



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

Signature

Date

IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not reportable

Case No: 2026 - 113095

In the matter between:

TROPIC PLASTIC & PACKAGING INDUSTRY (PTY) LTD

Applicant

and

DEBBIE LUBBE

First Respondent

RICHESTER FOODS (PTY) LTD

Second Respondent

RICHFLEX (PTY) LTD

Third Respondent

Heard: 21 July 2026

Delivered: This judgment was handed down electronically by uploading on Caselines; circulation to the parties' legal representatives by email, and publication on the Labour Court's website. The date for hand-down is deemed to be 2 September 2026.

JUDGMENT

TLHOTLHALEMAJE, J

Introduction:

- [1] In this application, the applicant seeks an order enforcing a restraint-of-trade agreement and certain undertakings made by the first respondent at the commencement of the parties' employment relationship. The order sought is to interdict and restrain the Second Respondent for a period of twelve months

from 27 April 2026 and throughout the Republic, from being employed with the Second Respondent and/or the Third Respondent in any capacity whatsoever; from using, disclosing or communicating the Applicant's confidential and/or proprietary information to any person or entity, including the Second Respondent and/or the Third Respondent, their employees, agents or representatives; and from soliciting, canvassing or dealing with any customer of the Applicant with whom she had contact or in relation to whom she acquired confidential information during her employment.

- [2] Only the First Respondent (Ms Lubbe) opposed the application.

The background and the Applicant's case:

- [3] The founding affidavit was deposed to by Mr Blake Anthony Walker, the applicant's Human Resource and Compliance Executive. He averred that the applicant is a manufacturer operating in the flexible plastic packaging industry, and carries on business from Durban, KwaZulu-Natal. It operates in the flexible packaging and plastics manufacturing sector, with a particular focus on producing and supplying low-density polyethylene packaging materials and related converting solutions. Its manufacturing activities include extrusion, flexographic printing, lamination, slitting and bag converting processes, supplying customers across, *inter alia*, the food, retail, industrial and consumer goods sectors.
- [4] Lubbe was employed by the applicant with effect from 3 May 2021 as Key Accounts Technical Sales Manager. Prior to the commencement of her employment, Lubbe had signed a written restraint of trade and confidentiality agreement in favour of the applicant on 28 March 2021. Lubbe was also paid a monthly "restraint of trade" fee of R3,000 as part of her remuneration package and compensation for the existence and effect of the restraint agreement. She handed in her resignation from the applicant on 27 April 2026.
- [5] Walker contends that the Third Respondent (Richflex (Pty) Ltd) is the applicant's direct competitor in the flexible plastic packaging industry, and is also an associated company within the same group structure as the Second

Respondent (Richester Foods (Pty) Ltd, and through or within whose structure Lubbe was engaged. The Second and Third Respondents were cited because Lubbe had taken up employment within their structure and/or business operations. According to Walker, the Second and Third Respondents were associated companies operating as part of the same commercial structure, with the same directing mind, operated from the same premises, and had overlapping personnel and communications. Thus, to the extent that the Third Respondent was a direct competitor of the applicant in the flexible plastic packaging industry, it was contended that Lubbe's engagement within the structure of the second and third respondents fell within the competitive field from which she agreed to be restrained.

- [6] Walker further averred that the flexible packaging industry was highly competitive, and that the nature of the applicant's business necessarily involved the development and protection of confidential commercial information, including customer relationships, pricing structures, manufacturing methodologies, technical specifications, supplier relationships, production capabilities and proprietary operational processes within a competitive manufacturing sector.
- [7] According to Walker, Lubbe, in her position, was based in Johannesburg and reported to the Sales and Marketing department. Her role is said not to have been peripheral, as she occupied a hybrid senior position integrating technical sales, customer and system management, compliance oversight, and operational quality management. In that role, she also serviced existing clients and approached new clients. In addition to her role as sales manager, Lubbe acted as the applicant's Systems Coordinator and was responsible for the entire integrated management system across the business. To this end, it was contended that by virtue of her role, she had direct and extensive access to the applicant's customer identities, pricing and margin structures, sales strategies, pipelines and market intelligence, product specifications and technical data, proprietary food-safety and quality-management systems, supplier relationships, and operational processes.

