(1) Reportable Yes/No
(2) Of interest to other Judges: Yes/No
(3) Revised

Signature Date

IN THE LABOUR APPEAL COURT OF SOUTH AFRICA, JOHANNESBURG

Case number A2025-153574 & A2025-153556

Consolidated under case number A2025-153574

In the matter between:

DOWNARD IAN MICHAEL

(Case No. A2025-153574) **First Appellant**

JENKINS MARK

(Case No.2025-153556) **Second Appellant**

SNIPERVERSE (PTY) LTD

(Case No.153556/2025) **Third Appellant**

and

HUDACO TRADING (PTY) LTD

(Both Appeals) **Respondent**

Heard: 14 May 2026

Delivered: 30 July 2026

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Coram: Van Niekerk JA, Tokota AJA et Djaje AJA

This judgment was handed down electronically by circulation to the parties' representatives by email, published on the Labour Appeal Court website, and released to SAFLII. The date and time for hand-down is deemed to be 10h00 on 30 July 2026.

JUDGMENT

TOKOTA, AJA

Introduction

[1] The respondent approached the Labour Court seeking an order interdicting and restraining the first and the second appellants from breaching the contracts of restraint of trade entered into between them and the respondent. There were two separate applications before the Labour Court, each of which was based on similar facts. The Labour Court granted both applications, but it restricted the area of application of the restraints to Gauteng, KwaZulu-Natal and Western Cape, with costs. In this judgment where I refer to Mr Downard and Mr Jenkins that will be a reference to the first and second appellants respectively.

[2] The appeals against the order are with leave of the Labour Court.

Background

[3] During 2013 the respondent entered into a sale of Business Agreement in terms whereof it purchased the business of Three-D Agency Investments (Pty) Ltd (Three-D Investments) as a going concern. In concluding the agreement Mr Downard was the authorised representative of Three-D

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Investments. It was envisaged that Three-D Investments would be conducted as a separate division and that Mr Downard would be appointed as the head thereof. In terms of the agreement Mr Downard was to conclude a written service, confidentiality and restraint agreement. It is alleged that there was a precondition to the sale of Business Agreement that Mr Downard would bind himself to the extensive and comprehensive restraint and non-competitive agreement for a period of 3 years after the termination of employment.

[4] The restraint clause was intended to protect the interests of the business being acquired as a going concern of the respondent's investments and to prevent the erstwhile owners and employees of the purchased business from expropriating the clients, suppliers, business relationships, the technical knowledge, know how, proprietary information and trade secrets of the business for their own benefit

[5] After the sale, indeed Mr Downard was appointed as the Managing Director of Three-D Investments to run the day-to-day business until November 2022. He was also responsible for maintaining the relationship of the existing clients and the expansion of the client base. The sale agreement was to include a restraint clause (clause 18) in terms of which he would be` bound to honour for three years after the termination of his employment with Three-D Investments.

[6] Mr Downard then concluded a contract of employment with Three-D Investments on 1 May 2013 which was subject to various extensions up until the end of November 2024. His duties included expanding the business of Three-D Investments' new clients, suppliers, developing sales and implementation of strategies subject to the Board's approval. Included in his contract was a confidentiality clause which would survive

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after the termination of his employment. The contract further contained confidentiality and secrecy clauses in terms of which Mr Downard agreed not to use, for his own benefit or disclose to any other person for their benefit, any trade secrets or confidential information. The confidentiality and secrecy clauses were to operate indefinitely.

[7] In terms of the sale of Business Agreement Mr Downard agreed that the prescribed area of the business would be the magisterial district of Johannesburg and every other magisterial district in the Republic of South Africa. That he would not, for a period of three years after the termination of his employment with Three-D Investments or Huduco, compete with business of Three-D Investments directly or indirectly. That he would not carry on business as either a proprietor, partner, director, shareholder, employee, member, consultant, contractor, financier, agent representative, assistant or otherwise, whether for reward or not.

