IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

Case No: 2026-085681

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED.

DATE: 1 May 2026

SIGNATURE

In the matter between:

CRAIG DU TOIT NEL ,CRAIG'S GLOW EMPIRE (PTY) LTD,CRAIG DU TOIT NEL GROUP (PTY) LTD	Plaintiff / Applicant / Appellant

and

HESTER SOPHIA SWART	Defendant / Respondent

JUDGMENT

The judgment and order are published and distributed electronically.

PA VAN NIEKERK, J

INTRODUCTION:

[1] Applicants seek, by way of urgency, an order interdicting the Respondent to utilise the Applicants' confidential information and further ancillary relief, and in the alternative seeks an interim interdict for similar relief, pending the institution of an action against Respondent. The First Applicant trades as *"Craig's Slimming*" and the Second and Third Applicants are related entities to the First Applicant, which all trade under the brand *"Craig du Toit Nel*". The Applicants trade in the beauty and cosmetic industry, providing a range of slimming and cosmetic products and procedures including laser lipo, microneedling and other slimming products. For sake of convenience in this judgment the three Applicants will be referred to jointly.

[2] Respondent is an adult female, a cosmetic consultant who was previously employed by the Applicants.

[3] In the Notice of Motion Applicants seek an order in the following terms:

"1. Any non-compliance by the Applicant with the Rules in respect of form, service and time periods as provided for in Rule 6(12)(b) of the Rules of the above honourable Court, as well as any non-compliance with the practice directives of the above honourable Court, as well as any non-compliance with the practice directives of the above honourable court, be condoned and this matter is treated as one of urgency.

2. That the Respondent be ordered to:

2.1 Immediately cease and halt all attempts to contact, solicit and/or deal with, in any manner whatsoever, with the Applicants' clients;

2.2 Immediately cease and halt all attempts to make use or utilise for any purpose, in any manner whatsoever, the Applicants' confidential information, more specifically in relation to, but not limited to, their client lists, client data, business practices, supplier information, costing formulations and/or brand;

2.3 Immediately cease and halt all attempts to hold out, represent and/or advertise, in any manner whatsoever, that the Respondent is affiliated with the brand or in the employ of the Applicants;

2.4 Immediately return and/or handover any and all stock, items, products and/or material containing the Applicants' brand name on or upon it;

2.5 Immediately disclose to the Applicants the list of the Applicants' clients that the Respondent has made contact with and/or sold products to, as well as the description of such products sold; and,

2.6 Immediately return and/or handover any and all confidential information of the Applicants', in any form or manner that such information may be held and or published;

2.7 Provide proof/confirm under oath that she no longer has any of the Applicants' confidential information in her possession and that all records and/or personal information in her possession, along with information contained in or upon any personal devices of the Respondent has been destroyed and/or removed and/or handed over to the Applicants.

3. That the costs of this application be paid by the Respondent on an attorney client scale, inclusive of the costs of Counsel.

4. Further and/or alternative relief.

<u>ALTERNATIVELY:</u>

5. In the alternative and in the event that the Honourable Court is not inclined to grant a final interdict, then the relief sought as per paragraphs 1 to 3 *above shall be sought to act as an interim interdict pending the return date of a rule nisi to be issued.*

6. *That the Respondent, or any interested party, are called upon to show cause before this Honourable Court on ______________ 2026, at 10h00, or so soon thereafter as counsel may be heard as to why an Order in the following terms, as per paragraphs 1 to 3 above, should not be made final.*

7. *That the interim Order is to be served:*

   7.1 *on the Respondent by email: at V[...]*

8. *That the costs of this application be paid by the Respondent on an attorney client scale, inclusive of the costs of Counsel.*

9. *Further and/or alternative relief".*

[4] The relief claimed by Applicants is opposed by Respondent. The matter was enrolled as an urgent application in this Court and stood down for hearing from Tuesday 28 April 2026 to Wednesday 29 April 2026 after it was established that the Applicants' counsel was engaged in another Court and was unavailable at the time when the matter was called. This issue will be referred to *infra* in relation to costs.