- [8] Walker further averred that Lubbe had unlimited access to information such as product formulations, raw material specifications, manufacturing processes, lamination sequencing, machinery capabilities and weaknesses, production capacity information, customer-specific requirements, technical tolerances, pricing and margin structures, and strategic operational limitations.
- [9] Further confidential information to which Lubbe is said to have had unlimited access to, according to Walker, included all information about the applicant's customers and the blends, formulations, and recipes used to produce flexible packaging for those customers. It was averred that she knew the applicant's top clients, who the relevant contacts at each client were, dealt with customer complaints and their outcomes, and had full visibility into audit results and corrective action strategies for clients, including assessments of any internal weaknesses and risk mitigation mechanisms. According to Walker, Lubbe was placed in a position where she acquired the applicant's most confidential information and customer connections of obvious commercial value to any competitor or associated competitor; hence the enforcement of the restraint as sought, to mitigate against any risks to the above-mentioned confidential information.
- [10] Walker further averred that upon Lubbe's resignation during April 2026, she had specifically informed him that the Second Respondent approached her with an offer of employment. The applicant became aware on 30 April 2026 that Lubbe had taken up, alternatively intended imminently to take up, employment with the Second Respondent, alternatively an associated entity within the same group as the Second Respondent. The applicant's attorneys addressed correspondence to Lubbe, reminding her of her restraint-of-trade undertakings. In the correspondence, Lubbe was afforded until 4 May 2026 to give undertakings that she would not breach the terms of her restraint of trade undertakings by, *inter alia*, taking employment with the Second Respondent or any other competing entity.
- [11] Following further correspondence and another deadline, Lubbe responded on 6 May 2026, expressly stating that she was aware of the restraint-of-trade undertakings. She confirmed that she had commenced employment with the

Second Respondent in its Food Safety Department with effect from 4 May 2026, and indicated to whom she directly reported. She further requested a copy of her signed contract of employment and declined to give any undertakings as sought by the applicant.

- [12] There were further exchanges between the attorneys for the applicant, Lubbe, and the third respondent, including additional deadlines within which Lubbe was to provide undertakings, failing which this application would be launched. However, no such undertakings were forthcoming. It is against this background that the Court was approached with this urgent application.

Lubbe's opposition:

- [13] From both the answering and supplementary answering affidavits, Lubbe does not dispute the existence of the restraint and confidentiality agreement she voluntarily signed, which formed part of the employment relationship. Lubbe further conceded that, after her resignation, she took up employment with the Second Respondent, with effect from 1 May 2026, as Food Safety Management System Manager. She did not dispute that the Third Respondent is a direct competitor of the applicant in the flexible packaging industry. She confirmed that the employment relationship with the second respondent was terminated on 8 May 2026. In its letter confirming the termination, the second respondent indicated that it was a 'precautionary and commercial step' in light of the circumstances brought to its attention and to avoid unnecessary disputes between the parties concerned.
- [14] Lubbe denied that she was ever employed by the third respondent, and contended that her employment was only with the second respondent, which was not a competitor. She contended that the two entities were separate businesses, and that the fact that they shared ownership did not make them one entity. This was so because the Second Respondent was a confectionery manufacturer, whilst the Third Respondent was a packaging company with separate management, operations, and activities. She denied any breach of the restraint undertakings, since the Second Respondent was not a competitor and, further, since she never worked for the Third Respondent.

She averred that as at the date of the hearing of the application, she was unemployed.

[15] Lubbe denied that she occupied a strategic role involving customers and confidential information. She contended that 98% of her tasks related to food safety systems, and that she had limited responsibilities in sales and limited customer management. She denied having broad access to confidential information or being a gatekeeper and custodian of any such information. She further denied that she was in possession of any proprietary confidential information, or had unrestricted access to pricing, profit margins, finance or product formulation. She further contended that she managed only a few customers and had no influential customer relationships or control over customer accounts. She denied having solicited the applicant's customers at any stage after the termination of the employment relationship.

[16] To the extent that Lubbe's appointment with the second respondent was brief, Lubbe denied that its termination was due to attempts to avoid restraint proceedings. She contended that the termination was a 'precautionary commercial decision' and was not due to breach of the restraint or guilt. The termination of the employment with the Second Respondent on 8 May 2026, according to Lubbe, made the urgent application moot, as the relief sought had already been achieved.

Preliminary points:

[17] In opposing the application, Lubbe had raised four preliminary points. The first was raised under the provisions of Rule 3(1) of the Rules of this Court¹, which was, however, and wisely so, abandoned at the commencement of the proceedings.

(i) *Challenge to authority:*

¹ Which provide;

3. Seat where proceedings must be initiated and court sittings;
 (1) Unless the Judge President directs otherwise, proceedings must be initiated at the seat of the court nearest the place where the dispute which is subject matter of the proceedings arose."

- [18] The second preliminary point pertained to Walker's authority to depose to the founding affidavit. Lubbe had contended that no resolution from the applicant's board of directors was annexed to the founding affidavit, which authorised Walker to institute and prosecute the application on the applicant's behalf or to act on its behalf. She contended that any instruction that Walker had given to any legal representative to act on behalf of the applicant in these proceedings was similarly invalid.
- [19] A notice in terms of Rule 7(1) of the Uniform Rules of Court² was subsequently served. Lubbe specifically relied on *Minister of Water and Sanitation v Clackson Power(Pty) Ltd and Another*³, in questioning the authority of Walker, and with specific reference to whether he was properly authorised to instruct the applicant's attorneys of record.
- [20] I agree with the applicant's contentions that the Rule 7 challenge is misconceived in view of the basis of that challenge. In this case, it is the applicant's attorneys that had instituted and prosecuted the application on the instructions of the respondent. Walker merely deposed to the founding affidavit, and there was no need for authorisation in that regard in line with *Ganes and Another v Telkom Namibia Ltd*⁴, where it was held that

