



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

Signature

15 May 2026
Date

THE LABOUR COURT OF SOUTH AFRICA, CAPE TOWN

Case no: 2026-028438

In the matter between:

SD RECRUITMENT (PTY) LTD

Applicant

and

WERNER PRETORIUS

First Respondent

IMMPLOY RECRUITMENT AGENCY

Second Respondent

Heard: 13 March 2026

Delivered: 15 May 2026

Summary: An urgent application to order an ex-employee to comply with restraint of trade, confidentiality, and non-solicitation undertakings. The matter was heard as urgent. A case was made out for some, but not all, of the relief sought.

JUDGMENT

GANDIDZE, J

Introduction

- [1] SD Recruitment (Pty) Ltd, the applicant, seeks orders against a former employee, Werner Pretorius (Pretorius), restraining him from (i) being engaged, in any capacity, in a competing business (the restraint undertaking), (ii) soliciting any persons who were the applicant's clients or to whom the applicant had rendered services as at 15 December 2025 (non-solicitation provision), and (iii) using or disclosing the applicant's confidential information or trade secrets (confidentiality undertaking). In relation to the last-mentioned prayer, the applicant also seeks an order that Pretorius make available to the applicant, or destroy, all the applicant's confidential information in his possession, in whatever format, and produce proof to the applicant that this has been done.
- [2] The restraint and non-solicitation undertakings are sought to be enforced within the greater municipal area of the City of Cape Town for 12 months, commencing on the date of the court order. Even if the applicant is successful with its application, there is no basis for an order commencing on the date of the order, and the applicant has not provided any case authority to support such an order. The documents containing the restraint-of-trade and non-solicitation undertakings (discussed below) make clear that the undertakings are enforceable for a specified period, calculated from the date of termination of employment. In this case, the applicant elected to enforce the restraint for only 12 months, and, if successful, the 12 months must be calculated from the date of termination of Pretorius' employment with the applicant.
- [3] Also cited as a respondent is Immploy Recruitment Agency (Immploy), a competitor of the applicant, which employed Pretorius after he left the applicant's employ. Immploy and Pretorius will be referred to collectively as the respondents, and both opposed the application, even though, inexplicably, the applicant states that only Pretorius opposed it.

Brief background information

- [4] The applicant and Immploy are competitors, as both provide recruitment or staffing solutions in the medical industry. They, inter alia, provide temporary staff, such as locum doctors and nurses (medical professionals), to hospitals,

clinics, and private medical practices (medical institutions) when required. When a medical institution requires a medical professional, it would, in this case, contact the applicant, who would recommend and subsequently place a medical practitioner at the institution that fits its needs with respect to budget, expertise, et cetera. The medical institution pays the applicant, who, in turn, pays the medical practitioner. Although the applicant places doctors too, in this case it was about the placement of nurses.

- [5] The applicant was established in 2020 and has therefore operated in the industry for about six years.¹ Immploy has been operating since 2009.
- [6] Pretorius was employed by the applicant from 7 February 2022 until his resignation on 2 December 2025. His last day with the applicant was 2 January 2026.
- [7] On commencing employment with the applicant, Pretorius signed an employment contract that included restraint-of-trade and confidentiality undertakings. Weeks later, he signed a non-disclosure agreement (NDA). He was initially employed as a medical consultant and, on 29 November 2024, was promoted to Team Manager.
- [8] According to the applicant, Pretorius's resignation came out of the blue, a claim strongly disputed by Pretorius. More on this later. According to the applicant, because Pretorius's future endeavours were unknown, he was asked, as a precaution, to sign a document reaffirming his commitment to honour all restraint-of-trade and confidentiality obligations following his resignation, which he did in an exit document.
- [9] Therefore, there are three documents relevant to the dispute, namely the employment contract, the NDA and the exit document.
- [10] As the application was brought on an urgent basis, that issue needs to be determined first.

¹ The respondents dispute this version and allege that the applicant has operated for longer than 10 years. Nothing turns on this dispute of fact.

Urgency

- [11] Pretorius resigned on 2 December 2025 but continued working until 2 January 2026, serving the notice period.
- [12] The applicant's account is that on 7 January 2026, Pretorius joined Immploy. It further states that on 8 January 2026, it learned that some of the nurses previously placed by Pretorius while he was employed by the applicant were still in contact with the applicant. On 9 January 2026, its attorneys sent a letter to Pretorius, alleging breaches of the restraint-of-trade and confidentiality undertakings. The letter demanded that Pretorius cease providing services to competing businesses in the Republic of South Africa and return all the applicant's confidential information. On 16 January 2026, the respondents' attorneys wrote to the applicant's attorneys to say they were taking instructions. On 23 January 2026, they wrote to request a copy of the non-disclosure agreement (NDA), which was provided the same day. No further communication was received from the respondents' attorneys, and the current application was filed on 9 February 2026.
- [13] The applicant states that it held off on launching the current application, hoping the matter would be resolved amicably, but that when it became clear it was being strung along, it filed. The applicant contends that the matter is urgent because the restraint is time-limited and that it will not obtain substantial redress in due course.
- [14] The respondents contested urgency, arguing that although Pretorius's last day was 2 January 2026, on 23 December 2025 he met with the applicant's Chief Executive Officer and the Managing Director, Marais, and informed her that he planned to return to Immploy and would not pursue any nurses he had dealt with during his employment with the applicant. Marais responded that she would not come after him. Therefore, despite knowing on 23 December 2025 that Pretorius would be joining Immploy, the applicant filed the present application in February 2026, a delay of six weeks.
- [15] The further submission was that the applicant's nursing database, which is alleged to be confidential information (discussed below), was disclosed to all

recruitment agencies, including Immploy, that participated in the 2023 and 2024 Department of Health (DoH) tender process. The tender was awarded to the applicant, and during the ensuing review proceedings instituted in 2025, the DoH discovered the applicant's tender documents, which included its database of nurses. That being the case, the submission went, information that has been in the public domain since 2024 cannot now be sought to be protected on an urgent basis.

- [16] It is also contended that the applicant cannot demonstrate that it cannot obtain substantial redress in the ordinary course, given that, in clause 7 of the NDA,² it agreed to liquidated damages of R100 000 for any breach.
- [17] The respondents also lamented the applicant's conduct in bringing proceedings on compressed timeframes. This issue can be readily disposed of on the basis that the time for filing the answering affidavit was extended by agreement between the parties. In the answering affidavit, the respondents reserved the right to supplement it. By the time the matter was argued, the respondents had filed the fourth affidavit, as permitted by Rule 39 of the Rules Regulating the Conduct of the Proceedings of the Labour Court³ (Labour Court Rules). Accordingly, the respondents were afforded ample opportunity to present their full case.
- [18] In all matters where an applicant contends that the matter is urgent, they are required to comply with Rule 38 of the Labour Court Rules, which requires such an applicant to set out the reasons for urgency and the necessity of urgent relief.
- [19] While restraint applications are inherently urgent, this does not entitle an applicant to delay seeking relief from the court and then, as a matter of right,

² The clause provides as follows:

‘7. INDEMNIFICATION

- 7.1 The Individual agrees to pay liquidated damages in the amount of R100,000 for any violation of the covenant not to disclose confidential and/or trade secret information, whether contained in this Agreement or any other agreement with the Company.’

³ *Published*: GN 4775, G. 50608 of 3 May 2024. *Commencement*: 17 July 2024 - GN 5038, G. 50929 of 12 July 2024.

to seek an urgent hearing when it suits them. The approach to the court must be made at the first opportunity otherwise, urgency is self-created.

