to the second respondent to commission the Beer Powder Plant without the applicant's knowledge and express consent. In support of its contention, the applicant relies on the following:

a. The applicant relies on information received from employees of AB InBev who informed the deponent of the founding affidavit, confidentially and on a basis of anonymity, that employees of the First Respondent visited the plant in preparation for commissioning the plant.

b. The applicant states that on 24 June 2024, when the deponent to the founding affidavit visited the Beer Powder Plant, he found electrical designs bearing the first respondent's company name and logo. The said designs were recognised as those made

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9 The applicant, relying on a consulting engineering report, states that "it will be impossible for any other contractor, apart from the contractors involved in the initial commissioning of the plant, to complete it, without an extensive reverse engineering process", p. 20, para 35; see also pp. 18-19, paras 32-33

10 p.11 para 14

during the period when the applicant and first respondent were conducting the initial commissioning and construction of the Beer Powder Plant.

c. The applicant relies on suspicious conduct by the first and second respondents on the 6th of November 2024. On this said date, the first respondent in writing cancelled the agreements it had with the applicant (which agreements were dated between the period 2016 and 2017). This happened, according to the applicant, on the same date on which the applicant was appointed by KBL to attend to the product commissioning of the Beer Powder Plant. Also on this date, and according to the applicant, the applicant attended the Beer Powder Plant site, but the second respondent, suspiciously so, was absent from the site. The applicant argues that its appointment to attend to the product commissioning of the plant would have resulted in the applicant having to work in proximity with the second respondent, who was, as alluded to hereinbefore, appointed to finish the Beer Powder Plant. The applicant thus contends that (a) the termination letter addressed to it by the first respondent was made in an attempt to circumvent the contractual restraint, and (b) the fact that the second respondent left the construction site was to conceal its business relationship with the first respondent.

d. The applicant relies on an email received from AB InBev dated 27 November 2024. As part of the email trail was an email from the second respondent, which had attached design plans for the Beer Powder Plant. The applicant alleges that the said design plans are the design plans provided by the first respondent to the second respondent.

e. The applicant relies on a client proposal by the first respondent, referencing the client's KBL, SAB and Ab InBev. This, the applicant contends, shows the first respondent contravened the non-circumvention and nondisclosure terms of the agreements between the applicant and the first respondent.

[11]. The first and second respondents opposed the application. On 19 November 2025, the second respondent filed a notice conceding to the relief sought by the applicant.[11] The first respondent, however, persists with its opposition to the applicant's application.

[12]. In essence, the first respondent denies contravening the contractual restraints. More specifically, it denies that it attempted to or assisted the second respondent in commissioning the plant. The second respondent confirms the first respondent's position and explicitly denies any assistance from the first respondent in commissioning the plant[12].

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11 pp. 689-690

12 p. 450 para 49; p.454 para 62.3; p.455 para 63; p. 456 paras 66.1 and 67.2

[13]. Before dealing with the applicant's main contentions and juxtaposing them with the respondents' opposition in more detail, I set out the legal principles applicable to this application.

[14]. The requirements which an applicant for an interlocutory interdict has to satisfy are the following: a prima facie right, a well-grounded apprehension of irreparable harm if the interim relief is not granted and the ultimate relief is eventually granted, a balance of convenience in favour of the granting of the interim relief, and the absence of any other satisfactory remedy.[13]

[15]. The different requisites should not be considered separately or in isolation but in conjunction with one another in order to determine whether the court should exercise its discretion in favour of the grant of the interim relief sought.[14]

[16]. When considering the first requirement, a prima facie right, the degree of proof required is as follows: the right can be prima facie established even if it is open to some doubt. Mere acceptance of

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13 Erasmus: Superior Court Practice 3rd Edition: (Vol 2) Revision Service 27, Civil Litigation and Procedure, Appendices D6, Interdicts – Interim Interdicts, para 8