*"It is irrelevant whether Hanke had been authorised to depose to the founding affidavit. The deponent to an affidavit in motion proceedings need not be authorised by the party concerned to depose to the affidavit. It is the institution of the proceedings and the prosecution thereof which must be authorised."*⁵

² Which provides;

"7(1) Subject to the provisions of subrules (2) and (3) a power of attorney to act need not be filed, but the authority of anyone acting on behalf of the party may, within ten days after it has come to the notice of the party that such person is so acting, or with the leave of the court on good cause shown at any time before judgment, be disputed, whereafter such person may no longer act unless he satisfied the court that he is authorised to act, and to enable him to do so the court may postpone the hearing of the action or application."

³ (4438/2023) [2024] ZAWCHC 87; 2024 (5) SA 280 (WCC)

⁴ (608/2002) [2003] ZASCA 123; [2004] 2 All SA 609 (SCA); 2004 (3) SA 615 (SCA); (2004) 25 ILJ 995 (SCA).

⁵ At para 19

[21] It was correctly pointed out on behalf of the applicant that the preliminary point rested on a basic conflation, to the extent that the authority of the applicant's attorneys to institute and prosecute the application is not challenged. It follows that the challenge ought to be dismissed.

(ii) *Urgency.*

[22] The third preliminary point related to the urgency of the matter. The application was initiated on 20 May 2026. The matter initially came before the Court on 19 June 2026, and was removed from the roll for unclear reasons. Although in the answering affidavit Lubbe sought to contest the urgency of the application, this was not seriously pursued during argument. However, for the sake of completeness on the issue of urgency, the applicable principles in that regard are trite as can be gleaned from now familiar authorities⁶.

[23] Under Rule 38 of the Rules of this Court, an applicant seeking urgent relief must in her founding affidavit, set out the reasons for urgency; why urgent relief is necessary; and the reasons why the requirements of the rules were not complied with. Aligned to these requirements is that an applicant cannot claim urgent relief where, on the facts and circumstances of the case, it is apparent that the urgency claimed is self-created. Further considerations the Court must take into account when considering urgent relief are the interests of the respondent party, and any prejudice it may suffer if the matter is disposed of on an urgent basis. Equally important is whether, based on the facts and circumstances of the case, it can be said that an applicant will not be afforded substantial redress in due course if the application was brought to Court by way of an ordinary non-urgent procedure. Where an applicant fails to establish that substantial redress is not available in due course, the matter must be struck from the roll⁷.

⁶ See *Jiba v Minister: Department of Justice and Constitutional Development and Others* (2010) 31 ILJ 112 (LC) at para 18; *Tshwaedi v Greater Louis Trichardt Transitional Council* [2000] 4 BLLR 469 (LC) at para 11; *Dynamic Sisters Trading (Pty) Limited and Another v Nedbank Limited* [2023] ZAGPPHC 709 (21 August 2023); *Luna Meubel Vervaardigers v Makin and Another* 1977 (4) SA 135 (W) at 136H-137F; *Ntozini and Others v African National Congress and Others* [2018] ZAGPJHC 415 at para 10.

⁷ *SARS v Hawker Air Services (Pty) Ltd* [2006] ZASCA 51; 2006(4) SA 292 (SCA)

- [24] Lubbe had contended that the urgency claimed in this case was self-created in view of the fact that she had since terminated her employment with the Second Respondent, thus rendering the application moot. She contended that there was no longer any ongoing threat, breach or imminent harm to invoke the urgent jurisdiction of the Court. She further contends that the urgency sought was based on assumptions and speculation that she may disclose confidential information in future, and further that no practical effect would follow from the relief sought.
- [25] The applicant contended that applications to enforce restraint of trade agreements were inherently urgent in nature. Since the inherent nature of urgency in such matters cannot be disputed because of their time-bound character, similarly, there is an obligation on the applicant to satisfy the Court that the requirements of urgency are met. Equally so, an applicant must have acted with the necessary haste to prevent any harm that the restraint sought to protect. At the same time, it is equally acknowledged that the haste with which an applicant approaches the court is not on its own determinative of urgent relief.
- [26] In this case, there can be no doubt that upon the applicant having become aware of Lubbe's employment with the second respondent and the former had not given the undertakings sought, it had, as evinced from the background set out above, acted with the necessary alacrity. Furthermore, it can be accepted that urgency arises out of the need not only to enforce the restraint agreement, which was not disputed in this case, but also to protect the proprietary interests through the restraint. This is so because once an ex-employee is shown to have breached the restraint, one cannot seriously speak of substantial redress being available to an applicant in due course.
- [27] The issue of mootness in view of the common cause fact that the employment relationship between Lubbe and the Second Respondent was terminated as at the hearing of this matter, will be addressed in detail further below. However, to the extent that Lubbe had in opposition to the application persisted with her contention that the Second Respondent was not a competitor, or that she possessed no capacity to share or disclose any of the

applicant's proprietary interests, and further to the extent that the restraint remains extant, I am of the view that there is no basis for any conclusion to be reached that the urgency claimed in this case is self-created. The Court will therefore treat the matter as urgent.