- [20] The applicant knew as early as 23 December 2025 that Pretorious would be joining Immploy, a competitor. That was when the clock started ticking for filing the current application, as Pretorious intended to breach the restraint-of-trade undertaking and would likely also breach the confidentiality and non-solicitation undertakings. The applicant's assertion that it did not have to act against Pretorious until he started working for Immploy is rejected. Pretorious made his intentions known, and the applicant should have launched the application at that point. It did not, because, as it states, it was willing to forgo its rights in respect of the restraint undertakings. Marais informed Pretorious as much. But the applicant is now seeking to enforce the restraint-of-trade undertakings it had indicated it would not enforce. The change of heart cannot be an acceptable explanation for the delay in bringing the application. It did not escape the court's attention that the applicant's founding affidavit makes no mention of the meeting of 23 December 2025 with Pretorious. The omission was calculated to hide the full picture in determining urgency.
- [21] The applicant states that it only occurred to it on 8 January 2026 that Pretorious was soliciting nurses and that engaging Pretorious became necessary at that point. This submission lacks candour, given that the applicant's own submission, which is correct, is that in applications of this nature, it is not necessary to prove solicitation of customers, only that they could be solicited. The risk of customers being solicited arose on 23 December 2025, when Pretorious made known his intention to join Immploy. The risk of disclosure of confidential information also arose on that date.
- [22] While it was reasonable for the applicant to engage the respondents before launching the present application, the clock for filing an urgent application did not start ticking when the correspondence ended, as the applicant submitted, but on 23 December 2025. The application was launched six weeks later, a delay the applicant sought to conceal from the court.

- [23] Notwithstanding the above, the primary consideration in determining whether a matter is urgent, as set out in *East Rock Trading 7 (Pty) Ltd v Eagle Valley Granite (Pty) Ltd*⁴ (*East Rock*), is whether the applicant can obtain substantial redress in due course. If so, the court need not hear the matter as urgent. However, because the relief sought is time-bound, substantial redress in such applications is not possible. Therefore, the court will hear the matter as urgent.
- [24] The contentions that the information sought to be protected as confidential has been in the public domain for years and that the NDA provides for liquidated damages in the event of a breach are best addressed when the court assesses the merits of the application and the requirements for a final interdict, respectively.

The contractual arrangements

Restraint undertaking

- [25] This is provided for in clause 16 of the employment contract. Pretorius undertook that, as an employee of the applicant and in the course of his duties, he would become intimately involved in the applicant's business and affairs; that he would have access to the applicant's trade secrets; and that he would acquire considerable knowledge and know-how relating to the applicant and its business.
- [26] Clause 16.3 provides that Pretorius acknowledges that, if he were not restricted from competing with the applicant, the applicant would suffer considerable economic prejudice, including loss of custom and goodwill; that it was essential for the company to protect its interests; and that he agreed to the restraint of trade undertakings, which preclude him from carrying on certain activities that would harm the company's interests.

⁴ 2011 JDR 1832 (GSJ).

- [27] For 24 months after termination, Pretoria undertook not to be employed by any business in the Republic of South Africa that renders any prescribed services,⁵ not to render any prescribed services to or for the benefit of any prescribed client,⁶ not to solicit any prescribed client, and not to solicit the applicant's staff.
- [28] In clause 16.1.1, Pretorius acknowledged that the restraints were fair and reasonable as to subject matter, area and duration; that they were reasonably necessary to protect the applicant's proprietary interests and to maintain the applicant's goodwill; and that they were within the context of the benefits to be derived by the employee under this agreement

Confidentiality obligation

- [29] These are provided for both in the contract of employment and the NDA.
- [30] Pretorius acknowledged that, by virtue of his association with the applicant, he will become possessed of the applicant's trade secrets, which include know-how, processes and techniques; knowledge of and influence over customers and business associates; contractual arrangements with business associates; financial details of the applicant's relationship with its business associates; financial details, including credit and discount terms, relating to the applicant's plans; the names of prospective clients and their requirements; details of the applicant's financial structure and operating results; details of employee remuneration and duties; and other matters relating to the applicant's business and in respect of which information is not readily available in the ordinary course of business to a competitor of the applicant. He undertook to refrain from using, divulging, or disclosing to others any of the applicant's trade secrets during and after his employment. He also undertook to ensure that any written instructions, drawings, notes, memoranda or records relating to the applicant's trade secrets shall be surrendered to the applicant on

⁵ Defined as services rendered by the company as at the termination date.

⁶ Defined as any person, firm, association, business undertaking, company or other legal person who is a client of the company at the termination date or to whom prescribed services were rendered by the company at the termination date.

demand and on termination of employment, and that he will not retain any copies thereof. In general, he undertook to protect the applicant's trade secrets and other potentially sensitive information from becoming known to any person outside the applicant's organisation at any time during or after his employment.

Non-solicitation of clients

[31] In clause 16.4 of the contract of employment, Pretorius undertook and warranted, in favour of the company and its successors in title or assigns, that for as long as he is employed by the company and for 24 months from the termination date, he will not, anywhere in the prescribed area, whether directly or indirectly, solicit, interfere with, or entice or attempt to entice away from the company any prescribed client.

Exit document

[32] This is a letter, addressed to Pretorius after his resignation, dated 15 December 2025. In it, Pretorius was reminded of the restraint-of-trade and confidentiality undertakings to which he remained bound following his resignation. Pretorius was also reminded of the prohibition against soliciting, *inter alia*, the applicant's clients and staff. The letter also records as follows:

‘...This correspondence is not intended to prevent you from pursuing lawful employment, but rather to ensure that your transition is conducted in a manner consistent with your contractual undertakings and applicable law.

Should you wish to clarify the scope of your restraint obligations or obtain written confirmation regarding any proposed role, you are invited to engage with us before accepting or commencing alternative employment. We, in any event, enclose a copy of your employment and confidentiality agreement. In particular, we draw your attention to clause 16 regulating the restraint provisions you agreed to.’

[33] Pretorius signed the letter on 17 December 2025.

Alleged breaches by Pretorius

- [34] The applicant states that after Pretorius left on 2 January 2026, it subsequently learned that he had joined Immploy, possibly around 7 January 2026. As noted above, this version is not entirely correct, as it deliberately omits crucial information. Be that as it may, Immploy is a direct competitor of the applicant, providing services that are virtually identical to those provided to the same or overlapping medical institutions and medical practitioners. Although the applicant does not know the exact job title held by Pretorius at Immploy, it states that his responsibilities are very similar, if not identical, to those he performed for the applicant, the most prominent of which was recruiting nurses and placing them at medical institutions. It is therefore the applicant's case that Pretorius is in breach of clause 16 of the employment contract in that, after termination of his employment with the applicant, he is delivering prescribed services within the Republic of South Africa to prescribed clients of the applicant.
- [35] The applicant also alleges that it ascertained that Pretorius had been in communication with at least two of the nurses in its database, Mr White and Ms Muthwa, to whom the applicant had provided services for a long period. The applicant further alleges that Pretorius is now providing the same service to these nurses through his new employer, Immploy. The applicant relied on WhatsApp messages and voice notes left by the nurses on Pretorius's work phone, which he handed in when he left the applicant. According to the applicant, this proves that Pretorius is actively recruiting and soliciting nurses who are currently on the applicant's books and persuading them to use Immploy's services instead. The applicant also learned that yet another nurse, Ms Visser, had since moved to Immploy, which, according to the applicant, was no doubt due to Pretorius's solicitation and influence.
- [36] In support of its case that Pretorius's conduct in soliciting the nurses was premeditated, the applicant refers to the handover document he prepared upon his departure, from which he had deleted the nurses' contact numbers and, in some instances, used the nurses' nicknames instead of their full names, making it cumbersome to ascertain their real identities. According to the applicant, Pretorius must have kept the phone numbers for himself and/or

digitally copied them for Immploy's benefit. It states that it had since managed to reconstruct the information from the existing database, which wasted time and was a great inconvenience.

