(1) Reportable: YES
(2) Of interest to other Judges: YES

Signature Date

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

CASE NO: 2026-093159

In the matter between:

RHAM EQUIPMENT (PTY) LTD Applicant

and

JACQUES LOUIS BOTES First Respondent

COALSEAM HYDRAULIC & MINING SUPPLIES (PTY) LTD Second Respondent

Heard: 3 June 2026

Delivered: 15 June 2026

Summary: Application to enforce restraint and confidentiality undertakings. Requirements proved for interdict. Order granted as sought.

JUDGMENT

DANIELS J

Introduction

[1] The applicant seeks to enforce 'restraint of trade' and confidentiality undertakings (the "restraint agreement") given to it by its former employee, the first respondent, who is employed by the second respondent. The application is brought, inter alia, under section 77(3) of the Basic Conditions of Employment Act No. 75 of 1997, as amended ("BCEA"). The application has been actively opposed by the first respondent. The second respondent, which states that it does not oppose the application, has nevertheless filed an affidavit in support of the first respondent. The applicant seeks to enforce the restraint agreement for twenty-four months, even though the restraint itself is thirty-six months.

Urgency

[2] The requirements relating to urgency are laid out in *AMCU & others v Northam Platinum Ltd & another*[1] where Snyman AJ summarises the applicable principles. A party seeking urgent relief must expressly, and in adequate detail, set out the reasons for urgency and why such relief is necessary. An applicant is not entitled to rely on a self-created urgency. The applicant must not delay when acting. The more immediate the litigant's reaction to remedy the situation by instituting litigation, the better for establishing urgency. The applicant must state why he cannot be afforded substantial redress at a hearing in due course. A further consideration is the prejudice the respondent might suffer because of the abridgment of the prescribed time periods.

[3] Among other things, it is necessary to consider whether the applicant acted with expedition. The following facts are pertinent:

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[1] (2016) 37 ILJ 2840 (LC)

3.1 On 28 January 2026, the first respondent gave the applicant 30 days' notice of his resignation, stating that he intended to continue his studies.

3.2 However, on 16 March 2026, the applicant became aware that the first respondent had taken up employment with the second respondent, which the applicant views as a competitor, in breach of the restraint agreement.

3.3 On 19 March 2026, the applicant addressed a letter to the first respondent, warning him that his employment with the second respondent was in breach of the restraint agreement.

3.4 The respondents replied to the applicant's letter on 23 March 2026, advising *inter alia* that the second respondent was not competing with the applicant. In addition, the first respondent undertook that he would not directly or indirectly divulge any of the applicant's confidential information, that he would not retain any copies of the applicant's confidential information, that he did not possess copies of confidential information, and that he would not solicit any parties contrary to the restraint agreement.

3.5 The applicant approached the registrar and was informed that the application could not be heard until 3 June 2026. The applicant therefore launched the application on 23 April 2026, thirty-eight days after it learned that the first respondent had breached the undertakings. It is noted that the time periods for the filing of the answering affidavit, the replying affidavit, and the fourth affidavit complied with the rules. The time periods allocated by the rules allow for 17 court days to file these pleadings. This would have taken the applicant to 20 May 2026.

[4] The applicant could have launched the application sooner. But it is also plain that this would not have led to an earlier hearing date. Rule 39 provides for the allocation of provisional and final hearing dates, both of which fall within the registrar's purview. Given the abovementioned circumstances, in my view, the applicant acted with the necessary expedition.

[5] In my view, the applicant cannot receive substantial redress at a hearing in due course. If the application were brought in the normal course, it is unlikely that a hearing date would be set within 18 months. By that time, the applicant would have suffered irreparable harm. By the time the matter was heard and determined, it may well have become moot. In the circumstances, I accept that the application is urgent and should be heard as such.

Material facts

[6] The facts set out below are drawn from the four affidavits filed by the applicant and the first respondent. For the sake of completeness, reference is also made to the facts alleged by the second respondent, albeit that the affidavit from the second respondent should be properly admitted before it can be taken into consideration. Where the facts are not common cause, this is indicated.