(iii) *Mootness:*

- [28] This issue arose in light of the common cause fact that the employment relationship between Lubbe and the second respondent was terminated prior to this matter being enrolled for a hearing. It is trite that courts do not determine academic questions or grant orders where no practical effect will result. A matter that is moot falls outside the jurisdiction of the court unless the interests of justice demand otherwise⁸.
- [29] In *Normandien Farms (Pty) Limited v South African Agency for Promotion of Petroleum Exportation and Exploitation (SOC) Limited and Others*⁹, the Constitutional Court held that mootness is when a matter "no longer presents an existing or live controversy", and that the doctrine was based on the notion that judicial resources ought to be utilised efficiently and should not be dedicated to advisory opinions or abstract propositions of law, and that courts should avoid deciding matters that are "abstract, academic or hypothetical". The Constitutional Court acknowledged that mootness was not an absolute bar to the justiciability of an issue, and that the overriding consideration was whether the interests of justice require the determination of the dispute. The Court had discretionary power to entertain even admittedly moot issues, where the interests of justice, and further taking into account *inter alia*, whether any order will have some practical effect either on the parties or on others; the nature and extent of the practical effect that any possible order might have; and the importance of the issue.

⁸ *President of the Republic of South Africa v Democratic Alliance and Others* (CCT159/18) [2019] ZACC 35; 2019 (11) BCLR 1403 (CC); 2020 (1) SA 428 (CC); *Women in Capital Growth (Pty) Ltd and Another v Scott and Others* (1193/2019) [2020] ZASCA 95 (20 August 2020) at para 15; *JT Publishing (Pty) Ltd and Another v Minister of Safety and Security and Others* (CCT49/95) [1996] ZACC 23; 1996 (12) BCLR 1599 (CC); 1997 (3) SA 514 (CC) at para 15; *National Coalition for Gay and Lesbian Equality and Others v Minister of Home Affairs and Others* (CCT10/99) [1999] ZACC 17; 2000 (2) SA 1 (CC); 2000 (1) BCLR 39 (CC)

⁹ (CCT195/19) [2020] ZACC 5; 2020 (6) BCLR 748 (CC); 2020 (4) SA 409 (CC) at paras 47 - 50

[30] Against the above principles, the Court appreciates that the order sought by the applicant in this case is directly linked to a time-bound period under the restraint of trade agreement, which was still in force. Lubbe had already secured employment with an entity that the applicant considered a competitor, thereby breaching the agreement. Despite requests and deadlines, she had not given the undertakings sought. It can thus not be doubted that the termination of the employment relationship with the second respondent was only triggered after the application was initiated, and after Lubbe had refused to give any undertakings. Clearly the application was necessary. Moreover, the fact that, in persisting with her opposition, Lubbe had contended that her employment with the second respondent did not constitute a breach of the restraint, and that the applicant's case was based on speculation, further adds credence to the necessity of the application and the need to consider whether the interdict sought is appropriate.

[31] As recently stated by the Labour Appeal Court in *Downard and Others v Hudaco Trading (Pty) Ltd*

*'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. If the injury is one that 'occurred 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'*¹⁰

[32] Without questioning Lubbe's bona fides for now, the applicant cannot in these circumstances trust that a possibility of the infringement complained of may not be repeated prior to the expiry period of the restraint. In my view, the applicant is correct in pointing out that a live controversy exists. To the extent that Lubbe disputes any breach or denies that the second respondent is a competitor, there is a live legal issue that requires determination. There is therefore no doubt that should the order sought be granted, this would have a significant practical effect in relation to the proprietary interests sought to be

¹⁰ (A2025/153574; A2025/153556) [2026] ZALAC 29 (30 July 2026) at paragraph 43

protected. I am of the view that the interests of justice dictate that the application be determined.

The legal framework and evaluation:

- [33] The principles applicable to disputes pertaining to enforcement of restraint-of-trade agreements need no introduction. It is trite that such agreements are generally enforceable, unless they are found to be unreasonable or unlawful. It is therefore for the applicant seeking enforcement to not only establish the existence of the contract sought to be invoked, but also to demonstrate the breach thereof. Once a contract and its breach are established, it will be upon the ex-employee seeking to avoid the restraint provisions to demonstrate, on the balance of probabilities, that the restraint agreement is unenforceable because it is unreasonable, unlawful, and against public policy.¹¹
- [34] To the extent in this case, it was submitted on behalf of Lubbe that the applicant had not discharged its onus regarding the reasonableness of the restraint provisions, the Labour Appeal Court in *Ball v Bambalela Bolts (Pty)Ltd and Another*¹² has held that;

'In Reddy v Siemens Telecommunications (Pty) Ltd, it was held that the reasonableness of a restraint could be determined without becoming