- [37] The applicant also alleges that Pretorius deleted the database of the nurses to whom he had provided services from his work-issued laptop, either to make it difficult for the applicant or to sabotage the applicant's business, and points to Pretorius's having intentionally copied this information for use at Immploy.

Applicant's submissions on the merits of the application

- [38] It is the applicant's case that the onus lies on the respondents to prove that the restraint undertaking ought not to be enforced on the ground that it is unreasonable. Notwithstanding this, the applicant contends that it is entitled to the relief it seeks because it has protectable interests. The first comprises confidential information to which Pretorius was exposed during the applicant's employment, and the second comprises the client connections he built whilst working for the applicant.

Confidential information

- [39] Confidential information is protectable under the common law, even in the absence of an NDA. Pretorius agreed that he was privy to the applicant's confidential information in the contract of employment, the NDA and the exit document. He was exposed to this information because one of his main functions was to book and place nurses at medical institutions. The applicant believes Pretorius still has access to this information.
- [40] The applicant has some 8,400 nurses in its database. The database includes their names, contact details, qualifications, experience, and fields of expertise, information that would be cumbersome and time-consuming to compile. It also contains nurses' identity numbers and their South African Nursing Council (SANC) registration numbers. This information streamlines and ensures swift placements. The database also includes nurses' residential addresses, which helps place nurses at medical institutions in their area. It also records the medical institutions where nurses were previously placed, as these institutions

prefer nurses who have worked with them before. The applicant was also exposed to the various rates at which nurses had previously worked. This is important information because, while medical institutions pay standardised rates, the secret to success lies in knowing the rates at which nurses are prepared to work, which in turn influence margins and profits. Competing recruitment agencies jealously guard this information, and nurses do not disclose what they have been paid by other agencies, as they want to see who offers them the best deal. Pretorius will use his knowledge of the rates paid to nurses by the applicant to Immploy's advantage, thereby constituting unfair competition. Pretorius also had access to details of the number of nurses the applicant placed at any given time at the various medical institutions, as well as the turnover derived from them. With this information, a competitor will know which medical institutions are the most lucrative and devote most of their resources to marketing at these institutions.

[41] According to the applicant, only a select few of its employees had access to all this information. The applicant has little doubt that Pretorius made digital and/or hard copies of all this information when he left the applicant. Alternatively, he may have committed some of it to memory. The applicant should not have to cross its fingers and hope that Pretorius will act honourably, especially now that he is employed by a direct competitor. Pretorius will use the applicant's information as a springboard for Immploy, which is impermissible and unlawful at common law.

[42] It is the applicant's further submission that if Immploy has the applicant's confidential information, it is because Pretorius was the source. In that event, the respondents were invited to disclose their full database, to state under oath when it was last updated, and to allow the applicant's IT professional to verify it.

Client connections

[43] The applicant alleges customer connections with the nurses and the medical institutions.

- [44] It submits that Pretorius' main function was to place nurses at medical institutions. To do this, he was required to solicit prospective nurses to join the applicant's database, which involved building strong personal relationships with them, learning about their skills, experience, and expertise, as well as the rates at which they would be willing to work. In the process, he gathered the nurses' contact details, viz., telephone numbers and email addresses. This information was then uploaded to the applicant's digital database.
- [45] In addition to the nurses he solicited, Pretorius was required to service the nurses already in the applicant's database. He was required to build personal relationships and/or consolidate the applicant's existing trust with them through in-person meetings, telephone calls, and digital messaging. Most of the nurses would be on first-name terms with Pretorius.
- [46] It is the applicant's case that Pretorius was also required to build and maintain good working relationships with the medical institutions. While the medical institutions are known, the key to success is knowing whom to liaise with at each institution and what their requirements are. This is because the applicant has learned from experience that cold calling yields little success. Pretorius was also on first-name terms with the relevant people at the medical institutions, and he built these relationships while employed by the applicant. According to the applicant, the medical practitioners and the contact persons at the medical institutions will likely follow Pretorius to Immploy, as, in their eyes, he was the face of the applicant.
- [47] The applicant seeks an order restraining Pretorius from soliciting the nurses and medical institutions he served while employed by the applicant.

Restraint area

- [48] It is the applicant's submission that the restraint area, being the Republic of South Africa, is not unreasonable, given that the applicant's operations are not area-specific and services are provided throughout the Republic.

However, purely as a gesture of benevolence, as the applicant put it, it was limiting the restraint to the broader provincial area of the Western Cape.⁷

Restraint duration

[49] The restraint provision is for 24 months. The applicant justifies this by stating that compiling the database took longer than 24 months. However, as with the restraint area, and for the same reason given for limiting the restraint area, the applicant limited the restraint period to 12 months, commencing on the date the court grants the order. This issue was already addressed in the judgment's introductory paragraph.

Respondent's submissions

[50] The respondents raised preliminary points and several defences, which are addressed below.

The Labour Court lacks jurisdiction over the dispute

[51] It was submitted that this court lacks jurisdiction to hear a matter that, when properly analysed, involves interpreting multiple commercial agreements, applying the Conventional Penalties Act⁸ (CPA), and resolving a contractual construction dispute concerning the hierarchy, interaction and legal effect of the employment contract, the NDA and the exit document. According to the respondents, the resolution of that dispute falls outside this court's statutory jurisdiction in terms of the Labour Relations Act⁹ (LRA).

[52] That submission need not detain the court. The applicant has not relied on the provisions of the LRA, but on a contract of employment, the NDA and the exit document. In terms of section 77(3) of the Basic Conditions of Employment Act¹⁰ (BCEA), this court and the civil courts have concurrent jurisdiction over contractual matters. The employment contract, the NDA, and the exit

⁷ Including Worcester, Paarl, De Doorns, Malmesbury, Montague, Atlantis, Robertson, Stellenbosch, Vredenburg, Wellington, Klapmuts, Somerset West, Caledon, George, Hermanus, Knysna, Ladysmith Mitchell's Plain, Mossel Bay, Oudtshoorn, Sedgefield and Uniondale.

⁸ Act 15 of 1962.

⁹ Act 66 of 1995.

¹⁰ Act 75 of 1997.

document all regulate an employment relationship, over which this court has jurisdiction. They are not commercial agreements, but even if they could be described as such, they regulate an employment relationship. Which document takes precedence is a matter of interpreting the documents that regulate an employment relationship.

[53] The failure to plead section 77(3) of the BCEA, though encouraged, is not fatal to the applicant's case.

[54] As regards breach of the CPA, the applicant was free to choose a cause of action. As it is entitled to do, it did not plead an alleged breach of the CPA or seek payment of damages under that statute. Instead, it pleaded a contractual claim. In *Chirwa v Transnet Ltd and Others*¹¹ (*Chirwa*), the court held that a court's jurisdiction to hear a matter is determined by the pleadings, and that it is not for the other party to contend that there is yet another cause of action that an applicant could have pursued.

[55] The court has jurisdiction over the matter, and the respondent's preliminary point is without merit.

The NDA overtook the contract of employment

[56] According to the respondents, the NDA, signed on 24 November 2022, expressly provides in clause 1.3 that it does not, and will not, prevent Pretorius from working for any other entity after the termination of employment with the applicant. This, according to the respondents, is a written variation of the earlier restraint conditions incorporated into Pretorius's contract of employment, and it confines the applicant's protection to misuse or disclosure of confidential information, not to employment by a competitor. The submission is therefore that the applicant was relying on two inconsistent documents, one prohibiting employment and the other permitting it.