6.1 The applicant is a well-established business that designs and manufactures specialized machines and equipment for the underground mining industry, a demanding and highly competitive market. The applicant also provides support and maintenance services to its customers for its machines and equipment. The applicant designs and manufactures its own ‘roof bolter’ as an ‘original equipment manufacturer’ and, in that regard, it faces competition from one other manufacturer in the domestic market. The applicant also designs and manufactures its own specialized “load haul dumpers” (“LHD”). The applicant’s design and

manufacture of hydrostatic machinery enhance efficiency and control, giving it a competitive edge.

6.2 With effect from 3 January 2024, the applicant and the first respondent, Mr. Jacques Louis Botes ("Botes"), concluded a written employment contract, with Botes engaged as a technical illustrator, working under the instruction of the managing director.

6.3 Clauses 11, 12, and 13 of the employment contract read as follows:

"11.1 The employee, by virtue of his association with the employer, has become possessed of and has access to the employer's trade secrets, trade connections, and confidential information, including inter alia, but without limiting the generality of the foregoing, the following matters, all of which are hereinafter referred to as "trade secrets":

11.1.1 Knowledge of the production (including raw material production) and operating procedures relating to the business of his employer,

11.1.2 Knowledge of and influence over the customers, suppliers and business associates of the employer and knowledge of the needs and requirements of such customers, suppliers and business associates,

11.1.3 Contractual arrangements between the employer and its business associates,

11.1.4 Financial details of the relationship of the employer with his business associates,

11.1.5 The names of the prospective customers of the employer and their requirements,

11.1.6 Details of the remuneration paid directly by the employer to its various employees and their duties,

11.1.7 Training schemes, programmers and methods utilized by the employer,

11.1.8 Other matters which relate to the business, structure and management of the employer, and in respect of which information is not readily available in the ordinary course of business to a competitor.

11.2 The employee acknowledges that, if on termination of his employment he takes up employment or otherwise becomes associated with or interested in a competitor of the employer, the employer's proprietary interest in its trade connections, trade secrets and confidential information will be prejudiced.

12.1 Having regard to the matters referred to in 11 above, the employee undertakes in favour of the employer to protect the proprietary interest of the employer with regards to trade connections and trade secrets in the following manner:

12.1.1 The employee will not at any time, directly or indirectly, divulge or disclose to others (except to the extent necessary to perform his duties to the employer) any of the company's trade connections and trade secrets.

12.1.2 Any written instructions, notes, memoranda or records relating to the employer's trade connections and trade secrets which are made by the employee or which come into his possession during the period of his employment with the employer shall be deemed to be the property of the employer and shall be surrendered to the employer on demand, and the employee will not obtain any copies thereof or extracts there from.

12.1.3 The employee shall not for a period of three (3) years after the date of termination of his employment with the employer:

12.1.3.1 Persuade or attempt to persuade any person whom, during his employment with the employer, was a banker, financier, supplier or customer of the employer, to cease doing business with the employer or commence doing business with anyone else.

12.1.3.2 Solicit or attempt to solicit the business or custom of any persons referred to herein.

12.1.3.3 Persuade, induce, solicit, encourage or procure any employee employed by the employer to cease such employment or to undertake employment with (sic) to have interest (sic) in any other business.

12.1.4 The employee shall not during the period of three (3) years after the termination of his employment for any reason whatsoever, either alone or jointly or together with or as agent for any other person, assist, be interested, engaged or concerned, directly or indirectly, whether as principal, proprietor, shareholder, partner, representative, member, consultant, advisor, director, financier, administrator, employee or otherwise, in any business, company or concern which carries on business in competition with the employer in South Africa.

12.2 ….

12.3 …

12.4 In the event that it is contended that any of the provisions of this agreement are not binding, the onus of proving same shall be upon the employee and until the dispute has been adjudicated upon finally by a court of competent jurisdiction, the provisions of this agreement shall remain binding upon him.