¹¹See *Experian South Africa (Pty) Ltd v Haynes and another (Experian)* (48711/2011) [2012] ZAGPJHC 105; 2013 (1) SA 135 (GSJ); (2013) 34 ILJ 529 (GSJ); *Reddy v Siemens Telecommunications (Pty) Ltd* 2007 (2) SA 486 (SCA); *Sibex Engineering Services (Pty) Ltd v Van Wyk and Another* 1991 (2) SA 482 (T) at 502 J – 503 B; See Headnote in *Magna Alloys and Research (SA) (Pty) Ltd v Ellis* 1984(4) SA 874 (A) where the following is stated:

"The approach, followed in many South African judgments, that a covenant in restraint of trade is *prima facie* invalid or unenforceable stems from English law and not our common law, which contains no rule to that effect. The position in our law is that each agreement should be examined with regard to its own circumstances to ascertain whether the enforcement of the agreement would be contrary to public policy, in which case it would be unenforceable. Although public policy requires that agreements freely entered into should be honoured, it also requires, generally, that everyone should be free to seek fulfilment in the business and professional world. An unreasonable restriction of a person's freedom of trade would probably also be contrary to public policy, should it be enforced.

Acceptance of public policy as the criterion means that, when a party alleges that he is not bound by a restrictive condition to which he had agreed, he bears the *onus* of proving that the enforcement of the condition would be contrary to public policy. The Court would have to have regard to the circumstances obtaining at the time when it is asked to enforce the restriction. In addition, the Court would not be limited to a finding in regard to the agreement as a whole, but would be entitled to declare the agreement partially enforceable or unenforceable."

¹² JA 23/11) [2013] ZALAC 14; [2013] 9 BLLR 843 (LAC); (2013) 34 ILJ 2821 (LAC) at para

embroiled in the issue of onus. This could be done if the facts regarding reasonableness have been adequately explored in the evidence and if any disputes of fact are resolved in favour of the party sought to be restrained. If the facts, assessed as aforementioned, disclose that the restraint is reasonable then the party, seeking the restraint order, must succeed, but if those facts show that the restraint is unreasonable, then the party, sought to be restrained, must succeed. Resolving the disputes of fact in favour of the party sought to be restrained involves an application of the Plascon-Evans rule.'

- [35] The purpose of enforcing restraint provisions, as restated in *Sibex*, is not to curtail the freedom of a former employee to do the work for which they are qualified, because doing so would be unreasonable, contrary to the public interest, and therefore unenforceable on public policy grounds. This is particularly where it can be demonstrated by the ex-employee that at the time enforcement was sought, the restraint was directed solely to the restriction of fair competition and that the restraint was not at that time reasonably necessary for the legitimate protection of the ex-employer's protectable proprietary interests,
- [36] From the above principles, it follows that in deciding whether a restraint of trade agreement ought to be enforced, the Court must strike a balance between the sanctity of a contract, and the freedom of ex-employees' ability and right to trade their labour, occupation, and professional skills as protected in section 22¹³ of the Constitution of the Republic¹⁴.
- [37] At the core of enforcement of restraint of trade is whether, as stated in *Basson v Chilwan and Others (Basson)*¹⁵, a party seeking to enforce a restraint of trade has established protectable interests in the form of confidential information which is of value for the carrying of business for both the ex-employer and its competitors(i.e., trade secrets) and/or trade connections¹⁶.

¹³ The Constitution of the Republic of South Africa, 1996.

¹⁴ See also *Labournet (Pty) Ltd v Jankielsohn and Another (Jankielsohn)* (2017) 38 ILJ 1302 (LAC) at para 40 – 41.

¹⁵ 1993 [3] SA 742 (A) at 767 C-H. See also *Backsports (Pty) Limited v Motlhanke and Another (Backsport)*(Reasons) (JA2025/091548) [2025] ZALAC 50; [2026] 1 BLLR 8 (LAC); (2026) 47 ILJ 529 (LAC)

¹⁶ See also *Jankielsohn* at para 41

Against these interests, in *Basson*, it was further held that the questions to consider when assessing the reasonableness of restraint of trade provisions are;

- (a) Whether such interests were being prejudiced by the other party
- (b) If so, whether such interests so weigh up qualitatively and quantitatively against the interest of the latter party that the latter should not be economically inactive and unproductive?
- (c) Whether there is 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?

[38] Of equal relevance in the determination of reasonableness is the duration of the restraint, the reasons for the restraint, the geographical area to which the restraint applies, and whether the restraint goes further than is necessary to protect the interests claimed¹⁷.

[39] To the extent that the applicant seeks final relief, it must satisfy the requirements in that regard. Thus, it must demonstrate a clear right; an actual or reasonably apprehended infringement of that right; and the absence of an adequate alternative remedy¹⁸.

Existence of the restraint of trade and breach:

[40] Lubbe does not dispute the existence of the restraint agreement and undertakings. Against these undertakings, Lubbe was further paid a monthly restraint allowance.