[57] The applicant disputed the respondent's version that the NDA overrode the employment contract. It contends that the NDA was intended to supplement,

¹¹ 2008 (4) SA 367 (CC) para 21, 23 and 169.

not replace, the employment contract. It further submits that, if the parties intended the NDA to vary the employment contract, they would have said so, given clause 17.2 of the employment contract, which is a non-variation clause, and that the NDA does not state that it varies the employment contract. The two documents are meant to co-exist. According to the applicant, clause 1.3 of the NDA means that the NDA in and of itself does not constitute a restraint of trade, that 'an employee who notionally only signed the NDA, but not the restraint of trade, would not be subjected to a restraint', and that the purpose of the NDA was to add a deterrent against employees disclosing confidential information. The applicant also submits that the exit document did not novate the employment contract, and that, at common law, novation¹² is not presumed but must be proven by an express declaration of the parties or by necessary inference from the circumstances of the case. Reference was made to *Norvatis SA (Pty) Ltd v Maphil Trading (Pty) Ltd*¹³ (*Norvatis SA*), where the court upheld an interpretation of a contract which was consistent with the conduct of the parties after concluding that a contract. Finally, it was submitted that the defence was a 'so-called lawyers' defence' which was contrived *ex post facto*.

[58] The respondent's submission has no merit. Clause 1.3 of the NDA provides as follows:

'1.3 The Individual understands that this Agreement does not and will not prevent them from working for any other entity subsequent to the termination of their contract with the company but only prohibits the individual from using or disclosing any of the company's confidential and or trade secret information.' (Own underlining)

[59] The NDA, which is the 'Agreement' referred to in clause 1.3, does not prevent Pretorius from working for a competitor. That is all the clause says. Nothing more, nothing less. It does not override the restraint provisions in the contract of employment.

¹² See *Swadif (Pty) Ltd v Dyke*, NO 1978 (1) SA 928 (A)- which held that when parties novate, they intend to replace a valid contract by another valid contract.

¹³ 2016 (1) SA 518 (SCA).

Alleged material non-disclosures

- [60] The respondents also complained that the applicant failed to disclose material facts in its founding affidavit.
- [61] The first is that both the deponent to the applicant's affidavits and the Chief Financial Officer (Moosa) and Pretorius were previously employed by Immploy, and that Moosa was a disgruntled former employee of Immploy. After leaving Immploy, Moosa headhunted several of Immploy's employees who were subject to restraint undertakings, but Immploy did not enforce those restraints, as it believed most of its information was in the public domain. It is correct that the applicant did not disclose this information in its founding affidavit, and whether this bears on the current application will be determined when the merits of the application are assessed.
- [62] The second undisclosed fact is that the applicant's nursing database was disclosed during the litigation that followed the applicant's award of a tender by the DoH in 2024, after a tender process that commenced in 2023.¹⁴ Therefore, the information the applicant claims constitutes a trade secret is in the public domain and did not come into Immploy's hands through Pretorius. It is also correct that the applicant did not disclose this information upfront and does not deny that its database was discovered during a review process initiated by Immploy, which challenged the award of the tender to the applicant. I will return to this issue when I address whether the applicant has a protectable interest.
- [63] According to the respondents, the third undisclosed fact is that the applicant brought two prior restraint applications against former employees, Mr Vryburg and Ms Wagner, both of which were dismissed by the Western Cape Division of the High Court in January 2025, with costs. According to the respondents, it was therefore not coincidental that the applicant resolved to launch the current application in a different court. The real issue, according to the respondents, is that Moosa has a personal vendetta against the Immploy

¹⁴ The respondent's papers suggest that the databases of all service providers who participated in the 2023/2024 DoH tender process were circulated amongst the service providers, as required by the DoH, a contention disputed by the applicant.

shareholder, and that Pretorius has become the latest person drawn into that wider dispute. The judgments of the Western Cape High Court will be considered, but ultimately this application will be determined on its own merits.

- [64] Linked to the above issue is the applicant's zealously pursuing employees who were joining Immploy, but not pursuing other former employees with the same vigour. The applicant pursued Vryburg and Wagner and was unsuccessful. The allegation that other employees who joined Immploy were not pursued was first raised in the fourth affidavit, and the applicant was unable to respond to it. It will not be entertained for that reason.¹⁵
- [65] The respondents also raised a related issue, namely that Immploy did not enforce restraint-of-trade undertakings against its employees who resigned and joined the applicant. I agree with the applicant's submission that this was a battle for Immploy to fight. In any event, because Immploy did not enforce the restraint against its former employees, can it be said that the applicant is now precluded from enforcing the restraint-of-trade undertakings against Pretorius on that basis? I think not, and no case authority was relied upon.¹⁶ However, the fact that Pretorius came from Immploy when he joined the applicant is a relevant factor, which will be addressed later in the judgment.
- [66] According to the respondents, the fourth undisclosed fact is the continued unauthorised commercial use of Pretorius's name and photograph on the applicant's WhatsApp business profile, even after Pretorius's departure. Pretorius, who is legally represented, should seek legal advice on his remedy. The issues for determination in the present application are confined to whether the restraint, confidentiality, and non-solicitation undertakings should be enforced. It cannot be said that the alleged use of Pretorius's name and

¹⁵ The applicant referred the court to a decision of this court in *Adviceworx (Pty) Ltd and another v Roux and Others* [2024] JOL 63399 (LC), in which a similar defence did not find favour with the court for the reasons set out in the judgment.

¹⁶ The applicant referred to case authorities on unlawful competition by employers and on delictual damages, but the court has not engaged with them because the current matter is not a dispute between two employers, but rather between a former employee and their previous employer.

photograph on the applicant's WhatsApp business profile is an ancillary matter for determination in this application.¹⁷ Even if it is an ancillary matter for consideration, Pretorius has not specified the relief he seeks. The alleged conduct casts the applicant in a bad light, but that is as far as the court is prepared to go.

- [67] The fifth undisclosed fact concerns the circumstances of Pretorius's resignation. He denies that he resigned out of the blue. Instead, he states that he resigned from the applicant because, in 2025, he was instructed to participate in a tax evasion scheme, or alternatively, fraud, which would have exposed him to potentially criminal consequences. More specifically, he states that he was instructed to update the nurses' statuses from employee to independent contractor, so that the applicant would not deduct PAYE and UIF, and the tax burden would shift from the applicant to the nurses. Pretorius states that the same scheme was applied to him, with his salary processed through payroll but not his commission payments. In November 2025, he was presented with a document in terms of which he indemnified the applicant for the tax liability in respect of the commission payments, which he signed under duress. According to the respondents, a former employer cannot enforce a restraint undertaking against an employee who had valid reasons for leaving. The further submission is that the applicant failed to disclose the indemnity that it required Pretorius to sign, which forms part of the employment contract, and that it only seeks to enforce the restraint provisions. This issue is addressed when dealing with the reasonableness of the restraint.

Absence of protectable interest

- [68] The respondents deny that the applicant has protectable interests. They contend that the information and customer connections relied upon were, in substantial part, developed by Pretorius while at Immploy, after which he joined the applicant. Accordingly, Pretorius was simply returning to an employer he had previously worked for, bringing with him the information and

¹⁷ See *Backsports (Pty) Ltd v Motlhanke & Another* (2026) 47 ILJ 529 (LAC), where, in a restraint application, the employer sought an order preventing the ex-employee from threatening its employees and assets, and the LAC held that the court had jurisdiction to determine the ancillary matter.

customer connections that the applicant now claims are its proprietary interests.