[8] Three-D Investments purchases various electrical and cable accessories from its own established suppliers, and then sells them to the mining, industrial zomer, electrical wholesale, automotive, and renewable energy sectors. The respondent's suppliers include Uni-Trend Technology (China) (Uni-T) and HIKMICRO. The respondent contends that Three-D Investments is the sole distributor for Uni-T products in South Africa. In addition, so the respondent contends, it is one of two distributors of HIKMICRO products in South Africa.

[9] During his employment period with Three-D Investments, Mr Downard had unrestricted access to all the information of Three-D Investments including pricing, client lists and details, client and supplier purchasing trends, sales projections, payment analysis, stock inventories and suppliers, as well as its business expansion strategy.

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[10] During the second week of December 2024, the first and second appellants, acting on behalf of the third appellant, placed an order with Uni-T and/or HIKMICRO for products valued at more than R 1 000 000, 00 (one million rand).

[11] Mr Downard averred that he assisted the third respondent, and Sniperverse Holdings, to bring their businesses into the SYSPRO programming system designed to provide retailers with an "*all in one business management solution*", for which he was remunerated. He stated that this had nothing to do with the respondent's business and products

[12] Clause 18 of Mr Downard's contract of employment contains conditions of the restraint but suffice it to quote the relevant part for the determination of this appeal. Pertinent to his contract of employment was clause 18 of the restraint agreement the relevant terms of which are that he:

'shall not, during the operation of this agreement or thereafter, use for his own benefit or any other person or divulge or communicate to any person or persons, except to those officials of the company whose province it is to know, any of the Group's Secret and Confidential information or any other information which he may receive or obtain in relation to the Group's affairs or to the details of any specific project undertaken by the Group or to the working of any process or invention or to any marketing technique which is carried on or used by the Group.'

[13] On 2 October 2013 Mr Jenkins took up employment with Three-D Investments, which was a division of the respondent, as a Sales Director. As the company was based in Gauteng, during February 2024 Mr Jenkins sought a transfer to Cape Town due to ill-health of his wife who wanted

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to live closer to her children in Cape Town. The application for transfer was declined.

[14] On 31 May 2024 Mr Jenkins tendered a resignation from Three-D Investments effective from 31 July 2024. Apparently by the time he resigned he had already secured employment with Sniperverse Holdings which is a family company of his in-laws. There is a dispute as to whether he was employed by Superverse Holdings or the third appellant. This is dealt with later in this judgment.

[15] Mr Jenkins commenced his duties with the new employer on 1 August 2024. Superverse Holdings was a shareholding company of Sniperverse Investments (Pty) Ltd, the third appellant. The Directors of these two companies are Ms Danielle Diedericks and Mr Sheldon Diedericks (the son to Danielle). Mr Jenkins' daughter is married to Mr Sheldon Diedericks.

[16] The respondent is adamant that Mr Jenkins is employed by the third appellant. It attached a letter from the third appellant confirming that Mr Jenkins was in its employment from August 2024. Mr Jenkins stated that the letter did not reflect a true position but was written purely to secure his rental accommodation. He stated that Sniperverse Holdings was at its infancy stages when he took up employment with it. The third appellant ordered stock for Sniperverse Holdings because it did not possess a customs code. The third appellant attached two salary slips for Mr Jenkins, one was for December 2024 and one for January 2025. The one for January 2025 reflected that 'Jenkins' was employed by Sniperverse Holdings effective from January 2025.

[17] The respondent stated that Mr Jenkins disclosed its trade secrets and confidential information to the third appellant to enable the third

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appellant to gain competitive advantage. Needless to say this was denied by Mr Jenkins.