¹⁷ See also *Kwik Kopy (SA) (Pty) Ltd v van Haarlem and Another* 1999 (1) SA 472 (W) at 484E. See also *Backsport* at para 28 where it was held that;

‘The enquiry into reasonableness has been refined and elaborated on in cases such as *Reddy* and *Basson*. The enforceability of a restraint essentially hinges on the nature of the activity that is prevented, the duration of the restraint, and the area of operation of the restraint. In particular, 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*’

¹⁸ *Setlogelo v Setlogelo* 1914 AD 221 at p227.

- [41] The nature of the restraint and undertakings is extensively covered under Clause 2 of the agreement. Effectively, Lubbe undertook, for a period of one year from the termination of her employment and throughout the Republic of South Africa, not directly or indirectly to be employed by, interested in, engaged in, or concerned with any concern manufacturing, selling or rendering the applicant's prescribed services. She further undertook not to solicit or deal with prescribed customers and not to use or disclose the applicant's confidential information.
- [42] The 'prescribed services' are defined in clause 1.2.5 of the agreement to mean: 'any services which are rendered by the Company in the ordinary course of business carried on by it during any part of the Employment Period; and/or manufacturing and providing customers with a range of flexible plastic and packaging and other related products.'
- [43] Lubbe contended that there was no breach in view of the fact that she did not take up employment with the third respondent, which is a direct competitor of the applicant. She further contends that since her employment with the second respondent was brief, she never divulged or utilised the applicant's confidential information, or solicited its clients. She submits that her access to confidential information during her employment relationship with the applicant was overstated, and that her expertise was part of her own skills and experience, and not the applicant's proprietary interest.
- [44] She contends that, in any event, her employment with the second respondent was not in breach, as the latter was not a competitor. She conceded that there was common ownership of the second and third respondents, but contended that the entities were distinct and separate businesses, with separate operations, management and activities. According to Lubbe, the second respondent is a confectionery manufacturer, importer and wholesaler, and did not manufacture or supply flexible packaging products, which activities fell outside of 'Prescribed Services' as defined in the agreement. She contended that even if the second respondent employed her, such employment would not trigger the restraint provisions.

- [45] The applicant had correctly pointed out that Lubbe's attempts at distinguishing between the second and third respondents were indeed artificial, contrived, and lacking in substance. Undisputed facts are that the two entities operate as part of the same commercial structure and from the same premises. Furthermore, they have overlapping operational personnel/management/directorship, and communications, as well as business activities. They also operate within the same flexible plastic packaging sector, utilise comparable manufacturing and converting processes, and compete for substantially similar categories of customers requiring customised packaging solutions.
- [46] Against the comparable, overlapping and intertwined business operations between the two entities, I fail to appreciate how Lubbe can seriously contend that they are distinct and unrelated, and that her employment with the second respondent could not therefore have triggered the restraint provisions, which prohibit her employment by any concern rendering 'Prescribed Services' as defined in clause 1.2.5 of the agreement.
- [47] The invariable conclusion is that, by taking up employment with the second respondent, albeit for a brief period, Lubbe indeed breached the restraint of agreement. Accordingly, the applicant had indeed established a clear right to the final relief sought. The applicant has correctly pointed out that Lubbe's employment with the second respondent clearly created a clear and foreseeable risk to its proprietary interests, particularly given the direct operational overlap between the two entities.

Protectable interests:

- [48] The only issue is whether, resulting from the provisions of the restraint of trade agreement, and in the light of the specific proprietary interests identified by the applicant, these are worthy of any protection. This Court recently, in *Vanhattan Lifting CC v Herselman and Another (Vanhatten)*¹⁹, and with reference to other authorities, summarised what constitutes proprietary interests that are worthy of protection as follows;

¹⁹ (2026/106176) [2026] ZALCJHB 206 (7 July 2026)

“[35] Confidential information would be: (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 summarised 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.

[36] Trade connections as an interest worthy of protection would be 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 or she leaves employment and becomes employed by a competitor, the employee could easily or readily induce the customers to follow the employee to the new business. 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 (d) the nature of the product or services at stake.

[37] The seniority of the employee concerned is also an important consideration where it comes to evaluating the existence of a protectable interest. The more senior the employee, the more likely it is that the

employee would be entrenched with what can legitimately be considered to be a protectable interest based on the above two considerations. Seniority is not just the level of the employee in the organization of the erstwhile employer, but also includes factors such as the length of service, position, influence, knowledge, expertise, nature of duties, relationships and even the particular person of the employee.”

[49] In *Experian*, it was further held that;

*“It is trite that the law enjoins confidential information with protection. Whether information constitutes a trade secret is a factual question. For information to be confidential it must be capable of application in the trade or industry, that is, it must be useful and not be public knowledge and property; known only to a restricted number of people or a close circle; and be of economic value to the person seeking to protect it (see *Townsend Productions (Pty) Ltd v Leech and Others* 2001 (4) SA 33 (C) at 53J-54B, *Mossgas (Pty) Ltd v Sasol Technology (Pty) Ltd* [1999] 3 All SA 321 (W) at 333F)”²⁰.*

[50] To the extent that Lubbe’s employment relationship with the second respondent was brief, it is correct that there is no discernible evidence advanced by the applicant that she had solicited its customers, nor was there any evidence to demonstrate that indeed she had shared the applicant’s trade secrets with the second respondent or with any other entity. The enquiry, however, does not end at that point; more specifically, it has been concluded that Lubbe had already breached the restraint by being employed by the second respondent, whose business and operations are intrinsically linked to the third respondent, which is a competitor.

