THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Case no. 2025 – 209912

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

29 May 2026

In the matter between:

KING PIE HOLDINGS (PROPRIETARY) LIMITED **Applicant**

and

CHANTEL JUTE **First Respondent**

VEA FOODS (PROPRIETARY) LIMITED **Second Respondent**

Heard: **21 May 2026**

This judgment was handed down electronically by circulation to the parties and legal representatives by email and uploading on CaseLines. The date and time for hand-down is deemed to be 29 May 2026

Summary: **Urgent application by respondents to stay hearing – principles relating to urgency considered – respondents failing to establish any case of urgency – urgency self-created – respondents failing to make out case of urgency**

Practice and procedure – stay of hearing pending determination of interlocutory proceedings – principles considered – interests of justice and fairness decisive – respondents failing to establish any basis for stay of proceedings – application tactical manoeuvre to delay proceedings to so defeat restraint – undue prejudice to applicant – conduct of respondents constitutes abuse of process

Practice and procedure – Rule 35(12) / Rule 30A of Uniform Rules considered – nothing in Rule 35(12) that suspends operation of time frames to file answering affidavit – respondents still compelled to file answering affidavit despite Rule 35(12) / 30A – failure to do so fatal to stay application

Restraint of trade – Rule 39 considered – no reason why respondents could not have complied with Rule 39 – respondents failing to file any answering affidavit – instead reverting to technical point taking – conduct inappropriate in the context of Rule 39

Restraint of trade – breach of restraint established – reasonableness of enforcement of restraint – principles stated – application of principles to matter – nature of protectable interest considered – enforcement of restraint justified

Costs – conduct of respondents considered – conduct tantamount to unjustified point taking and abuse of process – costs order against respondents justified

Relief – Application to stay hearing refused – restraint of trade enforced – costs awarded against respondents

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JUDGMENT: REASONS

SNYMAN, AJ

Introduction

[1] The current matter started out as an urgent application brought by the applicant on 5 November 2025 to enforce a restraint of trade covenant and confidentiality undertaking against the first respondent, a former employee of the applicant. In the application, the applicant sought an interdict against the first respondent, encompassing the following relief: (1) to not divulge any of its confidential information to any third party, including the second respondent; (2) to not solicit the custom of the applicant's customers and / or cause such customers to terminate their business relationship with the applicant; and (3) to not be interested in any competing business to that of the applicant, and in particular the business of the second respondent, which interest includes employment. The second respondent was joined by the applicant in the application only on the basis of having an interest in the matter, and no relief was sought against it Nonetheless, the second respondent chose to engage in the application, make common cause with the first respondent, and oppose the same. Both respondents thus opposed the application.

[2] For ease of reference in this matter, considering the various different processes filed throughout the conduct of the proceedings, I will refer to the parties by name, as they are cited in the original application. The applicant will be referred to as '*King Pie*', the first respondent as '*Jute*' and the second respondent as '*Vea*'.

[3] In the Labour Court, applications relating to the enforcement of restraints of trade are governed by a bespoke Rule, considering the *sui generis* nature of these kinds of applications. This is Rule 39, which at all relevant times governed the current proceedings, and would have afforded Jute and Vea more than sufficient time to engage King Pie in opposing this matter on the merits. I say this, because it is relevant when considering that they then actually did, in this context, as will be dealt with later in this judgment.

[4] In terms of King Pie's original notice of motion, provision was made for the exchange of four sets of affidavits in compliance with Rule 39(2). The matter

was set down for hearing on 18 February 2026, in line with the prescribed pre-processes that Rule 39 requires to be adhered to prior to the matter being heard. In particular, Jute and Vea were called upon to deliver their answering affidavits on or before 18 November 2025. However, and even when this matter came before me on 21 May 2026, still no answering affidavit had been filed by them. Instead, they embarked upon a course of action of procedural objections and technical point taking. What exactly this entailed will be dealt with later.

[5] The restraint applications on the merits came before Mkhatshwa AJ on 18 February 2026. In those proceedings, Jute and Vea based their opposition on the technical issues raised, and in essence applied that the proceedings be stayed until these issues have been decided. The learned Judge refused to grant this relief sought by Jute and Vea, and the learned Judge was convinced to grant King Pie the relief it sought where it came to the enforcement of the restraint of trade against Jute, albeit on an interim basis. An order reflecting the aforesaid was issued on 19 February 2026. This order was followed by written reasons contained in a judgment dated 5 March 2026. The learned Judge made some pertinent findings in this judgment, which will be elaborated on below. The learned Judge also ordered that either party could arrange a hearing date with the Registrar for the final determination of the matter.

[6] On 17 April 2026, King Pie then filed an amended notice of motion, providing the hearing date of 21 May 2026. It must be emphasized that this new hearing date was the only amendment of the original notice of motion. The substantive relief sought, and which formed the basis of the interim order of 19 February 2026, never changed. It appears that the new hearing date was arranged with the Registrar, as contemplated by the order by Mkhatshwa AJ.

[7] Only on 12 May 2026, Jute and Vea then field an urgent application in which they ought relief to the effect that hearting of the main application to enforce the restraint of trade be stayed, pending the determination of the earlier Rule 30A application brought by them. This was the exact same approach they followed before Mkhatshwa AJ. This urgent application was set down for hearing along with the main application on 21 May 2026. Needless to say, this urgent stay application was opposed by King Pie.

[8] Both the stay application and the main application for the enforcement of the restraint of trade came before me on 21 May 2026 for argument. After having heard argument by the parties and considering all the process filed, I granted the following order on the same day:

1. The urgent application by the first and second respondents to stay the proceedings is dismissed.

2. The first respondent, Ms Chantel Jute (identity number 860729 0114 08 5) (“Ms Jute”) is interdicted and restrained, whether directly or indirectly, from:

2.1 disclosing, divulging, or disseminating, or permitting to be disclosed, divulged, or disseminated to any person or entity (including but not limited to the second respondent) or using or permitting to be used in any manner whatsoever, any of the Confidential Information (as defined in annexure "X" hereto) and/or Confidential Records (as defined in annexure "X" hereto), or attempting to do so;

2.2 for a period of 12 (twelve) months after termination of her employment with the applicant, and thus until 4 August 2026, from:

2.2.1 persuading, inducing, soliciting or encouraging any Prescribed Person (as defined in annexure "X" hereto) to terminate its contractual relationship with King Pie;

2.2.2 furnishing any information or advice acquired by her as a result of her employment by King Pie to anyone which might result in any Prescribed Person terminating its contractual relationship with King Pie;

2.2.3 in any capacity whatsoever:

2.2.3.1 dealing with, rendering advice to or consulting with the second respondent or any Prescribed Persons vis-a-vis Prescribed Services (as defined in annexure "X" hereto) and/or Prescribed Products (as defined in annexure "X" hereto); and / or

2.2.3.2 otherwise performing or providing Prescribed Services and/or Prescribed Products whether for herself or for or on behalf of the second respondent or any third party and regardless of whether the request for Ms Jute to do so originates from Ms Jute, any other third party and/or the Prescribed Person itself, or attempting to do so;

2.2.4 anywhere in the Republic of South Africa, being employed by, concerned, engaged and/or associated with, interested in and/or forming part of the second respondent or any business concern, in any capacity whatsoever which –

2.2.4.1 conducts business in competition with King Pie;

2.2.4.2 is conducted by any Prescribed Person

2.2.4.3 provides and/or supplies the Prescribed Products; and/or

2.2.4.4 renders the Prescribed Services.

3. The first and second respondents are ordered to pay the costs of the entire application, including the costs of the urgent stay application, jointly and severally, the one paying the other to be absolved on the party and party scale C, consequent to the employment of two counsel, one being a senior counsel.

4. Written reasons for this order will be handed down on 29 May 2026.

[9] This judgment now constitutes the written reasons for the order I have grated, above, as contemplated by paragraph 4 of such order. I will start by first dealing with the stay application brought by Jute and Vea, in which they seek to stay the determination of the restraint of trade, on the merits, by setting out the relevant facts relating to such application.

The relevant facts: stay of proceedings

[10] There is a critical consideration that is at the forefront of deciding whether it would be in the interest and justice and fairness to grant the stay application in this case. This is the fact that what is at stake is a restraint of trade. Restraints of trade are always of a limited duration. This is because the enforcement of restraints of trade of an excessive duration is generally considered unreasonable. In this case, the restraint period is 12 months, expiring on 6 August 2026. Any undue delay in the proceedings would therefore render the restraint valueless, considering it is due to expire in less than three months.

[11] As dealt with in the introduction to this judgment, the application to enforce the restraint of trade brought by King Pie on 5 November 2025 called upon Jute and Vea to file their answering affidavit by 18 November 2025. They did not do so. Instead, and on 21 November 2025, they delivered a notice in terms of Rule 35(12) of the Uniform Rules of Court, demanding discovery of unredacted copies of three particular annexures to the founding affidavit, which King Pie, although describing the same in the founding affidavit, had decided to redact because of the sensitive and confidential nature thereof.

[12] It is perhaps important at this juncture to establish what these documents actually were. One was a list of the wholesale and retail customers of King Pie, with their details and contact particulars, however with all these particulars redacted. The second document was a list of confidential suppliers, with particulars, as well as supply chain management procedures, which also had the confidential parts of these particulars redacted. And lastly, there was a document containing the price determinations of King Pie, but with the prices redacted. These documents were however all identified and described in the

founding affidavit, the significance and purpose of which will be dealt with later in this judgment.