14 Olympic Passenger Service (Pty) Ltd v Ramlagan 1957 (2) SA 382 (D) at 383E–F; Eriksen Motors (Welkom) Ltd v Protea Motors, Warrenton 1973 (3) SA 685 (A) at 691F; Beecham Group Ltd v B-M Group (Pty) Ltd 1977 (1) SA 50 (T) at 54E–F; Cambridge Plan AG v Moore 1987 (4) SA 821 (D) at 833G–H; Commissioner for Inland Revenue, Transkei v Jalc Holdings (SA) (Pty) Ltd 1991 (4) SA 646 (TK) at 654G–H; Breedenkamp v Standard Bank of South Africa Ltd 2009 (5) SA 304 (GSJ) at 313J–314H; Camps Bay Residents and Ratepayers Association v Augoustides 2009 (6) SA 190 (WCC) at 196H–I; Tshwane City v Afriforum 2016 (6) SA 279 (CC) at 306B; Homemed (Pty) Ltd v Claasen (unreported, GJ case no 2022/004040 dated 1 August 2022) at paragraph 80 footnote [34]; Vea Road Maintenance and Civils (Pty) Ltd v South African National Roads Agency SOC Limited (unreported, KZD case no D7913/2023 dated 20 November 2023) at paragraph [32].

the applicant's allegations is insufficient, but a weighing up of the probabilities of conflicting versions is not required. The proper approach is to consider the facts as set out by the applicant together with any facts set out by the respondent which the applicant cannot dispute, and to decide whether, concerning the inherent probabilities and the ultimate onus, the applicant should, on those facts, obtain final relief at the trial or in the main application to be determined. The facts set up in contradiction by the respondent should then be considered, and if they throw serious doubt on the applicant's case, the latter cannot succeed.[15]

[17]. The second requisite for an interim interdict is a reasonable apprehension that continuance of the alleged wrong will cause irreparable harm to the applicant. The test is objective, and the question is whether a reasonable person, confronted by the facts, would apprehend the probability of harm. Actual harm need not be established upon a balance of probabilities[16].

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15 The Law of South Africa('LAWSA'), Interdicts, Interim Interdicts, para 537; Webster v Mitchell 1948 1 SA 1186 (W) as qualified by Gool v Minister of Justice [1955] 3 All SA 115 (C); 1955 2 SA 682 (C); Freinkel v Garment Workers Union of SA [1961] 1 All SA 243 (W); 1961 1 SA 507 (W); Selected Products Ltd v Enterprise Bakeries (Pty) Ltd [1963] 1 All SA 352 (C); 1963 1 SA 237 (C). Godbold v Tomson [1970] 1 All SA 218 (D); 1970 1 SA 61 (D) 63D. Airoadexpress (Pty) Ltd v Chairman, Local Road Transportation Board, Durban 1986 2 SA 663 (A); Buffalo Club v Border Cricket [2012] JOL 29403 (ECG) par 28. Nedbank Ltd v Survé [2024] 1 All SA 615 (SCA); [2023] JOL 62281 (SCA) par 19; Goldstar Finance (Pty) Ltd v Capitec Bank (Pty) Ltd [2024] 1 All SA 727 (WCC) par 19. Spur Steak Ranches Ltd v Saddles Steak Ranch, Claremont 1996 3 SA 706 (C) 714; Aranda Textile Mills (Pty) Ltd v Hurn [2000] 2 All SA 530 (E); [2000] JOL 6494 (EC). A possibility or a slight degree of probability will not suffice: Molteno Bros v SAR 1936 AD 321 333; Van den Berg v OVS Landbou Ingenieurs (Edms) Bpk [1956] 4 All SA 105 (O); 1956 4 SA 391 (O).

16 LAWSA supra at para 538

[18]. The third requisite for an interim interdict is that the balance of convenience must favour granting the order. The court must weigh the prejudice the applicant will suffer if the interim interdict is not granted against the prejudice the respondent will suffer if it is, bearing in mind the wider public interest and the underlying principles of our democratic society. The exercise of its discretion usually resolves itself into a consideration of the prospects of success and the balance of convenience: the stronger the prospects of success, the less the need for such balance to favour the applicant; the weaker the prospects of success, the greater the need for the balance to favour the applicant.[17]

[19]. The fourth requisite for the granting of an interim interdict is the absence of another adequate remedy. This element is also a factor in the exercise of the court's general discretion to grant or refuse an interim interdict.[18]

[20]. A court always has a wide discretion to refuse an interim interdict even if the requisites have been established. This means that the court is entitled to have regard to a number of disparate and incommensurable features in coming to a decision, and not that the court has a free and unfettered discretion. The discretion is a judicial one which must be exercised according to law and upon established facts.Important factors taken into account are the

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17 LAWSA supra at para 539

18 LAWSA supra at para 540

relative strengths of the parties' respective cases and whether any other adequate remedy is available.[19]

[21]. Having regard to the applicable legal principles, I deal with the applicant's main contentions and the opposition thereto.