[18] During November 2024 Mr Jenkins proceeded to Gauteng to meet with representative clients of Sniperverse Holdings. During his visit to clients in Johannesburg, he was accompanied by Mr Downard. Although Mr Downard alleges that he was merely a chauffeur of Mr Jenkins his denial of attendance to the meetings was, in my view, correctly rejected by the Labour Court. However, there is no evidence to gainsay that Mr Downard, even though he attended meetings, did not participate in the negotiations of a prospective business. Mr Jenkins admits that Mr Downard attended meetings but avers that he did not participate in the deliberations.

[19] He asserts that prices and stock quantities are standard in the industry and not confidential at all.

[20] In light of these meetings and the orders from Uni-T and/or HIKMICRO referred to above the respondent sought an interdict restraining and interdicting the appellants, demanding that they should desist from breaching their contracts of restraints of trade. As pointed out above the Labour court granted the interdict with costs.

[21] Before discussing the merits of the appeal I deem expedient to dispose of preliminary issues.

Amendment of the notice of motion:

[22] One of the grounds of appeal is that the Labour Court erred in granting an amendment of the notice of motion in respect of the first appellant relating to the addition of '*and the restraints in the employment/services*

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agreement' at the end of paragraphs 2 and 3 of the notice of motion. Paragraph 2 reads:

"Declaring that the first respondent, lan Michael Downard has breached the terms of clause 18 of the sale of business agreement concluded on 26 March 2013 a copy of which is annexed to the founding papers of the Applicant ("the Sale of 10 Business Agreement").

[23] Paragraph 3 reads:

> "That the First Respondent be interdicted from breaching any term of the restraint of trade contained the Sale of Business Agreement from date of granting this order for a period of 32 months."

[24] It is contended that the Labour Court, by allowing the application for amendment to be moved from the bar, it altered the case of the first appellant and based this alteration on the heads of argument and not on his founding papers. It was submitted that the first appellant's case founded jurisdiction in terms of the Labour Relations Act[1] (LRA) and not the Basic Conditions of Employment Act[2] (BCEA). On this basis, so it was argued, the Labour Court lacked jurisdiction. It was further contended that the Labour Court ought to have postponed the matter to allow a proper application for amendment to be made on notice. It was submitted that the application for amendment was an attempt to bring the application within the jurisdiction of the Labour Court.

[25] Our Courts have, as correctly submitted by counsel for the respondent, adopted a generous approach to the amendment of pleadings. They have allowed amendments to cure defects in pleadings, even to the extent of allowing even a cause of action to be substituted by another and even in

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[1] Act 66 of 1995.
[2] Act 75 of 1997.

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cases where prescription might otherwise have intervened[3]. Counsel for the first appellant submitted that it is not correct, as stated by the Labour Court, that there was no serious opposition to the amendment.

[26] The contract of employment of the first appellant is inextricably linked to the sale of business agreement hence it was subject to him being employed as the head of Three-D Investments. It was further a term of the sale of the business agreement that he should sign a restraint of trade agreement. In my view the amendment did not bring about any prejudice to the appellants. I am therefore unable to find fault in the Labour Court allowing the amendment.

Jurisdiction

[27] It has been argued on behalf of the first appellant that the Labour Court had no jurisdiction on the grounds that the respondent brought the application in terms of the LRA. It is trite that where a court has jurisdiction in the principal action, it retains jurisdiction in ancillary or incidental matters arising therefrom. A litigant who submits to the jurisdiction of the court in the main proceedings cannot approbate and reprobate by seeking to avoid jurisdiction in respect of interlocutory or ancillary relief.

[28] The question of jurisdiction and the formulation of a cause of action has been decided by the Constitutional Court in *Gcaba v Minister for Safety and Security and Others*[4] where it was held that:

[3] See in this regard *Trans-Africa Insurance Co Ltd v Maluleka* 1956 (2) SA 273 (A) at 279C - E; *Alfred McAlpine & Son (Pty) Ltd v Transvaal Provincial Administration* 1977 (4) SA 310 (T) at 343B - D; *Mabaso and Others v Minister of Police and Another* 1980 (4) SA 319 (W) at 323D - 325A; *Imprefed (Pty) Ltd v National Transport Commission* 1990 (3) SA 324 (T) at 329C - D; *Wavecrest Sea Enterprises (Pty) Ltd v Elliot* 1995 (4) SA 596 (SE) at 600I - J; *Vorster v Havemann* 1996 (4) SA 308 (T) at 312A - I.