[13] Despite providing these redacted documents, King Pie did offer to make the unredacted documents available to Jute and Vea, however subject to them providing strict confidentiality undertakings. One of these undertakings was that the unredacted documents concerned could not be used in any litigation, including in defence to the restraint application. Jute and Vea were unwilling to agree to provide this undertaking, and consequently, King Pie was in turn unwilling to disclose the same. This resulted in an impasse where it came to discovery of these documents.

[14] Jute and Vea then adopted the approach that it was not possible for them to file an answering affidavit to King Pie's restraint application without these unredacted documents being provided to them. On 1 December 2025, they brought an application in terms of Rule 30A of the Uniform Rules, in the ordinary course, despite the main application being urgent proceeding sunder Rule 39 with specifically applicable time limits, in order to compel King Pie to discover copies of the unredacted documents. Jute and Vea however never applied for the extension of any time limits within which to file an answering affidavit. This Rule 30A application was opposed by King Pie.

[15] The main application on the merits, as stipulated in the original notice of motion and founding affidavit, came before Mkhatshwa AJ on 18 February 2026. Both Jute and Vea were at all times aware of this hearing date. Other than the Rule 35(12) notice and the following Rule 30A application, both only filed after the expiry of the deadline within which to file an answering affidavit under Rule 39, Jute and Vea filed nothing else to oppose the substantive merits of the restraint enforcement application. Instead, they filed heads of argument in which they sought, without any substantive application supported by affidavit, a stay of the main application pending the finalisation of the Rule 30A application. This stay application was moved from the bar.

[16] Mkhatshwa AJ refused to stay the proceedings pending the Rule 30A application. The learned Judge was critical of the fact that Jute and Vea sought a stay of the hearing based on the pending Rule 30A process, without even filing an answering affidavit to the restraint application and without

bringing a substantive stay application. The learned Judge further considered the relevant authorities relating to the implications of fining a Rule 35(12) notice to further proceedings, and determined that it does not suspend the time limits under Rule 39. The learned Judge accepted that that Jute and Vea were compelled to comply with Rule 39. Based upon the evidence then before him, the learned Judge found that King Pie had established proper cause for the enforcement of the restraint of trade. In the end, the learned Judge decided to grant an interim order, and directed, in the order dated 19 February 2026, that the application be adjourned to a date to be allocated by the Registrar, on application by either of the parties. This future date would obviously be for the final determination of the merits of the matter.

[17] On 24 February 2026, and prior to Mkhatshwa AJ even handing down the written reasons for the order of 19 February 2026, Jute and Vea served an application for leave to appeal the whole of the interim order, despite it being an interim order and the appealability of such order being questionable. As touched on above, the written reasons were ultimately provided by Mkhatshwa AJ on 5 March 2026.

[18] Despite these clear warnings dispensed by Mkhatshwa AJ, Jute and Vea were still not spurred into action in opposing the restraint on the merits. If ever there was an opportune moment to file an answering affidavit (with a condonation application if needed), this was it. But they remained supine.

[19] Only on 18 March 2026, Jute and Vea applied for a hearing date for the deciding of the Rule 30A application, but importantly, on the ordinary opposed motion roll. This was despite all the pleadings (affidavits) in this application having been exchanged as far back as 23 February 2026, when the replying affidavit was filed. And even then, Jute and Vea had failed to file heads of argument as prescribed by Rule 40(2). Considering the state of the ordinary opposed motion roll, it is virtually impossible for it to be heard before restraint expires in August 2026, a fact which Jute and Vea, even on their own version, was intimately aware of.

[20] On 20 March 2026, King Pie instituted an application seeking to hold Jute in contempt of Court for failing to comply with the interim order of 19 February 2026. King Pie managed to obtain an interim contempt order in terms of this

application on 27 March 2026. The matter has been set down for the return date of 9 June 2026 for the final determination of this contempt application.

[21] Having applied for a hearing date in respect of the main application on 14 April 2026, and then having been allocated the hearing date of 21 May 2026 by the Registrar on such date, King Pie, on 17 April 2026, in accordance with directions obtained from the Registrar, filed the amended notice of motion reflecting this hearing date of 21 May 2026 for the determination of final relief in the main application. The entitlement of King Pie to do so arises from the Court order of 19 February 2026. As dealt with earlier, this amended notice of motion did not change the substance of the original notice of motion, save only for the new hearing date. Again, Jute and Vea resorted to technical point taking. On 4 May 2026, they filed a notice in terms of Rule 57(1) of the Labour Court Rules and Rule 30A of the Uniform Rules, alleging that the amended notice of motion constitutes an irregular proceeding.

[22] Finally, and on 11 May 2026, almost a month after the amended notice of motion with the new hearing date was filed, Jute and Vea finally brought a substantive stay application, supported by affidavit. It is important to have regard to what exactly is relied upon by them in this supporting affidavit, as basis for seeking the stay.

[23] In their founding (supporting) affidavit in the stay application, Jute and Vea contend the main application is not ripe for hearing. This contention is based on the fact that the Rule 30A application, the application for leave to appeal, and the Rule 57(1) notice, have not yet been decided. They again raise the same contentions as found in the Rule 30A application concerning the lack of discovery of the unredacted documents. They in fact concede that the Registrar has informed them that the opposed motion roll is full for 2026, but state that they cannot be prejudiced for this state of affairs. With specific reference to the amended notice of motion containing the new hearing date, it is contended that King Pie somehow circumvented the Rules in obtaining this new hearing date. In this founding affidavit, it was never explained on what basis the documents concerned were essential for them to be able to file an answer, and why they could not file an answering affidavit without it.

[24] A final considering is the approach Jute and Vea seek to adopt in their replying affidavit in the stay application. In the replying affidavit, they now seek to present a case on the merits of the restraint application. Although it is impermissible to make out a new case on reply and they remain bound by the case made out in the founding affidavit,[1] what is significant is that if they now plead a case on the merits when it suits in the stay application, then the obvious question must be why it could not have been done earlier. Some of the defences offered is that Vea is not a direct competitor of King Pie and that King Pie has consistently failed to enforce restraint until now, with reference to a number of names of individuals. This information had nothing to do with the redacted documents, and could always be raised.

Urgency

[25] Urgent applications are governed by Rule 38 of the Labour Court Rules, being the successor to the erstwhile Rule 8. The Court in *Jiba v Minister: Department of Justice and Constitutional Development and Others*[2] applied Rule 8 as follows: '*… Rule 8 of the rules of this court requires a party seeking urgent relief to set out the reasons for urgency, and why urgent relief is necessary. It is trite law that there are degrees of urgency, and the degree to which the ordinarily applicable rules should be relaxed is dependent on the degree of urgency. It is equally trite that an applicant is not entitled to rely on urgency that is self created when seeking a deviation from the rules …*'. These same considerations, in my view, equally apply to Rule 38.

[26] Of importance *in casu* is that when seeking to rely upon urgency, a party seeking urgent relief is obliged to take action at the first reasonably available opportunity.[3] In other words, the litigant must act expeditiously, and without undue delay, or risk failing on urgency. Where a litigant delays and then institutes proceedings shortly before the event or happening the urgent relief is

[1] See *Betlane v Shelly Court CC* 2011 (1) SA 388 (CC) at para 29 ;*Van Der Merwe and Another v Taylor NO and Others* 2008 (1) SA 1 (CC) at para 122; *President of the Republic of SA and Others v SA Rugby Football Union and Others* 2000 (1) SA 1 (CC) at para 150; *National Council of Societies for the Prevention of Cruelty to Animals v Openshaw* 2008 (5) SA 339 (SCA) at paras 29 – 30; *Brayton Carlswald (Pty) Ltd and Another v Brews* 2017 (5) SA 498 (SCA) at para 29.
[2] (2010) 31 ILJ 112 (LC) at para 18.
[3] See *Golding v HCI Managerial Services (Pty) Ltd and others* [2015] 1 BLLR 91 (LC) at para 24; *National Union of Mineworkers v Lonmin Platinum Comprising Eastern Platinum Ltd and Western Platinum Ltd and Another* (2014) 35 *ILJ* 486 (LC) at para 50.

aimed at, and then relies on this immanent event or happening as a basis for urgency, that would ordinarily, in the absence of a proper and reasonable explanation for the delay, be regarded as self-created urgency. As the Court said in *Association of Mineworkers and Construction Union and Others v Northam Platinum Ltd and Another*[4]: '*… the more immediate the reaction by the litigant to remedy the situation by way of instituting litigation, the better it is for establishing urgency. But the longer it takes from the date of the event giving rise to the proceedings, the more urgency is diminished. In short, the applicant must come to Court immediately, or risk failing on urgency. …*' And in *Madonsela v Legal Practice Council and Others*[5] the Court added: '*… One of the fundamental requirements when seeking urgent relief is to approach the court at the first available opportunity. This in my view implies that where harm, prejudice or unlawfulness is likely to arise from a set of facts, a party must take immediate action to protect its rights against the alleged harm*.'

[27] Applying the aforesaid *in casu*, the stay application of Jute and Vea fail dismally on the issue of urgency. Even assuming a stay application was competent, the proper occasion to have brought it would have been when the matter was first set down on 18 February 2026. The Rule 30A application, which formed the basis for seeking the stay, was filed by Jute and Vea as far back as December 2025, and at that point, the matter has already been set down for 18 February 2026. The stay application should in my view have already been brought at that time, in contemplation of the hearing on 18 February 2026. The period of delay that followed after that is nothing else but self-created urgency.