- [69] The respondents also submitted that the applicant's nursing database was shared with Immploy and all recruitment agencies in 2024 and 2025, in connection with the DoH tender, which required all participating tenderers to share their nursing databases. Therefore, that database was in the public domain and no longer confidential information. If the applicant had trade secrets, it failed to specify how they were kept secret. It was pointed out that the applicant's own case regarding the number of nurses in its database changed from 3000¹⁸, to 2500¹⁹, to 8400²⁰, and that such information could not be relied upon. The respondents also rejected the invitation to produce Immploy's records, contending that the applicant's case must stand or fall on the case it has presented.
- [70] It was also submitted that nurses' contact details, experience, fields, and rates were provided to multiple agencies by nurses who moved between agencies to secure the best deal, depending on shift availability and convenience. All recruitment agencies retain nurses' SANC registration numbers for compliance purposes. According to the respondents, at least 246 nurses on the applicant's database had also been registered with Immploy for years. It is insufficient to contend that the 'value lies in convenience', as this does not convert widely held candidate information into a trade secret.
- [71] The further defence regarding the alleged confidential information is that the exact information regarded as secret and unique was not specified, and that no details were provided about the applicant's margins and pricing models, which were said to be secret. According to the respondents, margins are substantially shaped by the tender framework and the standardised processes prescribed by the DoH, and the information was not unique to the applicant.

¹⁸ The applicant explained that these are medical practitioners on its database.

¹⁹ Applicant says these are nurses on the database.

²⁰ Applicant says these are all medical practitioners on its database, including archived ones.

The DoH rates, which account for 80% of the applicant's business, are fixed across all recruitment agencies.

- [72] As regards public medical institutions, the submission is that the applicant implies it has an exclusive entitlement to supply staff to them, whereas these institutions are served by multiple agencies, so there is no exclusivity. As regards placements, in the Western Cape, shifts are administered through systems and processes that limit preferential treatment and personal influence. In any event, Immploy places candidates at all facilities, as this is commercially sensible. The information relating to facilities, wards, and management contracts attached by the applicant is not a trade secret.
- [73] Pretorius denies deleting information from the work-issued laptop and points out that the screenshot relied upon was taken in February 2026, long after he had left, and that it is difficult to understand the case being made, given that the applicant's own case is that it has all that information in a database. He also denies having access to the applicant's pricing information and margins, copying, retaining, or removing any database or contact list, or sharing it with Immploy. He could not have committed that much data to memory.
- [74] As regards soliciting nurses, the WhatsApp voice notes on which the applicant relies were sent to a phone he handed in when he left the applicant and no longer has access to. In any event, Immploy would not simply take nurses without subjecting them to a rigorous vetting and compliance process. He also states that he was not appointed to a leadership position and does not manage staff.
- [75] Pretorius also takes issue with the restraint, which he says seeks to restrict his section 22 Constitutional right to choose a trade, occupation and profession. He is a nursing recruitment consultant, the only profession for which he has training, expertise and experience. He also challenges the reasonableness of the restraint's geographical scope, as he lives in Cape Town.
- [76] Before discussing the parties' competing contentions, the legal regime governing restraint-of-trade applications will be set out.

Legal principles

[77] *Magna Alloys & Research (SA) (Pty) Ltd v Ellis*²¹ (*Magna Alloys*) held that restraints of trade are valid and enforceable unless shown to be unreasonable and contrary to public policy. Once the existence of the agreement and a breach or threatened breach have been established, the restraint must be enforced unless it is unreasonable and contrary to public policy.

[78] The once vexing question of who bears the onus of proving that a restraint is unreasonable has since been settled. In *Ball v Bambalela Bolts (Pty) Ltd & another*²² (*Ball*), the court held that:

‘In *Reddy v Siemens Telecommunications (Pty) Ltd*,²³ it was held that the reasonableness of a restraint could be determined without becoming embroiled in the issue of onus. This could be done if the facts regarding reasonableness have been adequately explored in the evidence and if any disputes of fact are resolved in favour of the party sought to be restrained. If the facts, assessed as aforementioned, disclose that the restraint is reasonable then the party, seeking the restraint order, must succeed, but if those facts show that the restraint is unreasonable, then the party, sought to be restrained, must succeed. Resolving the disputes of fact in favour of the party sought to be restrained involves an application of the *Plascon-Evans* rule.’

[79] In *Reddy v Siemens Telecommunications (Pty) Ltd (Reddy)*²⁴, the court further explained that the enquiry into the reasonableness of a restraint is a value judgment involving two policy considerations, namely, the public interest, which requires that parties to a contract must comply with their contractual obligations (i.e., *pacta servanda sunt*), and the principle that a citizen should be free to engage in or follow a trade, occupation or profession of her choice.

²¹ 1984 (4) SA 874 (A).

²² (2013) 34 ILJ 2821 (LAC) at para 14.

²³ 2007 (2) SA 486 (SCA); (2007) 28 ILJ 317 (SCA) para 14 at 498E-499.

²⁴ *Ibid.*

[80] The inquiry into reasonableness also considers whether an employer has a protectable interest. In *Automotive Tooling Systems (Pty) Ltd v Wilkens & others*²⁵ (Automotive), the court held that:

'An agreement in restraint of trade is enforceable unless it is unreasonable. It is generally accepted that a restraint will be considered to be unreasonable, and thus contrary to public policy, and therefore unenforceable, if it does not protect some legally recognizable interest of the employer but merely seeks to exclude or eliminate competition.'

[81] In *Basson v Chilwan & others*²⁶ (Basson), the court set out the questions to consider when assessing the reasonableness of restraint of trade provisions as follows:

81.1 Is there an interest of one party that is deserving of protection at the termination of the agreement?

81.2 Is such interest being prejudiced by the other party?

81.3 If so, does such interest weigh sufficiently, both qualitatively and quantitatively, against the interest of the latter party to justify the latter being economically inactive and unproductive?

81.4 Is there another facet of public policy, having nothing to do with the relationship between the parties, that requires the restraint to be either maintained or rejected?

[82] More recently, a further enquiry has been added, namely, whether the restraint goes further than necessary to protect the relevant interest. The enquiry is undertaken at the time of enforcement and involves balancing the parties' interests. The court must balance the right to contractual freedom with the right to economic participation. This includes consideration of 'the nature, extent and duration of the restraint and factors peculiar to the parties and their respective bargaining powers and interests'.²⁷

²⁵ 2007 (2) SA 271 (SCA); (2007) 28 ILJ 145 (SCA) at para 8.

²⁶ 1993 (3) SA 742 (A).

²⁷ See Reddy supra n 23 and Basson supra n 24.

- [83] Protectable interests can include confidential information, such as trade secrets or trade connections.²⁸ The former comprises all confidential matters that are useful in carrying on the business and, if disclosed to a competitor, could be used by that competitor to gain a relative competitive advantage. The latter consists of relationships with customers, potential customers, suppliers, and others, and is an important aspect of an employer's incorporeal property known as goodwill. An employer need not prove both. Either will suffice.
- [84] Whether information is confidential is a factual enquiry. According to *Labournet (Pty) Ltd v Jankielsohn & Another*²⁹ (*Labournet*), information is confidential if (a) it is capable of being used in a trade or industry, is useful, and is not public knowledge or property (b) it is known only to a restricted number of people or a closed circle, and (c) it is of economic value to the person seeking to protect it. All three requirements must be met.
- [85] As regards trade connections, in *Rawlins v Caravantruck (Pty) Ltd*³⁰ (*Rawlins*), the court stated the following:
- ‘The need of an employer to protect his trade connections arises where the employee has access to customers and is in a position to build up a particular relationship with the customers so that when he leaves the employer's service, he could easily induce the customers to follow him to a new business’.
- [86] All that an employer has to show is that an employee had access to the trade secrets and could theoretically transmit them to the new employer³¹, or that customer connections exist and could be exploited if an employee were to be employed by a competitor.³² It is not necessary to prove actual transmission of information or exploitation of the customer connection.

²⁸ *Rawlins v Caravantruck (Pty) Ltd* 1993 (1) SA 537 (A).

²⁹ (2017) 38 ILJ 1302 (LAC) at para 48.