[4] 2010 (1) SA 238 (CC) at p 263 para. 75:

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> 'While the pleadings - including, in motion proceedings, not only the formal terminology of the notice of motion, but also the contents of the supporting affidavits - must be interpreted to establish what the legal basis of the applicant's claim is, it is not for the court to say that the facts asserted by the applicant would also sustain another claim, cognisable only in another court. If, however, the pleadings, properly interpreted, establish that the applicant is asserting a claim under the LRA, one that is to be determined exclusively by the Labour Court, the High Court would lack jurisdiction.'

[29] Section 77(3) of the BCEA provides as follows:

> 'The Labour Court has concurrent jurisdiction with the Civil Courts to hear and determine any matter concerning a contract of employment, irrespective of whether any basic condition of employment constitutes a term of that contract.'

[30] This Court, per Waglay AJP, as he then was, has held that if an issue in dispute relates to; is linked to; or connected with an employment contract then the Labour Court does have jurisdiction in terms of section 77(3) of the BCEA to entertain such a dispute.[5] The Learned Judge continued in *Randwater v Stoop and Another*[6] and said:

> 'In the matter of *Tsika v Buffalo City Municipality,* the court in my view properly held that the Labour Court had wide powers in terms

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[5] See: *Randwater v Stoop and Another* [2013] 2 BLLR 162 (LAC); *Penta Publication (Pty) Ltd v Schoombie and others* [2001] 2 BLLR 199 (LC) here the Labour Court held that an employer was entitled to enforce a confidentiality clause in an employment contract even after termination of the employment relationship. *Vorster v Real Africa Corporate Services (Pty) Ltd* [2003] 2 BLLR 208 (LC); *Mafihla v Govan Mbeki Municipality* [2005] 4 BLLR 334 (LC) where the Labour Court considered if there was a breach in the termination of an employment contract, if so, the relief that should be granted

[6] [2013] 2 BLLR 162 (LAC) at para 22.

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of the BCEA and that in terms of s77A(e) the Labour Court may make any order that it considers reasonable on any matter concerning a contract of employment in terms of s77(3). The court added that such orders may include an order for specific performance; an award of damages or an award of compensation.'

(Footnotes omitted)

[31] If regard is had to the contents of clause 18, the text of which is fully quoted below, the '*issue in dispute relates to; is linked to; or connected with an employment contract'*. The clause reads:

'18.2. Each Covenantor will not, for 3 (three) years from the Termination Date, whether as proprietor, partner, director, shareholder, employee, member, consultant, contractor, financier, agent, representative, assistant or otherwise, and whether for reward or not, directly or indirectly, -

18.2.1. carry on in the Prescribed Areas any undertaking; or

18.2.2. be interested or engaged in or concerned with any company, close corporation firm, undertaking or concern operating in any of the Prescribed Areas; of

18.2.3 be employed by any company, close corporation, firm, undertaking or concerns span operating in any of the Prescribed Areas, which manufactures and/or sells goods competitive with the Prescribed Goods or renders services competitive with the Prescribed Services or in the course of the business of which of which such goods are sold and/or such services are rendered; provided that the Covenantors shall not be

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deemed to have breached their undertakings by reason of them –

18.2.4. holding shares in any company the shares of which are listed on a recognised stock exchange if the shares owned (whether directly or indirectly) by them, their ascendants and descendants, their or their spouses, any person related to them or their spouse within the third degree of consanguinity and any trust created primarily for the benefit of one or more of such persons or any company or close corporation effectively controlled by the Covenantor and/or one or more of such persons and/or trusts do not in the aggregate constitute more than 5% (five per cent) of any class of the issued share capital of such company.'