[28] Makhatshwa AJ was quite critical of the conduct by Jute and Vea in bringing a stay application from the bar on 18 February 2026, and not having filed a substantive application before that. This criticism is evident from the judgment of 5 March 2026. Despite this, Jute and Vea still bring no stay application, but instead seek leave to appeal. Then, and when the amended notice of motion

[4] (2016) 37 ILJ 2840 (LC) at para 26. See also *Sihlali and Others v City of Tshwane Metropolitan Municipality and Another* (2017) 38 ILJ 1692 (LC) at para 18; *National Union of Metalworkers of SA and Others v Bumatech Calcium Aluminates* (2016) 37 *ILJ* 2862 (LC) at para 26; *Soobedar and Another v Minister of International Relations and Cooperation and Another* (2021) 42 ILJ 1762 (LC).at para 20.

[5] (2025) 46 ILJ 2664 (LC) at para 13.

provides the hearing date of 21 May 2026, the reaction by then is still not a stay application, but a notice in terms of Rule 57(1). The actual stay application then only follows on 11 May 2026, almost a month later and shortly before the hearing on 21 May 2026. If this behaviour is not self-created urgency, it is hard to understand what would be. Having regard to the conduct of Jute and Vea, I believe the following *dictum* in *O'Connor v LexisNexis (Pty) Ltd*[6] is apposite, where the Court had the following to say:

> 'The first factor, self-created urgency, relates to a scenario where the applicant has created the need for an urgent hearing because it has culpably delayed in approaching the court. This is a justifiable limitation on the right of urgent access to court because, but for the applicant's culpable conduct, there would be no need to burden the administration of justice with an urgent hearing (or push other litigants further back in the queue for justice).'

[29] For the aforesaid reasons alone, the stay application by Jute and Vea falls to be struck from the roll or dismissed.[7] The Court in *February v Envirochem CC and Another*[8] accepted that urgency was not established, but the Court nonetheless proceeded to dismiss the application. For the reasons to follow, I believe that this is a similar situation where the stay application must be finally disposed of and dismissed and not just struck from the roll.

Analysis: Stay Application

[30] In deciding the stay application brought by Jute and Vea, it is prudent to first set out the considerations to be applied when deciding whether or not to grant such a stay. It must be remembered that this is a stay of the hearing to decide the main application, pending a decision in an ancillary issue relating to discovery of documents. This would clearly be a matter that resorts within the wide discretion afforded to this Court to decide. As to how this discretion is to

[6] (2024) 45 ILJ 1287 (LC) at para 27.
[7] See *Radebe and Others v Aurum Institute* (2024) 45 ILJ 876 (LC) at paras 26 – 28.
[8] (2013) 34 ILJ 135 (LC) at para 17. See also *National Union of Metalworkers of SA and Others v Bumatech Calcium Aluminates* (2016) 37 ILJ 2862 (LC) at para 33; *Bethape v Public Servants Association and Others* [2016] ZALCJHB 573 (9 September 2016) at para 53; *Rail Refurb CC v South African National Road Agency* 2023 JDR 3545 (GP) at para 22; *National Association of SA Workers on Behalf of Members v Kings Hire CC* (2020) 41 ILJ 685 (LC) at para 32.

be exercised, the starting point is having due regard to Section 173 of the Constitution, which provides:

> 'The Constitutional Court, the Supreme Court of Appeal and the High Court of South Africa each has the inherent power to protect and regulate their own process, and to develop the common law, taking into account the interests of justice.'

[31] Specifically in the context for applying section 173 of the Constitution to deciding whether to grant a stay of proceedings, the Court in *Mokone v Tassos Properties CC and Another*[9] decided as follows:

> 'Put simply, this says the mentioned courts may regulate their own process taking into account the interests of justice. I will say nothing about equity but, based on this, I do not see why proceedings may not be stayed on grounds dictated by the interests of justice. Whatever the import of what was said by courts previously may be, the Constitution lays down its own test; and it has everything to do with the interests of justice.'
>
> In this context, the idea of interests of justice is quite wide. I will not attempt to delineate what it encompasses. Suffice it to say, what justice requires will depend on the circumstances of each case. …'

[32] The following dictum in *South African Broadcasting Corp Ltd v National Director of Public Prosecutions and Others*[10] is in my view ingightful, where the Court came to the following conclusion:

> 'The power in s 173 vests in the judiciary the authority to uphold, to protect and to fulfil the judicial function of administering justice in a regular, orderly and effective manner. Said otherwise, it is the authority to prevent any possible abuse of process and to allow a Court to act effectively within its jurisdiction.'

[33] When considering of what would be in the interest of justice, this must always be considered with due regard to the interests of all the parties in the litigation,

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[9] 2017 (5) SA 456 (CC) at paras 67 – 68. See also *Rissik Street One Stop CC t/a Rissik Street Engen and Another v Engen Petroleum Ltd* 2024 (4) SA 447 (CC) at para 57; *Smith and Others v Georgio and Others* 2025 JDR 1929 (GP) at para 13.

[10] 2007 (1) SA 523 (CC) at para 90.

and not just the interests of the applicant seeking a stay of the proceedings. This was recognised in *Municipal Employees Pension Fund v Adamax Property Projects Menlyn (Pty) Ltd*[11] where the Court said: '… *An application for a stay of proceedings must be evaluated on the basis of the interests of justice. This must be viewed from the perspective of all parties …*'. And in *Ncube v Liberty Group Limited*[12] the Court, after due consideration of the aforesaid *dictum* in *Mokone supra* and section 173 of the Constitution, added that: *'… stay of proceedings is normally only granted in exceptional cases and the power is exercised sparingly …'*[13].

[34] Should a stay of proceedings be too readily granted, without due and proper consideration of what would in the interest of justice in the context of the particular proceedings sought to be stayed, this could be seen to infringe on the litigant's right of access to Court under section 34 of the Constitution. The Court in *Showroom Centre (Pty) Ltd and Others v Ronald Kagan*[14] specifically appreciated this consideration, and held as follows in this respect: '*… a stay would impede a litigant's access to a court, guaranteed by s 34 of the Constitution. There must be a balancing of rights …*'.

[35] So, what would be in the interest of justice where it comes to the stay application brought by Jute and Vea? In deciding this question, the nature of the proceedings must be considered. The main application concerns an urgent application to enforce a restraint of trade. These kind of applications need to be expeditiously disposed of, because of the fact that the relief obtained thereof is of limited duration. An undue stay of the proceedings may well defeat the very purpose of such litigation, and this certainly could be seen to unduly compromise the right of access to Court of the litigant seeking to enforce the restraint. One must be alive to the real possibility, especially having regard to the consequences of an enforcement of a restraint of trade, that stay proceedings would be open to abuse by litigants seeking to avoid the restraint enforcement. For the aforesaid reasons, I am of the view that any attempt to stay restraint of trade proceedings should be viewed with careful

[11] 2023 JDR 4191 (GJ) at para 6.
[12] 2024 JDR 1283 (GJ) at para 25.
[13] Id at para 26.
[14] (573/2024) [2025] ZASCA 175 (21 November 2025) at para 27.

circumspection, and should only be granted in exceptional circumstances, due to their *sui generis* nature.

[36] In the above context, it is important to decide exactly why Jute and Vea believe the proceedings should be stayed, and whether this would substantiate the kind of exceptional circumstances that would justify a stay. But before dealing with this, regard must first be had to Rule 39 of the Labour Court Rules, as the bespoke rule in the Labour Court specifically dealing with restraints of trade. There was good reason for adopting Rule 39. Restraint of trade applications are more often than not quite vigorously opposed, with extensive affidavits being filed by the litigating parties. Where it came to applying the ordinary practice relating to urgent applications in this Court, to these kinds of restraint applications, difficulties often arose. These difficulties included the matter not being ready to be heard when the set down date arrived and parties requesting more time to file opposition and replies. Because of complexity with the onus in restraint applications, there were often further sets of affidavits required to be filed by the parties. All this meant that time was taken up on the urgent roll and Judges preparing themselves, for matters that were simply not finally ripe to be heard, which was a waste of resources and certainly not ideal.

[37] In order to provide a solution for the aforesaid, Rule 39 was adopted. it is prescribed in Rule 39(1) that when an application to enforce a restraint of trade is brought, the process stipulated in Rule 39 must be followed (barring exceptional circumstances). Provision must be made for four sets of affidavits.[15] Further, specific time periods are provided for the exchange of these affidavits,[16] being seven days to file an answering affidavit, five days to file a replying affidavit, and a further five days to file a fourth affidavit. Once the time period for the filing of a fourth affidavit expires, the applicant must immediately index the matter,[17] and the parties must file heads of argument within five days of such index.[18] Importantly, and when first bringing the application and seeking a hearing date from the Registrar, the applicant must

[15] Rule 39(2).
[16] Rule 39(3).
[17] Rule 39(9).
[18] Rule 39(1).

account for all of these time periods, in obtaining such date.[19] And finally, the matter will only be finally enrolled for the week following the filing of heads of argument.[20] This effectively allows a time period of at least 22 Court days from when the application is first brought and until it is finally heard, giving all parties sufficient opportunity to address all that is needed, whilst still maintaining the imperative that restraint of trade disputes be urgently disposed of.