REASONABLENESS OF THE RESTRAINTS

13. The employee acknowledges and agrees that the restraints imposed upon him in terms of this agreement are reasonable in all respects as to subject matter, period and territorial limitation and are no more than are reasonable and necessarily required by the employer and its shareholders to protect the proprietary interests, goodwill, trade secrets, trade connections and confidential information of the employer."

6.4 On the applicant's version, Botes' position required that he be granted access to the applicant's technical and proprietary material[2] including the use of engineering drawings, schematics, and specifications to document machine functionality, operating procedures, maintenance processes, component configurations, and technical limitations. He was given access to all the applicant's 3D models, assemblies, and component-level design data, including machine architectures, hydraulic layouts, component specifications, bills of materials, and engineering tolerances and fits. In short, on the applicant's version, Botes had unrestricted and direct access to the applicant's design environment and interacted with the design server and the engineering database. As a result of his duties, Botes also gained knowledge of the applicant's deal structures, its running costs and operational expenditure, parts costings and margins applicable to customers and suppliers.[3]

6.5 The first respondent's father, Mr Louis Botes Snr, is an employee of the second respondent. The second respondent enquired of him whether he knew of any draughtsmen he could recommend. He mentioned his son. This led to the first respondent's initial resignation from the applicant in March 2025.

6.6 As previously mentioned, in March 2025, Botes resigned from the applicant and informed it that he would be joining the second respondent.

[2] Founding Aff para 54, Answering Aff para 118

[3] Founding Aff para 3

However, when the human resources manager raised the restraint agreement with him, he withdrew his resignation.

6.7 Thereafter, on 28 January 2026, the first respondent gave the applicant 30 days' notice of resignation, this time stating that he intended to continue his studies.[4] Instead, the first respondent took up employment with the second respondent as a senior draughtsman.

6.8 Following Botes' resignation, the applicant discovered that he had deleted his email history. In his answering affidavit, Botes accepts that he did so but suggests that this was merely a deletion of personal emails and personal information. However, in its replying affidavit, the applicant demonstrated that the deleted emails went beyond the personal.

6.9 In response to a letter of demand, the first respondent undertook that he would not directly or indirectly divulge any of the applicant's confidential information, he would not retain any copies of the applicant's confidential information, he did not possess copies of confidential information, and he would not solicit any parties contrary to the restraint agreement. The second respondent stressed that Botes was not employed by Coalseam Engineering, and the second respondent was not in competition with the applicant.

Issues arising

[7] The following issues arise:

[4] The first respondent offers only a bare denial of the allegation that he informed the applicant that he was leaving to continue his studies. Answering Aff para 134 – 136 (004-35)

7.1 The status of the second respondent's affidavit. Is it admissible, and should it be taken into consideration?

7.2 Did the first respondent breach the restraint agreement by taking up employment with the second respondent? This depends on whether the second respondent is a competitor of the applicant.

7.3 Has the applicant shown that it has protectable or proprietary interests?

7.4 If so, has the first respondent proven that the restraint is unreasonable and therefore unenforceable? If indeed the restraint is unreasonable, would a more limited restraint suffice to protect the applicant's proprietary interests?

7.5 Has the applicant satisfied the requirements for a final interdict?

7.6 The appropriate relief, including costs.

Analysis

Status of the second respondent's affidavit

[8] In this court, in restraint disputes, the rules make provision for the filing of four affidavits. The respondent is permitted to file two affidavits to afford it a fair opportunity to discharge the onus of proving that the restraint is contrary to public policy.[5] In general, while further affidavits are permitted at the court's discretion, this does not constitute a license to parties who have deliberately chosen not to participate in the proceedings to file affidavits. Parties who have

[5] See *Atlas 360 Commercial Vehicle Services (Pty) Ltd v De Witt & another* (2026) 47 ILJ 561 (LC) at para [48]

chosen not to participate may not file affidavits and participate through the back door. In the circumstances, the second respondent's affidavit can play no role in these proceedings.