[51] Lubbe, however, further contends that the applicant failed to identify any genuine proprietary interest in her possession that was under threat, and submits that enforcement was intended merely to eliminate competition rather than to protect legitimate business interests. As to whether Lubbe was in a position to threaten the applicant’s proprietary interest, as already pointed out in *Vanhatten*, is an issue that must be assessed against a variety of factors,

²⁰ At para 19

including, but not limited to, her position and primary functions whilst in its employ.

- [52] From the pleadings and amongst a variety of disputes that Lubbe sought to raise, it does not appear to be seriously disputed that she occupied a senior and strategically key position as Key Accounts Technical Sales Manager, and had also acted as the applicant's System Coordinator. In those positions, she was responsible for the applicant's entire integrated Food Safety Management System. She maintained and updated controlled system documentation, including policies, procedures, work instructions, forms, and controlled documents. She managed audit and certification processes, interacted with customers regarding audits, questionnaires and certification requirements, and participated in quality and operational management processes. She managed key customers' accounts and technical matters and advised them on material selection, product performance, packaging solutions, and compliance requirements.
- [53] Notwithstanding her contentions that she was not the 'sole custodian' or 'gatekeeper', it was not seriously disputed that she had full access to documents relevant to her systems coordinator role. She had participated in risk assessments and supplier-related functions and engaged with service providers. In the course of her employment and given her senior position, she acquired valuable confidential information, trade secrets, and customer connections, including client databases, supplier information, pricing structures, and strategic business information.
- [54] Against the above factors, which are not seriously in dispute, at the core of Lubbe's opposition is the breadth of access to confidential information related to trade secrets and customer connections, rather than whether she had access at all. Lubbe had, however, sought to downplay her role, let alone her access to proprietary knowledge. It is, however, significant to observe that notwithstanding her denials in relation to her detailed exposure to any confidential information, Lubbe does not challenge the confidential nature of the information that she was exposed to, nor does she raise any factor that disputes that such information has actual economic value to the applicant.

- [55] Regarding the need to protect customer connections, it is trite, emanating from a long line of authorities, that to deserve protection, the party seeking enforcement must establish that such connections exist, and that they are of such a nature that the ex-employees would be able to exploit them, and influence/induce customers to follow them to the competitor.²¹ Again, Lubbe does not challenge the importance and proprietary nature of the customer information she was exposed to, other than the extent of that exposure. Based on the not seriously disputed facts as already summarised elsewhere in this judgment, it is apparent that such customer connections exist, and that they are of such a nature that Lubbe would be able to exploit them to the prejudice of the applicant.
- [56] Lubbe's mere contention that she did not deal with the applicant's prescribed customers, without specifically outlining which of those customers she dealt with to dispel any customer connections, clearly emphasises form over substance. This is particularly having regard to the nature of her position, responsibilities and engagements with customers whilst employed by the applicant. Indeed, her denials in the light of the undisputed facts are not only *mala fide* but are also far-fetched.
- [57] Against the principles set out in *Experian*²² and other authorities, the undisputed facts and the background to this application make it apparent that Lubbe was indeed exposed to the applicant's proprietary knowledge and interests. Since Lubbe had already breached the restraint by being employed by the second respondent, it is not for applicant to rely on her good faith that she would not exploit such knowledge to the applicant's detriment. Two significant factors fortify this observation.
- [58] The first is that upon it being discovered that Lubbe was employed by the second respondent, and before the hearing of this application, the applicant had proposed to the second and third respondents that they would consent to

²¹See *Esquire System Technology (Pty) Ltd t/a Esquire Technologies v Cronjé and another* (2011) 32 ILJ 601 (LC); *Continuous Oxygen Suppliers (Pty) Ltd t/a Vital Aire v Meintjes and another* (2012) 33 ILJ 629 (LC) at para 34; *Rawlins and Another v Caravantruck (Pty) Ltd* [1992] ZASCA 204; 1993 (1) SA 537 (A), at 541 C-H

²² At para 21- 22

an order preventing them from employing or engaging Lubbe during the restraint period. This proposal was not accepted.