[38] Having due regard to Rule 39, and the objectives sought to be achieved by it, I return to why Jute and Vea are asking for a stay. Despite all their wrangling about leave to appeal, forum shopping and supposed irregular steps, it is clear that the answer to this question is straight forward. King Pie has attached three redacted documents to its founding affidavit, and has relied on these documents as part of its case. According to Jute and Vea, they cannot file an answering affidavit without having sight of the unredacted version of these documents. They requested discovery of the unredacted documents by way of a notice in terms of Rule 35(12) of the Uniform Rules. The parties could not reach consensus on their discovery. This led to an application by Jute and Vea in terms of Rule 30A of the Uniform Rules. In this application, they sought to compel discovery of these documents. It is this notice in terms of Rule 35(12) and the following Rule 30A application, which Jute and Vea say need to be decided first before they can file an answering affidavit. This is what lies at the stay application.

[39] There are several difficulties with the aforesaid as basis for the stay of the hearing on the merits of the enforcement of the restraint. In the first instance, requesting discovery under Rule 35(12) followed by an application under Rule 30A do not serve to suspend the time limits for the filing of an answering affidavit under Rule 39. In short, and despite this pending process brought by them, Jute and Vea would still be compelled to file an answering affidavit. As a result, this pending process cannot substantiate a stay. This was in fact already recognised by Mkhatshwa AJ in the judgment of 5 March 2026 in dealing with the stay application brought by Jute and Vea from the bar, by

[19] Rule 39(4).
[20] Rule 39(11).

referring to the judgment in *Potpale Investments (Pty) Ltd v Mkhize*[21]. In the judgment in *Potpale*, a defendant argued that it was entitled to deliver a notice in terms of rule 35(12) at any time before the hearing of a matter. The plaintiff had referred to documents in its particulars of claim, and according to the defendant, it had a right to inspect those documents before being required to file to plea. On this basis, according to the defendant, it was not obliged to comply with the Rules relating to the time within which to plead until the notice has been complied with, as the Rule 35(12) notice suspended such time period.[22] The Court in *Potpale* decided this argument as follows:[23]

> 'The rules in question nowhere say that delivery of a notice in terms of rule 35(12) or (14) suspends the period referred to in rule 26 or any other rule. There are sanctions attaching to non-compliance with some parts of rule 35. That of rule 35(12), for example, is that the non-compliant party may not use the documents in question. Where documents have been appropriately referred to, in other words where they are an integral part of the case of the party concerned, the likely result of this sanction would be that that party would not be able to prove its case. A further sanction is that a non-compliant party becomes subject to the provisions of rule 30A. In that way if a case is made out, production of the documents can be compelled. …'

The Court in *Potpale* concluded:[24]

> '… The delivery of the rule 35 notice did not suspend the period in which the defendant was obliged to deliver a plea or other document referred to in rule 22. When he was confronted with a rule 26 notice, he was put to an election. He could either have done his best to plead and so have defeated the bar or he could have applied to extend the time within which to plead and to compel production of the documents for that purpose. If he had pleaded, it would have been open to him to apply to compel delivery of the documents and, if so advised, to thereafter seek to amend his plea. …'

[40] The aforesaid determination in *Potpale supra* has been consistently applied in a number of other judgments.[25] In *Democratic Alliance and Others v*

[21] 2016 (5) SA 96 (KZP).
[22] See para 11 of the judgment.
[23] Id at para 18.
[24] Id at para 23.

Mkhwebane and Another[26] the SCA analysed the reasoning in Potpale, and said that:[27] '*There is much to commend the reasoning and the approach in Potpale …'*. However, and due to other considerations, the Court did hold that '*… there is no need for a final word in relation to Potpale …'*. But more directly, that same Court in *Caxton and CTP Publishers and Printers Limited v Novus Holdings Limited*[28] determined as follows with regard to the reasoning in *Potpale*:

> 'There is nothing in the language of rules 35(12) and 30A to suggest that once a demand has been made for the production of the documents to which the rule 35(12) notice relates, the party seeking such documents is excused from complying with the timeframes prescribed in terms of Uniform Rule 6(5)*(d)*(ii) or 6(5)*(e)*, as the case may be. In *Potpale Investments (Pty) Ltd v Mkhize*, Gorven J rightly observed that the delivery of a notice in terms of rule 35(12) or (14) does not suspend the period referred to in rule 26 or any other rule. Whilst there is much to be said for the view expressed by the learned Judge, sight should however not be lost of the fact that it is open to the court, in the exercise of its discretion, to extend the time periods prescribed in terms of the rules whenever a proper case therefor has been made out by the party seeking such indulgence. Indeed, this is what Uniform Rule 27 itself contemplates.'

[41] The Court in *Industrial Development Corporation of South Africa v Reddy and Others*[29], pursuant to an analysis of the authorities and in particular the judgments in *Caxton supra* and *Potpale supra*, stated as follows:

> 'Whilst it is correct that each case must be determined on its own facts, the distinctions sought to be drawn by the respondents are artificial. If the principles in *Potpale* are considered in the context of *Caxton* and the other authorities, they apply irrespective of whether the proceedings are instituted by way of action or motion. As made clear in *Caxton*, the delivery of a notice in

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[25] See for example *MEC for Education North West and Another v Engelbrecht and Others* 2024 JDR 3403 (NWM) at para 23; *Distell Limited v Naidoo and Others* 2019 JDR 2502 (KZD) at paras 68 – 69; *National Director of Public Prosecutions v Mogotlane and Others* 2025 JDR 3884 (GP) at para 16.
[26] 2021 (3) SA 403 (SCA) at para 47.
[27] Id at para 48.
[28] 2022 JDR 0431 (SCA) at para 85.
[29] 2022 JDR 2591 (GJ) at paras 15 – 16.

terms of rule 35(12) or rule 35(14) does not suspend the period referred to in rule 26 or any other rule.

The launching of a compelling application would not make any difference to the above principle, save of course if an extension of time periods had been sought in that application. …'

[42] And lastly, realising the possible abuse that can arise from a misuse of Rule 35(12), the Court in *Tip Trans Cape (Pty) Ltd v Muller*[30] held that: '*… Rule 35(12) deals with the production of documents referred to in a pleading or an affidavit. It is however "not a procedural mechanism to delay the resolution of the merits of a disputes." vide Patch Boudienste CC v First Rand Bank Limited. The sanction for failure to comply with rule 35(12) is that the relevant document cannot be used by the party failing to produce same …*'.

[43] The above authorities clearly leave Jute and Vea in a predicament. The Rule 35(12) notice and Rule 30A application did not suspend the operation of Rule 39, which imposed an obligation on them to file an answering affidavit. The Rule 30A application simply asked for the discovery of the unredacted documents in the ordinary course, and never asked for the extension of time limits to file an answering affidavit pending that process. In any event, and considering the nature of restraint proceedings and the clear intention of Rule 39, I doubt if an extension of time limits would even be competent in this case. The case law relating to the option of asking for the extension of time limits are applicable to trial proceedings and concern the time limits to file a plea, where a trial will follow in due course. This is hardly a viable option in an urgent restraint application. All said, Jute and Vea remained obliged to file an answering affidavit and failed to do so. It is also not lost on me that the notice in terms of Rule 35(12) was filed after the time limit for filing an answering affidavit having expired, which I believe compounds their difficulty.

[44] What Jute and Vea should have done was to file the answering affidavit. In that answering affidavit, they could rely on the negative relief provided for in Rule 35(12), and pray that the three redacted documents be excluded from consideration as evidence in this case. Considering that the founding affidavit

[30] 2017 JDR 1422 (GP) at para 4.

explained what these documents were, they could have answered as best they could, in which event, if they raised a factual dispute, such dispute would be determined in their favour by virtue of the application of *Plascon Evans Paints v Van Riebeeck Paints.*[31] But to simply refuse to answer based on this demand for discovery, to be decided in due course, is inappropriate, and overall considered, wrong.

[45] Despite the aforesaid, the mere fact that Jute and Vea have filed the section 35(12) notice does not mean that they would be entitled to the three unredacted documents. In this regard, they needed to make out a case why these documents were essential for them being able to answer. They did not do so, and instead relied on a bald statement that the documents were referred to in the founding affidavit, and as such, they were entitled to an unredacted version in order to answer. As opposed to this, and in the founding affidavit, King Pie explained why the documents were redacted. This was because it contained confidential and proprietary information relating to King Pie's commercial information, trade secrets and the very confidential matter that King Pie needed to protect through the restraint application in the first place. This information could not be allowed to land in the hands of third parties, such as Vea, who was actually a party to the proceedings.

[46] In *Caxton supra*, the Court recognised that when considering an application to compel under Rule 30A, the Court retains a general discretion whether or not to compel discovery of the documents sought under Rule 35(12), which discretion must be exercised in a manner that strikes a balance between the interests of both parties. It thus does not follow that although the documents were asked for, and the party asking for the same may in principle be entitled to that discovery, discovery will be ordered. The Court in *Caxton* decided:[32]

> 'The other point that bears emphasising is that as this court rightly observed in *Hoërskool Fochville*, a court considering an application under rule 30A to compel production of documents sought pursuant to rule 35(12) enjoys a general discretion 'in terms of which it is required to try to strike a balance between the conflicting interests of the parties to the case'. And that the court

[31] 1984 (3) SA 623 (A) at 634E-635C.
[32] Id at para 31.

'should not fetter its own discretion in any manner and particularly not by adopting a predisposition either in favour of or against granting production'. [26] In the same case, Ponnan JA added that 'a court will not make an order against a party to produce a document that cannot be produced or is privileged or irrelevant'.'