Alleged breach of the restraint agreement

[9] Clause 12.1.4 of the first respondent's employment contract prohibits him from taking up employment with a competitor of the applicant, within South Africa, for a period of three years following the termination of his employment.

[10] It is common cause that the applicant and the second respondent both manufacture, supply, repair, and maintain LHD, face drills, roof bolters, shuttle cars, and related vehicles. They provide the same or similar products and services to the same clients or customers. They compete for the same contracts. They operate within the same industry. Furthermore, the second respondent services, repairs, and rebuilds machines manufactured by the applicant.

[11] On the common cause facts, the first respondent cannot seriously contend that the second respondent is not a competitor of the applicant. Whether the second respondent uses different technologies, designs, and engineering approaches is of no moment.

[12] In the circumstances, the first respondent breached the restraint agreement by taking up employment with the second respondent within three years of the termination of his employment with the applicant. Given that he had previously attempted to take up such employment and subsequently backed off, it is arguable that he deliberately breached the restraint agreement.

Does the applicant have protectable or proprietary interests?

[13] Proprietary interests that may be protected are of two types: the first type consists of the relationships with customers, potential customers, and suppliers - usually referred to as the "trade connection"; while the second type consists of all confidential matters that are useful for the carrying on of the

business and which can be used by a competitor to gain a competitive advantage. The second type is commonly referred to as “trade secrets”. In this dispute, the applicant’s primary concern is its trade secrets.

[14] Whether information constitutes a trade secret is a factual question, determined objectively by reference to whether the information is useful and capable of application in a trade or industry, and is not public knowledge, and is known only to a restricted number of people, and is of economic value.[6]

[15] The applicant alleges that, as its technical illustrator, Botes was responsible for compiling operating manuals, parts manuals, risk assessments, and integrated technical documentation packages. His duties required access to engineering drawings, schematics, and specifications of machine functionality, operating procedures, maintenance processes, component configurations, and technical limitations. He had access to all the applicant’s 3D models, assemblies, component-level design data, including machine architectures, hydraulic layouts, component specifications, bills of materials, and engineering tolerances and fits. In short, says the applicant, Botes had unrestricted, direct access to the applicant’s design environment and interacted with the design server and the engineering database.

[16] It is common cause on the papers that, among other things, the engineering and electrical designs and specifications constitute confidential information. The true dispute was whether the first respondent had access to such information and documentation. Indeed, Botes states: “*I do not contend that Rham has no confidential information in its business. That is not the issue. The issue is whether I possess specific confidential information which is capable of being used by Coalseam and whether my employment at Coalseam creates a real threat to such information. I deny that it does*.”

[6] *Experian SA (Pty) Ltd v Haynes & another* (2013) 34 *ILJ* 529 (GSJ) at para [19]

[17] Upon receipt of the answering affidavit, the applicant obtained an older backup of Botes' emails, which showed that he had been granted access to the design library.[7] The backup also shows that Botes was copied on emails from the applicant's design engineers and technical directors that included engineering design files and documents. Botes was copied on emails containing so-called "STEP" and "RA" files that contained confidential engineering / electrical drawings and specifications.

[18] In the fourth affidavit, the first respondent denies having "unrestricted access" to all the design files. He states: "*To the extent that I received engineering files or documents, they were provided to me for the limited purpose of preparing* manuals*, parts pages, technical illustrations or support documentation*".[8] Despite his initial denials, the first respondent ultimately conceded that he had access to the engineering and design files, albeit not unrestricted access. This tepid denial does not suffice to raise a genuine and material dispute of fact.[9]

[19] In addition, the applicant alleges, while Botes did not prepare or issue quotations, he had access to its running costs and operational expenditure data, parts costings, and margins applicable to all customers and suppliers. Despite initially denying such access, the first respondent later states: "*To the extent that I was copied on emails involving quotes, purchase orders, sales orders, stores, or production planning, my involvement was incidental to my manuals and parts documentation work*." More specifically, the first

[7] Replying Aff paras 124 – 129 (005-22)

[8] Founding Aff para 263 (006 – 59)

