



(1) Reportable: No
(2) Of interest to other Judges: No

Signature

Date

IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Case No: 2026-163226

In the matter between:

BRINK'S SOUTHERN AFRICA (PTY) LTD

Applicant

and

JOERN FRESE

Respondent

Heard: 27 August 2026

Delivered: This judgment was handed down electronically by circulation to the parties and / or their legal representatives by email. The date and time for handing-down is deemed 10h00 on 11 September 2026.

JUDGMENT

ALLEN-YAMAN J

Introduction

- [1] The applicant sought to enforce a restraint of trade agreement embodied in a contract of employment entered into between itself and the respondent on 1 April 2020.
- [2] In opposing the application the respondent did not challenge the applicant's claim that it was required to be determined on an urgent basis, and this court is satisfied that the applicant made out a case for its application to be dealt with on such basis. The application will be enrolled accordingly.
- [3] In circumstances in which the applicant's replying affidavit anticipated the possibility of referring certain aspects of the application for the hearing of oral evidence, this issue was canvassed with Mr Whitcutt SC, who appeared on behalf of the applicant with Ms Tolmay, at both the outset and the conclusion of the hearing. No application for the matter to be referred to oral evidence was ultimately made, the applicant having satisfied itself that the application could be determined on the papers.

Background

- [4] The applicant is a logistics company, specialising in the transportation of high-value, high-risk commodities, including precious metals and minerals, cash, and jewellery. It's operations extend throughout the continent of Africa.
- [5] The respondent joined the applicant's business by way of a s197 transfer, when the applicant purchased the business of G4S International Logistics (South Africa) (Pty) Ltd, a company in which he had been employed since 2010 as its Regional Director, Africa. His designation in the business of the applicant was that of Senior Director, Southern African Countries & Mining, Middle East and Africa. As a Senior Director, he reported directly to the applicant's Regional Vice President, Middle East and Africa, Mr Michel Constrain.

- [6] In his position, the respondent was responsible for the applicant's mining sector operations throughout the African countries in which it was involved, dealt with its customers, and was intimately involved in decision making concerning the applicant's business plans, operational plans, and development. To this end, the respondent had access the applicant's confidential information, including its commercial, financial, and strategic information, pricing structures, contractual arrangements, and business strategies.
- [7] On 2 June 2026, the respondent tendered three months' notice of his intention to resign, his last working day to be 1 September 2026. Around the time of his resignation he informed a number of the applicant's other employees that he intended to take up employment with one of the applicant's competitors, but did not specify which one. Beyond informing it that his future employment was to be outside of Africa, he declined to divulge any further information to the applicant, but nonetheless gave it his assurance that he would not act in contravention of any of his contractual obligations.
- [8] The applicant was not satisfied with the respondent's response and so launched the present application, premised on its apprehension that it was inevitable that his future employment would result in a breach of his restraint of trade agreement and its African business interests being damaged as a result.
- [9] Correspondence was exchanged between the parties' respective attorneys thereafter, with the respondent's attorney having endeavoured to assuage the applicant's concerns relating to the respondent's anticipated employment by providing the applicant with some particularity concerning the nature of the position he intended to take up. The applicant, however, remained unconvinced that the respondent's intended employment would not breach his restraint obligations.
- [10] The details of the respondent's proposed employment as set out in both his attorney's correspondence and his answering affidavit revealed that he was to be employed by Ava Global Services FZCO, a company he described as being *'incorporated in terms of the laws of the Dubai Multi Commodities Centre Free*

Zone, United Arab Emirates' (referred to hereafter as 'Ava Dubai'). He explained that Ava Dubai is a subsidiary of Ava Global Logistics Limited, (hereafter referred to as 'Ava Logistics') which he acknowledged to be a competitor of the applicant. The position he intends to occupy is that of Global Head of Mining and Refining (excluding Africa).

Analysis

[11] Not having disputed the veracity or enforceability of the restraint agreement itself; that the applicant has protectable interests in both its customer connections and the confidential information of which he is aware; that he has relationships with its customers such that he has the potential ability to influence the decisions they take insofar as their businesses are concerned; or that he intends, at least indirectly, to take up employment with a competitor, the singular disputed issue on which the application rests concerns whether the respondent's intended employment will breach the geographical limitations of the restraint.