- [59] A second consideration is that, as at the hearing of these proceedings, Lubbe had refused to give any form of undertaking and persisted in her incorrect contention that the second respondent was not a competitor. In these circumstances, it was neither incumbent upon the applicant to enquire into Lubbe's *bona fides* nor to demonstrate that she is *mala fides*, before being allowed to enforce the restraint agreement. The applicant need not further demonstrate that Lubbe has in fact utilised its confidential information; all that the applicant and the court must be satisfied with is that Lubbe could utilise such information. Accordingly, I am satisfied that the applicant has demonstrated its proprietary interests to which Lubbe had access and that they are worthy of protection.
- [60] To the extent that Lubbe challenged the period and scope of the restraint, her main contentions were that the combined effect of the geographical scope and duration of the restraint rendered it unreasonable and contrary to public policy. She submitted that the restraint went beyond what was required to protect any legitimate proprietary interests, and operated primarily to eliminate competition from her, and imposed a disproportionate burden on her ability to secure employment in the area of her expertise.
- [61] Lubbe's main contention as above was that the duration and area of the restraint went beyond the ambit of what was required to protect any legitimate proprietary interests. This can only confirm that, contrary to her primary contention, these interests do indeed exist. It could not, however, be seriously disputed that the applicant serviced its customers and clients and supplied products to those clients nationally. Its national customers included major retailers such as Albany Bread, Sunbake, Sasko, Woolworths, Rainbow Chickens, and PepsiCo, to whom Lubbe was exposed during her employment.
- [62] Weighed up qualitatively and quantitatively against the applicant's interests, clearly Lubbe is not prevented from being economically active and productive.

Even from her own pleadings, it can be discerned that alternative employment opportunities exist, including, amongst others, Food Safety Management positions outside the flexible packaging industry, Quality Assurance and Management positions in non-competing businesses, and any other industries unrelated to competing flexible packaging operations.

[63] There is no basis therefore for any conclusion to be reached that the restraint rendered her economically inactive for the period of the restraint, as it is confined to competing flexible packaging business or associated competitive structures, *albeit* for a limited period. Furthermore, the Court cannot agree that the restraint is merely meant to eliminate competition, particularly in light of its limited scope. Against these conclusions, it cannot therefore be argued on behalf of Lubbe that there is another facet of public policy having nothing to do with the relationship between the parties, but which requires that the restraint should be rejected.

[64] Upon a consideration of all the factors, the Court is satisfied that the applicant is entitled to final relief as sought. The applicant has demonstrated a clear right that is likely to be infringed or prejudiced, in circumstances where Lubbe persists in her view that the second respondent is not a competitor. An injury is reasonably apprehended should the second respondent employ her, and clearly the applicant cannot speak of any other satisfactory remedy being available to it. Against these conclusions, it follows that the applicant is entitled to the relief it seeks.

Costs:

[65] It is my view, having considered the facts and background to this application, that this matter ought not to have reached this stage. Upon Lubbe's employment with the second respondent having been terminated, and for whatever reason the latter had proffered, she ought to have reconsidered her position in opposing this matter. Once that employment relationship was terminated, Lubbe ought to have realised that she could not possibly mount a bona fide defence genuinely based on legitimate legal grounds. This was even more so since her opposition did not raise genuine disputes of fact

regarding the enforceability and reasonableness of the restraint. Furthermore, contrary to Lubbe's views, and in view of the contractual nature of the dispute before the Court, the provisions of section 162(1) of the LRA find no application. Accordingly, the ordinary principle that costs must follow the result must apply. In my view, an award of costs of the application is deemed appropriate.

[66] Accordingly, the following order is made;

Order:

1. The applicant's non-compliance with the normal time limits for service is condoned.
2. The First Respondent's preliminary point on the authority of the deponent to depose to the founding affidavit is dismissed.
3. The late filing of the First Respondent's Supplementary Heads of Argument is condoned without any order as to costs.
4. The First Respondent's defence of mootness is dismissed.
5. The First Respondent is interdicted and restrained from being employed with the Second Respondent and/or the Third Respondent and shall not in any capacity whatsoever, including as proprietor, partner, director, shareholder, employee, consultant, contractor, financier, agent, representative, assistant, trustee or beneficiary of a trust or member of a close corporation, directly or indirectly, carry on or be interested or engaged in or concerned with the Second Respondent, the Third Respondent, or any company, firm, partnership, close corporation, trust, undertaking or concern which carries on business in competition, directly or indirectly, with the business as carried on by the Applicant, for a period of twelve months from 27 April 2026 within the Republic of South Africa.

6. The First Respondent is interdicted and restrained from using, disclosing or communicating the Applicant's confidential and/or proprietary information to any person or entity, including the Second Respondent and/or the Third Respondent, their employees, agents or representatives.
7. The First Respondent is interdicted and restrained from soliciting, canvassing or dealing with any customer of the Applicant with whom she had contact or in relation to whom she acquired confidential information during her employment with the Applicant, for a period of twelve months from 27 April 2026.
8. The First Respondent is ordered to pay the costs of this application on the party and party Scale A.

Edwin Tlhotlhemaje

Judge of the Labour Court of South Africa

APPEARANCES:

For the Applicant:

W N Shapiro SC, instructed by
Macgregor Erasmus INC.

For the First Respondent:

Mr Frederick Johannes Swartz of
FJ Swartz Attorneys

LABOUR COURT