REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED:

5/5/2026 [redacted]
DATE SIGNATURE

CASE NO.: 2026-080689

In the matter between:

EKM EXPORTS (PTY) LTD	**First Applicant**
EKM EXPORTS AFRICA (PTY) LTD	**Second Applicant**

and

ALLAN DE OLIVIERA	**First Respondent**
PACU MARKETING (PTY) LTD	**Second Respondent**

JUDGMENT

VAN DER WESTHUIZEN, J

[1] The applicants launched an urgent application for an interdict against the respondents, *inter alia,* to prohibit the use of alleged confidential information of the applicants and from competing unlawfully or unfairly with the applicants.

[2] The first applicant is a long-established fresh-fruit exporter with operations centred on a packhouse between Marble Hall and Groblersdal in the Limpopo Province. The first applicant was a well-established entity primarily doing business on the international markets. It subsequently established and maintained a local market in the fresh fruit industry. Once that market was growing, the second applicant was established through which the local market business would be conducted. The first respondent became a director and shareholder of the second applicant.

[3] The first respondent was an erstwhile employee of the first applicant and an erstwhile director of the second applicant. The second respondent is a private company of which the first respondent is a director and the alleged driving force of the second respondent. The first respondent is also a shareholder of the second respondent. The conduct complained of is alleged to be carried on through the second respondent.

[4] The relief sought is primarily a final interdict against the respondents and, in the alternative, an interim interdict pending the institution and finalisation of an action within a specific period. Failing the timeous institution of the action, the interim interdict would lapse.

[5] The applicants contend that when the first respondent joined the first applicant in 2019, the latter was already an established business in the relevant market. It was further contended on behalf of the applicants that during the first two years of joining the first applicant, the first respondent was exposed to the producer relationships of the first applicant. He exploited these relationships and developed them further at the first applicant's expense.

[6] In this regard, the first respondent submitted that he had already had contact and dealings with some of the applicants' clients and that he in fact, brought some of them into the first applicant's fold. However, the first respondent admitted to be made privy to the citrus and grape farming and how the Go Go packhouse operated and packed for customers. The first respondent submitted that when he joined the first applicant, the latter had no local customers and was primarily active in the international market. Furthermore, the first respondent submitted that due to a restraint of trade agreement to which he was bound, he could not be involved with local retailers such as Pick n Pay, Freshmark, Spar or Woolworths. Nevertheless, the first applicant obtained a deal in terms of which it was allowed to supply to Pick n Pay and Spar.

[7] However, the applicants submitted that if, and should, the first respondent have brought his prior contacts into the first applicant's fold, those became the customers of the first applicant, and he did not and could not retain such customers as his own, exclusively to him. On his subsequent departure from the applicants, he did not have those customers as his own to trade with separately from the applicants. By soliciting such customers to rather deal with the second respondent, the applicants submitted that a breach was committed in respect of their confidential information relating to at least those customers and he was accordingly trading unlawfully *vis-à-vis* the applicants.

[8] In the main, the first respondent raised three defences. The first related to the fact that he was a legitimately experienced participant in the fresh fruit industry who had brought his own contacts into the first applicant's fold. He subsequently merely joined a venture organised by producers who had already decided to leave the applicants.

[9] In this regard, there is no merit in that defence. As recorded above, he did not retain such producers as his own after introducing them to the applicants. Consequently, when he joined the venture, in the form of the

second respondent, those customers were still the customers of the first applicant. They had not yet left the applicant's company. Prior to leaving the applicants, he is alleged to have systematically copied information of the applicant that would assist him in continuing to deal with the applicant's customers. He would not have to re-establish such information, thereby effecting a clear springboard effect upon the applicants. His denial of such conduct is gainsaid by deleting the e-mails, from his laptop supplied to him by the applicants, for a period of at least 8 months prior to his departure.

[10] Further in this regard, the fist respondent did not deny the occurrence of the alleged damned conduct in respect of the documentary evidence, but only the legal characterisation of the documentary evidence.

[11] Secondly, the first respondent alleged that the second applicant was a non-trading entity and thus owned no protectable interests. The first respondent was appointed as a director of the second respondent while he was still a director and shareholder of the second applicant and employee of the first applicant. In an affidavit relating to his departure from the applicants, he defined himself to be a director and an authorised representative of the second applicant.

[12] The first respondent's third defence contained an interesting concession that his actions at most amounted to a possible breach of a fiduciary duty towards a dormant company falling short of unlawful competition. In my view, such concession clearly constitutes an intention of improper conduct, attempting to dilute the true character of the admitted unlawful conduct.

[13] The attempted denial of the confidentiality of the property of the applicants and the weak attempt to deny unlawful competition on the part of the first respondent, does not absolve the first respondent from his clear systematic approach to unlawfully compete with the applicants. The first respondent's lamentation of not receiving any promised

shareholding in the first applicant and his alleged frustration therewith, is not adequately explained by him. In his new venture, he would still be receiving his same salary structure with the first applicant and hold shares in the second respondent, akin to the shareholding in the second applicant. Consequently, he would not be in a better position than that he held with the applicants.

[14] In my view, the conduct of the first respondent, assessed objectively and cumulatively, constitutes unlawful competition. Further in this regard, I am satisfied that the applicants have proven a *prima facie* right in confidential property worthy of protection to warrant the issue of an interim interdict as prayed for, pending the institution of an action to be instituted within a specific period. The applicants have shown a clear apprehension of harm and the balance of convenience warrants an order protecting the applicants' *prima facie* rights.

[15] It was conceded on behalf of the applicants, that the area of restriction is to be limited only to the areas of Groblersdal and Marble Hall in the Limpopo province.

[16] Although the respondents contested the urgency of the matter, they did not press that issue. Accordingly, I received and heard the matter as a matter of urgency.

[17] In respect of costs, the parties were agreed to a costs order to be taxed on Scale C of the Uniform Rules of Court, such costs to include the cost of two counsel where so employed. However, it may be prudent to direct that the costs of this application be reserved.

I grant the following order:

1. The matter is heard as one of urgency;

2. The first and second respondents be interdicted and prohibited from:

(a) Competing unlawfully or unfairly with the applicants;

(b) Soliciting any of the applicants' customers and clients, specifically Freshmark and Pick n Pay;

(c) Soliciting any of the applicants' partner producers (farmers or suppliers) in the geographical area of Groblersdal and Marble Hall in the Limpopo province;

(d) Disclosing or using any of the applicants' confidential export programme information, international client information and confidential information which was retrieved from the applicants' database;

3. The relief contained in and provided for in paragraph 2 above shall operate as an interim interdict with immediate effect, pending the institution and finalization of an action, provided for in paragraph 4 *infra*;

4. The applicants are directed to institute action against the first and second respondents within 20 (twenty) days from the date of this order, failing which the order referred to in paragraphs 2 and 3 above will lapse irrevocably;

5. The cost of this application are reserved.

[redacted]

C J VAN DER WESTHUIZEN
JUDGE OF THE HIGH COURT
PRETORIA

On behalf of Applicant:	FW Botes SC M Louw
Instructed by:	VBH Incorporated Attorneys
On behalf of Respondent:	J Vorster SC JA Booyse
Instructed by:	Jacobs Roos Fouché Inc.
Date of hearing:	23 April 2026
Date of Judgment:	05 May 2026