The Court also pronounced on what was meant by a document being '*relevant*', and said:[33]

'… Nevertheless, a court will refuse to order production of a document that is not in the possession or under the control of the other party or which is privileged or irrelevant. [30] By relevance is meant that the document or tape recording in question 'might have evidentiary value' or 'might assist' the party seeking production in relation to any 'aspects or issues that might arise' in light of the facts stated in the pleadings or affidavits …'

[47] The position with regard to the discovery of documents under Rule 35(12) was succinctly summarised in *Democratic Alliance and Others v Mkwebane and Another*[34] in the following manner:

'To sum up: It appears to me to be clear that documents in respect of which there is a direct or indirect reference in an affidavit or its annexures that are relevant, and which are not privileged, and are in the possession of that party, must be produced. Relevance is assessed in relation to rule 35(12), not on the basis of issues that have crystallised, as they would have, had pleadings closed or all the affidavits been filed, but rather on the basis of aspects or issues that might arise in relation to what has thus far been stated in the pleadings or affidavits and possible grounds of opposition or defences that might be raised and, on the basis that they will better enable the party seeking production to assess his or her position and that they might assist in asserting such a defence or defences. In the present case we are dealing with defamatory statements and defences such as truth and public interest or fair comment that might be raised. The question to be addressed is whether the documents sought might have evidentiary value and might assist the appellants in their defence to the relief claimed in the main case. …'

[33] Id at para 35.
[34] 2021 (3) SA 403 (SCA) para 41.

[48] Having considered the founding affidavit by King Pie in the main application, and what the documents concerned are all about, it is my view that Jute and Vea did not need these documents for the purposes of answering the founding affidavit. A proper conspectus of the founding affidavit leaves me convinced that the documents were not produced so that the content thereof would serve to prove the case of King Pie. Rather, it was produced to prove the confidential information exists in that form, which Jute had access to. I explain as follows. Taking for example the confidential customer list with particulars, King Pie says in the founding affidavit that Jute worked with and had access to a list containing confidential customer particulars. It then provides the redacted list as proof of its existence. Considering that the very purpose of the restraint application is to protect such confidential information being disseminated, especially to a competitor such as Vea who is party to the proceedings, it is simply nonsensical to attach an unredacted list to the founding affidavit and then be compelled to discover it. The same contention would apply to the other two documents as well. If it was not true that Jute had access to and worked with such lists, all she needed to do was to say in the answering affidavit that she did not have lists of confidential customer information at her disposal and had no knowledge of the kind of documents King Pie was referring to. All said, this clearly illustrates that these documents, in an unredacted form, was not required for Jute and Vea to be able to answer.

[49] I believe that Jute and Vea snatched at the bargain of the existence of the redacted documents, knowing that King Pie would be reluctant to disclose unredacted versions. I am convinced that Jute knew exactly what these documents were, and were familiar with them. King Pie pertinently said this in the answering affidavit to the Rule 30A application. Knowing an issue will arise in this respect, this was the opportune moment for Jute and Vea to rely on technical points to avoid having to engage King Pie on the merits of the application, and consequently to delay the determination of the merits as far a possible and hopefully to the point when the restraint period expired. Further justification for this belief is found in the fact that the proceedings to compel the discovery of the unredacted documents were brought in the ordinary course as an opposed motion. Again, they clearly knew that deciding this would take the amin matter beyond the expiry of the restraint period. This is

the kind of conduct the Court in *Tip Trans Cape* quoted above was critical about.

[50] The issue of King Pie offering to disclose the unredacted documents against a confidentiality undertaking, however the terms of this undertaking being in the view of Jute and Vea entirely unreasonable, is in my view nothing but a red herring where it comes to deciding this case. This is because of my view that Jute and Vea did not require the unredacted documents in order to be able to file an answering affidavit, as I have discussed earlier. I will accordingly make no findings against Jute and Vea as to whether they should have provided the undertakings, and whether they justified in considering it unreasonable. The simple position is that no matter, what they did not need the documents to answer.

[51] Returning then to Rule 39 and *sui generis* nature of urgent restraint of trade proceedings, the application of the discovery procedures under Rule 35(12) of the Uniform Rules must always be considered with proper circumspection where it comes to these proceedings in the Labour Court. In fact, I believe it is subject to considerations of exceptionality. The Court should always decide whether exceptional circumstances exist that justify a departure from the strict application of Rule 39, and this includes any issue relating to the discovery of documents. As the facts of this case illustrate, the using of technical defences that become available when applying the Uniform Rules opens up a real risk of abuse, in that it serves to delay the deciding of the restraint, which should be avoided. Where it comes to restraints, a delay is often tantamount to a defeat. This cannot be allowed. Albeit in the context of deciding an application under section 18(3) of the Superior Courts Act[35], the Court in in *Incubeta Holdings (Pty) Ltd and Another v Ellis and Another*[36] specifically held as follows as the consequences of a delay where it comes to enforcing a restraint of trade:

> ‘Do these circumstances give rise to 'exceptionality' as contemplated? In my view the predicament of being left with no relief, regardless of the outcome of an appeal, constitutes exceptional circumstances which warrant a consideration of putting the order into operation. The forfeiture of substantive

[35] Act 13 of 2010.
[36] 2014 (3) SA 189 (GJ) at paras 27 – 28.

> relief because of procedural delays, even if not protracted in bad faith by a litigant, ought to be sufficient to cross the threshold of 'exceptional circumstances'.
>
> The plight of the victor alone is probably all that is required to pass muster. Nonetheless, I am not unconscious of the undesirable outcome that relief granted by the court becomes a vacuous gesture. A court order ought not to be lightly allowed to evaporate, a fate which, seems to me, would tend to undermine the role of courts in the ordering of social relations.'

[52] The purpose of any Court Rule is not to create a mechanism that puts form over substance as a basis for defending a claim. In short, the Rules should not be abused to establish a defence. The following dictum in *Federated Trust Ltd v Botha*[37] is pertinent: '*… The court does not encourage formalism in the application of the Rules. The rules are not an end in themselves to be observed for their own sake. They are provided to secure the inexpensive and expeditious completion of litigation before the courts. …*'. The following *dictum* in *Anglo Operations Ltd v Sandhurst Estates (Pty) Ltd*[38] is particularly apposite: '*… the Rules are there for the Court, and not the Court for the Rules …*'. And lastly in this respect, the Court in *Eke v Parsons*[39] had the following to say:

> 'Without doubt, rules governing the court process cannot be disregarded. They serve an undeniably important purpose. That, however, does not mean that courts should be detained by the rules to a point where they are hamstrung in the performance of the core function of dispensing justice. Put differently, rules should not be observed for their own sake. Where the interests of justice so dictate, courts may depart from a strict observance of the rules. That, even where one of the litigants is insistent that there be adherence to the rules. Not surprisingly, courts have often said '[i]t is trite that the rules exist for the courts, and not the courts for the rules'.'

[37] 1978 (3) SA 645 (A) 654C-E. see also *Trans-African Insurance Co Ltd v Maluleka* 1956 (2) SA 273 (A) at 278-G it was said: '*… Technical objections to less than perfect procedural steps should not be permitted, in the absence of prejudice, to interfere with the expeditious and, if possible, inexpensive decision of cases on their real merits …'.*
[38] 2007 (2) SA 363 (SCA) at para 32.
[39] 2016 (3) SA 27 (CC) para 39.

[53] The Labour Court has always been quite averse to technical point taking that could serve to obstruct or compromise the expeditious deciding of a dispute. In *Liquid Telecommunication (Pty) Ltd v Carmichael-Brown*[40], the Court held:

> '… Technical point-taking has never been encouraged in this court, inimical as it is to the statutory purposes to which I have referred above. Litigating in the manner in which the excipient employer has approached this matter is to be discouraged in the strongest terms. This is particularly so in litigation between dismissed employees and their erstwhile employers, where the promotion of access to justice may be frustrated by the cost of litigation conducted in a manner other than that envisaged by the rules. At best for the excipient, the terms of the exception evince an overly technical approach to litigation, one that is not welcome in this court. At worst, it is an attempt consciously to frustrate the statutory purposes to which I have referred. …'

[54] The approach adopted by Jute and Vea in this case constitutes the kind of technical point taking that has been the subject matter of so much criticism. It is the kind of approach that should be strongly discouraged. What Jute and Vea has chosen to do in this case is not what is envisaged by a genuine and bona fide application of Rule 35(12). And added to that, the Rule 30A compel application in the ordinary course is just giving effect to that abuse of process. I am convinced that this was done for the sole reason of frustrating and delaying the process, to the point where the restraint is effectively defeated because of the delay that has been occasioned. This Court should not allow these kind of technical defences to stand in the way of determining the merits of a restraint of trade application under Rule 39, especially considering the very important commercial interests restraints seek to protect. As held in *E Tradex (Pty) Ltd t/a Global Trade Solution v Finch and Others*[41]:

> '… In our view, whenever an interpretation that requires the application of a rule or of a standard practice to imply a compulsory genuflection to a ritual performance which adds no value to effective dispute resolution ought to be rejected where possible …'

[40] (2018) 39 ILJ 1779 (LC) at para 23. See also *Inxuba Yethemba Local Municipality v Msweli and Others* (2024) 45 ILJ 548 (LC) at para 41.
[41] (2022) 43 ILJ 2727 (LAC) at para 17.