[22]. The question to consider is, did the applicant meet the requirements necessary for an interim interdict against the respondents? To answer this question, it is necessary to have regard to all the requirements for an interim interdict in conjunction with each other. What should be considered are the facts as set out by the applicant together with any facts set out by the respondents which the applicant cannot dispute, and to decide whether, concerning the inherent probabilities and the ultimate onus, the applicant should, on those facts, obtain final relief at the trial to be determined. The facts set up in contradiction by the respondents should then be considered, and if they throw serious doubt on the applicant's case, the latter cannot succeed.

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19 LAWSA at para 541; Goldstar Finance (Pty) Ltd v Capitec Bank (Pty) Ltd [2024] 1 All SA 727 (WCC); [2023] JOL 62281 (SCA) par 22.Knox D'Arcy Ltd v Jamieson 1996 (4) SA 348 (A) 361I; [1996] 3 All SA 669 (A) 680I; Hix Networking Technologies CC v System Publishers (Pty) Ltd [1996] 4 All SA 675 (A); 1997 1 SA 391 (A) 401G; [1997] JOL 519 (A). Van Zyl v Jonathan Ball Publishers (Pty) Ltd 1999 4 SA 571 (W); [1999] JOL 5234 (W). Gründling v Beyers [1967] 2 All SA 216 (W); 1967 2 SA 131 (W) 155. Benoni Town Council v Meyer [1961] 3 All SA 294 (W); 1961 3 SA 316 (W) 326.Plettenberg Bay Entertainment (Pty) Ltd v Minister van Wet & Orde [1993] 1 All SA 509 (C); [1993] 4 All SA 243 (C); 1993 2 SA 396 (C) 400; Contact Electrical Maintenance(Pty) Ltd v Sanlam Ltd 1996 2 SA 440 (B); Sweets from Heaven (Pty) Ltd v Ster Kinekor Films (Pty) Ltd 1999 1 SA 796 (W) par 11. Beecham Group Ltd v B-M Group (Pty) Ltd [1977] 1 All SA 267 (T); 1977 1 SA 50 (T) 55. Cresto Machines (Edms) Bpk v Die Afdeling Speuroffisier, SA Polisie, Noord-Transvaal 1970 4 SA 350 (T) 367G–368E.

[23]. The main contention by the applicant is that it believes the first respondent, in contravention of the agreements between them, assisted the second respondent in commissioning the Beer Powder Plant and engaged in a direct business relationship with KBL in contravention of the nondisclosure and non-circumvention clauses of the agreements between them.

[24]. For purposes hereof, I deal hereinunder with the applicant's main contention by considering the same and juxtaposing it with the relevant facts set out in the respondents' opposing papers.

[25]. It is contented by the applicant that the Beer Powder Plant cannot be commissioned and finalised without direct input from it (the applicant) or the first respondent. The applicant, relying on a consulting engineering report, states that "it will be impossible for any other contractor, apart from the contractors involved in the initial commissioning of the plant, to complete it, without an extensive reverse engineering process"[20]. Both the respondents deny that only the applicant and the first respondent could commission the plant[21]. To this end, it is contended by both respondents that through a process of reverse engineering, the plant could be successfully commissioned. The second respondent specifically states that it made use of a team of software engineers to reverse engineer the software[22]. Because

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20 pp. 18-19 paras 32-33 ; p.20 para 35

21 p. 487 para 22.2; pp. 488-489 para 25

22 p. 451 para 49.4; p. 460 para 75.4

of this process and because the first respondent refused to assist the second respondent, the completion of the project took a year as opposed to two months[23]. Both respondents also deny that the first respondent assisted the second respondent in any manner to commission the Beer Powder Plant[24]. If regard is had to the applicant's expert report, the said report does not exclude the possibility of commissioning the plant without the applicant and/or first respondent. What the report states is that it is not advisable to do so, but that it can be done through an extensive reverse engineering process that may take weeks or even months to complete[25]. Given the contents of the expert report and the versions of the respondents, it cannot be seriously contended that a third party could not commission the Beer Powder Plant.