[32] A Covenantor refers to Lamley and Downard in terms of clause 18.1.1 Lamley represented the purchaser in the sale of Business Agreement. The main order sought was a declaratory order that the first appellant was in breach of the restraint of trade embodied in clause 18 of the sale of business Three-D Investments and that he should be interdicted from continuing to breach the contract.

[33] It is clear from clause 18 that the contract related to the first appellant in his capacity as an employee. The 'Termination Date' referred to in clause 18.2 refers to the termination of employment. When drawing papers, it is not necessary to refer to a statutory provision by name but it is sufficient if the provisions on which reliance is placed are covered in the allegations. The Labour Court has concurrent jurisdiction as the High

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Court to adjudicate on matters of restraint of trade particularly with reference to employment contracts. Accordingly, the Labour Court had jurisdiction to entertain the matter.

Dispute of fact

[34] It was submitted on behalf of the first appellant; that he was out of employment for the past three years; that he did not participate in the meetings where he accompanied the second appellant. In relation to the second appellant, it was disputed that he is employed by the third appellant and therefore there was a misjoinder. It was submitted that his employer is Sniperverse Holdings. It was also denied that he breached any contract by disclosing information to the companies he consulted. It was further disputed that the respondent had protectable interests.

[35] From the onset, it must be stated that insofar as there are factual disputes, the Labour Court properly resolved the disputes by applying the *Plascon-Evans* rule[7] which lays down that in motion proceedings, the applicant can only succeed in obtaining the relief sought if the facts as stated by the respondent together with the admitted facts in the applicant's affidavits justify such an order. The general rule as was stated in *Stellenbosch Farmers' Winery Ltd v Stellenvale Winery (Pty) Ltd*[8] is that:

> "... where there is a dispute as to the facts a final interdict should only be granted in notice of motion proceedings if the facts as stated by the respondents together with the admitted facts in the applicant's affidavits justify such an order... Where it is clear that

[7] See: *Plascon-Evan Paints Ltd v Van Riebeeck Paints (Pty) Ltd* 1984 (3) SA 623(A) at 634-5
[8] 1957 (4) SA 234 (C) at 235 E – G.

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facts, though not formally admitted, cannot be denied, they must be regarded as admitted." [9]

[36] In my view it is not necessary to set out the details of how the Labour Court went about resolving the issues. Suffice it to say that the denials by the appellant were so farfetched and in certain instances consistent with the allegations of the respondent and therefore the Labour court was justified in rejecting them.

[37] To summarise the resolution of the disputed facts I say, (a) the denial by the first appellant that he was merely a chauffeur of the second appellant cannot hold water in view of the fact that he also attended these meetings. He had no business in the consultations if he was merely a chauffeur; (b) the second appellant was not telling the truth when he said he was employed by the Sniperverse Holdings in view of the letter saying he was employed by the third appellant; (c) Sniperverse Holdings was not in its infancy in view of the revelations that it was established in December 2016; (d) the allegations that the prices and stock quantities are standard in the industry and not confidential cannot be reconciled with the appellants signing restraint contracts in terms of which they agreed that they are confidential. I am satisfied that the overall assessment of the facts by the Labour Court was correct.

Merits of the appeal

[38] It is trite that restraints of trade are valid and binding, and as a matter of principle enforceable, unless the enforcement thereof would be regarded

[9] See: *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* 1984 (3) SA 623 (A) at 634E-635C; *Tamarillo (Pty) Ltd v BN Aitken (Pty) Ltd* 1982 (1) SA 398 (A) at 430G-H

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to be unreasonable.[10] Furthermore, a restraint of trade also does not infringe on the constitutional right to free economic activity.[11] The *rationale* behind the enforceability of restraint is based on the principle of *pacta sunt servanda.*

[39] Restraints of trade are aimed at protecting an employer's right to trade secrets and to retain business relationships that they may have introduced an employee to as a contract employee. Ultimately, a restraint of trade is intended to protect the interests of the employer while allowing an employee enough freedom to be economically active and productive. Balancing these sometimes-competing interests can be difficult.