[55] In summary, for all the reasons above, the application by Jute and Vea to stay the deciding of the merits of the restraint application until the Rule 30A application has been decided must fail. This is because there is no legitimate basis upon which to grant such a stay, as the Rule 35(12) / Rule 30A proceedings cannot suspend the operation of the clear time limits and the obligation to file an answering affidavit, under Rule 39. Jute and Vea always remained obliged to file an answering affidavit, and they had ample opportunity to do so. Especially after the first hearing of 18 February 2026, they should have done so. The Rule 30A application in this case was designed as technical manoeuvre to delay the matter until after the restraint period expired. This is evident from the fact that it was brought in the ordinary course, and in the manner in which it was prosecuted. King Pie would be materially prejudiced should the proceedings be stayed, as this would effectively defeat the restraint and deprive it of a fair opportunity to prove its case on the merits, compromising its right of access to Court. And in any event, properly considered, Jute and Vea do not require access to the unredacted documents to be able to file a proper answer, which documents are in any event confidential. All said, a stay of proceedings would not be in the interest of justice in this case. It must be thus be refused.

The relevant facts: Restraint

[56] Having refused to stay the hearing of the main application, it means the merits of the case of King Pie for the enforcement of the restraint must be decided. In this regard, this has to a large extent already been disposed of by the judgment of Mkhatshwa AJ of 5 March 2026. The learned Judge considered the merits of the matter, and was convinced to grant an interim order enforcing the restraint. But since I am called upon to finally decide this issue, I will provide a short factual exposition in this respect.

[57] King Pie was founded in 1990. Its business is concerned with the manufacturing and sale of fast-food savoury pies. King Pie's business model revolves around providing high-quality, freshly baked pies at affordable prices, catering to a diverse range of tastes and dietary preferences. It has approximately 330 franchised businesses, throughout South Africa. The customer base of King Pie consists of three pillars. First, there are the

franchisees, through which franchise network King Pie's pies are sold to the general public. Second, King Pie also supplies wholesale and retail customers. And lastly, King Pie also operates in the frozen food market.

[58] Vea is a direct and material competitor of King Pie. It operates in exactly the same markets as King Pie. It also specialises in the manufacturing and sale of fast-food savoury pies.

[59] Jute was employed by King Pie as key accounts manager. She commenced employment on 26 April 2021. She was dedicated to King Pie's retail business and thus its wholesale and retail customers. As a key accounts manager for King Pie, Jute's responsibilities entailed *inter alia* the driving of sales in King Pie's retail department to achieve targets, engaging in active selling of King Pie's products to King Pie's retail customers, implementing King Pie's confidential retail business model, implementing King Pie's confidential innovative strategies, managing the implementation of King Pie's costing, attending on the processing and implementation of orders received from King Pie's customers and identifying and establishing relationships with prospective customers. She also specifically liaised with King Pie's distributors of its products to ensure that orders are placed, and products delivered to King Pie's customers.

[60] Upon commencement of employment, Jute signed a Non-Solicitation Agreement, containing restraint terms. However, and on 12 February 2024, she signed a detailed restraint, confidentiality, and non-solicitation agreement, which was extant at the time when her employment at King Pie terminated. This restraint of trade would apply for a period of 12 months following her termination of employment. The restraint *inter alia* prohibited her employment with a competitor, imposed a non-solicitation obligation where it came to the applicant’s customers, and required her to maintain the confidentiality of the confidential information of King Pie.

[61] In the course of her employment with King Pie, Jute retained and had access to a detailed database of King Pie's wholesale and retail customers. This included contact details of the identified contact person within each wholesaler / retailer. She established a personal relationship with the relevant contact person within the wholesaler / retailer, with the view to securing custom for

King Pie, which relationship would then be actively pursued, and indeed preserved and looked after by her. She was effectively the face of King Pie to these customers. Jute also had knowledge of King Pie's costing and pricing models applied by King Pie in pursuance of its retail business, as well as the details of margins.

[62] Jute's employment with King Pie terminated on 5 August 2025 due to her resigning from employment. It is also undisputed that immediately following her resignation, she took up employment at Vea. This employment at Vea is in itself a breach of her restraint of trade.

[63] Following Jute's departure from King Pie, a number of further breaches of her restraint was discovered. She met with Boston Pie Co (otherwise known as Brider), a customer of King Pie, following which Brider no longer ordered products from King Pie and instead ordered products from Vea. In fact, and following Jute's departure, sales in King Pie's general retail division have declined by approximately R200 000 per month. The customers lost by King Pie are now ordering product from Vea.

[64] It has become apparent to King Pie that Jute's exit strategy was carefully devised and planned well in advance. She calculatedly positioned herself to compete with King Pie as soon as her employment with King Pie terminated, and when she took up employment with Vea as King Pie's largest competitor.

[65] In addition, Jute has access to King Pie's recipes, which King Pie guards jealously. King Pie's recipes are not in the public domain nor are such recipes known to its competitors such as Vea. The risk of Jute disseminating this information to Vea is substantial, and highly prejudicial to King Pie.

[66] It was also discovered that shortly after having left King Pie, Jute communicated with Jesse Brenner (Brenner), employed at Vector Logistics, who, at that time, provided centralised distribution services to both King Pie and Vea. The communication related to Hypercheck, a customer of King Pie. It turned out that Jute had solicited the custom of Hypercheck within a month of her becoming employed by Vea, and continued to deal with Vector with regard to Hypercheck, but now just on behalf of Vea. This appeared to be a

'seamless transfer' of this customer from King Pie to Vea, due to the efforts of Jute.

[67] The aforesaid discoveries resulted in a letter of demand by King Pie's attorneys on 17 October 2025 to Jute and Vea, in which it was demanded that she immediately terminate her employment with VEA and comply with the restraint undertakings that she had provided in favour of King Pie. It was demanded from Vea that it terminate Ms Jute's employment forthwith. Jute and Vea answered this letter of demand on 22 October 2025, through their attorneys. It was disputed that the restraint of trade was enforceable, and it was indicated that any action to enforce the restraint will be defended. This then led to the application to enforce the restraint of trade.

Analysis: restraint

[68] There can be no doubt that Jute bound herself to a restraint of trade covenant, and a confidentiality undertaking. It is trite that as a matter of general principle, restraints of trade are valid and binding, and enforceable, unless the enforcement thereof is considered to be unreasonable.[42] A restraint of trade also does not infringe on the constitutional right to free economic activity.[43]

[69] Whether the enforcement of a restraint of trade would be reasonable is dependent upon deciding the following questions set out in *Basson v Chilwan and Others*[44]: (a) Does the one party have an interest that deserves protection?; (b) If so, is that interest threatened by the other party?; (c) does such interest weigh qualitatively and quantitatively against the interest of the other party not to be economically inactive and unproductive?; and (d) Is there an aspect of public policy having nothing to do with the relationship between

[42] *Magna Alloys and Research (SA) (Pty) Ltd v Ellis* 1984 (4) SA 874 (A) at 891B-C; *Reddy v Siemens Telecommunications (Pty) Ltd* (2007) 28 ILJ 317 (SCA) at para 14; *Labournet (Pty) Ltd v Jankielsohn and Another* (2017) 38 ILJ 1302 (LAC) at para 39; *Ball v Bambalela Bolts (Pty) Ltd and Another* (2013) 34 ILJ 2821 (LAC) at para 13; *Esquire System Technology (Pty) Ltd t/a Esquire Technologies v Cronjé and Another* (2011) 32 ILJ 601 (LC) at para 26; *SPP Pumps (SA) (Pty) Ltd v Stoop and Another* (2015) 36 ILJ 1134 (LC) at para 26; *Shoprite Checkers (Pty) Ltd v Jordaan and Another* (2013) 34 ILJ 2105 (LC) at para 20.

[43] *Reddy (supra)* at paras 15 – 16. See also *Fidelity Guards Holdings (Pty) Ltd t/a Fidelity Guards v Pearmain* 2001 (2) SA 853 (SE) where the Court said: '*The Constitution does not take such a meddlesome interest in the private affairs of individuals that it would seek, as a matter of policy, to protect them against their own foolhardy or rash decisions*'.

[44] 1993 (3) SA 742 (A) at 767G-H.

the parties that requires that the restraint be maintained or rejected. More recently, a further enquiry has been added, which can be called question (e), being whether the restraint goes further than necessary to protect the relevant interest.[45]

[70] This Court and the LAC have been consistently applying these five considerations in determining whether the enforcement of a restraint of trade would be reasonable.[46] Deciding each of these considerations involves a determination on the facts of that particular case, applying, as held in *Ball v Bambalela Bolts (Pty) Ltd and Another*[47], the following approach: '*… the determination of reasonableness is, essentially, a balancing of interests that is to be undertaken at the time of enforcement and includes a consideration of 'the nature, extent and duration of the restraint and factors peculiar to the parties and their respective bargaining powers and interests …*' The *dictum* in *Ball supra* was applied in *Torrente and Another v Grant Monaghan and Associates Incorporated*[48] as follows:

> 'In general, a court which is required to evaluate a restraint of trade agreement has also to engage with the reasonableness of the restraint. It is now trite law to note that this enquiry is a value judgment which involves a consideration of a public interest which requires that parties to a contract should comply with their contractual obligations (pacta servanda sunt) and the principle reinforced in s 22 of the Constitution of the Republic of SA 1996, namely that every citizen has a right to choose their trade, occupation or profession freely. As stated by this court in *Ball v Bambalela Bolts (Pty) Ltd & another*, a court seeks to achieve a balance between the respective gravitational pull of pacta servanda sunt and s 22 of the Constitution by carefully examining the nature of the activity prevented by the relevant clause, the area of operation of the restraint, and the overall balance of the competing interests between the parties.'