³⁰ 1993 (1) SA 537 (A) at 542F.

³¹ *BHT Water Treatment (Pty) Ltd v Leslie* 1993 (1) SA 47 (W).

³² *Experian South Africa (Pty) Ltd v Haynes and Another* 2013 (1) SA 135 (GSJ).

[87] Where an employee proves that they had no access to confidential information or did not exert influence over customers, the employer has no protectable interest.

Discussion

The restraint undertaking

[88] Pretorious signed an employment contract that incorporates restraint undertakings, and restraints of trade are enforceable unless shown to be unreasonable.

[89] Whether the restraint undertaking must be enforced is determined at the time of enforcement. Therefore, an employee's agreement to the restraint undertaking is a factor, but it is not decisive on whether the restraint undertaking must be enforced.

[90] The starting point is that on 23 December 2025, Pretorious informed Marais that he would be taking up employment with Immploy. Marais did not object. In fact, she agreed. The applicant's own account is that it was willing to forgo its restraint-of-trade rights ex gratia, provided Pretorious did not solicit nurses on its books. Whether Pretorious solicited nurses on the applicant's books will be addressed later in the judgment, but the parties agreed that the restraint-of-trade undertaking would not be enforced. It is surely unreasonable and contrary to public policy for an employer to agree not to enforce a restraint-of-trade undertaking and then go back on its word after an employee has taken up employment with a competitor.

[91] To compound matters, the applicant failed to disclose this crucial information in its founding affidavit to the court. It was only when the answering affidavit was filed that the applicant acknowledged the agreement reached on 23 December 2025. That agreement undermines the applicant's attempt to enforce the restraint undertaking.

[92] It follows that the contract of employment, the NDA, and the exit documents were superseded by the verbal agreement reached on 23 December 2025 in relation to the enforcement of the restraint undertaking against Pretorius.

[93] Yet another reason, in the court's view, why the restraint cannot be enforced is the circumstances surrounding Pretorius's resignation. Pretorius pleaded that he resigned because he did not wish to participate in the applicant's alleged unlawful activities, as detailed when the respondent's grounds for opposing the application were set out. The applicant submitted that Pretorius's reasons for resigning were irrelevant to determining whether the restraint undertaking must be enforced. The question is not novel, as it has been answered in at least two decisions of courts with a higher status than this court, which are binding on this court.

[94] The first was *Reeves & another v Marfield Insurance Brokers CC & another*³³ (Reeves). The court was called upon to decide whether an employer's alleged wrongful or unlawful termination of employment precluded the employer from enforcing a restraint undertaking, having regard to the wording of the restraint provision. The court stated as follows:

'... The words "ceases to be employed" indicate an intention that the restraint is to operate once there is no longer an employment relationship between the employer and employee. The words that follow, i.e., "for any reason whatsoever", make it clear that the circumstances in which the employment relationship comes to an end or the underlying cause of its termination are irrelevant to the operation of the restraint provision.

[95] However, the court did not end there. It also stated the following:

'Mr Lang did not contend that in the event of the provision in question being construed as including a wrongful termination it was on that basis alone *contra bonos mores* and as such invalid. What he did argue, as I understood him, was that having regard to events which occurred subsequent to the conclusion of the contract and in particular the circumstances in which the employment relationship came to be terminated, the enforcement of the

³³ 1996 (3) SA 766 (A).

restraint would be contrary to public policy. I shall return to this argument in due course.'

[96] In *Reeves*, the wrongful termination arose because the employer failed to give the required notice of termination. The court stated:

'I accordingly see no justification for regarding a provision such as the one in issue as *contra bonos mores*. Whether such a provision should be enforced in the light of all the circumstances prevailing when it is sought to invoke the restraint is a different question and one to which I shall revert later.' (own underlining).

[97] Therefore, the court held that a restraint provision stating that it is enforceable regardless of the circumstances of termination, in that case a failure to give notice of termination, is not *contra bonos mores*. Later on, the court also stated that:

'Furthermore, as I shall show in due course, the absence of such a rule would not mean that the manner in which the contract of employment comes to an end is of no consequence.'

[98] The court also stated as follows:

'Where the wrongful termination by an employer is fraudulent, eg the employee is hired and fired with the sole object of imposing a restraint upon him, or otherwise amounts to a wrongdoing on the part of the employer which is wilful, ie it involves bad faith on his part, a court would on that ground alone decline to enforce the restraint. Indeed, an express provision in terms of which one contracting party undertakes to condone or submit to the fraudulent conduct of the other will be regarded as *contra bonos mores* and so offensive to the interests of society as to render it illegal and hence void.'

And

'But it does not follow that in the absence of fraud or wilful wrongdoing the circumstances in which an employee ceases to be employed are necessarily an irrelevant consideration when it comes to the question whether or not the restraint should be enforced. In *Magna I Alloys and Research (SA) (Pty) Ltd v Ellis* 1984 (4) SA 874 (A) this Court rejected the English doctrine that a covenant in restraint of trade is *prima facie* invalid. It is now settled that

whether a restraint is to be enforced or not depends upon whether it would be contrary to the public interest to do so. This is to be assessed in the light of the circumstances prevailing when it is sought to enforce the restraint and involves the weighing up of two main considerations.' (Own underlining)

[99] Finally, the court said:

'Where, as in the present case, the restraint may be invoked even following the wrongful termination of the contract of employment by the employer, there would seem to be no reason in principle why the existence of such a provision in the restraint agreement and the circumstances in which the employment relationship came to be terminated should not be included in what Botha JA in the Basson case, supra at 777D, described as 'the multitude of factors to be taken into account in the inquiry as to the reasonableness of the restraint'. In the absence of fraud or a wilful wrongdoing the termination of the contract of employment in consequence of a breach or an unfair labour practice on the part of the employer would not on its own, I think, ordinarily carry much weight. In appropriate circumstances, however, such conduct, eg the repudiation of the contract by the employer and the nature thereof, may well serve to tip the scales in favour of the conclusion that it would be contrary to the public interest to enforce the restraint.' (Own underlining)

[100] Therefore, *Reeves* does not lay down a hard-and-fast rule that the circumstances in which the employment came to an end are irrelevant. In fact, the judgment states that where fraud or wilful doing was involved, this must be taken into account when a restraint of trade is sought to be enforced. The court also held that conduct such as the employer's repudiation of the contract and the nature of that conduct may well tip the scales in favour of the conclusion that it would be contrary to the public interest to enforce the restraint.

[101] It bears noting that, in *Reeves*, the employer was keen to retain the employee's services, but when he refused to sign the contract, the employer terminated his employment without notice. The court found that, on the facts, terminating without notice did not justify refusing to enforce the restraint undertaking. Therefore, *Reeves* was decided on its own facts.

[102] The second decision is *Backsports (Pty) Ltd v Motlhanke & Another*³⁴ (*Backsports*). The employee was dismissed for misconduct, and one of the reasons he resisted an application to enforce the restraint-of-trade undertaking was that he had been dismissed. This court upheld that argument, but on appeal, the court stated the following:

[16] In the present case, the restraint of trade provisions refer to the 'termination date' and nothing more. In essence, on the authority of *Reeves*, the restraint of trade agreement is enforceable despite the circumstances that led to the termination of the employment contract. It is not the first respondent's argument that his dismissal was fraudulent, as it was solely effected for the purposes of enforcing the restraint of trade agreement. The appellant argues, correctly, that the first respondent was dismissed after pleading guilty to the charges brought against him and subsequently abandoned his unfair dismissal dispute at the CCMA.'

[103] Therefore, in *Backsports*, the court held that the employee's dismissal was not fraudulent, as it was not effected for the purpose of enforcing the restraint-of-trade undertaking, and that he was dismissed after pleading guilty and abandoning the dismissal case he had referred to the CCMA. Obviously, given those facts, the employee could not argue that the restraint could not be enforced because he had been dismissed. The matter was decided on its own facts.