[9] See *Wightman t/a JW Construction v Headfour (Pty) Ltd and Another* 2008 (3) SA 371 (SCA) at para [13] where Heher JA stated: " A real, genuine and bona fide dispute of fact can exist only where the court is satisfied that the party who purports to raise the dispute has in his affidavit seriously and unambiguously addressed the fact said to be disputed. There will of course be instances where a bare denial meets the requirement because there is no other way open to the disputing party and nothing more can therefore be expected of him. But even that may not be sufficient if the fact averred lies purely within the knowledge of the averring party and no basis is laid for disputing the veracity or accuracy of the averment. When the facts averred are such that the disputing party must necessarily possess knowledge of them and be able to provide an answer (or countervailing evidence) if they be not true or accurate but, instead of doing so, rests his case on a bare or ambiguous denial the court will generally have difficulty in finding that the test is satisfied."

respondent admits that during January 2024, he received an internal email containing a sales quote. He also admits that in July 2024, he requested a purchase order. Further, the first respondent admits that during October 2025, he received a 2025 production planning folder. This amounts to a concession that the first respondent had access to such confidential commercial information.

[20] There can be little doubt that the abovementioned information is confidential, was known only to a closed circle, is useful in the industry, and has economic value.

[21] In the present circumstances, it falls to the first respondent to show that he had no access to the confidential information[10] which he has failed to do.

Is the restraint unreasonable and therefore unenforceable?

[22] It is trite that restraint agreements are valid and enforceable unless the party seeking to evade them can prove that the restraint is unreasonable, contrary to public policy, and therefore unenforceable.[11] The party seeking to enforce the agreement must prove its existence and its breach. Assuming these are proved, the question arises as to whether the agreement is reasonable.

[23] The test to determine the reasonableness of the agreement was set out in *Basson v Chilwan and others*[12] where the Appellate Division indicated that the court must ask the following questions: (a) Is there an interest of the one party that is deserving of protection upon the termination of the agreement? (b) Is that interest being prejudiced by the other party? (c) If so, does such interest so weigh up against qualitatively and quantitatively against the interest of the

[10] *New Justfun Group (Pty) Ltd v Turner and others* (2018) 39 ILJ 2721 (LC)

[11] *Reddy v Siemens Telecommunications* 2007 2 SA 486 (SCA)

[12] 1993 (3) SA 742 (A)

other party, such that the other party should not be economically active and productive? (d) Is there another facet of public policy having nothing to do with the relationship between the parties, but which requires that the restraint should either be maintained or rejected?

[24] In *Sibex Engineering Services (Pty) Ltd v Van Wyk*[13] Stegmann J held that the onus fell to the respondent to show that the contractual restraint went beyond what was reasonably required to protect the applicant's proprietary interest.

[25] In *Reddy v Siemens Telecommunications (Pty) Ltd*[14] ("*Reddy*") the Supreme Court of Appeal ("SCA") juxtaposed two competing policy considerations and a value judgment. First, the court must consider that the public interest requires that parties comply with their contractual obligations. Second, the court must consider that it is in the interest of society that all persons should be productive and be permitted to engage in trade and commerce or the professions. If the interest of the party to be restrained outweighs the interest to be protected, the restraint is unreasonable and consequently unenforceable. The inquiry is undertaken at the time of enforcement and covers a wide range of issues, including the nature, extent, and duration of the restraint, as well as factors peculiar to the parties and their respective bargaining powers and interests.

[26] While the duration of the restraint, twenty-four months, may seem extreme, the applicant explains it in the context of the need to protect its valuable engineering designs and methodologies, which are unique to its business and give it its competitive edge. In my view, the duration and extent of the restraint do not exceed what is reasonably necessary to protect the applicant's proprietary interests.