[12] The "Restricted Territory" was defined in clause 16.1 of his contract of employment to include,

'Every magisterial district of the Republic of South Africa in which the Company operates, and province/state in any African country in which the Company operates.'

[13] In terms of clause 16.2 of his contract of employment the respondent accepted the following restrictions on any employment entered into by him after the termination of his employment with the applicant,

'The Employee will not without the prior written consent of the Company directly or indirectly and whether alone or in conjunction with or on behalf of any other person and whether as a principal, shareholder, director, employee, agent, consultant, partner or otherwise within the Restricted Territory for a period of 12 months from the Termination Date:

- 16.2.1 *be employed, engaged, concerned or interested in or provide technical, commercial or professional advice or management advice to any other business which supplies Products or Services in competition with the Company or the Group provided that this restriction does not apply to prevent the Employee from either: (i) undertaking duties or activities which are materially different to those undertaken by him during the Relevant Period in the performance of his duties hereunder; or (ii) holding shares or other securities in any company which is quoted, listed or otherwise dealt in on a recognised investment exchange or other securities market and which confer not more than four per cent of the votes which could be cast at a general meeting of such company; or*
- 16.2.2 *be employed, engaged, concerned or interested in any business which at any time during the Relevant Period has supplied products or services to the Company and/or do or attempt to do anything which causes or may cause the supplier to cease, alter or materially to reduce its supplies to the Company; or*
- 16.2.3 *be employed, engaged, concerned or interested in any business which is or was at any time during the Relevant Period a Relevant Customer of the Company and/or the Group and/or do or attempt to do anything which causes or may cause the Relevant Customer to cease or materially to reduce its orders or contracts with the Company and/or the Group; or*
- 16.2.4 *so as to compete with the Company canvass, solicit, or approach or cause to be canvassed, solicited or approached any Relevant Customer for the sale or supply of Relevant Products or Services or endeavour to do so; or*
- 16.2.5 *so as to compete with the Company deal or contract with any Relevant Customer in relation to the sale or supply of any Relevant Products or Services, or endeavour to do so; or*
- 16.2.6 *solicit, induce or entice away from the Company or, in connection with any business in or proposing to be in competition with the Company, employ, engage or appoint or in any way cause to be employed, engaged or appointed a Critical Person whether or not such person would commit any breach of his or her contract of employment or engagement by leaving the service of the Company; or*
- 16.2.7 *use in connection with any business any name which includes the name of the Company or any passing off of such name.'*

[14] The respondent denied that his employment by Ava Dubai would result in his breach of his restraint obligations. Whilst he accepted that the physical location of his employment beyond the borders of the Restricted Territory would not of itself suffice to place him beyond the restraint, and that any conduct on his part involving the Restricted Territory would result in a breach thereof irrespective of where he was physically situated, he asserted that the restraint would not be breached by his taking up employment with a competitor outside the Restricted Territory merely by virtue of the fact that the competitor itself has business interests within the Restricted Territory. Mr Viljoen argued on behalf of the respondent that to apply the term Restricted Territory to the business of the competitor rather than to the respondent himself would have the effect of creating a worldwide restraint.

[15] On the assumption that the respondent's interpretation of the restraint provisions is correct, then the issue is whether the activities he will be required to undertake in his new position exclude any involvement or influence by him within the Restricted Territory.

[16] On the respondent's version he has been employed by Ava Dubai in the position of Global Head of Mining and Refining (excluding Africa). The exclusion of Africa from his position arose in circumstances in which he had brought the existence of the restraint to the attention of those with whom he was negotiating. The Chief Executive Officer of Ava Global, Mr Christopher Fergus, explained,

'On this basis, and after taking legal advice on the issue, Ava Dubai and Ava Global carefully curated the role and functions of Mr Frese so that his engagement by Ava Dubai would not breach his restraint undertakings owed to the applicant.'