[45] *Jonsson Workwear (Pty) Ltd v Williamson and Another* (2014) 35 ILJ 712 (LC) at para 44; *Medtronic (Africa) (Pty) Ltd v Van Wyk* (2016) 37 ILJ 1165 (LC) at para 15; *Esquire* (*supra*) at paras 50 – 51.
[46] *Labournet* (*supra*) at para 42; *Jonsson (supra*) at para 44; *Vox Telecommunications (Pty) Ltd v Steyn and Another* (2016) 37 ILJ 1255 (LC) at paras 28 – 29; *Shoprite Checkers* (*supra*) at paras 23 – 24; *Benchmark Signs Incorporated v Muller and another* [2016] JOL 36587 (LC) at para 15.
[47] (2013) 34 ILJ 2821 (LAC) at para 17. See also *Labournet* (*supra*) at para 40.
[48] (2024) 45 ILJ 798 (LAC) at para 21. See also *Sadan and Another v Workforce Staffing (Pty) Ltd* (2023) 44 ILJ 2506 (LAC) at para 20; *Beedle v Slo-Jo Innovations Hub (Pty) Ltd* (2023) 44 ILJ 2493 (LAC) at para 24

[71] It is thus important to establish whether a protectable interest in favour of the party seeking to enforce the restraint of trade exists. As to what would constitute a protectable interest, it is trite that it can be found in one or both of two considerations, being confidential information (trade secrets), or trade connections.[49] In *Labournet (Pty) Ltd v Jankielsohn and Another*[50] the Court held: '*… A restraint is only reasonable and enforceable if it serves to protect an interest, which, in terms of the law, requires and deserves protection. The list of such interests is not closed, but confidential information (or trade secrets) and customer (or trade) connections are recognised as being such interests. …*'

[72] Turning first to the concept of confidential information, this would be:[51] (a) Information received by an employee about business opportunities available to an employer; (b) information that is useful or potentially useful to a competitor, who would find value in it; (c) Information relating to proposals, marketing or submissions made to procure business; (d) information relating to price and/or pricing arrangements, not generally available to third parties; (e) information that has actual economic value to the person seeking to protect it; (f) customer information, details and particulars; (g) information the employee is contractually, regulatory or statutory required to keep confidential; (h) Information relating to the specifications of a product, or a process of manufacture, either of which has been arrived at by the expenditure of skill and industry which is kept confidential; and (i) information relating to know-how, technology or method that is unique and peculiar to a business. Importantly, the information summarized above must not be public knowledge or public property or in the public domain. In short, the confidential information must be objectively worthy of protection and have value.

[49] *Dickinson Holdings Group (Pty) Ltd and Others v Du Plessis and Another* (2008) 29 *ILJ* 1665 (N) at para 32; *Basson (supra)* at 769 G – H; *Bonnet and Another v Schofield* 1989 (2) SA 156 (D) at 160B-C; *Hirt and Carter (Pty) Ltd v Mansfield and Another* (2008) 29 ILJ 1075 (D) at para 37; *Esquire* (*supra*) at para 27; *Sibex Engineering Services (Pty) Ltd v Van Wyk and Another* 1991 (2) SA 482 (T) at 502E-F; *FMW Admin Services CC v Stander and Others* (2015) 36 ILJ 1051 (LC) at para 36; *Vox Telecommunications (Pty) Ltd v Steyn and Another* (2016) 37 ILJ 1255 (LC) at para 30.

[50] (2017) 38 ILJ 1302 (LAC) at para 41.

[51] See *Dickinson (supra) at* para 33; *Jonsson* (*supra*) at paras 46 – 49; *David Crouch Marketing CC v Du Plessis* (2009) 30 ILJ 1828 (LC) at para 21; *Esquire (supra)* at para 29; *Experian SA (Pty) Ltd v Haynes and Another* (2013) 34 ILJ 529 (GSJ) at para 19.

[73] Where it comes to trade connections, it would qualify as an interest worthy of protection where the employee had access to customers / clients and was in a position to build up a particular relationship with the customers / clients so that when he or she leaves employment and becomes employed by a competitor, the employee could easily or readily induce the customers / clients to follow the employee to the new business.[52] Whether the employee can be seen to have the ability to exert this kind of influence, is dependent upon: (a) the duties of the employee; (b) the employee's particular personality and skill; (c) the frequency and duration of contact between the employee and the customer(s); (d) the nature of the relationship between the employee and the customer(s) and in particular whether the relationship carried with it a notion of trust and confidence; (e) the knowledge of the employee concerning the particular requirements of the customer and the nature of its business; (f) how competitive the rival businesses are, and (g) the nature of the product or services at stake.[53]

[74] *In casu*, there can be no doubt that Jute breached the terms of her restraint. She took up employment with a direct competitor of King Pie. She has proceeded to solicit the custom of King Pie's retail customers she dealt with whilst employed at King Pie. She has leveraged her close customer relationship she in order to solicit the custom of those customers away from King Pie, and to Vea. And there can be little doubt that she has utilized King Pie's confidential information in support of this objective.

[75] I am satisfied that considering the nature of its business, the kind of information that Jute had access to, the nature of her duties, the seniority of her position, and the nature of the relationship she was required to establish and maintain with King Pie's customers, King Pie has a proper protectable interest. As said in *Bonfiglioli SA (Pty) Ltd v Panaino*[54]:

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[52] See *Rawlins and another v Caravantruck (Pty) Ltd* 1993 (1) SA 537 (A) at 541D-F; *FMW* (*supra*) at paras 46 – 48; *Esquire* (*supra*) at paras 31 – 32; *Experian* (*supra*) at para 18; *LR Plastics (Pty) Ltd v Pelser* [2006] JOL 17855 (D) at para 26.

[53] *Rawlins* (*supra*) at 541F-I; *FMW* (*supra*) at para 45; *Aquatan (Pty) Ltd v Jansen van Vuuren and Another* (2017) 38 ILJ 2730 (LC) at para 24.

[54] (2015) 36 ILJ 947 (LAC) at para 24. See also *Rawlins* (*supra*) at 542F-I where the Court held, with specific reference to an employee canvassing customers and selling to them, as follows: *'… 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*

> '… The restraint agreement is therefore geared at protecting the employer's proprietary interest after the employee has left the employer's employment. In *Reeves & another v Marfield Insurance Brokers CC & another*, the object of a restraint of trade term was described as follows:
> 'The legitimate object of a restraint is to protect the employer's goodwill and customer connections (or trade secrets) and the restraint accordingly remains effective for a specified period (which must be reasonable) after the employment relationship has come to an end.''

[76] It is also undisputed that the products supplied by King Pie to its customers can readily be substituted with the competing products supplied by Vea.[55] This reality has in fact manifested itself in the loss of sales experienced by King Pie following the departure of Jute to Vea. This constitutes a proper protectable interest for the purposes of the enforcement of a restraint of trade.[56] In *Rawlins and another v Caravantruck (Pty) Ltd*[57] the Court said:

> '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 …'

[77] The continued employment of Jute with Vea places the business of King Pie at intolerable risk, especially considering the kind of confidential information Jute had access to.[58] This includes not only detailed customer information, but also information relating to costing, pricing, margins and operations. This is not the kind of information King Pie would want disseminated to competitors, especially a competitor like Vea. It cannot be expected that King Pie sits by, crosses its fingers, and hopes that Jute and Vea act honourably. The evidence

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which is 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 …'.

[55] Compare *Medtronic (Africa) (Pty) Ltd v Kleynhans and Another* (2016) 37 ILJ 1154 (LC) at para 46.

[56] In *Hirt and Carter (Pty) Ltd v Mansfield and Another* (2008) 29 ILJ 1075 (D) at para 37, it was held: '*…. Customer goodwill and trade connections have long been regarded as proprietary interests worthy of protection*'.

[57] 1993 (1) SA 537 (A) at 541D-I. See also *Esquire* (*supra*) at para 27; *Continuous Oxygen Suppliers* (*supra*) at paras 34 – 36; *FMW* (*supra*) at para 45.

[58] See *Plumblink SA (Pty) Ltd v Legodi and Another* (2020) 41 ILJ 1743 (LC) at para 38.

in fact show that they have no intention of acting honourably. In *Reddy v Siemens Telecommunications*[59] the Court said:

> 'I agree with the remarks of Marais J in *BHT Water*:
> 'In my view, all that the applicant can do is to show that there is secret information to which the respondent had access, and which in theory the first respondent could transmit to the second respondent should he desire to do so. The very purpose of the restraint agreement was that the applicant did not wish to have to rely on the bona fides or lack of retained knowledge on the part of the first respondent, of the secret formulae. In my view, it cannot be unreasonable for the applicant in these circumstances to enforce the bargain it has exacted to protect itself. Indeed, the very ratio underlying the bargain was that the applicant should not have to content itself with crossing its fingers and hoping that the first respondent would act honourably or abide by the undertakings he has given …''

[78] Where it comes to the quantitative and qualitative weigh off to be conducted, the Court in *Plumblink SA (Pty) Ltd v Legodi and Another*[60] summarized the factors to be considered, as being: (1) the scope and period of the restraint;[61] (2) whether the employee was possessed of the skills, expertise, qualifications and experience before joining the employer;[62] (3) the nature of the industry;[63] and (4) the ability of the employee to secure gainful employment elsewhere. A shorter restraint and properly limited geographical area (if applicable) would mitigate in favour of enforcement, whilst an unduly long and broad restraint would mitigate against it.[64] It must also be considered whether the enforcement of the restraint would go further than necessary in order to protect the interests of the employer. And lastly, the onus would be on the