[40] In order for the courts to be able to enforce the contract of restraint the contract must relate to information which may be contractually protected by an employer and must be capable of application in that trade or industry. In addition, the information must be secret or confidential in the broader sense of not being readily available to the public and must be of economic value.

[41] In *Rawlins v Caravan Truck (Pty) Ltd*[12] it was said that the need for an employer to protect its trade connections arises where the employee has access to customers and is in a position to build up a particular relationship with the customers and could easily induce the customers to follow him or her to a new business. Once that conclusion has been

[10] *Magna Alloys and Research (SA) (Pty) Ltd v Ellis* 1984 (4) SA 874 (A) at 891B-C; *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.
[11] *Fidelity Guards Holdings (Pty) Ltd t/a Fidelity Guards v Pearmain* 2001 (2) SA 853 (SE) where the Court said at p 861 H that: '*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*'.
[12] [1992] ZASCA 204; 1993 (1) SA 537 (A) at 541 C-D

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reached and it is demonstrated that the prospective new employer is a competitor of the applicant, the risk of harm to the applicant, if its former employee would take up employment, becomes apparent.[13]

[42] An employer who seeks to enforce a restraint against an employee, must prove the existence of a restraint contract that applies to the employee. And if that is shown to exist, the employer must prove that the employee acted in breach of the restraint obligation imposed by the restraint and that the employee is likely to continue the breach or that there is a reasonable apprehension that the breach is imminent. Once the breach is shown to exist, the determination then turns to whether the facts, considered as a whole, show that the enforcement of the restraint would be reasonable in the circumstances.[14] In *casu* the respondent has shown that the restraint obligations exist in respect of both the first and the second appellants. The only avenue open to the appellants was to prove on a balance of probabilities that the restraints are unreasonable or contrary to constitutional values.[15] Otherwise even if there is no evidence of actual breach, the employer would still be entitled to an interdict in the event of an apprehension that there is strong likelihood that it will be breached. This is so by reason of the fact that an interdict is meant to prevent future conduct and not past events.[16]

[43] An interdict is appropriate only when future injury is feared. This means that when the wrongful act giving rise to the injury has already occurred, either it must be of a continuing nature or there must be a reasonable apprehension that it will be repeated.[17] If the injury is one that '*occurred*

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[13] Ibid para.12

[14] *A J Charnaud & Co (Pty) Ltd v van der Merwe and Others* (2020) 41 ILJ 1661 (LC) at para 56.

[15] *Barkhuizen v Napier* 2007 (5) SA 323 (CC) at para 30

[16] *National Treasury and others v Opposition to Urban Tolling Alliance and others* 2012 (6) SA 223 (CC) at para 50.

[17] A C Cilliers, C Loots et al, Herbstein & Van Winsen: Civil Practice of the High Courts and the Supreme Court of Appeal of South Africa, 5th ed, Juta, at p 1465.

once and for all and is finished and done with', then the applicant should allege facts justifying a reasonable apprehension that the harm is likely to be repeated.[18]

[44] In *Bidvest Protea (COIN) (Pty) Ltd v Seetharam and Another*[19] Van Niekerk J, as he then was, said:

> 'It is incumbent on the employee under restraint to establish that he or she had no access to confidential information and never acquired any significant personal knowledge of confidential information or influence over the applicant's customers while in the applicant's employ (see *Rawlins* supra at 542F-543A). In other words, it is enough for the party seeking to enforce a restraint to show that trade connections through customer or supplier contact exist, and that they can be exploited if the employee was to be employed by a competitor or compete with the business of the applicant. It is not for the applicant to have to run the risk of the employee communicating its trade secrets or utilising its customer connections to the advantage of a competitor. It is also not incumbent on an applicant to enquire into the *bona fides* of the employee or to demonstrate that he or she is *mala fides* before it is entitled to enforce a contractually agreed restraint. The holder of the restraint also does not have to show that the employee *in fact utilised information confidential to it – it is enough that the employee could do so*.'
>
> (Own emphasis)

18 *Performing Right Society Ltd v Berman and Another* 1966 (2) SA 355 (R) at 357 – 358
19 (D 14/2022) [2022] ZALCD 2 (28 February 2022) at para 20.