[17] Without challenging the various factual propositions contained in the explanation advanced by the respondent, the applicant was nonetheless dissatisfied. It contended that even on the respondent's own version, it was apparent that the applicant's employment with the respondent would nevertheless breach the restraint. This was said to be so as, in the absence of

any particularity having been provided by the respondent as to how the position he was to take up was, in practical terms, to be divested of its African connection, the position itself when considered in relation to the business of both the applicant and Ava Global, would of necessity require he be involved in the African mining business, even if only on an indirect basis.

[18] In consideration of this, the first observation which may be made is that this court is unable to discern any real distinction between Ava Global and Ava Dubai. Nor has it been advised as to the nature of Ava Dubai's business, insofar as it is a subsidiary of Ava Global and is said to be a distinct and discrete entity. Despite the juristic division of the companies, it is evident that there is an interconnectedness between them such that certain employees of one are employees of both and the reporting lines cross both companies. As regards the respondent's specific position, despite his contract of employment being with Ava Dubai, it is also evident that the functions of his employment will extend to Ava Global.

[19] Other employees identified by the respondent hold equally ambiguous positions within the two entities. Mr Christopher Fergus is both the CEO of Ava Global and 'an employee' of Ava Dubai. Although unspecified, the respondent having referred only to 'Ava', it appears that the other individuals who are to assume responsibility for Ava Global's African operations form part of Ava Global's employee complement. On the respondent's own version, the people to whom those responsible for Africa as well as himself are to report, being either the Chief Commercial Officer or the Chief Operations Officer, are both employed by Ava Global. Moreover, prior to his own appointment by Ava Dubai, negotiations to that end took place with both Ava Dubai and Ava Global.

[20] The respondent attached what was said to be an organogram of *'the various persons who are required to manage Ava Global's African operations.'* The organogram relied on by the respondent in substantiation of his assertions that he is to be kept away from Ava Global's mining operations not only bears no indication that it is one approved by either Ava Global or Ava Dubai (nor was it said by the respondent to have been either entities' official organogram) but it

positions the respondent, an individual who is to be employed by Ava Dubai, amongst several other individuals who are employed by Ava Global. Of those he identified, he appears to be the only individual who is employed exclusively by Ava Dubai. Whilst Ava Global and Ava Dubai are obviously at liberty to structure their business' in any manner they deem suitable, the placement of the respondent within Ava Global's reporting structure coupled with the stated purpose of his role links his position at Ava Dubai inextricably with the business of Ava Global.

- [21] The further difficulty with the conflation of the two entities and the excision of responsibility for the African mining sector from the respondent's portfolio of responsibilities was the respondent's statement that,

'Ava Dubai does not perform any functions within Africa. The African functions are conducted through Ava Global LLC, being an entity based in the United States of America.'

If that proposition is correct, and the respondent had been employed by Ava Dubai to perform services solely for that entity, there would have been no reason to exclude the continent of Africa from his functions.

- [22] That his services are to be performed on behalf of Ava Global, notwithstanding his employment by Ava Dubai, was confirmed by the job summary he provided in relation to the position. This clearly expressed the primary responsibility of his position to be to Ava Global, and to that end, it elaborated the functions for which he is to bear responsibility.

'The Global Head of Mining holds executive responsibility for defining and executing Ava Global Logistics' strategic growth agenda in the mining and refining sector.'

His key responsibilities will entail:

- Leading the development of Ava Global's global commercial strategy for the mining and refining verticals, aligned with its long term vision and financial objectives;

- Driving global revenue, client retention, and market share growth within the mining and refining supply chains (including mining, refining, trading, storage, and distribution);
- Building and managing relationships with stakeholders across the mining and refining business chain, from miners to vault operators;
- Identifying market trends, regulatory development and emerging customer needs;
- Leading commercial negotiations, strategic partnerships, and key account strategies with a view to enhancing Ava Global's competitiveness;
- Providing executive oversight of the sales pipeline and operational execution, so as to ensure, *inter alia*, accurate forecasting and client satisfaction;
- Recruiting, mentoring and leading a global team across commercial, client services and logistics functions;
- Ensuring that all commercial activities are aligned to Ava Global's governance, compliance and security protocols; and
- Representing Ava Global at global industry forums, regulatory meetings and client engagements.