[104] To the extent that *Backsports* may be interpreted as meaning that the circumstances under which an employee's employment was terminated are never a relevant consideration when an employer seeks to enforce a restraint-of-trade undertaking, on my understanding, this is not a principle founded in *Reeves*. For this reason, I respectfully disagree with this court's decisions to the effect that the circumstances under which the employment terminated are never a relevant consideration when a restraint of trade undertaking is sought to be enforced. On the contrary, the opposite is true.

³⁴ (2026) 47 ILJ 529 (LAC).

- [105] In this case, the applicant alleged that Pretorius's resignation came out of the blue. Pretorius refuted this version and presented his own explanation for his resignation. In terms of the *Plascon Evans* rule³⁵, disputes are facts that are decided in favour of the party against whom the restraint is sought to be enforced, unless that party's version constitutes a bare denial, is fanciful or is far-fetched. Pretorius's version is accepted because it is not fanciful or far-fetched.
- [106] The applicant chose not to engage with Pretorius's version, instead regarding it as irrelevant, defamatory, scandalous, and deserving to be struck out, and arguing that Pretorius ought to have reported the alleged unlawful conduct to the authorities. It is not sufficient for an ex-employer against whom such serious allegations are made to contend that 'two wrongs do not make a right', as the applicant sought to argue. Not reporting the matter to the authorities (who require proof) does not preclude Pretorius from advancing that version to resist the enforcement of the restraint undertakings.
- [107] The respondent also submits that Pretorius did not refer to any alleged unlawful activities by the applicant in his resignation letter. That may be so,³⁶ but Pretorius presented a version to this court explaining why he resigned, which the applicant could have addressed but chose not to. There is only one version before the court, and it is accepted.
- [108] In the court's view, it would be unreasonable to enforce the restraint undertaking against Pretorius, who chose to resign and join a competitor rather than participate in the alleged unlawful conduct he detailed. It would be against public policy to hold Pretorius to the restraint undertaking.
- [109] The court also accepts Pretorius's concerns about the scope of the restraint. He states that all he knows is recruiting medical practitioners, a version which has not been disputed. The question that arises is, if the restraint undertaking is enforced, how is Pretorius to earn a living?

³⁵ *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* 1984 (3) SA 623 (A) at 634H-635B.

³⁶ The resignation letter did not form part of the papers before the court.

[110] Weighing up the interests of the parties and taking into account public policy considerations that relate to the public interest rather than the parties, the restraint undertaking in this matter cannot and will not be enforced for all the reasons set out above.

[111] But even if the court is wrong in how it has weighed the parties' interests and public policy considerations, the applicant must still overcome the hurdle of demonstrating a protectable interest.

Confidentiality

[112] Pretorious signed an employment contract and the NDA, both of which contain confidentiality undertakings. The applicant is correct that it need not prove utilisation of confidential information, only that Pretorious had access to it and could potentially use it. Despite knowing the correct legal position, the applicant devoted considerable time in its founding affidavit to attempting to demonstrate a breach. This was unnecessary and must have been done to create an atmosphere.

[113] The court accepts that Pretorious had access to the applicant's confidential information, at the very least in the form of the nurses' database. This is because the applicant took the trouble to compile it.³⁷ The 'convenience', as the applicant calls it. Whether that database is confidential depends on whether the three requirements for confidentiality, as set out under legal principles, are satisfied.

[114] The court accepts that, given the nature of the applicant's industry, a nurse's database is useful and of economic value to the applicant or a competitor. However, on its own version, the applicant's nurses' database was discovered during litigation between the DoH and Immploy in 2025. It was not discovered for the DoH's eyes only, as the applicant submits. The applicant had the option to request that its nurses' database be sealed, but it chose not to. Therefore, Immploy is lawfully in possession of the applicant's database.

³⁷ *Van Castricum v Theunissen and Another* 1993 (2) SA 726 (T) A at 731F – H.

[115] The applicant's contention that the discovered database is outdated leaves one wondering how the current database differs from the disclosed one. The court does not know, as it is not told.

[116] The applicant also states that not all the nurses' information was disclosed. Apart from the applicant's failure to disclose this crucial information upfront, the disclosure included the nurses' names, ID numbers, fields of speciality, and SANC registration numbers. The applicant states that the undisclosed information included contact details, email addresses, previous employers, rates, and the number of nurses placed at a medical institution at any given time. In the court's view, the information disclosed was sufficient for a competitor to pursue those nurses if it wished. In any event, it was undisputed that nurses were listed in the databases of several recruitment agencies to see where they could get the best deal. The contention that 250 nurses on the applicant's database were also on Immploy's database was not disputed.

[117] It follows that the applicant's contention that the nurses' database is confidential because it is stored on the computer servers and only selected employees have access to it cannot be accepted.

[118] The nurses' database, which was once confidential, is no longer a protectable interest because the applicant disclosed it in the litigation instituted by Immploy. This explains why the applicant submitted that its case that the confidential information deserved protection may well be superfluous. This was a half-hearted concession that the applicant had not made out a case that the nurses' database was confidential, given that it had been known to Immploy long before Pretorious returned to Immploy. The concession, though half-hearted, was well made.

[119] The applicant also treated its pricing as confidential. The respondents disputed this, stating that the rates offered by the DoH, which accounted for 80% of the applicant's business, were fixed and known to all recruitment agencies. The respondents' version is accepted.

[120] The respondents also submitted that nurses shopped around for the best deal and that the applicant's terms and conditions with nurses allow nurses to be

listed on multiple recruitment agencies' databases. The applicant did not dispute these contentions. The rates paid to the nurses are not a protectable interest.

[121] The applicant also referred to pricing, profit margins, and turnover as trade secrets. Given how the industry works, which is common cause, it is difficult to understand how a recruitment agency's profit margins and turnover would be valuable to a competitor.

[122] There are no recognisable trade secrets that warrant protection in this case.

Trade connections

[123] The applicant claims a protectable interest in trade connections based on the nurses and the medical institutions.

[124] Pretorius conceded he had connections with nurses but contends he moved to the applicant with those connections. The respondents rely on *Van Castricum v Theunissen and Another*³⁸ (*Van Castricum*), which they contend held that customer relationships must have developed during and by virtue of employment. The applicant relies on *Rawlins*, in which the court considered a similar argument that the employee had brought the clients in question. The respondents submitted that *Rawlins* does not establish a hard-and-fast rule but requires a factual enquiry.

[125] In *Rawlins*³⁹ the court posed the question:

'Does this establish that the respondent did not have a proprietary interest of the kind under consideration? It is, of course, a factor in his favour; but not conclusively so'...Even though the persons to whom an employee sells and whom he canvasses were previously known to him and in this sense 'his customers', he may nevertheless during his employment, and because of it, form an attachment to and acquire an influence over them which he never had before. Where this occurs, what I call the customer goodwill which is

³⁸ 1993 (2) SA 726 (T).

³⁹ *Supra* n 30.

created or enhanced, is at least in part an asset of the employer. As such it becomes a trade connection of the employer which is capable of protection by means of a restraint of trade clause.' (Own underlining).

[126] Therefore, whether there is a trade connection worthy of protection is a factual inquiry.

[127] The court went on to state this:

'The onus being on Rawlins to prove the unreasonableness of the restraint, it was for him to show that he never acquired any significant personal knowledge of or influence over the persons he dealt with as a salesman of the respondent, over and above that which previously existed. In my opinion he did not do so. No allegation that he did not acquire such knowledge or influence is made by Rawlins. Nor do I think that it can be inferred. On the contrary, it would appear to be no less probable that Rawlins' relationships with the customers he dealt with as a salesman of the respondent were such as to make it reasonable for the respondent to protect itself. Rawlins worked for the respondent for some 15 months. During this time, he received training in the use and marketing of products sold by the respondent. He was obviously a successful salesman. Taking account of the realities of commerce, it is a fair inference in these circumstances that it was Rawlins' employment with the respondent that gave him the opportunity to consolidate or even strengthen the prior rapport which he had with his customers.'