[26]. The applicant states that it received information from employees of AB InBev who informed it, confidentially and on a basis of anonymity, that employees of the First Respondent visited the plant in preparation for commissioning the plant[26]. I need not say more about this issue other than restating the relevant legal position that, in general, hearsay evidence is not allowed in affidavits and that no substantial application was made before this Court that the hearsay evidence be considered and accepted[27].

23 p. 452 para 57
24 p. 450 para 49; p. 487 para 22.3
25 p. 334
26 pp.19-20 para 34
27 Special Investigating Unit and another v Engineered Systems Solutions (Pty) Ltd [2021] JOL 50623 (SCA) at para 40

There is no basis on which this hearsay evidence may be accepted and, as such, the same is disregarded.

[27]. The applicant contends that on 24 June 2024, when the deponent to the founding affidavit visited the Beer Powder Plant, he found electrical designs bearing the first respondent's company name and logo (annexures "FA15.2" to "FA15.5" of the founding affidavit[28]). The said designs were recognised as those made during the period when the applicant and first respondent were conducting the initial commissioning and construction of the Beer Powder Plant[29]. The first respondent contends that, after some investigations, a copy of the electrical wiring diagrams of the Beer Powder Plant was provided to an entity known as Specialised Automation Services. The said wiring diagram contains no confidential information but merely presents a drawing of the electrical wires in the plant, which can be observed by any person inspecting the wiring thereof[30]. As per the second respondent's answer, the drawings (annexures "FA15.2" to "FA15.3") were provided to it by KBL[31]. The second respondent denies having knowledge of annexures "FA15.4" and "FA15.5". Both the first and second respondents deny the first respondent's involvement, directly or indirectly, in the second respondent's commissioning of the Beer Powder Plant. I agree with the applicant that the first respondent's conduct, providing Specialised Automation Services

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28 pp. 360 - 363
29 pp. 25-26 para 44
30 pp. 491-492 para 28
31 p. 462 para 79.3

with a copy of the wiring diagram, makes no sense; no indication is given as to who Specialised Automation Services is or on what basis they were provided with the electrical wiring diagram. Irrespective of this, I do not find this conduct to amount to a breach of the agreements entered into between the parties. Even if I am wrong, such a breach does not warrant the relief sought in the notice of motion interdicting the first respondent from engaging in business with KBL, SAB and/or any of its subsidiaries (as opposed to seeking relief prohibiting the first respondent from sharing such information with third parties).

[28]. The applicant relies on the suspicious termination of the business relationship between it and the first respondent on 6 November 2024. To this end, the termination letter was forwarded to the applicant's attorneys of record on the same date on which the applicant agreed with KBL that it was to oversee the commissioning of the Beer Powder Plant, which would have resulted in the applicant having to work in proximity with the second respondent, who was, as alluded to hereinbefore, appointed to finish the Beer Powder Plant. Also on 6 November 2024, the second respondent left the construction site. The applicant contends that (a) the termination letter addressed to it by the first respondent was made in an attempt to circumvent the contractual restraint, and (b) the fact that the second respondent left the construction site was to conceal its business relationship with the first respondent[32]. Concerning the letter of cancellation,

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32 pp. 26 – 28 paras 45 - 48

the first respondent confirms that it cancelled the business relationship with the applicant and that, irrespective of that, the contractual restraint survived such cancellation[33]. In addition to the aforementioned, the first respondent denies assisting any person in commissioning the Beer Powder Plant. The second respondent also denies that the first respondent assisted in the mechanical commissioning of the Beer Powder Plant. The second respondent furthermore denies leaving the construction site on 6 November 2024 for any ulterior motives. The second respondent contends that it left the construction site on 5 November 2024 after completing a training schedule[34]. Viewed objectively, the first and/or second respondent's conduct on the 6th of November 2024 cannot be found to be suspicious as alleged or at all. The fact that the agreements between the applicant and the first respondent were cancelled some 8 years later does not render it suspicious, and even if it did, such cancellation does not result in nullifying the non-circumvention and non-disclosure clauses thereof. The explanation by the second respondent as to why its director left the site on 5 November 2024 is also not seriously unconvincing. In any event, the second respondent's explanation is merely denied by the applicant in its replying affidavit[35].