BACKGROUND FACTS:

[5] During February 2025 the Respondent was contracted by Applicants as a consultant to perform various services, including client relations such as handling of telephone calls and WhatsApp messages on behalf of the Applicants, deal with queries from clients, booking of appointments, product sales, invoicing and receiving proof of payment, as well as packaging and delivering of products ordered by clients. Respondent was also trained to use the laser machine as well as to perform meso-therapy.

[6] When the Respondent was employed by Applicants, the Respondent concluded a non-disclosure agreement with the Craig du Toit Nel brand. A copy of the agreement is annexed to the founding affidavit and has the following salient terms:

[6.1] Respondent agreed to protect the confidential information of the Applicants and specifically not to divulge to any third party, or sell, trade, publish, reproduce or reverse-engineer any of the confidential information, and further not put in use, in any manner, any confidential information without the prior written consent of the Applicants;

[6.2] The confidential information remains the property of the Applicants who may demand return thereof and in which event the Respondent shall return all of the original confidential information and destroy all copies and reproductions thereof in her possession;

[6.3] Respondent is prevented from disclosing or furnishing to any other party any information, equipment or material embodying any confidential information or developed as a result of the business relationship;

[6.4] The confidential agreement survives termination of the relationship between Respondent and Applicants;

[6.5] The term "*confidential information*" is widely defined and includes particulars of clients, prospective clients, their contact information, as well as technical knowledge, specifications, client lists and is in my view clearly defined to the extent that it includes the confidential information which the Applicants seek to protect in terms of the relief as claimed in the notice of motion.

[7] On 2 April 2026 Respondent terminated her employment with the Applicants and was then requested to return all confidential information and company property which included a cellular phone used for business purposes as well as the Applicants' invoice book. The invoice book contains all the information pertaining to Applicants' client base. The invoice book was only returned on 7 April 2026. Applicants aver in the founding affidavit that, on the same day being 7 April 2026, it was discovered that an existing client of the Applicants purchased

products from the Respondent after being brought under the impression that Respondent was still affiliated with the Applicants. Existing clients of Applicants were then contacted and the deponent to the founding affidavit (First Applicant) attached copies of four different electronic messages exchanged between existing clients of the Applicants and the Applicants from which it clearly transpires that the Respondent engaged such clients and solicited business from them, similar to the nature of the business conducted by Applicants.

[8] The aforesaid resulted therein that the Applicants' attorney of record addressed correspondence to the Respondent, wherein it was recorded that the Respondent is utilising confidential information, contrary to the non-disclosure agreement, and a demand was made that the Respondent desist from such conduct. Respondent failed to react to such correspondence and in the Respondent's opposing affidavit the Respondent does not deny that she received such correspondence and neither does the Respondent provide any rational reason as to why she ignored the correspondence. In my view, considering the nature of the serious allegations made against Respondent in such correspondence and the fact that the Respondent failed to react thereto, warrants an inference that the Respondent accepted the veracity of the allegations contained the correspondence and had no justifiable reason to dispute the contents thereof.

[9] When the correspondence failed to have the necessary effect, the application was launched on an urgent basis.

RESPONDENT'S OPPOSITION

[10] Respondent filed an opposing affidavit which has the following features:

[10.1] The answering affidavit contains mostly bare denials of allegations set out in the founding affidavit, and is in my view a textbook example of a bold and sketchy defence of material allegations as contained in the founding affidavit. In this regard I inter-alia refer to the fact that the answering affidavit fails to explain why the respective clients to whom the Applicants refer in paragraph 11.14 of the founding affidavit would provide information to the Applicants which substantiate the Applicants' averment that the Respondent is utilising confidential information to compete with the Applicants unlawfully. Significantly, instead of providing a plausible explanation in answer to the factual content of the averments made, Respondent elected to raise an issue on the admissibility of the evidence.

[10.2] The answering affidavit is mostly argumentative in the sense that it attempts to provide legal argument why a final interdict cannot be granted and why the matter is not urgent.

THE MERITS OF THE MATTER:

[11] After some debate during the hearing of the matter, counsel acting on behalf of the Applicants handed up a draft order which provides for an interim interdict,

pending an ation to be instituted by the Applicants against Respondent. Applicants' counsel thereafter argued that the requirements for an interim interdict were satisfied and in heads of argument filed on behalf of the Applicants the issue of an alternative order granting an interim interdict was dealt with, submitting compliance by Applicants of all requirements for an interim interdict to be granted.