[27] The first respondent is a skilled individual who is unlikely to remain unemployed for any length of time. In his own words, the first respondent

[13] 1991 2 SA 482 (T) 502H-J

[14] Cited at fn. 11 at 327

states that, by the time he commenced employment with the applicant, he already had substantial experience in draughting, technical drawings, parts-related documentation, assembly-related work, and the use of drawing software such as AutoCAD and Solid Edge. These skills and experience can be used outside the applicant's industry, but can also be used within the industry, provided they are not used in competition with the applicant.

[28] The first respondent does not contend that he will be rendered economically inactive if the restraint is enforced. He contends only that he will be unable to use the skills and experience that he gained while in the applicant's employ. The applicant alleges that his skills and experience are broadly applicable and may be used across a broad range of engineering, design, and industrial contexts.[15] In response, the first respondent offers a rather lukewarm denial.[16] He states: "*The alternative employment options suggested by Rham are theoretical and do not answer whether the restraint is reasonably necessary to protect a legitimate interest*".

[29] The first respondent is restrained only in the choice of his employer for a limited period, not in his being economically active at all. Restraining him from being employed by the second respondent does not affect his employment elsewhere or his ability to engage in the employment for which he was trained.

[30] Ultimately, the burden falls to the first respondent to put up evidence from which the court can determine that the restraint is unreasonable. He has not put up any evidence apart from bald statements.

[31] It has been suggested by some that paragraph [14][17] of *Reddy* held that there is no onus in restraint disputes. This statement has been taken out of context.

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[15] Replying Aff para 19

[16] Fourth Affidavit para 341 - 342

[17] "In the present case we are not called upon to decide that issue. Where the onus lies in a particular case is a consequence of the substantive law on the issue. I have pointed out that the substantive law

The statement is merely an indication that the onus[18] seldom plays a determinative role where value judgments are required. In any event, onus plays a determinative role only where the evidence is evenly balanced. The onus remains. Botha JA put it best in *Basson v Chilwan* when the learned judge stated: "*By a long process of judicial development it is clearly established that, in the particular case of a contract in restraint of trade, an unreasonable restraint is contrary to public policy, and that the covenantor can avoid contractual liability by discharging the onus of proving unreasonableness, according to the ordinary standard of proof required in a civil case*."[19]

[32] This court is bound by *Sadan & another v Workforce Staffing (Pty) Ltd*[20] where, at para [19] the Labour Appeal Court ("LAC") stated: "*Once the party seeking to enforce a restraint of trade agreement has established an interest worthy of protection and that the other party is threatening that interest, the onus is on the party resisting the enforcement of the agreement to prove that it would be unreasonable. The appellants thus bore the onus of proving that the enforcement of the restraint will be unreasonable, both in respect of its territorial operation and duration*." In my view, the first respondent has failed to discharge the onus of showing that the restraint is unreasonable.

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as laid down in Magna Alloys is that a restraint is enforceable unless it is shown to be unreasonable, which necessarily casts an onus on the person who seeks to escape it. But if the rule were to be reversed to provide that a restraint is not enforceable unless it is shown that it is reasonable which would necessarily cast an onus on the person seeking to enforce it to allege and prove that the restraint is reasonable the result in the present case would be the same. For in the present case the facts concerning the reasonableness or otherwise of the restraint have been fully explored in the evidence, and to the extent that any of those facts are in dispute that must be resolved in favour of Reddy (these being motion proceedings for final relief). If the facts disclosed in the affidavits, assessed in the manner that I have described, disclose that the restraint is reasonable, then Siemens must succeed: if, on the other hand, those facts disclose that the restraint is unreasonable then Reddy must succeed. What that calls for is a value judgment, rather than a determination of what facts have been proved, and the incidence of the onus accordingly plays no role."

[18] The burden of proof or true onus refers to the obligation of a party to persuade the trier of facts by the end of the case of the truth of certain propositions. See Heydon & Ockelton *Evidence: Cases & Materials* 4th Ed (1996) 15

[19] At p777

[20] (2023) 44 ILJ 2506 (LAC)

[33] In the final analysis, taking all the evidence into consideration, the first respondent's interest does not outweigh the applicant's interest, either qualitatively or quantitatively. It is in the interest of society that the parties be held to their voluntarily agreed-upon agreement. Furthermore, as previously mentioned, this is not a situation where the first respondent is likely to become and remain economically inactive. No other facet of public policy has been brought to the court's attention.

