REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: 2026-078818

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

04/06/2026 [redacted]
DATE SIGNATURE

In the matter between:

EQUITY MEDICAL TECHNOLOGIES (PTY) LIMITED Applicant

and

FRANCOIS DE VILLIERS First Respondent

GENVIA SA (PTY) LIMITED Second Respondent

JUDGMENT

MBONGWE, J:

INTRODUCTION

[1] The applicant seeks to enforce a restraint of trade and confidentiality undertakings against the first respondent, Mr De Villiers, following his resignation and subsequent employment with Genadyne and/or Genvia SA, a competitor of the applicant. The relief sought is final in nature, extending until 26 January 2027, twelve months post-termination of employment.

[2] The first respondent resists enforcement, contending that the applicant's proprietary interests have dissipated following the termination of its distribution agreement with Genadyne, and that any restraint beyond 1 July 2026 is punitive, contrary to public policy, and unsupported by legitimate interests.

THE APPLICABLE PRINCIPLES

[3] Covenants in restraint of trade are valid and enforceable unless shown to be unreasonable.[1] The test remains whether the restraint protects a legally recognisable interest of the employer, such as confidential information or customer connections, rather than merely excluding competition.[2]

[4] The balancing exercise requires consideration of:

a) whether the applicant has a protectable interest,

b) whether such interest is threatened,

c) whether the interest outweighs the respondent's right to work, and

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[1] *Magna Alloys & Research (SA) (Pty) Ltd v Ellis* 1984 (4) SA 874 (A) at 898A-B.
[2] *Basson v Chilwan & Others* 1993 (3) SA 742 (A) at 767A-D.

d) whether public policy supports enforcement.[3]

[5] The enquiry is conducted at the time enforcement is sought, not at the time of the conclusion of the contract. [4]

CONFLICTING CONTENTIONS

[6] The applicant argues that De Villiers, while employed, acted in breach by serving as a director of Genvia, colluding with Genadyne, and appropriating confidential information. It stresses that undertakings were dishonoured and that only a court order can secure compliance. Reliance is placed on *Reddy*[5] where the risk of disclosure of confidential information to a competitor justified enforcement.

[7] The respondent counters that EMT's business has fundamentally changed: its distribution agreement with Genadyne has been terminated, its proprietary interest in customer connections has dissipated, and its sales representatives retain the strongest client relationships. He contends that enforcement beyond 1 July 2026 is punitive, citing *Aranda Textile Mills*[6], where skills and know-how in the public domain were held not to constitute proprietary interests.

ANALYSIS

[8] The applicant's case rests on the assumption that its proprietary interests remain intact notwithstanding the termination of the Genadyne distribution

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[3] *Basson*, supra.
[4] *J Louw & Co (Pty) Ltd v Richter* 1987 (2) SA 237 (N) at 243B-C.
[5] *Reddy v Siemens Telecommunications (Pty) Ltd* 2007 (2) SA 486 (SCA).
[6] *Aranda Textile Mills (Pty) Ltd v Hurn* [2000] 4 All SA 183 (E).

agreement. Yet, the evidence shows that EMT no longer distributes Genadyne's NPWT devices, which formed the backbone of its business. Its customers are now confronted with unfamiliar products, while Genadyne, through Genvia, continues with established brand recognition. In these circumstances, the protectable interest in customer connections is substantially diluted.

[9] Confidential information, too, must be assessed in context. Information that is obsolete or no longer capable of conferring competitive advantage cannot qualify as a trade secret.[7] The applicant has not demonstrated that the information allegedly at risk retains economic value in light of its changed business model.

[10] The restraint of trade cannot serve as a mechanism to punish De Villiers for past misconduct. Its purpose is to prevent unfair competition, not to mete out retribution.[8] Where competition is no longer viable because the applicant's business model has altered, enforcement of the restraint beyond 1 July 2026 serves no legitimate purpose.

[11] The disclosure of "without prejudice" mediation discussions by the applicant is troubling. The rule exists to protect candid settlement negotiations. While not decisive of the present application, it underscores the contrived nature of the applicant's reliance on concessions allegedly made during mediation.

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[7] *Townsend Productions (Pty) Ltd v Leech* 2001 (4) SA 33 (C) at 53J-54B.
[8] *Automotive Tooling Systems (Pty) Ltd v Wilkens* 2007 (2) SA 271 (SCA) at 277G-H.

CONCLUSION

[12] In balancing the interests, the Court finds:

a) The applicant's protectable interests in customer connections and confidential information have dissipated with the termination of the distribution agreement.

b) Enforcement of the restraint beyond 1 July 2026 would impose economic inactivity on the respondent without corresponding benefit to the applicant.

c) Public policy, informed by constitutional values of freedom to trade and work, militates against punitive enforcement. [9]

[13] The appropriate relief is limited enforcement of the confidentiality undertakings, which the respondent does not oppose, and recognition that the restraint ceases on 1 July 2026.

ORDER

[14] Consequent to the findings in this judgment, the following orders are made:

1. The application to enforce the restraint of trade until 26 January 2027 is dismissed.

2. The restraint of trade shall endure until 1 July 2026, thereafter lapsing.

3. The first respondent is interdicted from disclosing or misusing the applicant's confidential information at any time.

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[9] *Napier v Barkhuizen* 2006 (4) SA 1 (SCA) at [6]; *Afrox Healthcare Bpk v Strydom* 2002 (6) SA 21 (SCA) at [18-30]).

4. The applicant is directed to pay the costs of this application, including the costs of senior counsel.

[redacted]

MPN MBONGWE
JUDGE OF THE HIGH COURT
GAUTENG DIVISION,
PRETORIA

APPEARENCES

For Applicant:	**AJ DANIELS SC**
Instructed by:	Bowman Gilfillan Inc.
For the Respondent:	**I MILTZ SC**
With:	**C de WITT**
Instructed by:	Malan Scholes Attorneys
Date of Hearing:	**29 April 2026**
Date of Judgment:	**04 June 2026**

THIS JUDGMENT WAS ELECTRONICALLY TRANSMITTED TO THE PARTIES' LEGAL REPRESENTATIVES AND UPLOADED ONTO CASELINE ON 04 JUNE 2026.