[12] Insofar as the requirement that the Applicants have to show a protectable *prima facie* right is concerned, Applicants' counsel referred to the *Moller* decision[1] where the Court described the test for establishment of a protectable *prima facie* right as follows:

"*9.1 The rights can be prima facie established even if it is open to some doubt;*

9.2 Mere acceptance of the applicant's allegations is insufficient but weighing up the probabilities of conflicting versions is not required;

9.3 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, with regard to the inherent probabilities and the ultimate onus, the applicant should on those facts obtain final relief at the trial;

---

1 *Moller N.O. and Another v Murray N.O. and Others (2308/2021) [2021] ZAMPMBHC 34.*

9.4 The facts set up in contradiction by the respondent should then be considered and if they throw serious doubt on the applicant's case he cannot succeed. See Webster v Mitchell 1948 1 SA 1186 (W)".

[13] In *Messina (Transvaal) Development Co. Ltd v South African Railways and Harbours*[2] the Court held as follows:

"*In an application for an interim interdict pending action, the Court has a large discretion in granting or withholding an interdict. Where there is merely a possibility, not a practical certainty, of interference or injury, as in the present case, the Court will be reluctant to grant an interdict, especially if the party seeking the interdict will have other means of redress and will not suffer irreparable damage. And the Court is entitled to and must regard the possible consequences, both to the applicant and to the respondent, which will ensue if an interdict be granted or withheld".*

[14] In my view the Applicants established a protectable *prima facie* right for the following reasons:

[14.1] In terms of the evidence as presented in paragraph 11.14 of the founding affidavit, the Applicants refer to *prima facie* evidence that the

2 *Messina (Transvaal) Development Co. Ltd v South African Railways and Harbours 1929 AD 195 at 215-216.*

Respondent is soliciting clients of the Applicants. Although that evidence may be open to some doubt at this time, it constitutes prima facie evidence which Respondent did not deal with in a manner which casts serious doubt on the credibility of that evidence;

[14.2] If the facts referred to *supra* are proven at the trial, the Applicants will be entitled to a final interdict;

[14.3] On the version of Respondent, she was in unlawful possession of confidential information of Applicants after her resignation, because she admits to retaining the invoice book and cellular phone for a number of days after resignation, contrary to the terms of the non-disclosure agreement. No reasonable explanation is provided for this conduct.

[15] Considering the fact that, on the probabilities of the evidence, the Respondent will most likely continue to utilise confidential information of the Applicants to compete unlawfully with the Applicants while there is a non-disclosure agreement in place, I am of the view that the balance of convenience favours the Applicants and that the real potential of continuation of harm leaves the Applicants with no suitable alternative remedy. In my view Applicants therefore satisfied the requirements for an interim interdict.

COSTS:

[16] The matter was allocated to be heard on 28 April 2026 but by necessity had to stand down to 29 April 2026 by virtue of the fact that the Applicants' counsel was engaged in a different Court (Johannesburg) notwithstanding the fact that this application was enrolled in this Court, in terms of the Practice Directives of this Court, for 28 April 2026. The aforesaid caused inconvenience to this Court and to Respondent's legal representatives who duly attended Court on 28 April 2026. I am therefore of the view that the wasted costs which includes Respondent's counsel's costs for attending the Court on 28 April 2026,. should be paid by the Applicants. The remainder of the costs is to be reserved for determination by the Trail Court which hears the action to be instituted by the Applicants as referred to in the draft order prepared by Applicants' counsel.

[17] In the result, the draft order which was handed down by Applicants' counsel and which I have marked with an "X", dated and initialled is made an order of Court with the proviso that paragraph 4 thereof is amended to read:

"Costs of the application is reserved for the Trial Court referred to in paragraph 3 of the order with the proviso that the Applicants pays the wasted costs occasioned on 28 April 2026", including costs of Respondent's counsel's appearance on that day ".

P A VAN NIEKERK
JUDGE OF THE GAUTENG DIVISION,
PRETORIA

APPEARANCES

FOR APPLICANTS

INSTRUCTED BY **VAN DER MERWE &**

ASSOCIATES

RESPONDENT

INTSTRUCTED BY