Requirements for a final interdict

[34] The applicant seeks a final interdict. It must satisfy the requirements for a final interdict - the existence of a clear right, an actual or reasonably apprehended infringement of that right, and the absence of an adequate alternative remedy.[21]

[35] The applicant has proved the existence of the agreement and its breach. The first respondent does not dispute having had access to the applicant's confidential information or trade secrets. He contends only that he did not have unrestricted access to such information and his access was limited to the nature of his duties and functions.

[36] Indeed, where an employee is employed by a competitor, the risk of disclosure of the previous employer's trade secrets is objectively assessed as obvious.[22] The first respondent is engaged in a similar position. His loyalty is to his new employer. He will have opportunities to disclose such information, and it can be reasonably apprehended that he will do so, whether deliberately or not.

[21] S*etlogelo v Setlogelo* 1914 AD 221 at p227.

[22] See *Reddy at p330*

[37] In *BHT Water Treatment (Pty) Ltd v Leslie and another*[23] Marais J held: "*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 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 the first respondent would act honourably or abide by the undertaking he has given.*"

[38] In summary, the applicant proved the restraint agreement and proved its breach. There is no reason for the applicant to accept the first respondent's bona fides. There is no adequate alternative remedy. The requirements for a final interdict are proved.

Relief, including costs

[39] The application is brought under the BCEA and not the Labour Relations Act No. 66 of 1995 as amended (the "LRA"). The requirements of law and fairness, in section 162 of the LRA, do not govern costs under the BCEA. In *Biase v Mianzo Asset Management (Pty) Ltd*, the LAC held that in a civil claim, absent special circumstances, the costs follow the result. No special circumstances have been presented to the court, and there is no reason why costs should not follow the result.

[40] In the circumstances, I make an order as follows:

[23] 1993 (1) SA 47 (W) at p57

40.1 The application may be dealt with on an urgent basis and the rules governing service and process are condoned,

40.2 It is declared that the first respondent is in breach of the restraint agreement contained in the written employment contract concluded with the applicant on 27 November 2023,

40.3 The first respondent is interdicted and restrained for a period of 24 months, calculated from 27 February 2026, from:

40.3.1 Persuading or attempting to persuade any person who, during his employment with the applicant, was a banker, financier, supplier, or customer of the applicant, to cease doing business with the applicant or commence doing business with anyone else,

40.3.2 Soliciting or attempting to solicit the business or custom of any persons referred to in para 40.3.1; and

40.3.3 Either alone or jointly or together with or as agent for any person, assist, be interested, engaged or concerned, directly or indirectly, whether as principal, proprietor, shareholder, partner, representative, member, consultant, advisor, director, financier, administrator, employee or otherwise, in any business, company or concern which carries on business in competition with the applicant in South Africa.

40.4 The first respondent is interdicted and restrained from using and/or directly or indirectly divulging or disclosing to any person any of the applicant's confidential information. This includes any methods, operations, processes, computer software, operating manuals,

engineering data, documentation, client lists, programmes, trade secrets, technical information, drawings, financial information, or any other information which could be damaging to the applicant's operations, or which could benefit other persons to the detriment of the applicant.

40.5 The first respondent is interdicted and prohibited from being engaged in any form of employment or engaged in any capacity whatsoever with the second respondent or any of its subsidiary and/or associated companies for a period of 24 months, calculated from 27 February 2026,

40.6 The first respondent is ordered to destroy and/or return any of the applicant's confidential and/or proprietary information and/or trade secrets in his possession to the applicant within 5 business days of the order

40.7 The first respondent is ordered to pay the applicant's party and party costs.

RN Daniels
Judge of the Labour Court of South Africa

For the Applicant
S Lancaster
Lancaster Kungoane Attorneys

For the First Respondent
Adv S Bismilla
MC Inc Attorneys