[29]. The applicant relies on an email received from AB InBev dated 27 November 2024. Part of the email was an email trail containing

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33 pp. 493 – 494 para 32

34 p. 463 para 81.4 – 81.5

35 p.630 para 63

an email from the second respondent, which had attached to it design plans for the Beer Powder Plant (annexure "FA20" to the founding affidavit). The applicant alleges that the said design plans are the design plans provided by the first respondent to the second respondent[36]. Both respondents explicitly deny that the first respondent provided the second respondent with a copy of the design plans[37]. The first respondent states that annexure "FA20" is not a copy of the design plans but a copy of the first respondent's product brochure as contained on its website[38]. The second respondent states specifically that it completed annexure "FA20" using extractions from the first respondent's brochure on its website[39]. This explanation by the second respondent is not placed in dispute in that it was not dealt with in the applicant's replying affidavit. If proper regard is had to the facts surrounding this aspect, I am unable to find that annexure "FA20" constituted the design plans as alleged by the applicant.

[30]. The applicant refers in its papers to a client proposal done by the first respondent, wherein the first respondent referenced KBL, SAB and AB InBev as clients previously worked for. This conduct by the first respondent, the applicant contends, shows the first respondent contravened the non-circumvention and nondisclosure terms of the agreements between the applicant and the first respondent[40]. The first respondent denies that it

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36 pp. 29-30 para 49

37 p. 465 paras 83.2 – 83.3; p.494 - 495 para 33

38 p. 495 para 33.3

39 p. 465 para 83.7

40 p. 30 para 51

contravened the non-circumvention and nondisclosure terms of the agreements between the applicant and it[41]. To this end, the first respondent specifically stated that KBL has been a client of it since 2014 and before entering into the agreements with the applicant. Reference to KBL in the said proposal was for marketing purposes by referencing former clients. In addition, the first respondent takes issue with the manner in which the applicant obtained the proposal made for a third party and challenged the applicant to disclose such information[42]. The applicant did not reply to this challenge nor deny the existence of a working relationship between the first respondent and KBL before it contracted with the applicant.

[31]. Premised on the discussion before, I am of the view that the applicant did not establish a prima facie right, even a prima facie right open to some doubt. To this end, it is not disputed that the applicant has a contractual right in the form of inter alia non-circumvention and nondisclosure clauses. What the applicant should, however, show is that there was a breach of such clauses warranting the granting of an interim interdict against the respondents. When considering the facts as set out by the applicant together with the facts set out by the respondents, which the applicant cannot dispute, and having regard to the inherent probabilities and the ultimate onus, I cannot find that the applicant showed that the first respondent contravened the terms of the

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41 p. 496 para 35

42 p. 496 para 35.3

agreements, warranting the granting of an interim interdict. In addition, the version of the respondents cast serious doubt on the applicant's version. Concerning the relief sought against the second respondent: The applicant has no contractual relationship with the second respondent. I find that the applicant failed to show that the second respondent infringed on its contractual relationship with the first respondent. The fact that the second respondent indicated that it concedes to the relief sought by the applicant does not entail that such an order should necessarily be made against the second respondent without a proper consideration of the facts of the matter. The applicant's application is primarily premised on the alleged contractual infringement by the first respondent and collusion between the first and second respondent to, as alleged, circumvent the non-disclosure and non-circumvention terms of the agreements entered into between the applicant and the first respondent. I already found that the applicant failed to show a prima facie right warranting protection. Based on this finding, I find against the granting of the interim interdict against the first and second respondents.

[32]. Therefore, I make the following order:

i. The application is dismissed with costs, including costs of counsel on scale C.

[redacted]

G V MAREE

ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA

NORTH WEST DIVISION, MAHIKENG

APPEARANCES:

JUDGEMENT RESERVED: 27 NOVEMBER 2025

JUDGMENT DELIVERED: 21 APRIL 2026

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