[23] How the African mining sector was to be separated from his own work was explained by the respondent with reference to the following structural arrangements,

'My role at Ava Dubai will not require me to perform any functions in respect of the African market in a direct or indirect manner. Contrary to the suggestions made by the applicant, Ava Global engages several other persons who will be solely responsible for Ava Global's African operations.'

Ava's current Global Head of Mining will become the Director of Mining when I commence my duties with Ava Dubai. The Director of Mining will manage all mining relationships globally, including in Africa and will report directly to Ava's Chief Commercial Officer, as I will.

Ava's Regional Business Development Director, Africa, will continue in that role. He also reports directly to Ava's Chief Commercial Officer. Furthermore, Ava's Operations Director for Europe, Middle East and Africa (EMEA) will report to Ava's Global Director of Operations who will, in turn, report directly to Ava's Chief Operations Officer.'

- [24] In amplification of this explanation, having asserted that his work was to exclude any and all involvement in the Ava Global's interests in the African mining sector, he detailed how this would apply in practical terms

'I will have no access to the pricing, pipeline, client lists, commercial data, or any other aspects of Ava Global's African operations;

I will have no input into, oversight of, or strategic responsibility for Ava Global's African operations; and

Ava Global's African mining, business development, and operations functions report directly to Ava Global's Chief Commercial Officer or Chief Operations Officer, and not to me.'

- [25] Disregarding for the moment the lines of reporting, and considering only the identified functions and the functionaries to whom they have been attributed, on the respondent's own version:

- The Director of Mining will manage all Ava Global's mining relationships; and
- Ava's Regional Business Development Director, Africa, will continue to develop new business in Africa.

In the absence of any challenge by the applicant to the intended structure as explained by the respondent (which is not inherently implausible) this court must accept that the respondent will have no direct involvement with either Ava Global's mining customers and suppliers or the development of its business within the African mining sector by virtue of his employment with Ava Dubai.

- [26] However, without a further explanation by the respondent regarding the manner in which it is intended that he perform the functions identified in the job description itself so as to exclude all involvement by him in Ava Global's interests in the African mining and refining sector, the inescapable conclusion is that, at the very least, in the execution thereof he will be required to participate indirectly.
- [27] The job description provided by the respondent is the only evidence of the functions which he will be required to perform in the role. The job description does not evince that any of the functions of the role have been adjusted so as to accommodate the respondent's obligations in relation to the restraint. Although his job title is that of 'Global Head of Mining and Refining (excluding Africa)', no similar exclusion appears in relation to the actual heading of the document. More importantly, consideration of the functions and responsibilities intrinsic to the position reveals that these are unlimited in relation to the entirety of Ava Global's mining operations. For example, he is to be responsible for *'defining and executing Ava Global Logistics' strategic growth agenda in the mining and refining sector,* and he will also be required to develop and execute Ava Global's commercial strategy for the mining and refining sector. Moreover, of the individual responsibilities identified in the job description, not one expressly excludes from its application Ava Global's interest in the mining and refining sector in Africa and none appear to be capable of implementation if Africa is excluded, as every responsibility is global. Accordingly, despite the excision of 'Africa' from the respondent's job title, none of the functions of the work he will be required to perform appear to have been curtailed in any way so as to exclude Africa from their application.
- [28] Given that the performance of the functions by the incumbent necessarily entails consideration of the entirety of Ava Global's business within the mining and refining sector, there is no self-evident means by which consideration of the African sector can be excluded. In the absence of any explanation as to how the purpose of the role could be achieved without reference to Ava Global's African market, this court is constrained to conclude that by taking up the position in question and performing the functions associated therewith, the

respondent will of necessity be required to involve himself with considerations relating and relevant to the African mining and refining market. Accordingly, whilst this court accepts that the respondent will not be directly involved in Ava Global's African mining and refinery operations as these functions have been allocated to other employees, his indirect involvement in Ava Global's interests in the African market will be the inevitable consequence of his performance of the global functions required of the role in question.

[29] In the result, this court finds that the intended employment of the respondent by either Ava Dubai and / or Ava Global in the position of Global Head of Mining and Refining (excluding Africa) would be in breach of clause 16.2.1 of his contract of employment with the applicant dated 1 April 2020.