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[45] It is common cause that the first appellant had unrestricted access to all the information of Three-D Investments including pricing, client lists and details, client and supplier purchasing trends, sales projections, payment analysis, stock inventories and suppliers, as well as its *business* expansion strategy. He occupied the highest position in the hierarchy and was responsible for the day to day running of the business.

[46] The respondent discovered, by reference to its computer records, that the first and second appellants accessed confidential business information and trade secrets, such as client records and inventory lists for suppliers. From July 2024, they accessed information relating to purchase patterns of clients, inventory lists, and market trends relating to the products supplied by the respondent. It was common cause that information, within the respondent's business, is securely maintained. There are different levels of access - depending on seniority. The first and second appellants had unrestricted access to that information.

[47] During the second week of December 2024, the first and second appellants, acting on behalf of the third appellant, placed an order with Uni-T and/or HIKMICRO for products valued at more than R 1 000 000, 00 (one million rand). There was therefore a reasonable apprehension that they may have breached the restraint obligations. This evidence was enough for an interdict to be granted.

[48] The three requirements for a final interdict laid down in *Setlogelo v Setlogelo*[20] namely, the establishment of a clear right, injury actually committed or reasonably apprehended and the absence of similar protection by any other ordinary remedy have been satisfied.

[20] 1914 AD 221 at 227

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[49] With regard to reasonableness or otherwise of the restraints the Labour Court considered that the restricted areas were too wide and reduced the area of application of the restraints to Gauteng, KwaZulu-Natal and Western Cape. Courts have consistently applied considerations in determining whether the enforcement of a restraint of trade would be unreasonable.[21] I find no reason to interfere with the determination of the Labour Court in this regard. In my view the appeal must fail.

Costs

[50] The guiding principle in Labour matters with regard to costs is law and fairness. Where no employment relationship exist the Court must exercise its discretion either to award or not award costs. There is no contention that the Labour Court exercised its discretion capriciously or upon applying a wrong principle.

[51] In the result the following order will issue.

Order

1. The appeal is dismissed with costs.

B R Tokota

Acting Judge of the Labour Appeal Court of South Africa

[21] *Ball v Bambalela Bolts (Pty) Ltd and another* [2013] 9 BLLR 843 (LAC) at para 15.; *Basson v Chilwan* 1993 (3) SA 742 (A) at 767C-H *New Justfun Group (Pty) Ltd v Turner and Others* (J786/14) [2014] ZALCJHB 177 (14 May 2014) at para 10; *ARB Electrical Wholesalers (Pty) Ltd v Grove and Others* (C335/14) [2014] ZALCCT 31 (3 June 2014) para.27; *Shoprite Checkers (Pty) Ltd v Jordaan & another* (2013) 34 ILJ 2105 (LC) at para 23; *Vox Telecommunications (Pty) Ltd v Steyn and Another* (2016) 37 ILJ 1255 (LC) at paras 28; *Benchmark Signs Incorporated v Muller and another* [2016] JOL 36587 (LC) at para 15.

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Van Niekerk JA and Djaje AJA Concur

<u>APPEARANCES:</u>

For the First Appellant	:	C Slabbert
		Instructed by: V Cronje Attorneys
For the Second appellant	:	A Coetzee
		Instructed by: Dunsters Attorneys
For the respondent	:	M. Peacock
		Instructed by: Jagga and Associates

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