

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case No: 031167/2026

| | |
|----------|-------------------------------------|
| (1) | REPORTABLE: NO/YES |
| (2) | OF INTEREST TO OTHER JUDGES: YES/NO |
| (3) | REVISED: YES/NO |
| 5/6/2026 | [REDACTED SIGNATURE] |
| DATE | SIGNATURE |

In the matter between:

RAWDEN ELECTRIC CC

Applicant

(REGISTRATION NUMBER: 2011/096806/23)

and

**MTHEMBI ENGINEERING AND
CONSTRUCTION (PTY) LTD**

First Respondent

(REGISTRATION NUMBER: 2017/326556/07)

and

WILLEM JACOBUS COMBRINCK

Second Respondent

and

TREVOR VAN DER MERWE

Third Respondent

This judgment is prepared and authored by the Judge whose name is reflected as such and is handed down electronically by circulation to the parties / their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date for handing down is deemed to be 05 JUNE 2026.

JUDGMENT

MAKHOPA, J

[1] On the 3rd of March 2026 the urgent court issued an order relating to the Respondents. The order reads as follows:

2 *“The second respondent is hereby interdicted and restrained for a period of 24 months from 13 September 2025, from directly or indirectly:*

2.1 *Inducing or attempting to induce any employee or contractor of the applicant to quit employment or retainer with the applicant, otherwise interfere with or disrupt the applicant’s relationship with its employees or contractors, discuss employment opportunities or provide information about competitive employment to any of the applicant’s employees or contractors or solicit, entice or hire away any employee or contractor of the applicant for the purpose of employment opportunity that is in competition with the applicant.*

2.2 *Diverting or attempting to divert from the applicant any business it had enjoyed, solicited, or attempted to solicit, from its customers as a date of this order, as per Annexure “X” attached hereto.”*

3 *“The third respondent is hereby interdicted and restrained for a period of 24 months from 15 August 2025, from directly or indirectly:*

3.1 *Inducing or attempting to induce any employee or contractor of the applicant to quit employment or retainer with the applicant, otherwise interfere with or disrupt the applicant’s relationship with its employees or contractors, discuss employment opportunities or provide information about competitive employment to any of the applicant’s employees of all contractors or solicit,*

entice or hire away any employees or contractor of the applicant for the purposes of employment opportunity that is in competition with the applicant.

3.2 Diverting from the applicant any business it had enjoyed, solicited or attempted to solicit, from its customers as a date of this order, as per the Annexure "X" attached hereto."

[3] The first respondent is included herein due to the fact that it was a party to the application for an interdict which was granted by the court. No relief is sought against the first respondent

[4] The application before this court is an urgent application for an order declaring the second and third respondents to be in contempt of the order referred to above.

[5] The applicant seeks further relief for the committal of the second and the third respondents to imprisonment as a result of their contemptuous conduct, together with an appropriate court order.

[6] It is submitted on behalf of the applicant that the essence of this application is that the second and third respondents, despite being expressly interdicted from directly or indirectly diverting the applicant's business, have continued to do so under the guise of their employment with the first respondent, thereby willfully and in bad faith disobeying the clear terms of this order.

[7] On behalf of the respondents, it is submitted that the first application is that paragraph 19 of the founding affidavit should be struck out, the entire paragraph constitute hearsay evidence.

[8] Again on behalf of the respondents the second application to strike out the application is that, matters referred to in the replying affidavit, does not emanate from the allegations made by the second and third respondents in their answering affidavits or constitute new evidence.

[9] It is clear from the papers that, the second respondent was in the Northern Cape during the Easter weekend and did not do any work at the Sibanye Stillwater mine.

[10] In my view there is no proof that, the second and third respondents in any way breached the terms of the court order and or committed any contempt of court towards the order dated 3 March 2026. The second and third respondents are not prohibited to be employed by the first respondent and they did not in any way act or behave contrary to the court order.

[11] The key consideration in an application to strike out is that of prejudice as set out in the *Swissborough Diamond Mines (Pty) Ltd and Others v Government of The Republic of South African and Others 1999 (9) SA 279 (T) at 336J to 337E*:

[12] In *Vaats v Law Society of Namibia 1991 (3) SA 563 (Nm) at 566D (1990 NR 332 at 334 - 335B)* the court held that the word scandalous, vexatious and irrelevant in regards to the content of an affidavit had the following meanings:

12.1 Scandalous matter - allegations which may or may not be relevant but which are so worded as to be abusive or defamatory.

12.2 Vexatious matter - allegations which may or may not be relevant but are so worded as to convey an intention to harass or annoy.

12.3 Irrelevant matter - allegations which do not apply to the matter in hand and do not contribute one way or another to a decision of such matter.

[13] A matter that is hearsay or argumentative would fall under description of irrelevant matter. In determining an application to strike out the existence of prejudice as required by Rule 6(15) must not be lost sight of. In determining the presence or absence of prejudice, the approach adopted in *Syfrets Mortgage Nominees Ltd v Cape St Francis Hotels (Pty) Ltd 1991 (3) SA 276 (SE) 282H - 283C* is particularly instructive.

[14] *"Rule 6(15) provides for the striking out of any matter in an affidavit which is scandalous, vexatious or irrelevant", but goes on to add that "the court shall not grant the application unless it is satisfied that the applicant will be prejudiced in his case if it be not granted."*

[15] *In Beinash v Wixley 1997 (3) SA 721(SCA) the court held at 733B:*


"what is clear from this Rule is that two requirements must be satisfied before an application to strike out matter from any affidavit can succeed. First, the matter sought to be struck out must indeed be scandalous, vexatious, or irrelevant. In the second place the court must be satisfied that if such matter was not struck out the parties seeking such relief would be prejudice."

[16] In my view it is clear to me that if the first application to strike out is not granted the respondents will be prejudiced.

Order

[17] I make the following order.

1. The matter is urgent.
2. The application against the second and third respondent is dismissed with costs on Scale A.
3. The first application to strike out succeeds and is granted with costs on Scale "A".
4. The second application to strike out is dismissed. There is no order as to costs.



D MAKHOB
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

Date of Hearing : 03 June 2026

Date of Judgment : 05 June 2026

For the applicant : Adv J. Loubser

Instructed by : Jooste & Moodie Attorneys
c/o Johan Van De Vyver Attorneys

**For the second
and third respondents** : Adv A.P Bruwer

Instructed by : Creighton & Associates Inc
c/o Creighton Attorneys Gauteng