[30] The interests which the applicant seeks to protect through the mechanism of the enforcement of the restraint for a period of 12 months are its customer connections and its confidential information. As explained below, it appears that such period will not be necessary, and to apply the restraint for its full duration would be accordingly be unreasonable.

[31] Insofar as the applicant's customer connections are concerned, the applicant did not suggest that the relationships formed by the respondent in the course of his employment with it were such that he would be in a position to attract their business to Ava Global or Ava Dubai by virtue of no more than those relationships. By all accounts, although his dealings with the applicant's business associates were both direct and of a duration commensurate with the length of his own employment with the applicant, they were not alleged to be of a personal nature.

[32] As to its confidential information, the nature thereof was detailed under the applicant's confidential affidavit. Reference being had to the document identified as 'CA11', it is evident that a number of factors cause some instability within the African market. These factors include issues such as the sensitivity of South Africa's currency to external influences, political instability in West Africa, unanticipated changes to the West African regulatory environment, and

unforeseen changes to both custom procedures and security requirements. Given that the various aspects of the mining and refining business in the region are prone to change, it does not appear that any confidential information to which the respondent was privy whilst employed by the applicant will be of any commercial value for a full twelve months.

[33] It is accordingly the conclusion of this court that a period of six months ought to suffice so as to both negate the value of any confidential information to which the respondent was exposed whilst employed by the applicant, and to afford the successor in the respondent's role an opportunity to become fully acquainted and form relationships with the applicant's business associates in the African market. The period of the restraint will be reduced accordingly.

[34] On the further relief sought by the applicant in its Notice of Motion concerning both the retention by the respondent and the potential transmission of the applicant's confidential information to third parties, nothing before this court indicates that the respondent has either retained any of the applicant's confidential information or that he has, or intends to, disseminate confidential information to others. Equally, albeit that a number of other senior employees resigned shortly before the respondent himself did so, nothing suggests that he was instrumental in or influenced their decision to do so. Likewise, the requirements for an interdict in relation to use, or potential use by the respondent of the applicant's identity have not been established. There is accordingly no basis to grant the applicant the orders it sought in regard to these aspects of its claim.

Costs

[35] The applicant asked for an order of costs. It is not difficult to appreciate how the respondent might initially have understood that the restraint of trade would not have prevented him from taking up employment in Dubai. As nothing vexatious or malicious appears to have informed his decision to take up employment elsewhere, or to oppose this application, and now being obliged to

endure a six month period of unemployment, this court is not of the view that the interests of justice would be served by requiring him to bear a costs order.

Order

1. The provisions of the Rules for the conduct of proceedings in the Labour Court relating to the times and manner of service are dispensed with and the matter is dealt with as one of urgency in terms of Rule 38.
2. The respondent is interdicted and restrained for a period of 6 (six) months from 1 September 2026, and within every magisterial district of the Republic of South Africa in which the applicant operates, and every province/state in any African country in which the applicant operates from:
 - 2.1 being employed, engaged, concerned or interested in or providing services to any business which supplies products or services in competition with the applicant or the Brinks Group; and
 - 2.2 canvassing, soliciting, or approaching any Relevant Customer of the applicant for the sale or supply of Relevant Products or Services (as defined in the contract of employment concluded between the applicant and respondent, dated 1 April 2020), or endeavouring to do so; and
 - 2.3 dealing or contracting with any Relevant Customer of the applicant in relation to the sale or supply of any Relevant Products or Services (as defined in the contract of employment concluded between the applicant and respondent, dated 1 April 2020), or endeavouring to do so.
3. The respondent is interdicted and restrained from disclosing, using or divulging any confidential information or trade secrets of the applicant in any manner whatsoever to any third party.
4. The applicant is granted leave to remove its confidential affidavit deposed to by Mr Michel Constrain on 20 July 2026 from the court record and / or court file.

5. Each party is to bear their own costs.

K. ALLEN-YAMAN J

Judge of the Labour Court of South Africa

Appearances

Applicant:

Mr C Whitcutt SC, with Ms E Tolmay

Instructed by Cliffe Dekker Hofmeyr Inc

Respondent:

Mr H M Viljoen

Instructed by Cowan-Harper-Madikizela Attorneys