[128] Therefore, Rawlins was held to have acquired and enhanced his influence over the clients he brought because (a) he did not deny it, and (b) he had received training from the employer, which made him a successful salesman. Accordingly, I agree with the respondents that *Rawlins* does not establish a hard-and-fast rule.

[129] In this case, Pretorious alleged, which was not denied, that the applicant headhunted him because of his trade connections. He denied having acquired or enhanced his influence over these customers while employed by the applicant. There was also no suggestion that he received training which was specific to the applicant's business (as in the *Rawlins* case), which would have enhanced his influence over the customers he brought along.

- [130] The applicant did not deny that Pretorious brought customers along but contended that they became the applicant's proprietary interest as a matter of right. That is incorrect. In the absence of evidence that Pretorious's influence over those customers was enhanced while employed by the applicant, the customers that Pretorious brought to the applicant are not the applicant's proprietary interest.
- [131] That leaves the nurses whom Pretorious recruited while employed by the applicants. The court was prepared to accept that trade connections were acquired in respect of those nurses. However, one does not know who those nurses are, as the applicant lumped them all together in Annexure RM5.
- [132] There are no trade connections worth protecting.
- [133] The contention that medical institutions are trade connections was not seriously pursued, except to argue that the contact names of people at these institutions are needed. However, this information is set out in Annexure RM5, annexed to the founding affidavit, which raises the question of how such information can be confidential when the applicant shared it in these proceedings without seeking to have it sealed.
- [134] The respondent's contention that the DoH uses the NIMS system, in terms of which a clerk at the medical institution does not know the recruitment agency that put forward a particular candidate for placement to ensure fairness and prevent manipulation, was not disputed by the applicant. On those facts, I am unable to see how a single recruitment agency could influence a medical institution to place nurses with it. There can be no talk of aggressive marketing to DoH medical institutions. Logically, if the recruitment agency cannot influence a medical institution as to which nurses to place, it follows that the number of nurses a recruitment agency has placed at a medical institution cannot be a trade secret.
- [135] The applicant's own version was that medical institutions preferred nurses with whom they were familiar. Therefore, whichever recruitment agency has the preferred nurses on its database will secure a successful placement. In addition, if these nurses were on the databases of multiple recruitment

agencies, it is common cause that they shop around to see which recruitment agent offers them the best rates.

[136] The allegations that Pretorius must have copied the applicant's database when he left are speculative. No credible evidence has been placed before the court in support of the allegation, other than the assertion that 'no doubt' he copied the information. If no case has been made that information was copied, an order to hand over or destroy such information serves no purpose.

[137] The screenshot, purportedly showing a deleted file, was taken in February 2026, more than a month after Pretorius left the applicant's employ, and does not prove that he copied any information. Whether Pretorius deleted the information or used nurses' nicknames in the handover report is not the same as copying the information and taking it with him. Immploy does not have to disclose its database to prove anything. It was for the applicant to prove its case, given that it approached the court with an application for final relief and in motion proceedings.

[138] It is also difficult to understand how it can be seriously argued that Pretorius reduced a database of some 2500 nurses to memory.

[139] No case has been made out in respect of a protectable interest.

Non-solicitation

[140] The applicant's case was that it had agreed not to enforce the restraint of trade undertaking on the condition that Pretorius did not solicit any of its clients. Pretorius did not dispute that he had agreed not to solicit the applicant's clients.

[141] The applicant also states that it engaged Pretorius after learning on 8 January 2026 that he had solicited at least two nurses from its database. This was based on WhatsApp voice notes left by these nurses on the work-issued mobile device that Pretorius handed in when he left the applicant's employ. The respondents also pointed out that someone at the applicant had

responded to the WhatsApp messages, pretending to be Pretorious, which was unethical. The conduct is indeed questionable.

[142] When Pretorious pointed out that he had no access to this phone, the applicant responded that it was not necessary to prove actual solicitation, only the risk of it. The respondent's submission is legally correct, but the court did not overlook the fact that the applicant approached this court with a version that it had proof that Pretorious was soliciting its clients.

[143] [143] The applicant alleged that the two nurses involved in the WhatsApp messages, together with a third, had left the applicant and followed Pretorious to Immploy. Pretorious denies arranging the nurses' placements using the applicant's phone number. As noted elsewhere in the judgment, an employer need not prove solicitation, only the risk of it.

[144] Pretorius' version, also communicated to Marais, was that he would not turn away any nurses who approached him. He further alleged that some nurses, including his family members, moved to Immploy of their own accord.

[145] In *Experian South Africa (Pty) Ltd v Haynes and Another*⁴⁰ (*Experian*), the court addressed the argument about customers contacting an employee in the following terms:

[52] An argument was also advanced on behalf of the first respondent J that Jacqui Jooste and Pieter Buitendag contacted first respondent and not the other way round, and that, accordingly, he cannot be said to have attempted to solicit these clients. This argument is devoid of merit: it has been held that it makes no difference whether or not an employee contacts the customers of his ex-employer or whether such customers contact him. Both forms of conduct amount to solicitation of the customers of the ex-employer which is impermissible during the restraint period.'

[146] Therefore, Pretorious' contention that he would service the nurses who contact him is not in line with the law and is rejected.

⁴⁰ 2013 (1) SA 135 (GSJ).

[147] Considering the agreement with Marais, Pretorious must be interdicted from soliciting the applicant's nurses with whom he dealt while employed by the applicant. He cannot service these clients even if they contact him. This applies for a period of 12 months, calculated from 2 January 2026.

Requirements for final relief

[148] As the applicant was seeking a final interdict, the three essential requisites are firstly, a clear right; secondly, an injury actually committed or reasonably apprehended; and, thirdly, the absence of any other satisfactory remedy.⁴¹

[149] The applicant has failed to demonstrate a clear right in respect of the restraint and confidentiality undertakings but has succeeded in demonstrating a clear right in respect of the non-solicitation undertaking. The applicant will suffer irreparable harm if the non-solicitation undertaking, which Pretorious agreed to on 23 December 2025, is not enforced. Pretorious must be held to the bargain he struck. The liquidated damages of R100,000 agreed in the NDA relate only to a breach of the confidentiality undertaking, not to the restraint and non-solicitation undertakings. The court has already found that the restraint and confidentiality undertakings are unenforceable for the reasons given.

[150] The applicant has satisfied the requirements for final relief only in relation to non-solicitation.

Costs

[151] In this, court costs are awarded in accordance with the requirements of law and fairness. Both parties have been partially successful, and an appropriate order is that each party pay its own costs.

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

Order

⁴¹ *Setlogelo v Setlogelo* 1914 AD 221.

1. The non-compliance with the prescribed form, time and service requirements is condoned and this application is heard as one of urgency.
2. For a period of 12 months, commencing on 2 January 2026, Werner Pretorius is interdicted from directly or indirectly soliciting, contacting, enticing, interfering with, or attempting to do so, whether for his own benefit or that of others, the applicant's clients whom he serviced while employed by the applicant.
3. The application in respect of the restraint and confidentiality undertakings is dismissed.
4. There is no order as to costs.

T. Gandidze
Judge of the Labour Court of South Africa

Appearances:

For the Applicant
Instructed by

Advocate JP Steenkamp
Le Roux Sampson Inc t/a SL Law

For the first and second respondents:
Instructed by

Advocate R du Toit
Titus & Associates

LABOUR COURT