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[59] (2007) 28 ILJ 317 (SCA) at para 20. See also *Kleynhans* (*supra*) at para 40; *Van Wyk* (*supra*) at para 34.
[60] (2020) 41 ILJ 1743 (LC) at para 45.
[61] For example, shorter restraints and properly limited geographical area (if applicable) would mitigate in favour of enforcement, whilst an unduly long and broad restraint would mitigate against it – see *Labournet* (*supra*) at para 43; *Continuous Oxygen* (*supra*) at para 47.
[62] *Automotive Tooling Systems (Pty) Ltd v Wilkens and Others* (2007) 28 ILJ 145 (SCA) at para 8; *Labournet* (*supra*) at paras 43 - 44; *Jonsson (supra)* at para 51.
[63] In *Vumatel (Pty) Ltd v Majra and Others* (2018) 39 ILJ 2771 (LC) at para 39, it was held: '*… The nature of the industry is also an important consideration. The more specialized the industry is, the more the weigh off will favour the employer, as it limits the scope of the restraint and leaves much more avenues open to the employee to procure gainful employment in other industries. …*'.
[64] *Labournet* (*supra*) at para 43; *Continuous Oxygen* (*supra*) at para 47.

employee party to show that the restraint period and / or area would be unreasonable.[65]

[79] All of the above weigh off considerations favour King Pie. There is in any event no answering affidavit, and thus no case made out by Jute that the restraint period is unduly lengthy or the restraint area too wide. I in any event consider a restraint period of 12 months to be quite reasonable, especially where it comes to a person responsible for sales. The industry is narrow and specialized, and Jute can deploy her sales experience and expertise anywhere else, and so still earn a living. There is no evidence to indicate that Jute will be unduly prejudiced should the restraint he enforced. As opposed to this, there is clear evidence that the prejudice to King Pie if it is not enforced is manifest. I believe the following considerations as articulated in *Ball supra*[66] must equally apply *in casu*, in favour of King Pie:

> 'In my view, quantitatively and qualitatively, the interest of the first respondent surpassed that of the appellant. The fact that the appellant stated that she did not intend and did not use any of the information in favour of or for the benefit of the second respondent is irrelevant in determining whether the restraint is reasonable, or in determining whether the restraint had been breached. Furthermore, in my view, there was no other fact or aspect of public policy, at the time when the restraint was to be enforced, which required that the restraint be rejected. In the circumstances, I am satisfied that the court a quo correctly concluded that the restraint was reasonable and enforceable and in granting relief accordingly.'

[80] King Pie has no alternative remedy available to it in this instance. As said in *Plumblink supra*[67]: *'… A future damages claim based on breach of contract would be cold comfort for business lost, in a market where as already said products are readily interchangeable. …*'. It is far more appropriate to simply completely insulate King Pie from the risk associated with the employment of Jute with a competitor such as Vea, for the restraint period and in the restraint

[65] In *Plumblink* (*supra*) at para 50, the Court said: '*The first respondent had the onus to provide proper information or a factual basis upon which the restraint period and/or area would be considered unreasonable …*'. See also *Sadan* (*supra*) at para 19; *Document Warehouse (Pty) Ltd v Truebody and Another* [2010] JOL 26270 (GSJ) at para 47.
[66] Id at para 25.
[67] (2020) 41 ILJ 1743 (LC) at para 49.

area.[68] An interdict is the only way this can be achieved, based on the following *dictum* in *Esquire System Technology (Pty) Ltd t/a Esquire Technologies v Cronjé and Another*:[69]

> 'As I have stated above, the alternative remedy of a damages claim is cold comfort to an applicant that seeks to enforce a legitimate restraint of trade covenant. By the time a damages claim is heard, the horse had bolted and the harm is done. That harm is very difficult to repair. I am satisfied that, where a restraint of trade is enforceable, the alternative remedy of a damages claim in due course is more apparent than real …'

[81] In the end, King Pie has made out a proper case for the enforcement of the restraint of trade covenant and confidentiality undertaking against Jute. It has established the existence of a proper pretectal interest in the form of both confidential information and trade connections. It is undeniable that this protectable interest has been violated, considering Jute's employment with Vea, and her pursuit of the customers of King Pie she dealt with whilst employed with King Pie, by way of leveraging the personal relationship she established with those customers on behalf of King Pie. Considering the nature of the confidential information she had access to, the risk of her continued employment with the kind of direct competitor such as Vea is simply too great to tolerate. And lastly, the weighing off of interests favours King Pie. Enforcement of the restraint of trade is thus reasonable. King Pie is therefore entitled to final relief in terms of the notice of motion in the main application.

Costs

[82] This then leaves only the issue of costs. This Court has a wide discretion where it comes to the issue of costs, considering the provisions of section 162(1) of the LRA. In *Union for Police Security and Corrections Organisation v SA Custodial Management (Pty) Ltd and Others*[70] the Court said:

> 'In the labour context, the judicial exercise of a court's discretion to award costs requires, at the very least, that the court must do two things. First, it

[68] *Vumatel* (*supra*) at para 38.
[69] (2011) 32 ILJ 601 (LC) at para 40.
[70] (2021) 42 ILJ 2371 (CC) at para 35.

> must give reasons for doing so and must account for its departure from the ordinary rule that costs should not be ordered. Second, it must apply its mind to the dictates of the fairness standard in s 162, and the constitutional and statutory imperatives that underpin it …'

[83] King Pie has complained that the conduct of Jute and Vea *in casu* is part of a stratagem to either prevent or delay the enforcement of the restraint of trade by way of an abuse of process and misuse of the Rules. Because of what I have set out in this judgment concerning their conduct, I tend to agree. I have little doubt that Jute and Vea knew when the restraint was to expire, and designed their opposition to this matter in order to string the case along until the point where the restraint expired. This would ensure a victory without even dealing with the merits of the case. This is an untenable approach.

[84] There was, as discussed above, absolutely no legitimate reason for Jute and Vea not to have engaged on the merits of the restraint of trade application, and file an answering affidavit. They however deliberately pursued a stratagem designed to ensure they did not have to. This is evident from a number of pertinent facts. Frist, the rule 35(12) request for discovery was only made after the time limit for filing and answering affidavit had expired. Second, the compel application was brought in the ordinary course without any consideration of the urgency of the matter. Third, the prosecution of the compel application was conducted at a leisurely pace. Fourth, they never even sought to make out a case why these documents sought were essential for an answer to be prepared. And finally, the manner in which a stay of proceedings was pursued was, overall considered, entirely unwarranted and inappropriate. This kind of tactical litigation without engaging in the merits of a case should be discouraged in strong terms.

[85] Further, it is what Jute and Vea did after being provided with the judgment of 5 March 2026 that is also concerning. It surely must have been clear once this judgment was received that any further stay of the proceedings was a dubious prospect indeed. It should also have been clear that what was essential and needed, was for them to file an answering affidavit. But they doggedly pressed on with the same unjustified and unwarranted approach. I take guidance from

the following *dictum* in *Sepheka v Du Pont Pioneer (Pty) Ltd*[71], in a case where the Court was dealing with costs in the context of a punitive costs order: '*Punitive costs will also be justified where a litigant adopts what is called an 'unconscionable stance', or conducts him/herself in an unacceptable manner in the course of the proceedings. Punitive costs also serve as a mark of a court's displeasure. …'*

[86] What has happened in this case is an abuse of process by Jute and Vea. As decided in *Beinash v Wixley*[72]: '*… an abuse of process takes place where the procedures permitted by the rules of the court to facilitate the pursuit of the truth are used for a purpose extraneous to that objective …*' It is clear that the stay proceedings are a stratagem to scupper the enforcement of the restraint of trade, without having to engage on the merits. Their past conduct speaks clearly to this intention. The continuous failure by litigants to heed the numerous warnings by this Court where it comes to these kinds of applications must be visited with adverse consequences.[73] It constitutes an abuse of process to pursue a case which is for all intents and purposes hopeless. I fully align myself with the following *dictum* in *Mokoena v Merafong Municipality and Others*[74]:

> 'In casu, the applicant brought a meritless application to this court and fairness dictates that the respondents cannot be expected to endure enormous costs defending litigation where more thought and consideration had to be put in before approaching this court on an urgent basis. …'

[87] Ultimately, King Pie was dragged along for months by way of the stratagem deployed by Jute and Vea, despite the clear provisions of Rule 39, and King Pie's compliance therewith. In the end, and after some effort that should not have been needed, it managed to succeed. Overall considered, I consider it to be justified and fair, having particular regard to the conduct of Jute and Vea,

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[71] (2019) 40 ILJ 613 (LC) at para 42. See also *Mukanda v South African Legal Practice Council* 2021 (4) SA 292 (GP) at para 13.
[72] 1997 (3) SA 721 (SCA).
[73] See, for example, *Magoda v Director-General of Rural Development and Land Reform & another* (2017) 38 *ILJ* 2795 (LC) at para 20; *Botes v City of Joburg Property Company SOC Ltd and Another* (2021) 42 ILJ 530 (LC) at para 50; *Shikwane and Another v Bojanala Platinum District Municipality and Others* (J 774/20) [2020] ZALCJHB 191 (29 August 2020) at para 64.
[74] (2020) 41 ILJ 234 (LC) at para 36.

that King Pie must be entitled to its costs, which shall include the costs of two counsel (one being a senior counsel), on the party and party scale C.

Order

[88] It is for all the reasons as set out above, that I made the order that I did, as reflected in paragraph 8 of this judgment, *supra*.

S. Snyman

Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicant:	Advocate A Stubel SC together with Advocate P Lourens
Instructed by:	Werksmans Attorneys
For the First and Second Respondents:	Advocate J J Buys
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